

MAR 22 2023

S 232127
No. _____
Vancouver Registry



In the Supreme Court of British Columbia

Between

**Charleen Miller on behalf of herself
and the siblings of Amos Miller**

Plaintiff

and

**Mundi 910 Victoria Enterprises Ltd.;
Choice Hotels Canada Inc.;
City of Prince George; and
AllPoints Fire Protection Ltd.**

Defendants

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NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. On July 8, 2020, a fire ("**Fire**") broke out at the Econo Lodge Hotel, located at 910 Victoria Street, Prince George, British Columbia ("**Motel**"). The Motel was occupied at the time of the Fire.
2. Amos Miller was a registered guest staying at the Motel. The Fire killed Amos Miller ("**Amos**") and at least two other people and severely injured many more.
3. Amos was a Dunne-za man and a member of West Moberly First Nations. He was born on or around November 27, 1972 and was 47 years old at the time of his death. He grew up in Summit Lake, BC as the youngest in a large and close family.
4. Amos' parents predeceased him. His father died in 1989 and his mother died in 2011.

5. He is survived by his siblings April Bennett, Debbie Miller, Charleen Miller, Bruce Miller, Gord Miller ("**Gord**"), Brenda Miller, Peggy Miller, Chad Miller, Wanda Miller, and Albert Miller ("**Albert**"). Amos had no children or spouse at the time of his death.
6. Prior to his death, Amos's siblings were dependent on him for support.

The Plaintiff

7. The plaintiff, Charleen Miller ("**Charleen**"), is Amos' sister. Charleen has an address for service care of Camp Fiorante Matthews Mogerman LLP, Suite 400 – 856 Homer Street, Vancouver, BC, V6B 2W5.
8. Charleen brings this action as a representative proceeding pursuant to Rule 20-3(1) on behalf of herself and Amos' siblings.
9. At the time of his death, Amos was planning to help Charleen remodel her bathroom. On the day of his death, he was planning to meet Charleen to help her remodel her bathroom, but died in the Fire before he could do so.

Amos Miller

10. After high school, Amos became a carpenter. He lived with his brother Albert in Vancouver for period of time while working in the construction industry.
11. Approximately five years before his death, Amos moved back to northern BC.
12. Amos worked as a carpenter for West Moberly First Nations after moving back to northern BC.
13. Amos also developed a strong relationship with his brothers through shared hunting trips.
14. In the years before his death, Amos generally lived with Gord in Prince George. Amos had his own room and key at Gord's house and came and went as he pleased.

15. At times, he also stayed with his sister Charleen or with his brother Albert.
16. At other times, he stayed for short periods of time in a motel on his own.
17. At the time of his death, Amos was working intermittently for two weeks at a time as a carpenter in Williams Lake and staying with family when he was not working.
18. Amos provided care and assistance to his siblings in a number of ways, including:
 - (a) financial assistance;
 - (b) handyman or remodeling work;
 - (c) cooking and barbecuing;
 - (d) yard work;
 - (e) cleaning;
 - (f) collecting firewood;
 - (g) hunting; and
 - (h) purchasing food.
19. In particular, Amos provided significant assistance to Gord after Gord became ill with cancer. Amos left his job as a carpenter at this time and spent approximately one year caring for Gord as well as assisting him in remodeling his home. He also collected firewood and cooked and cleaned for Gord during this time.
20. At the time of his death, Amos was continuing to care for Gord as well as helping Gord with the remodeling of his home. The remodeling work is not yet complete.
21. Amos was a devoted sibling, uncle, nephew and cousin. As a result of his death, Charleen and her siblings and extended family have suffered loss, damage and expense including:

- (a) loss of financial support;
- (b) loss of valuable services;
- (c) loss of care, guidance, affection and companionship;
- (d) funeral and burial expenses;
- (e) such further and other particulars of damages as may be proven at the trial of this action.

The Defendants

Mundi 910 Victoria Enterprises Ltd.

- 22. Mundi 910 Victoria Enterprises Ltd. ("**Mundi Co.**") is incorporated pursuant to the laws of British Columbia with a registered office at 7076 Trygg Crt., Prince George, British Columbia.
- 23. Mundi Co. is the registered owner of the Motel, which is located at 910 Victoria Street, Prince George, British Columbia, legally described as Lots 1 to 9, Block 197, Plan PGP1268, District Lot 343, Cariboo Land District (PIDs 012-737-330; 012-737-356; 012-737-372; 012-737-381; 012-737-402; 012-737-437; 012-737-470; 012-737-518; 012-737-542).
- 24. At all material times, Mundi Co. operated the Motel.

Choice Hotels Canada Inc.

- 25. Choice Hotels Canada Inc. ("**Choice Hotels**") is incorporated pursuant to the laws of Ontario with a B.C. address at 1200-200 Burrard Street, Vancouver, British Columbia.
- 26. Choice Hotels owns, licences and franchises the "Econo Lodge" brand for hotels and motels.

27. At all relevant times, Mundi Co. was an approved franchisee of Choice Hotels and operated the Motel as an "Econo Lodge" pursuant to an agreement with Choice Hotels ("**Econo Lodge Agreement**").
28. Choice Hotels imposed quality standards and conditions on Mundi Co. with respect to Mundi Co.'s operation of the Motel through the Econo Lodge Agreement.

City of Prince George

29. The City of Prince George (the "**City**") is a municipality incorporated under the *Local Government Act*, R.S.B.C. 2015, c. 1, with an office at 1100 Patricia Boulevard, Prince George, British Columbia. The City regulates building construction and maintenance, as well as businesses.
30. Through the City's Fire Rescue Service department, the City provides fire safety services including but not limited to fire inspections for compliance with fire regulations and to ensure occupant safety. The City is liable, either directly or vicariously, for the acts and omissions of the City's Fire Rescue Service department.
31. The City is responsible for enforcing the BC Fire Code and the BC Building Code. The City has the authority to revoke occupancy permits, revoke business licences, and take other steps to protect public safety if a building owner or occupier does not comply with safety laws and regulations.

AllPoints Fire Protection Ltd.

32. AllPoints Fire Protection Ltd. ("**AllPoints**") is incorporated pursuant to the laws of British Columbia with a registered office at Box 306, 182 Memorial Ave., Parksville British Columbia.
33. AllPoints is in the business of installing, maintaining, and inspecting fire safety systems including but not limited to fire alarm systems, fire extinguishes, fire sprinkler systems, and emergency lighting, as well as preparing fire safety plans.

Background to the Fire

34. The Motel was built in or around 1964.
35. Around December 5, 2018, Mundi Co. acquired the Motel and has since operated it as a motel under the Econo Lodge brand, pursuant to the terms of the Econo Lodge Agreement.
36. The Motel was renovated and repaired from time to time, including roof replacement and repairs (collectively, the "**Renovations**").
37. A previous owner of the Motel hired a company to prepare evacuation map plaques, but did not have the company prepare a fire safety plan. After acquiring the Motel, Mundi Co. did not prepare a fire safety plan.
38. On or around February 21, 2020, the City inspected the Motel's fire warning and suppression systems. The City noted various deficiencies, including that the Motel required a fire safety plan, and that the Motel's portable extinguishers, fire alarm system and emergency lighting needed to be tested ("**Deficiencies**"). The City ordered Mundi Co. to remedy the Deficiencies.
39. Some time after February 21, 2020, AllPoints reviewed the Deficiencies and purported to test, inspect, repair or replace the Motel's fire safety system. AllPoints did not prepare a fire safety plan for the Motel.
40. On or around July 6, 2020, the City re-inspected the Motel and concluded the Deficiencies had been resolved despite the Motel's lack of a fire safety plan.
41. On the morning of July 8, 2020, the Fire took place in the Motel. It was intentionally started by an individual in the courtyard. He was able to start the Fire due to a lack of security at the Motel, and because of a large pile of construction debris left in the courtyard that fueled the Fire.

42. No fire alarm and no fire suppression system activated to notify Amos Miller of the Fire or to suppress the Fire. No fire safety plan was in place or activated to ensure the safe egress of Amos Miller.
43. Amos' Miller's death was caused by actions, or failure to act, on the part of Mundi Co., Choice Hotels, AllPoints, and the City. The particulars of negligence pleaded in Part 3 of this claim are incorporated into Part 1 as material facts.

Damages

44. Amos was a devoted brother and friend to his siblings. They were very close and Amos provided emotional, financial and in-kind support to them.
45. As a result of his death, Amos' siblings have suffered emotional injuries and suffered loss and damage, particulars of which are as follows:
 - (a) loss of financial support;
 - (b) loss of valuable services;
 - (c) loss of care, guidance, affection and companionship;
 - (d) funeral and burial expenses;
 - (e) pain and suffering; and
 - (f) such further and other particulars of damages as may be proven at the trial of this action.

PART 2: RELIEF SOUGHT

46. The plaintiff seeks, for her own benefit and for the benefit of Amos' other siblings:
 - (a) a declaration that Mundi Co.:

- (i) was negligent in the maintenance and operation of the Motel by creating or failing to ameliorate unsafe conditions that pre-date the Fire;
 - (ii) was negligent with respect to its installation, monitoring, and maintenance Hotel's fire safety system;
 - (iii) breached the implied or express term of the its contract with Amos and the Motel that it would comply with all legal requirements with respect to the Motel's fire safety system;
 - (iv) breached its duties under the *Occupiers Liability Act*;
- (b) a declaration that Choice Hotels breached its duties under the *Occupiers Liability Act* or common law by failing to monitor and/or enforce the terms of the Econo Lodge Agreement regarding health and safety standards;
- (c) a declaration that the City was negligent in its inspections of the Motel and its failure to ensure the Motel has an adequate fire safety plan, and breached its duty to warn the public that the Motel was unsafe or that there were hazardous conditions with respect to the Motel premises;
- (d.1) a declaration that the City is liable for failing to evacuate Amos, adequately assess or classify the fire, deploy adequate manpower and equipment to combat the fire, and use correct firefighting techniques to extinguish the fire;
- (d) a declaration that AllPoints was negligent in its inspecting and testing of the Motel's fire safety system;
- (e) a declaration that AllPoints was negligent for failing to prepare an adequate fire safety plan or ensuring the Motel had an adequate fire safety plan, including evacuation procedures;
- (f) an order for damages for negligence, breach of contract, and breach of the *Occupiers Liability Act*;

- (g) past and future costs of health care services pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c. 27;
- (h) general damages;
- (i) punitive damages;
- (j) aggravated damages;
- (k) prejudgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 78, s 128; and
- (l) such further and other relief as this Honourable Court may deem just.

PART 3: LEGAL BASIS

- 47. Amos' siblings would prefer that their claims be handled as part of the class proceedings in *Hay v. Mundi et al*, PRG-S-S-2058198. They consider themselves to be class members because they are dependants of Amos, who died as a result of the fire.
- 48. This action is being filed to preserve claims that Amos' siblings may have as a result of his death, in the event it is determined that they are not class members.
- 49. In a separate action, Amos' siblings are challenging s. 3(1) of the *Family Compensation Act* because it discriminates against them on the basis of race, family status, and ethnic origin contrary to s. 15 of the *Charter*. If the challenge is successful, Amos' siblings intend to pursue *Family Compensation Act* claims as class members or through this action.

Occupiers Liability

- 50. The Motel is a "premise" within the meaning of the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337. Mundi Co. is an "occupier" of the Motel by virtue of its physical possession and ownership of the Motel. Choice Hotels is an occupier of the Motel by virtue of its responsibility for, and control over, the condition of Hotel, the

activities conducted on the Motel premises and the persons allowed to enter the Motel premises pursuant to the Econo Lodge Agreement.

51. The Fire was caused by the negligence of the Defendants Mundi Co. and Choice Hotels (or their employees, servants or agents) and their failure to ensure Amos would be reasonably safe in the Motel or Restaurant. Particulars of their negligence is as follows:

- (a) causing or permitting the Motel to be, to become, or to remain in a dangerous and unsafe condition prior to the Fire;
- (b) failing to have in place a reasonable system of care, inspection and maintenance of the Motel premises;
- (c) failing to have a fire safety plan and failing to properly train its employees, servants or agents regarding how to respond to a fire on the Motel premises, including failing to have a program for the safe evacuation of the premises in the event of fire;
- (d) failing to ensure the condition of the Motel, the activities taking place at the Motel, and the conduct of third parties at the Motel were such that Amos would be reasonably safe;
- (e) failing to have adequate security at the Motel to ensure Amos would be reasonably safe;
- (f) failing to comply with applicable bylaws and regulations regarding fire prevention and mitigation, including failing to ensure the Motel's fire alarm system is maintained in fully functional operating condition at all times;
- (g) failing to take any measures, or in the alternative, any adequate measures, whether by way of examination, inspection, or test or otherwise, to ensure the Motel's fire safety system was operating properly; and

- (h) failing to undertake appropriate repairs and/or upgrades to the Motel to mitigate the risk of a fire, including but not limited to installing:
 - (i) an adequate automatic fire sprinkler system or at all;
 - (ii) adequate fire breaks or at all;
 - (iii) adequate escape routes or at all;
 - (iv) an adequate fire warning system or at all.

(Collectively, the "**Fire Safety Upgrades**")

52. The negligence of Mundi Co. and Choice Hotels caused the death of Amos.

Negligence – Mundi Co. and Choice Hotels

53. Mundi Co. and Choice Hotels owed a common law duty of care to Amos to ensure his safety as a patron or guest at the Motel.

54. Mundi Co. and Choice Hotels breached the standard of care owed by failing to:

- (a) operate or ensure the operation of the Motel in a manner that would ensure the Motel premises were reasonably safe for Amos including but not limited to having adequate security measures in place;
- (b) have in place or ensure there was in place a reasonable system of care, inspection and maintenance of the Motel premises;
- (c) have or ensure there was a fire safety plan and properly train its employees, servants or agents regarding how to respond to a fire on the Motel premises, including having a program for the safe evacuation of the premises in the event of fire;
- (d) ensure the condition of the Motel, the activities taking place at the Motel, and the conduct of third parties at the Motel were such that Amos would be reasonably safe;

- (e) comply or ensure compliance with bylaws and regulations regarding fire prevention and mitigation;
 - (f) have in place or ensure there was in place an adequate system for the detection, warnings and suppression of fire on the premises; and
 - (g) take adequate measures, or ensure adequate measures were taken, to ensure the Motel's fire safety system was maintained in fully functional operating condition at all times.
55. Mundi Co. and Choice Hotels owed a duty to warn Amos that the Motel did not have the Fire Safety Upgrades. Mundi Co. and Choice Hotels breached this duty.
56. Mundi Co.'s and Choice Hotels' negligence caused Amos' death.

Breach of Contract – Mundi Co.

57. Mundi Co. rented rooms in the Motel to members of the public on a nightly or monthly basis pursuant to a room rental agreement ("**Room Rental Agreement**").
58. At the time of the Fire, Mundi Co. had entered into a Room Rental Agreement with Amos. It was an express or implied term of these Room Rental Agreements that Mundi Co. would:
- (a) provide safe lodging to Amos for the duration of the Room Rental Agreement;
 - (b) have an adequate fire safety system, including but not limited to a fire safety plan, and that its employees, servants or agents would be adequately trained regarding how to respond to a fire on the Motel premises, including how to safely evacuate the premises in the event of fire;
 - (c) ensure the condition of the Motel, the activities taking place at the Motel, and the conduct of third parties at the Motel were such that Amos would be reasonably safe on the Motel premises; and

- (d) provide adequate staff and security so that Amos would be reasonably safe on the Motel premises.

(Collectively, the “**Motel Guest Safety Terms**”)

- 59. Mundi Co. breached the Motel Guest Safety Terms in its Room Rental Agreement with Amos.
- 60. As a result Mundi Co.’s breach of contract, Amos was killed.

Negligence – AllPoints

- 61. At all material times, AllPoints owed a duty of care to Amos to exercise all reasonable care, skill, diligence and competence as a fire protection technician by virtue of the following facts:
 - (a) AllPoints knew or ought to have known the Motel’s fire safety system was intended to protect Hotel guests and Restaurant patrons in the event of fire;
 - (b) AllPoints knew or ought to have known the Motel did not have a fire safety plan but needed one;
 - (c) It was reasonably foreseeable that if AllPoints were to negligently test, inspect, repair or replace the Motel’s fire safety system, AllPoints could cause harm to Amos;
 - (d) It was reasonably foreseeable that if AllPoints did not prepare or ensure there was a fire safety plan in place at the Motel that AllPoints could cause harm to Amos;
 - (e) It was reasonably foreseeable that if AllPoints represented to the City that the Deficiencies had been remedied when in fact they had not, AllPoints could cause harm to the Class Members;
 - (f) There is a sufficient relationship of proximity between AllPoints and Amos such that Amos should have been in AllPoints’ reasonable contemplation.

AllPoints knew or ought to have known that carelessness on its part may be likely to cause damage to Amos, including loss of life, personal injury and damage to property; and

- (g) Given the relationship between AllPoints and Amos, as well as Amos' reasonable expectation that a fire protection technician would properly service the Motel's fire safety system, it just and fair to impose a duty of care upon AllPoints.

62. AllPoints (or its employees, servants or agents) breached the duty of care owed to Amos in that AllPoints failed to exercise the standard of care required of a reasonable and careful fire protection technician in the circumstances by failing to identify deficiencies and/or compromising the proper functioning of the Motel's fire safety system.

63. AllPoints' negligence caused Amos' death.

Negligence – The City

64. The City knew or ought to have known the Motel was unsafe or that there were hazardous conditions at the Motel based on the following:

- (a) at all material times, Mundi Co. operated the Motel pursuant to a business licence issued by the City;
- (b) the City issued Mundi Co. a building permit and undertook inspections of the Motel as part of the Renovations, or, in the alternative, the City knew of the Renovations regardless of whether a building permit was required or issued; and
- (c) the City was required to regularly inspect, and did recently inspect, the Motel.

65. The City owed Amos the following duties:

- (a) to regularly inspect and test the Motel's fire safety system to identify deficiencies and ensure it is operating properly;
- (b) to ensure the Motel eliminated fire hazards from the Motel premises;
- (c) to warn Amos of unsafe or hazardous conditions with respect to the Motel premises that the City was aware of or ought to have known of; and
- (d) to require Mundi Co. to eliminate unsafe conditions or other threats to occupant safety, including but not limited to requiring Mundi Co. to install some or all of the Fire Safety Upgrades.

66. The City breached these duties by:

- (a) failing to warn Amos that the Motel was unsafe or that there were hazardous conditions at the Motel;
- (b) failing to exercise reasonable care, skill, diligence and competence when inspecting the Motel's fire safety system and fire safety plan;
- (c) impermissibly relying on AllPoints rather than conducting its own inspection of the Motel's fire safety system and fire safety plan;
- (d) issuing a business licence to Mundi Co. despite Mundi Co.'s failure to comply with applicable laws and regulations and otherwise operating the Motel in an unsafe manner, which the City knew or ought to have known;
- (e) failing to enforce its bylaws or otherwise require Mundi Co. to take steps to remediate hazards or otherwise operate the Motel in a safe manner.

67. The City, acting through its Fire Rescue Service department, owed Amos a duty of care when responding to the Fire. The City breached its standard of care by: (i) failing to take adequate steps to notify Amos of the Fire or evacuate him from the Motel at the time of the Fire; (ii) failing to adequately assess or classify the fire; (iii)

failing to deploy adequate manpower and equipment to combat the fire; and (iv) failing to use correct firefighting techniques to extinguish the fire

68. The Plaintiff relies on:

- (a) *Occupiers Liability Act*, RSBC 1996, c 337
- (b) *Hotel Keepers Act*, RSBC 1996, c 206
- (c) *Community Charter*, SBC 2003, c 26
- (d) *Local Government Act*, RSBC 2015, c 1
- (e) *Fire Services Act*, RSBC 1996, c 144
- (f) *Family Compensation Act*, RSBC 1996, c 126
- (g) The law of negligence; and
- (h) The law of contract.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP

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Email: service@cfmlawyers.ca

Place of trial: Vancouver, BC

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 22/Mar/2023



Signature of lawyer
for plaintiff

Jamie L. Thornback

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

Personal injury claim.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☒ another cause

A dispute concerning:

- ☐ contaminated sites
- ☒ construction defects
- ☐ real property (real estate)
- ☒ personal property
- ☒ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☐ a matter not listed here

THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law

- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

1. *Occupiers Liability Act*, RSBC 1996, c 337