



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

Filed by: 565387 B.C. LTD. and 565388 B.C. LTD. carrying on business as ONE WALL CENTRE PARTNERSHIP, CALMONT INVESTMENTS LTD., WALL FINANCIAL CORPORATION, and BRUNO WALL ("these Defendants")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**Division 1 – These Defendants' Response to Facts**

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

Division 2 – These Defendants' Version of Facts

1. In response to paragraph 17 of the notice of civil claim, these Defendants say, however, that, the IGU Deficiencies did not result in substantial danger to the health and safety of the occupants in One Wall Centre and others, as alleged in the notice of civil claim, or at all.
2. In response to paragraph 18 of the notice of civil claim, these Defendants further say that, One Wall Centre's heating, ventilation and air conditioning ("HVAC") systems were designed properly, and do not have deficiencies, as alleged in the notice of civil claim, or at all.
3. In further response to paragraph 17 of the notice of civil claim, these Defendants further say that, replacing all of the windows in One Wall Centre (the "Window Replacement Project") is not necessary to address the IGU Deficiencies, and will result in betterment.

Division 3 – Additional Facts

1. None

Part 2: RESPONSE TO RELIEF SOUGHT

1. These Defendants oppose the granting of relief sought in the notice of civil claim.

Part 3: LEGAL BASIS

1. If One Wall Centre was constructed with IGU Deficiencies and or HVAC Deficiencies; as alleged in paragraphs 17 and 18 of the notice of civil claim, and if the Plaintiff has suffered any loss, damage, or expense, as alleged or at all, all of which is denied, then these Defendants specifically deny that such loss, damage or expense was caused or contributed to by any act, omission, negligence, negligent advice, breach of duty, breach of contract, or fault on the part of these Defendants or their agents, servants or employees.
2. These Defendants specifically deny that they are guilty of the alleged or any breach of contract as alleged in paragraph 7 of Part 3 of the notice of civil claim or at all.
3. These Defendants specifically deny that they owed any duty to the Plaintiff as alleged in paragraphs 6 and 7 of Part 3 of the notice of civil claim, or at all.

4. In the alternative, if these Defendants owed any duty of care to the Plaintiff as alleged, or at all, which is not admitted but specifically denied, then these Defendants deny that they breached such duty of care.
5. Further, these Defendants specifically deny that they were negligent and deny each and every particular of negligence contained in the notice of civil claim.
6. These Defendants specifically deny that One Wall Centre contained any IGU Deficiencies or HVAC Deficiencies, as alleged in paragraphs 17 and 18 of the notice of civil claim, or at all, and deny the alleged damages resulting therefrom as set out in paragraphs 17 and 30 of the notice of civil claim, or at all.
7. In the alternative, if One Wall Centre was constructed with IGU Deficiencies and/or HVAC Deficiencies, as alleged in paragraphs 17 and 18 of the notice of civil claim, or at all, and if the Plaintiff suffered resultant loss, damage or expense, as alleged, or at all, which is not admitted but specifically denied, then such defects and damages were not reasonably foreseeable to these Defendants, and therefore these Defendants have no liability in law to the Plaintiff.
8. In the still further alternative, if the Plaintiff has suffered damages, which is not admitted, such damages are in the nature of pure economic loss as the alleged defects do not pose a real or substantial danger and, therefore, are not recoverable as a matter of law.
9. If the Plaintiff suffered any loss, damage or expense as alleged or at all, which is not admitted, but specifically denied, then such loss, damage or expense was caused or contributed to by the negligence of the Plaintiff and/or the other Defendants in this action.
10. Particulars of negligence of the other Defendants are set out in the notice of civil claim and are adopted herein, and such further and other particulars that may become known to these Defendants.
11. These Defendants plead and rely upon the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333 and amendments thereto.
12. If the Plaintiff suffered any of the alleged loss, damage or expense, which is denied, then the Plaintiff has exacerbated such loss, damage or expense by failing to mitigate, including failure to make timely repairs to remedy those deficiencies, defects and resulting damages particularized in the notice of civil claim, and the Plaintiff is thereby precluded in whole, or alternatively in part, from recovering for such loss, damage or expense.
13. Further, if the Plaintiff suffered any of the alleged loss, damage or expense, which is denied, the Plaintiff's Window Replacement Program constitutes a betterment of One Wall Centre and the Plaintiff is therefore precluded from recovering the cost of carrying out such repairs to the extent of the betterment.

14. These Defendants deny that a fiduciary relationship existed between any of these Defendants and certain members of the Strata Corporation, as alleged in paragraph 11 of Part 3 of the notice of civil claim.
15. These Defendants deny that the Disclosure Statements were false or that they failed to include material facts as alleged at paragraph 13 of Part 3 of the notice of civil claim.
16. If the Disclosure Statements were false or failed to contain material facts, which is denied, then at the time of making the Disclosure Statements these Defendants honestly believed the Disclosure Statements to be true.
17. These Defendants say that the Plaintiff's claim is barred by the effluxion of time and these Defendants plead and rely on the provisions of the *Limitation Act*, RSBC, 1996, c. 266 and amendments thereto.


WHEREFORE these Defendants submit that the action be dismissed with costs.

These Defendants' address for service: Singleton Urquhart LLP
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Tel: 604-682-7474 / Fax: 604-682-1283
Attention: John R. Singleton, Q.C.

Fax number address for service (if any): 604-682-1283

E-mail address for service (if any): none

Date: October 27, 2010



Signature of lawyer for the Defendant
John R. Singleton, Q.C.