



NO. Court File No. **NEW-S-S-245177**

NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

New Westminster
REGISTRY

NIKA FASHION & DESIGN CORPORATION
NEDA PESSIONE

PLAINTIFFS

AND

ATIRA PROPERTY MANAGEMENT INC.
WINTERS RESIDENCE LTD.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiffs,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. Nika Fashion & Design Corporation is an intraprovincially incorporated company pursuant to the laws of British Columbia with an address for service in this action at Suite 201 8501 – 162nd Street, Surrey BC, V4N 1B2.
2. Neda Pessione is an individual with an address for service in this action at Suite 201 8501 – 162nd Street, Surrey BC, V4N 1B2.
3. Atira Property Management Inc. (“Atira”) is an intraprovincially incorporated company with a registered records office at 405 Powell Street, Vancouver BC, V6A 1G7.
4. Winters Residence Ltd. (“Winters”) is an intraprovincially incorporated company with a registered records office at 31—650 West Georgia Street, Vancouver BC, V6B 4P7.
5. Winters owns and operates the land and premises located at 205 Abbott Street, Vancouver, British Columbia (the “Premises”).
6. The Premises includes a building comprised of commercial units on the ground floor and single-occupancy suites on the upper floors (the “Building”).
7. At all material times, Winters agreed to lease a portion of the Building to the Plaintiffs to operate their business (the “Unit”).
8. Pursuant to the lease agreement, at all material times Winters was responsible for the common areas of the Premises and agreed to maintain the Building in a reputable manner.
9. At all material times, Winters agreed to lease a portion of the Building to Atira to operate single-room occupancy housing for low-income individuals (the “SRO”).
10. On or about Friday April 8, 2022, a fire occurred in Room 216 of the SRO (the “First Fire”). The Building sprinkler system was triggered, and the Fire was extinguished without serious damage.
11. In response to the First Fire, Vancouver Fire Rescue Services (“VFRS”) turned off the Building’s sprinkler and alarm systems and ordered that the sprinkler system and alarm system be serviced by a fire suppression company before being re-activated.
12. In further response to the First Fire, VFRS ordered that a 24-hour fire watch at the Building in accordance with Vancouver Fire By-law, Division B, Sentence 6.1.1.4(1) which states:

When any portion of a fire protection system is temporarily shut down, alternative measures shall be taken to ensure that protection is maintained.
13. The VFRS Fire Watch Requirements includes the following relevant provisions [emphasis in original]:

When a Fire Protection System is out of service, the building shall be provided with an *acceptable* Fire Watch. This is for all

occupants and all areas of the building left unprotected by the shutdown, until the fire alarm system or sprinkler system has been returned to service.

Fire Protection Systems shall be repaired or replaced by an *acceptable* service company and returned to service as soon as possible. Many acceptable 24 hour service companies are available.

When a sprinkler system is shut down, measures that can be taken include the provision of emergency hose lines and portable extinguishers, and extra fire watch service.

THIS NOTICE MUST be posted in a conspicuous location in the main entrance to the building. Copies of this notice must be posted at other main access points including inside elevators and stairs.

14. The VFRS Fire Watch Procedures includes the following relevant provisions [emphasis in original]:

Promptly inform all building occupants of the Fire Protection System shut downs or equipment out of service and post this Notice throughout the building as described above.

At least 2 persons and if the building is larger, more people, shall provide a Fire Watch. Fire watch may be conducted by a professional fire watch service, or by occupants in the building designated by the building owner(s) or building's Fire Safety Director and trained in their duties.

The persons performing the Fire Watch must have a designated supervisor and shall:

- a) Be easily identifiable to building occupants by uniform or clothing.
- b) Be familiar with the operation of fire and life safety systems in the building.
- c) Be able, and capable, of promptly notifying emergency agencies and occupants of an incident.
- d) Have radio contact between each other using established emergency communications protocol.
- e) When required to notify the Fire Department, be identified by names and phone numbers for immediate contact.
- f) The Fire Watch shall be in attendance at all times when fire protection systems are out of service, and have sufficient staff to patrol all areas of the building involved, using the following as a minimum:

Non-residential buildings: during normal business open hours, **every 30 minutes**; other times **every 60 minutes**.

Buildings with sleeping accommodation:

i) between 2100–0800 hrs. (11 pm until 8 am)
every 15 minutes.

ii) between 0800-2100 hrs. (8am until 11 pm)
every 30 minutes.

The Fire Watch shall have an *acceptable* method of alerting building occupants, making them and VFRS aware of what it will be (eg, Air Horn etc.).

Maintain a chronological, written log of activities on site for VFRS, for the duration of the Fire Watch. Use a new “Fire Watch Log” sheet for each day. Use additional sheets for additional floors or areas where necessary.

15. At all material times, Atira and/or Winters failed to follow the VFRS Fire Watch Requirements and VFRS Fire Watch Procedures.
16. Following the First Fire, an employee of Atira contacted a fire suppression company and obtained an estimate for the cost of servicing the Building sprinkler system and alarm system.
17. Following the First Fire, Atira declined to authorize the work for servicing the Building sprinkler system and alarm system due to concerns about the cost of the work taking place over the weekend.
18. As a result, the Building sprinkler system and alarm system remained disconnected following the First Fire on Friday April 8, 2022.
19. On Monday April 11, 2022, a second fire took place at the SRO (the “Second Fire”).
20. The Second Fire destroyed the Building, including the Unit rented by the Plaintiffs’ and all of the Plaintiffs’ business and personal belongings located within the Unit.
21. At the time of the Second Fire, the Building sprinkler system and alarm system was disconnected and therefore was unable to alert Building occupants to the Second Fire or extinguish or attempt to extinguish the Second Fire.

Part 2: RELIEF SOUGHT

1. Damages arising from negligence and breach of contract.
2. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 as amended.
3. Costs of this action.
4. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Plaintiffs submit that Atira and/or Winters were negligent in respect to the Second Fire, including but not limited to:
 - a) Failing to have the Building sprinkler system and alarm system restored as soon as possible following the First Fire;
 - b) Failing to institute an acceptable Fire Watch as set out in the VFRS Fire Watch Requirements;
 - c) Failing to take additional measures while the Building sprinkler system was shut down, including but not limited to, the provision of emergency hose lines and portable extinguishers, and extra fire watch service;
 - d) Failing to properly inform the Building occupants that the Building sprinkler system and alarm system was shut down;
 - e) Failing to have sufficient and /or properly trained staff to carry out the Fire Watch; and
 - f) Failing to institute and/or maintain an adequate Fire Watch patrol.
2. Had the Building sprinkler system and alarm system been operational at the time of the Second Fire, it would have prevented and/or lessened the Second Fire, including the damage and/or loss of the Plaintiffs' business and personal belongings located within the Unit.
3. Had Atira and/or Winters followed the VFRS Fire Watch Requirements and Procedures, it would have prevented and/or lessened the Second Fire, including the damage and/or loss of the Plaintiffs' business and personal belongings located within the Unit.
4. The Plaintiffs further submit that Winters breached their lease agreement by failing to maintain the common areas and failing to keep the Building in a reputable state.
5. The Plaintiffs claim compensation for the loss and/or damage to their business and personal belongings located within the Unit arising from the negligence and/or breach of contract of Atira and/or Winters.

Plaintiffs' address for service:

Pythe Navis MDP
Suite 201, 8501 – 162nd Street
Surrey BC, V4N 1B2

Place of trial: New Westminster, BC

The address of the registry is: 651 Carnarvon Street, New Westminster, BC V3M 1C9

Fax number address for service (if any): 604-590-8684

E-mail address for service (if any): N/A

Dated: August 15, 2022

Liam Corcoran

Signature of Liam L. Corcoran

Defendant lawyer for the Plaintiffs

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.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Defendant is liable to the Plaintiffs for payment pursuant to an insurance contract.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money

- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4: ENACTMENTS RELIED ON

Court Order Interest Act, RSBC 1996 c. 79

Negligence Act, RSBC 1996, c. 33

Court Jurisdiction and Proceedings Transfer Act, SBC 2003, c 28