



No. 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., and
AZTECH FIRE SAFETY PLANNING & CONSULTING (2015) LTD.

DEFENDANTS

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

RESPONSE TO AMENDED NOTICE OF CIVIL CLAIM

FILED BY: All Points Fire Protection Ltd. and Aztech Safety Planning & Consulting (2015)
Ltd. (the “defendants”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants’ Response to Facts

1. The facts alleged in paragraphs 18, 20, 21 of Part 1 of the amended notice of civil claim are admitted.
2. The facts alleged in paragraphs 1, 6, 7, 19, 26, 28, 30, 31, 33, 43, 44, 45 49-52 of Part 1 of the amended notice of civil claim are denied.
3. The facts alleged in paragraphs 2-5, 8-17, 22-25, 27, 29, 32, 34, 35, 36, 37, 3839, 40, 41, 42, 46, 47, 48, 48.1 of Part 1 of the amended notice of civil claim are outside the knowledge of the defendants.

Division 2 – Defendants’ Version of Facts

All Points Fire Protection Ltd.

1. All Points Fire Protection Ltd. (“All Points”) is incorporated pursuant to the laws of British Columbia and is in the business of providing fire inspection services. All Points does not prepare fire safety plans.
2. On or about February 24, 2020, All Points was engaged to conduct an inspection of the fire alarm system, emergency lights, and fire extinguishers at the motel located at 910 Victoria Street, Prince George, British Columbia (the “Motel”). All Points attended the Motel on February 24, 2020 to inspect the fire alarm system, emergency lights, and fire extinguishers. By March 18, 2020, the components which had failed on inspection on February 24, 2020 were replaced and/or repaired.
3. All Points carried out the inspection of the fire alarm system, emergency lights, and fire extinguishers at the Motel in accordance with the standard of care expected from a fire safety technician in the circumstances.
4. All Points has never been engaged to prepare a fire safety plan or design a fire protection system for the Motel.

Aztech Fire Safety Planning & Consulting (2015) Ltd.

5. On October 6, 2015, 1051293 B.C. Ltd. was incorporated in accordance with the laws of British Columbia.
6. By agreement made on October 27, 2015, 1051293 B.C. Ltd. purchased the assets of Aztech Fire Safety Planning & Consulting Ltd., including the company name and logo, and the undertaking of Aztech Fire Safety Planning & Consulting Ltd.’s business as a going concern. 1051293 B.C. Ltd. did not assume the liabilities of Aztech Fire Safety Planning & Consulting Ltd.
7. On November 5, 2015, 1051293 B.C. Ltd. changed its name to Aztech Fire Safety Planning & Consulting (2015) Ltd.
8. Aztech Fire Safety Planning & Consulting (2015) Ltd. has never been engaged to inspect the Motel, prepare a fire safety plan for the Motel, or perform any other work for the Motel.

Division 3 - Additional Facts

NONE

Part 2: RESPONSE TO RELIEF SOUGHT

9. The defendants oppose the granting of the relief sought in ALL paragraphs of Part 2 of the amended notice of civil claim.
10. The defendants seek the dismissal of this action with costs.

Part 3: LEGAL BASIS

1. All Points and Aztech Fire Safety Planning & Consulting (2015) Ltd. owed no duty of care to the plaintiff or the proposed class.
2. All Points denies that it was negligent in carrying out the inspection of the fire alarm system, emergency lights, and fire extinguishers at the Motel, as alleged in the Notice of Civil Claim, or at all, and says that its inspection of the fire alarm system, emergency lights, and fire extinguishers at the Motel was appropriate to the circumstances and in accord with standard practice of a fire safety technician.
3. In the alternative, if All Points was negligent, which is denied, then no act or omission on its part caused or contributed to any injury, loss, damage or expense suffered by the plaintiff or any members of the proposed class.
4. Further, if the plaintiff or any members of the proposed class suffered any injury, loss, damage, or expense as alleged or at all, which is denied, then such injury, loss, damage or expense are attributable to pre-existing or subsequent unrelated health conditions, illnesses, injuries, accidents, trauma or other disease processes affecting the plaintiff or those members of the proposed class.
5. In the further alternative, if the plaintiff or any members of the proposed class suffered injury, loss, damage or expense as alleged or at all, which is denied, such injury, loss, damage or expense was caused or contributed to by the negligence of the plaintiff or those members of the proposed class, and All Points pleads the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333 and amendments thereto. Particulars of such negligence include:
 - (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 Motel property in the face of a fire;
 - (d) Failing to heed warnings and/or instructions to evacuate the Motel;
 - (e) Failing to follow warnings and/or instructions regarding proper evacuation of the Motel;
 - (f) Failing to evacuate the Motel;
 - (g) Failing to adhere to the Motel's fire safety plan;
 - (h) Failing to respond to alerts or notifications of a fire;
 - (i) Failing to follow directions from Motel staff or Fire Rescue Services personnel;
and

- (j) Such further and other particulars as may become known to counsel and which counsel shall advise.
6. In the further alternative, the injuries of the plaintiff and any members of the class, which are denied, were caused either wholly or in part by the negligence, breach of contract, and/or breach of duty of the defendants Mundi 910 Victoria Enterprises Ltd., Choice Hotels Canada Inc., and the City of Prince George, and/or their servants and agents, the particulars of which are set out in the notice of civil claim and are adopted by All Points and are raised against those defendants and their servants and agents.
 7. All Points claims apportionment of liability for damages and costs against the plaintiff, class members, and the defendants Mundi 910 Victoria Enterprises Ltd., Choice Hotels Canada Inc., and the City of Prince George, or others not named in this action, and pleads and relies upon the *Negligence Act*, R.S.B.C. 1996, c. 333 and amendments thereto.
 8. Further, if the plaintiff and/or members of the proposed class incurred the alleged injuries, which are denied, the injuries occurred at a time when they were workers and/or employers, and All Points was an employer. As a consequence, the claims of the plaintiff and members of the proposed class are barred by the provisions of the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, s. 10; R.S.B.C. 2019, c. 1, s. 127 and amendments thereto.
 9. Further, or in the alternative, if the plaintiff or any members of the class have suffered, or will suffer, any injury, loss, damage or expense, which is denied, All Points says that the plaintiff and those members of the class have failed to mitigate their losses by failing to take all reasonable steps to minimize or avoid such injury, loss, damage or expense.
 10. In addition, and in the alternative, if the plaintiff and any members of the proposed class did suffer any injury, loss, damage or expense, as alleged or at all, and if such injury, loss, damage or expense was caused or contributed to by the negligence of All Points, all of which is denied, then the health care services the plaintiff and the members of the proposed class received and continue to receive are unrelated to those alleged injuries, losses, damages or expenses and All Points pleads the provisions of the *Health Care Costs Recovery Act*, S.B.C. 2008, c. 27, as amended.

(1) The defendants' address for service is:

HARPER GREY LLP
Barristers & Solicitors
3200 – 650 West Georgia Street
Vancouver, BC V6B 4P7
Telephone: 604 687 0411
Fax No: 604 669 9385
Attn: Nigel L. Trevethan

Dated: 21 December, 2020



HARPER GREY LLP
(Per Nigel L. Trevethan)
Lawyer for the defendants, All Points Fire
Protection Ltd. and Aztech Safety Planning
& Consulting (2015) Ltd.

Name and address of lawyer:

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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.