



No. 245177
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

NIKA FASHION & DESIGN CORPORATION
NEDA PESSIONE

PLAINTIFFS

AND

ATIRA PROPERTY MANAGEMENT INC.
WINTERS RESIDENCE LTD.

DEFENDANTS

RESPONSE TO NOTICE OF CIVIL CLAIM

Filed by: Atira Property Management Inc. (this "Defendant")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – This Defendant's Response to Facts

1. The facts alleged in paragraphs 3 and 9 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 15 - 17 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1, 2, 4 – 8, 10 – 14, 18 – 21 of the Notice of Civil Claim are outside the knowledge of this Defendant.

Division 2— This Defendant's Version of Facts

4. This Defendant has an address for delivery at c/o Miller Thomson LLP, Suite 2200 – 700 West Georgia Street, in the City of Vancouver, in the Province of British Columbia.
5. This Defendant denies each and every allegation set out in the Notice of Civil Claim, except where expressly admitted herein. Any reference to, or use of, terms defined in the Notice of Civil Claim does not constitute an admission with respect to that term.
6. This Defendant admits to leasing space in the Building from Winters Residence Ltd. ("Winters") to operate the SRO. However, this Defendant expressly denies causing the Second Fire in the manner alleged in the Notice of Civil Claim or at all.

7. Prior to the Second Fire, this Defendant was never responsible for servicing the sprinkler system, the alarm system, or executing the VFRS Fire Watch Procedures in the Building.
8. The Second Fire was caused solely by the negligence of Winters, the owner of the Building, particulars of which, *inter alia*, are as follows:
 - (a) failing to service and restore the sprinkler system and the alarm system in the Building after the First Fire;
 - (b) failing to institute the proper Fire Watch procedures as set out in the VFRS Fire Watch Requirements;
 - (c) failing to institute and/or maintain an adequate Fire Watch patrol;
 - (d) failing to take additional measures to ensure fire safety in the Building, such as, *inter alia*, ensuring that there were portable extinguishers available;
 - (e) knowing or having the means of knowing that the Second Fire was likely to occur and taking appropriate actions to prevent it from occurring;
 - (f) failing to properly inform the occupants of the Building that the sprinkler system and the alarm system was shut down; and
 - (g) failing to properly train staff who were tasked with carrying out the Fire Watch.
9. But for Winter's negligence, the Second Fire would not have occurred.
10. In the alternative, the Second Fire was caused by or contributed to by the actions of the Plaintiffs, Nika Fashion Design & Corporation ("Nika Fashion") and Neda Pessione ("Pessione") who operated their business in the Building and who were present in the Building at the time the Second Fire occurred, particulars of which, *inter alia*, are as follows:
 - (a) failing to properly maintain their leased commercial premises to ensure it met fire safety standards; and
 - (b) failing to warn this Defendant and/or Winters of fire safety issues.

11. If this Defendant was negligent as alleged or at all, which is expressly denied, then Winters, Nika Fashion and/or Pessione were negligent as well on the basis stated above.

Division 3 — Additional Facts

12. The Plaintiffs sustained no injury, loss, damage or expense as a result of the Second Fire.
13. In the alternative, and also in any event, if the negligence of this Defendant caused or contributed to any injury, loss, damage, or expense sustained by the Plaintiffs, then this Defendant says the Plaintiffs have failed to properly mitigate their losses in this regard and any compensation they would otherwise have been entitled to receive from this Defendant should be reduced or eliminated accordingly.

PART 2: RESPONSE TO RELIEF SOUGHT

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

PART 3: LEGAL BASIS

1. In answer to the whole of the Notice of Civil Claim, this Defendant denies owing and/or being in breach of any duty of care owed to the Plaintiffs as alleged, or at all, and puts them to the strict proof thereof.
2. The acts or omissions alleged by the Plaintiffs were not the proximate cause of the Second Fire or resulting injury, loss, damage or expense as alleged by the Plaintiff.
3. The Second Fire and any alleged injury, loss, damage or expense resulting thereby occurred without negligence of this Defendant and solely as a result of, or was contributed to, by the negligence of the Plaintiffs. This Defendant pleads the *Negligence Act*, RSBC 1996 c 333 as amended and an apportionment of liability.

4. The Plaintiffs, by the exercise of due diligence, could have reduced the amount of any alleged injury, loss, damage or expense. The Plaintiffs have failed to mitigate their damages.

Defendant's address for service: Miller Thomson LLP
Barristers and Solicitors
2200 – 700 West Georgia Street
Vancouver, BC V7Y 1K8

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a



Date: 20/Sept/2022

Signature of Lawyer for the Defendant
Karen L. Weslowski

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.