



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*

RESPONSE TO CIVIL CLAIM

**Filed by: MUNDI 910 VICTORIA ENTERPRISES LTD., and
CHOICE HOTELS CANADA INC.**
(collectively, the “Hotel Defendants”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – The Hotel Defendants’ Response to Facts

1. The facts alleged in paragraphs 8, 9, 10, 11, 12, 13, 14, 23, 25, 26, 28, 29 and 39 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 1, 2, 3, 5, 6, 7, 24, 27, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, and 52 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 4, 15, 16, 17, 18, 19, 20, 21, 22, 43, 44, 45, 46, 47, 48, 49, 50, and 51 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Hotel Defendants.

Division 2 – The Hotel Defendants’ Version of Facts

4. In response to paragraph 1 of Part 1 of the Notice of Civil Claim, the Hotel Defendants admit only that on or about July 8, 2020, a fire (the “**Fire**”) broke out at the Econo Lodge City Centre Inn hotel located at 910 Victoria Street, Prince George, British Columbia (the “**Hotel**”).
5. At all material times, the Defendant, Mundi 910 Victoria Enterprises Ltd. (“**Mundi Enterprises**”) owned and operated the Hotel.

6. At all material times, the Defendant, Choice Hotels Canada Inc. (“**Choice Hotels**”) was granted the right and license to grant rights to others for the trade-mark and tradename “Econo Lodge®”. Pursuant to a Franchise Agreement dated December 13, 2018, Choice Hotel granted a non-exclusive, limited, and revocable license to Mundi Enterprises, to use the “Econo Lodge®” Brand Mark to operate the Hotel as per the terms and conditions of the Franchise Agreement.
7. At all material times, the Hotel Defendants took all reasonable care to ensure that the Hotel’s life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc., were in good working condition and free from defects as per the requirements of all applicable industry standards, building and fire codes, bylaws, and regulations.
8. At all material times, the Hotel had in place and in operation a regular system of inspection and maintenance in relation to its life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc.
9. On or about February 24, 2020 and March 18, 2020, the Hotel’s fire alarm system and its components were inspected, tested and serviced by the Defendant, All Points Fire Protection Ltd. (“**All Points**”).
10. As a result of All Points’ inspection, testing, and servicing of the Hotel’s fire alarm system, All Points represented to the Hotel Defendants, the following:
 - (a) the fire alarm system was fully functional;
 - (b) the fire alarm system was free of deficiencies;
 - (c) the fire alarm system was tested in accordance with the CAN/ULC S536-04 standard, or verified in accordance with the CAN/ULC S537-04 standard; and
 - (d) the sequence of operation of the fire alarm system was confirmed and tested.
11. At all material times, the Hotel Defendants reasonably relied on professional assurances from All Points that the Hotel’s life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc., were reasonable and adequate given the nature and use of the Hotel property, in good working condition, and free from defects.
12. At all material times, the Hotel Defendants reasonably relied on professional assurances from All Points that the services performed by its employees, servants, agents and/or subcontractors, were performed with reasonable care, skill and diligence, and in accordance with all applicable standards, codes, bylaws and regulations.
13. At all material times, the Hotel Defendants reasonably relied on All Points to provide it with advice and recommendations in relation to potential upgrades to the Hotel’s life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc.

14. On or about July 6, 2020, the City of Prince George (the “**City**”), through the Prince George Fire/Rescue Services, inspected the Hotel’s fire preparedness and safety systems.
15. As a result of the City’s inspection of the Hotel’s fire preparedness and safety systems, the City represented to the Hotel Defendants, the following:
 - (a) the Hotel’s fire preparedness and safety systems met all applicable standards, codes, bylaws and regulations;
 - (b) the Hotel had in place an adequate and operational fire safety plan;
 - (c) the Hotel had in place an adequate and operational fire alarm system;
 - (d) the Hotel had in place adequate and operational emergency lighting;
 - (e) the Hotel had in place adequate and operational portable fire extinguishers;
 - (f) the Hotel had in place adequate exit signage;
 - (g) the Hotel had adequate means of egress of occupants in the case of a fire;
 - (h) the Hotel had adequate fire separation/walls in place; and
 - (i) the Hotel had in place an adequate pre-incident plan.
16. At all material times, the Hotel Defendants reasonably relied on assurances from the City that the Hotel’s life and safety systems, including the fire alarm system and the fire safety plan were reasonable and adequate given the nature and use of the Hotel property, in good working condition, and free from defects.
17. Sometime before the Fire, Aztech Fire Safety Planning & Consulting (2015) Ltd. (“**Aztech**”) prepared a fire safety plan for the Hotel.
18. At all material times, the Hotel Defendants reasonably relied on assurances from Aztech as to the adequacy of the Hotel’s fire safety plan.
19. At all material times, the Hotel was reasonably safe for use by the general public. The Hotel Defendants deny that the Hotel was in a dangerous or unsafe condition prior to the Fire, whether as alleged or at all.
20. The Fire was not caused or contributed to by any negligence, breach of duty of care, breach of statutory duty, breach of contractual duty, acts, and/or omissions on the part of the Hotel Defendants, whether as alleged or at all.
21. In response to the whole of the Notice of Civil Claim, the Hotel Defendants deny that the Hotel’s fire safety systems did not operate as intended during the time of the Fire.
22. In the alternative, if the Hotel’s fire safety systems did not operate as intended during the time of the Fire, the lack of operation thereof was not caused or contributed to by any negligence, breach of duty, acts and/or omissions on the part of the Hotel Defendants.

23. If the Hotel's fire safety systems did not operate as intended during the time of the Fire, which is denied, the lack of operation thereof did not cause or contribute to the Fire or the injuries, losses, damages and/or expenses alleged to have been suffered by the Plaintiff and/or the other putative members of the proposed class.
24. In response to paragraphs 2, 6, 31, 34, 38, 42, 45, 51, and 52 of Part 1 of the Notice of Civil Claim, the Hotel Defendants deny that the Plaintiff and other putative members of the proposed class suffered any injury, loss, damage and/or expense as alleged, or at all.
25. In further response to paragraphs 2, 6, 31, 34, 38, 42, 45, 51, and 52 of Part 1 of the Notice of Civil Claim, if the Plaintiff and/or other putative members of the proposed class suffered any injury, loss, damage and/or expense as alleged, or at all, which is denied, the same was not caused or contributed to by any act, omission, negligence and/or breach of duty on the part of the Hotel Defendants or any of their employees, servants and/or agents.
26. If the Plaintiff and/or other putative members of the proposed class suffered any injury, loss, damage and/or expense as alleged, or at all, which is denied, such injury, loss, damage and/or expense is attributable to their previous and/or subsequent injuries, traumas, congenital defects and/or medical conditions.
27. If the Plaintiff and/or other putative members of the proposed class suffered any injury, loss, damage and/or expense as alleged, or at all, which is denied, they have failed to take reasonable steps to mitigate their injury, loss, damage and/or expense.
28. The Hotel Defendants further say that if the Plaintiff and/or other putative members of the proposed class suffered any injury, loss, damage and/or expense as alleged, or at all, which is denied, such injury, loss, damage and/or expense was caused or contributed to by the negligence of the Plaintiff and the other putative members of the proposed class, All Points, Aztech, the City, and/or other parties which are currently unknown to the Hotel Defendants and for which the Hotel Defendants are not responsible or legally liable.
29. The particulars of negligence of the Plaintiff and other putative members of the proposed class include, but are not limited to:
 - (a) failing to take reasonable care for their own safety in all of the circumstances;
 - (b) failing to pay reasonable or any attention to their surroundings;
 - (c) failing to heed warnings to avoid certain areas of the Hotel property in the face of the Fire;
 - (d) failing to heed warnings and/or instructions to evacuate the Hotel property;
 - (e) failing to follow warnings and/or instructions regarding proper evacuation of the Hotel property; and
 - (f) such further and other particulars of negligence as shall become known to the Hotel Defendants.

30. The particulars of negligence of All Points include, but are not limited to:
- (a) failing to take reasonable care in the inspection, testing, and/or servicing of the Hotel's life and safety systems, including its fire alarm system, smoke detectors and alarms, fire extinguishers, etc.;
 - (b) failing to exercise the standard of care required of a reasonable and prudent fire protection service provider by failing to identify potential deficiencies in the fire alarm system, and/or compromising the proper functioning of same;
 - (c) hiring unskilled or incompetent technicians to perform the inspection, testing, and/or servicing of the Hotel's life and safety systems, including its fire alarm system, smoke detectors and alarms, fire extinguishers, etc.;
 - (d) failing to reasonably and adequately train its technicians to perform inspections, testing, and/or servicing of building life and safety systems, including fire alarm systems;
 - (e) failing to reasonably and adequately supervise its technicians in their performance of inspections, testing, and/or servicing of building life and safety systems, including fire alarm systems;
 - (f) failing to make reasonable recommendations for available upgrades to the Hotel's life and safety systems, including its fire alarm system, smoke detectors and alarms, fire extinguishers, etc.; and
 - (g) such further and other particulars of negligence as shall become known to the Hotel Defendants.
31. The particulars of negligence of Aztech include, but are not limited to:
- (a) failing to take reasonable care in the preparation of the Hotel's fire safety plan and/or the individual rooms' fire safety plans;
 - (b) failing to exercise the standard of care required of a reasonable and prudent fire safety consulting provider by failing to identify potential deficiencies in the Hotel's fire safety plan and/or the individual rooms' fire safety plans;
 - (c) hiring unskilled or incompetent employees to prepare the Hotel's fire safety plan and/or the individual rooms' fire safety plans;
 - (d) failing to reasonably and adequately train its employees to prepare fire safety plans for commercial buildings;
 - (e) failing to reasonably and adequately supervise its employees in their preparation of fire safety plans;
 - (f) failing to make reasonable recommendations for updates to the Hotel's fire safety plan and/or the individual rooms' fire safety plans; and
 - (g) such further and other particulars of negligence as shall become known to the Hotel Defendants.

32. The particulars of negligence of the City include, but are not limited to:
- (a) failing to take reasonable care in its inspection and testing of the Hotel's life and safety systems, including its fire alarm system, smoke detectors and alarms, fire extinguishers, etc.;
 - (b) failing to exercise the standard of care required of a reasonable and prudent municipal fire department by failing to identify potential deficiencies in the fire alarm system, and/or the fire safety plan;
 - (c) failing to exercise reasonable care, skill, diligence and competence when inspecting the Hotel's fire safety system; and
 - (d) such further and other particulars of negligence as shall become known to the Hotel Defendants

Division 3 – Additional Facts

33. N/A.

Part 2: RESPONSE TO RELIEF SOUGHT

- 1. The Hotel Defendants consent to the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.
- 2. The Hotel Defendants oppose the granting of the relief sought in ALL paragraphs of Part 2 of the Notice of Civil Claim.
- 3. The Hotel Defendants take no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

- 1. The Hotel Defendants were not negligent, or in breach of any duty owed to the Plaintiff or putative members of the proposed class, whether statutory, contractual, or otherwise.
- 2. At all material times, the Hotel Defendants took all reasonable care to ensure that the Hotel's life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc., were in good working condition and free from defects as per the requirements of all applicable industry standards, building and fire codes, bylaws, and regulations.
- 3. At all material times, the Hotel had in place and in operation a regular system of inspection and maintenance in relation to its life and safety systems, including the fire alarm system, smoke detectors and alarms, portable fire extinguishers, etc.
- 4. At all material times, the Hotel was reasonably safe for use by the general public. The Hotel Defendants deny that the Hotel was in a dangerous or unsafe condition prior to the Fire, whether as alleged or at all.

5. The Fire was not caused or contributed to by any negligence, breach of duty of care, breach of statutory duty, breach of contractual duty, acts, and/or omissions on the part of the Hotel Defendants, whether as alleged or at all.
6. The Fire and any injury, loss, damage and/or expense suffered by the Plaintiff or putative members of the proposed class, was caused or contributed to by the negligence of the Plaintiff and the other putative members of the proposed class, All Points, Aztech, the City, and/or other parties which are currently unknown to the Hotel Defendants and for which the Hotel Defendants are not responsible or legally liable.
7. The Notice of Civil Claim is being defended pre-certification and therefore in relation to the allegations on behalf of the Plaintiff only.
8. The Plaintiff fails to meet the requisite test for certifying this action as a class proceeding. Further particulars and defences will be raised should the Plaintiff present an application to have his action certified as a class proceeding pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50.
9. The Hotel Defendants plead and rely upon the provisions of the following enactments:
 - (a) *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and any amendments thereto;
 - (b) *Negligence Act*, R.S.B.C. 1996, c. 333;
 - (c) *Fire Services Act*, R.S.B.C. 1996, c. 144;
 - (d) *The British Columbia Building Code*;
 - (e) *The British Columbia Fire Code*; and
 - (f) Such further and other enactments as the Hotel Defendants may advise.
10. The Hotel Defendants seek that the Plaintiff's Action against them be dismissed with costs payable to them.

The Hotel Defendants' address for service: Alexander Holburn Beaudin + Lang LLP
Barristers + Solicitors
2700-700 West Georgia Street,
Vancouver, BC V7Y 1B8

Attention: Robert M. McLennan

Fax number address for service (if any): 604.484.9700
E-mail address for service (if any): Nil

Dated: December 7, 2020



per:

Signature of Robert M. McLennan
Lawyer for Mundi 910 Victoria Enterprises Ltd., and
Choice Hotels Canada Inc.

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.