

Amended pursuant to Supreme Court Civil Rule 6-1(1)(a).
Original filed on 25/Aug/2020.



No. PRG-S-S-2058198
Prince George Registry

In the Supreme Court of British Columbia

Between

Leonard Hay

Plaintiff

and

Mundi 910 Victoria Enterprises Ltd.;
Choice Hotels Canada Inc.;
City of Prince George;
All Points Fire Protection Ltd.;
Aztech Fire Safety Planning & Consulting (2015) Ltd.

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996 c 50

AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff(s) 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. The Fire killed at least three people and severely injured many more.

2. The plaintiff brings this claim to recover damages for wrongful death, personal injury, loss of property and economic losses on his own behalf and on behalf of other registered guests and individuals who were present at the Motel at the time of the Fire.

The Representative Plaintiff

3. The plaintiff is a resident of British Columbia. At the time of the Fire, the plaintiff had been renting room 243 at the Motel for \$1200 per month.
4. At approximately 8:30 a.m. on July 8, 2020, the plaintiff heard screams from the room next door, and saw flames outside his window. The window exploded. He was able to exit through the outside door leading to an exterior walkway and run along that walkway to safety.
5. The plaintiff did not hear any fire alarms warning him or other guests of the Fire and he did not see Motel staff directing guests to a safe place or otherwise assisting guests escape the Fire.
6. The plaintiff suffered serious physical injuries, including second and third degree burns, as well as psychological injuries. The Fire destroyed all of the plaintiff's possessions.

The Class

7. This action is brought on behalf of the following class:
 - (a) All individuals who were registered guests of the Motel and all individuals on site at the Motel or the adjoining restaurant, known as Yolks All Day Family Restaurant, at the time of the Fire on July 8, 2020, and
 - (b) Personal representatives and dependants of persons who died as a result of the Fire

excluding the Defendants and their directors, officers, representatives, servants, employees or agents (the "**Class**").

The Defendants

Mundi 910 Victoria Enterprises Ltd.

8. Mundi 910 Victoria Enterprises Ltd. ("**Mundi Co.**") is incorporated pursuant to the laws of British Columbia with a registered office at 7076 Trygg Ct., Prince George, British Columbia.
9. 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).
10. At all material times, Mundi Co. operated the Motel.

Choice Hotels Canada Inc.

11. 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.
12. Choice Hotels owns, licences and franchises the "Econo Lodge" brand for hotels and motels.
13. 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**").
14. 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

15. 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.
16. 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.
17. 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.

All Points Fire Protection Ltd.

18. All Points Fire Protection Ltd. (“**All Points**”) is incorporated pursuant to the laws of British Columbia with a registered office at Box 306, 182 Memorial Ave., Parksville British Columbia.
19. All Points 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.

Aztech Fire Safety

20. Aztech Fire Safety Planning & Consulting (2015) Ltd. (“**Aztech**”) is incorporated pursuant to the laws of British Columbia with a registered office at Box 306, 182 Memorial Ave., Parksville British Columbia.

21. Aztech is in the business of fire safety consulting, including preparing fire safety plans.

Background to the Fire

22. The Motel was built in or around 1964.
23. 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.
24. At all material times, Yolks All Day Family Restaurant (the "**Restaurant**") was operating on or adjacent to the Motel. From time to time, Mundi Co. provided Motel patrons with vouchers for complimentary breakfast at the Restaurant as part of the Motel's room cost.
25. The Motel was renovated and repaired from time to time, including roof replacement and repairs (collectively, the "**Renovations**").
26. Aztech inspected the Motel and prepared a fire safety plan, including evacuation procedures.
27. 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.
28. Some time after February 21, 2020, All Points reviewed the Deficiencies and purported to test, inspect, repair or replace the Motel's fire safety system.
29. On or around July 6, 2020, the City re-inspected the Motel and concluded the Deficiencies had been resolved.

30. On the morning of July 8, 2020, the Fire took place in the Motel. No fire alarm and no fire suppression system activated to notify the Class of the Fire or to suppress the Fire. No fire safety plan was in place or activated to ensure the safe egress of guests and patrons of the Motel.
31. At least three people were killed by the Fire and many more suffered serious injuries.

Occupiers Liability

32. 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. At the time of the Fire, members of the Class (“**Class Members**”) were on the Motel premises as patrons of either of the Motel or Restaurant.
33. 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 the Class 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 the Class would be reasonably safe;
- (e) failing to have adequate security at the Motel to ensure the Class 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**")

34. The negligence of Mundi Co. and Choice Hotels caused Class Members to suffer, and continue to suffer, loss and damage, particulars of which are below.

Negligence – Mundi Co.

35. Mundi Co. owed Class Members a common law duty of care to ensure their safety as patrons or guests at the Motel.

36. Mundi Co. breached the standard of care owed to Class Members by failing to:

- (a) operate the Motel in a manner that would ensure the Motel premises were reasonably safe for the Motel's guests and patrons including but not limited to having adequate security measures in place;
 - (b) have in place a reasonable system of care, inspection and maintenance of the Motel premises;
 - (c) have 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 the Class would be reasonably safe;
 - (e) comply with bylaws and regulations regarding fire prevention and mitigation;
 - (f) have in place an adequate system for the detection, warnings and suppression of fire on the premises; and
 - (g) take adequate measures, to ensure the Motel's fire safety system was maintained in fully functional operating condition at all times.
37. Mundi Co. owed a duty to warn Class Members that the Motel did not have the Fire Safety Upgrades. Mundi Co. breached this duty.
38. Mundi Co.'s negligence caused Class Members to suffer, and continue to suffer, loss and damage, particulars of which are below.

Breach of Contract – Mundi Co.

39. 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**").

40. At the time of the Fire, Mundi Co. had entered into a Room Rental Agreement with some or all of the Class Members. It was an express or implied term of these Room Rental Agreements that Mundi Co. would:
- (a) 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;
 - (b) 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 the Class would be reasonably safe on the Motel premises; and
 - (c) provide adequate staff and security so that the Class would be reasonably safe on the Motel premises.

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

41. Mundi Co. breached the Motel Guest Safety Terms in its Room Rental Agreements with the members of the Class.
42. As a result Mundi Co.’s breach of contract, members of the Class have suffered and continue to suffer loss and damage, particulars of which are below.

Negligence – All Points

43. At all material times, All Points owed a duty of care to the Class Members to exercise all reasonable care, skill, diligence and competence as a fire protection technician by virtue of the following facts:
- (a) All Points 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) It was reasonably foreseeable that if All Points were to negligently test, inspect, repair or replace the Motel's fire safety system, All Points could cause harm to the Class Members;
 - (c) There is a sufficient relationship of proximity between All Points and the Class Members such that the Class Members should have been in All Points' reasonable contemplation. All Points knew or ought to have known that carelessness on its part may be likely to cause damage to the Class Members, including loss of life, personal injury and damage to property; and
 - (d) Given the relationship between All Points and the Class, as well as the Class' 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 All Points.
44. All Points (or its employees, servants or agents) breached the duty of care owed to the Class Members in that All Points 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.
45. All Points' negligence caused Class Members to suffer, and continue to suffer, loss and damage, particulars of which are below.

Negligence – The City

46. 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, in did recently inspect, the Motel.

47. The City owed Class Members 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 warn Class Members of unsafe or hazardous conditions with respect to the Motel premises that the City was aware of or ought to have known of; and

(c) 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.

48. The City breached these duties by:

(a) failing to warn Class Members 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;

(c) impermissibly relying on All Points rather than conducting its own inspection of the Motel's fire safety system;

(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.

48.1 The City, acting through its Fire Rescue Service department, owed Class Members 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 Class Members of the Fire or evacuate Class Members 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

Negligence – Aztech

49. At all material times, Aztech owed a duty of care to the Class Members to exercise all reasonable care, skill, diligence and competence as fire protection experts by virtue of the following facts:
- (a) Aztech knew or ought to have known the Motel's fire safety plan was intended to protect Hotel guests and Restaurant patrons in the event of fire;
 - (b) It was reasonably foreseeable that if Aztech were to negligently prepare the Motel's fire safety plan, Aztech could cause harm to the Class Members;
 - (c) There is a sufficient relationship of proximity between Aztech and the Class Members such that the Class Members should have been in Aztech's reasonable contemplation. Aztech knew or ought to have known that carelessness on its part may be likely to cause damage to the Class Members, including loss of life, personal injury and damage to property; and
 - (d) Given the relationship between Aztech and the Class, as well as the Class' reasonable expectation that fire protection experts would properly prepare the Motel's fire safety plan, it just and fair to impose a duty of care upon Aztech.
50. Aztech (or its employees, servants or agents) breached the duty of care owed to the Class Members in that Aztech failed to exercise the standard of care required

of reasonable and careful fire protection technicians in the circumstances by failing to prepare an adequate fire safety plan, including evacuation procedures.

51. Aztech's negligence caused Class Members to suffer, and continue to suffer, loss and damage, particulars of which are below.

Damages

52. As a result of the Defendants' conduct described above, the plaintiff and members of the Class have sustained severe physical and emotional injuries and suffered loss and damage, particulars of which are as follows:

- (a) loss of life;
- (b) loss of personal property;
- (c) loss of housing;
- (d) pain and suffering; and
- (e) loss of employment income both past and continuing into the future.

PART 2: RELIEF SOUGHT

53. The plaintiff, on behalf of the members of the Class, seeks:
- (a) an order certifying this action as a class proceeding against the Defendants and appointing the plaintiff as representative plaintiff in respect of the Class;
 - (b) 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 guests of the Motel that it would comply with all legal requirements with respect to the Motel's fire safety system;
- (iv) breached its duties to the Class under the *Occupiers Liability Act*;
- (c) a declaration that Choice Hotels breached its duties to the Class under the *Occupiers Liability Act* by failing to monitor and/or enforce the terms of the Econo Lodge Agreement regarding health and safety standards;
- (d) a declaration that the City was negligent in its inspections of the Motel 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 Class Members, adequately assess or classify the fire, deploy adequate manpower and equipment to combat the fire, and use correct firefighting techniques to extinguish the fire;
- (e) a declaration that All Points was negligent in its inspecting and testing of the Motel's fire safety system;
- (f) a declaration that Aztech was negligent for failing to prepare an adequate fire safety plan, including evacuation procedures;
- (g) an order for damages for negligence, breach of contract, and breach of the *Occupiers Liability Act*;
- (h) past and future costs of health care services pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c. 27;
- (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

54. The Class 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
#400 – 856 Homer Street
Vancouver, BC V6B 2W5

DICK BYL LAW CORPORATION
#510-550 Victoria Street,
Prince George, BC V2L 2K1

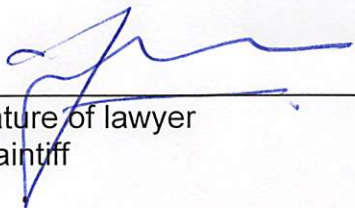
Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Prince George Law Courts

Address of the registry: 250 George St, Prince George BC V2L 5S2

Date: 29 /SEPT/2020



Signature of lawyer
for plaintiff
Dick Byl

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

[The following information is provided for data collection purposes only and is of no legal effect.]

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

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

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