



[FORM 2]

NO. S065140  
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE OWNERS, STRATA PLAN LMS 4456

PLAINTIFF

AND:

565387 B.C. LTD. and 565388 B.C. LTD. carrying on business as ONE WALL CENTRE PARTNERSHIP, CALMONT INVESTMENTS LTD, WALL FINANCIAL CORPORATION, ING INSURANCE COMPANY OF CANADA formerly WELLINGTON INSURANCE COMPANY, NATIONAL HOME WARRANTY PROGRAMS LTD., VISIONWALL CORPORATION AND BRUNO WALL

DEFENDANTS

**RESPONSE TO CIVIL CLAIM**

*[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]*

**Filed by:** ING Insurance Company of Canada formerly Wellington Insurance Company (this "Defendant").

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

- 1 The facts alleged in paragraphs 4, 7, 8, 11, 12 and 29 of Part 1 of the notice of civil claim are admitted.
- 2 The facts alleged in paragraphs 13, 17, 18 and 30 of Part 1 of the notice of civil claim are denied.
- 3 The facts alleged in paragraph(s) 1, 2, 3, 5, 6, 9, 10, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of Part 1 of the notice of civil claim are outside the knowledge of this Defendant.

## Division 2 – These Defendants Version of Facts

- 1 The New Home Limited Warranty Certificate (the "Limited Warranty") referred to in paragraph 29 of the Notice of Civil Claim provides Limited Warranty coverage for the common property which is subject to all of the terms and conditions of the Limited Warranty, including, the following:

- Common Property Commencement Date September 26, 2001
- Coverages for Common Property 15 months  
(all materials and labour) expires December 25, 2002
- Two (2) years (major systems), exterior cladding,  
building code expires September 25, 2003
- Five (5) years (building envelope) expires September 25, 2006

### MATERIALS AND LABOUR WARRANTY

Beginning on the applicable *Commencement Date*, this Limited Warranty includes....

b) in the first 24 months,

(i) any defect in materials and labour supplied for the electrical, plumbing, heating, ventilation and air conditioning delivery and distribution systems,

(ii) any defect in materials and labour supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the new home, and

(iii) any *Building Code Defect*;

a) in the first five years, *Building Envelope Defect*...

### Warranty Limits

2. This warranty is limited, for all claims under warranty applicable to the home, to....

b) For all defects in the *Common Property* of a building, the lessor of

- (i) the aggregate original contract price for all units in the building, and
- (ii) \$100,000 times the number of units in the building, and
- (iii) \$2,500,000....

## PART 2: CONDITIONS

### Notice of Defects

8.
  - a) Within a reasonable time after the discovery of a defect and before the expiry of the applicable *home* warranty insurance coverage, the *owner* must give written notice to
    - (i) the *Builder*, and
    - (ii) the Program.
  - b) Written notice of a defect must be in reasonable detail, must set out a specific defect covered by *home* warranty insurance, and must include the *home* warranty policy number as set out on the face of this certificate.
  - c) If the *Owner* has notified the *Builder* of a defect before the expiry of the applicable *home* warranty coverage, and the *Owner* is not satisfied with the *Builder's* repair or resolution of that defect, then the *Owner* must notify the Program in writing up to the close of business of the applicable expiry date. Such notice must include copies of any relevant documentation and correspondence between the *Owner* and the *Builder*.
  - d) The Program cannot provide warranty coverage for any defects of which the Program was not notified pursuant to this Section, even if such defects would otherwise be covered by *home* warranty insurance.

"Building Envelope Defect" means a defect which results in unintended water leakage from the exterior through the building envelope such that it causes, or is likely to cause, damage to the *home*.

"Structural Defect" means

- a) a defect in materials and labour that results in the failure of a load bearing part of the new *home*, or
  - b) any defect which causes structural damage that materially and adversely affects the use of the new *home* for residential occupancy.
- 2 The program did not receive notice of any of the claims now advanced in the Notice of Civil Claim at any time prior to the expiry of the applicable Limited Warranty.
- 3 The IGU deficiencies alleged did not result in substantial danger to the health and safety of the occupants in One Wall Centre or others as alleged in the Notice of Civil Claim and do not fall within the coverage afforded under the Limited Warranty.

### Division 3 – Additional Facts

- 1 None.

**Part 2: RESPONSE TO RELIEF SOUGHT**

- 1 This Defendant opposes the granting of the relief sought in Part 2 of the Notice of Civil Claim.

**Part 3: LEGAL BASIS**

- 1 This Defendant denies that the Plaintiff has suffered any damage, loss or expense, either as alleged or at all.
- 2 In answer to the whole of the Notice of Civil Claim, this Defendant specifically denies the allegations of fact and propositions of law contained in Part 3 of the Notice of Civil Claim.
- 3 In specific answer to paragraphs 19 through 23 inclusive of Part 3 of the Notice of Civil Claim, the coverage under the Limited Warranty is governed by the terms and conditions of the Limited Warranty and the Limited Warranty only extends to defects in respect of which written notice is given to the Builder and the Program within a reasonable time after discovery and prior to the expiry of the applicable warranty period.
- 4 This Defendant specifically denies that the required notice was given by the Plaintiff in respect of any of the matters now alleged to constitute the IGU deficiencies and HVAC deficiencies alleged in Paragraphs 17 and 18 of Part 1 of the Notice of Civil Claim.
- 5 In further answer to Paragraphs 19 through 23 inclusive of Part 3 of the Notice of Civil Claim:
  - (a) no written notice of any kind was given to this Defendant or its agent by the Plaintiff within 15 months of the Common Property Commencement Date;
  - (b) no notice was given to this Defendant or its agent by the Plaintiff of any defects in material and labour supplied for the exterior cladding system including windows that may lead to detachment or material damage to the home within a period of 24 months from the Common Property Commencement Date;
  - (c) no notice has ever been given to this Defendant or its agent by the Plaintiff of any building code defect either within a period of 24 months of the Common Property Commencement Date or at all;
  - (d) the coverage in respect of building envelope defects only extends to those defects falling within the definition of "Building Envelope Defect" in the Limited Warranty which provides as follows:

"Building Envelope Defect" means a defect which results in unintended water leakage from the exterior through the building envelope such that it causes, or is likely to cause, damage to the *home*.


- (e) no notice has ever been given to this Defendant or its agent by the Plaintiff under the Limited Warranty in respect of any structural defects.
- 6 In further answer to paragraphs 19 through 23 inclusive of Part 3 of the Notice of Civil Claim, coverage under the Limited Warranty is confined to those defects in respect of which written notice is provided to the Builder and to the Program within a reasonable time after discovery of a defect and before the expiry of the applicable warranty coverage. This Defendant specifically denies that such notice was given in respect of the defects alleged in paragraphs 17 and 18 of Part 1 of the Notice of Civil Claim.
- 7 In further answer to paragraphs 19 through 23 of Part 3 of the Notice of Civil Claim, the Limited Warranty contains all of the terms and conditions of the Limited Warranty and there are no other conditions expressed or implied except those specifically set out in the Limited Warranty.
- 8 In specific answer to paragraph 21 of Part 3 of the Notice of Civil Claim, this Defendant specifically denies that the IGU deficiencies and HVAC deficiencies alleged constitute Cladding System Defects, Building Code Defects or Building Envelope Defects within the definitions in the Limited Warranty.
- 9 In further answer to paragraphs 19 through 23 inclusive of Part 3 of the Notice of Civil Claim, if any notice in writing was given by the Plaintiff to this Defendant or its agent pursuant to the provisions of the Limited Warranty, which is not admitted but specifically denied, any notice that was given was not provided within a reasonable time or within the term of the applicable warranty coverage and this Defendant denies any liability to the Plaintiff under the Limited Warranty.

*[Set out the street address of the address for service. One or both of a fax number and an e-mail address may be given as additional addresses for service.]*

Defendant's(s') address for service: Whitelaw Twining Law Corporation  
2400 - 200 Granville Street  
Vancouver, BC V6C 1S4

Fax number address for service (if any): 604-682-5217

Date: December 20, 2010

  
Signature of lawyer for defendant  
ING Insurance Company of Canada formerly  
Wellington Insurance Company

John M. Moshonas  
[type or print name]

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.

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