

In the Supreme Court of British Columbia

Between

Jennifer Hansma

Plaintiff

and

**Atira Property Management Inc.,
Atira Development Society,
Atira Women's Resource Society,
City of Vancouver (Fire and rescue services), and
Winters Residence Ltd.**

Defendants

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

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff 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

- (c) 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

- (d) 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 plaintiff(s),

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

Overview

1. The Winters Hotel was a Single-Room-Occupancy (“SRO”) hotel located in Vancouver’s Downtown Eastside. On April 11, 2022, the Winters Hotel was destroyed by a fire (the “Fire”).
2. Over 80 Vancouverites were residents of the Winters Hotel at the time of the Fire. Many of the residents were registered tenants, and others were their guests.
3. Two residents were killed in the Fire. Many more were injured.

4. Some residents lost loved pets. Many more lost all of their worldly belongings, including keepsakes from deceased friends and family, ID cards, other important documents, clothing, and work tools.
5. All residents lost their homes and the community they had established in the Winters Hotel.
6. Three days prior to the Fire, there had been another fire at the Winters Hotel. It was quickly extinguished by the building's sprinkler system and residents using fire extinguishers. The building fire alarm system did not activate. The fire did not spread beyond the room where it started and no one was injured. Fire fighters arrived after the fire had been extinguished to shut off the sprinkler system.
7. No one took steps to reset the sprinkler or fire alarm systems, or replace fire extinguishers, before the Fire occurred three days later. The residents had no warnings about the Fire, and no means to fight it.
8. The Atira Defendants and Winters Residence did not consider the residents to have political, economic, or social power. In part because of this perceived lack of power, Atira and Winters Residence did not ensure that the Winters Hotel fire safety systems were maintained and operated to acceptable standards.
9. The City's interactions with the Winters Hotel and its residents were influenced by a similar perception. It did not enforce fire safety regulations to the same standards it did in buildings with more politically, economically, and socially powerful residents.

The Parties

Representative Plaintiff

10. Jennifer Hansma is a resident of British Columbia. At the time of the Fire, she was a tenant at the Winters Hotel. She has an address for service care of CFM Lawyers, 400 – 856 Homer St., Vancouver, BC V6B 2W5.

11. Ms. Hansma was a resident of Unit 320 at the time of the Fire. She lived there with her pet cat, who was also her best friend.
12. Ms. Hansma worked a night shift at her job on the evening of April 10. She returned home to sleep the morning of April 11.
13. Ms. Hansma woke to a neighbour kicking at her door and yelling "Fire!" She saw clouds of smoke pouring into her room with each kick.
14. When she understood what was happening, her first thought was to rescue her cat. She could hear him crying from his favourite hiding spot beneath a chair. She didn't have the strength to move the chair and couldn't coax him out.
15. Ms. Hansma realized she had to escape for her own safety. She opened the window to give her cat a chance to save himself, grabbed her keys, and opened the door.
16. The hallway was filled with black smoke and fire. Ms. Hansma couldn't see anything else and she couldn't breathe. She ran down the hall with other residents and followed one, with her hand on their back, down the stairs to the front exit.
17. Ms. Hansma ran down the street in her pajamas and socks. She was covered in soot. Her fingertips were burned from touching the door handle.
18. She lost her beloved cat and feels lost without him. She also lost treasured family heirlooms and other property with real economic and non-economic value.
19. As a result of the Fire, Ms. Hansma continues to suffer from psychological injuries.

The Class

20. The plaintiff brings this claim on behalf of the following class:

All individuals who were residents of the Winters Hotel, 203 Abbott Street, Vancouver, on April 11, 2022, including tenants and their guests; and,

Non-resident guests or visitors who were in the Winters Hotel at the time of the Fire; and,

The personal representatives and dependants of individuals who they claim died as a result of the Fire; but,

Excluding individuals who were residents of Unit #206 on April 11, 2022.

Winters Residence Ltd.

21. Winters Residence Ltd. ("**Winters Residence**") is incorporated pursuant to the laws of British Columbia with a registered office at 3100 – 650 West Georgia Street, Vancouver, BC V6B 4P7.
22. Winters Residence owned the land and building at 203 Abbott Street, Vancouver (the "Winters Hotel").
23. Winters Residence leased the Winters Hotel to one or more of the Atira Defendants, but maintained responsibility for, and control over, the condition of the Winters Hotel, the activities conducted there, and the persons allowed to enter.

The Atira Defendants

24. Atira Women's Resource Society ("**AWRS**") is a society organized pursuant to the laws of British Columbia with a registered office at 201 – 109 Alexander Street, Vancouver, BC V6A 1B5.
25. AWRS is a non-profit society that, among other things, provides housing programs for women and children.
26. Atira Property Management Inc. ("**Atira Property**") is incorporated pursuant to the laws of British Columbia with a registered office at 405 Powell Street, Vancouver, BC V6A 1G7.
27. Atira Property is a wholly owned subsidiary of AWRS. It manages properties for stratas, building owners, cooperatives, developers, and not-for-profit societies, including AWRS.

28. The majority of Atira Property's income is donated to AWRS. AWRS considers its long-term sustainability to be directly linked to the commercial success of Atira Property.
29. Atira Development Society ("**Atira Development**") is a society organized pursuant to the laws of British Columbia with a registered office at 201 – 109 Alexander Street, Vancouver, BC V6A 1B5.
30. Atira Development's members are the Directors of AWRS. Among other things, Atira Development provides affordable housing for persons of low and moderate income.
31. AWRS, Atira Property, and Atira Development will be collectively referred to as the "**Atira Defendants**". The Atira Defendants are closely related organizations that share directors, employees, and information. With respect to operation of the Winters Hotel, there were blurred lines of responsibility between the Atira Defendants.
32. Atira Development leased the Winters Hotel from Winters Residence.
33. In the alternative, one or more of the Atira Defendants leased the Winters Hotel from the Winters Residence.
34. Atira Property operated an SRO in the Winters Hotel.
35. In the alternative, one or more of the Atira Defendants operated an SRO in the Winters Hotel.
36. One or more of the Atira Defendants had physical possession of the Winters Hotel.
37. One or more of the Atira Defendants had responsibility for, and control over, the condition of the Winters Hotel, the activities conducted there, and the persons allowed to enter, by virtue of the lease from Winters Residence and their operation of the SRO.

38. Following the Fire, AWRS collected donations from the public on behalf of residents of the Winters Hotel.
39. In the alternative, following the Fire, one or more of the Atira Defendants collected donations from the public on behalf of residents of the Winters Hotel.

City of Vancouver (Fire and rescue services)

40. The City of Vancouver (the “City”) is a municipality incorporated under the *Vancouver Charter*, SBC 1953, c 55, with an office at 453 West 12th Avenue, Vancouver, BC V5Y 1V4.
41. Through its Vancouver Fire Rescue Services department, the City provides fire safety services including but not limited to inspections for compliance with fire regulations.
42. The purpose of the City’s fire safety services is to, among other things, protect residents and visitors from building fires in Vancouver.

Background to the Fire

43. The Winters Hotel was built in approximately 1904. It was not designed to modern standards that are intended to slow the spread of fire. It lacked firestops and had features such as open mezzanines that fire professionals understood would facilitate the growth and spread of fire.
44. For many years prior to the Fire, the Winters Hotel had been operated as an SRO that housed low-income tenants. The rooms were small and did not have kitchens. Residents shared bathrooms. Some of the residents lived with addiction and other mental health conditions.
45. Prior to the Fire, the Winters Hotel was in a state of disrepair. Fire escape ladders were chained or missing. Fire exits were locked. Some door closers were missing or broken. Holes in walls and ceilings were left unrepaired. Paint was peeling and black mold was growing. Rats were prolific.

46. The Atira Defendants and Winters Residence did not have adequate fire safety systems in place prior to the Fire, including:
 - (a) fire alarms;
 - (b) fire sprinklers;
 - (c) fire extinguishers; and,
 - (d) a fire safety plan.
47. Winters Residence, the Atira Defendants, and the City were aware of the conditions described at paragraphs 43-46 prior to the Fire.
48. In the years leading up to the Fire, SROs operated by the Atira Defendants, including the Winters Hotel, had received a disproportionately large number of warnings and tickets for fire safety violations. They had also experienced a disproportionate number of fires.
49. The City considered the Winters Hotel to be among the highest risk buildings in Vancouver because there was a high likelihood of fire and a high likelihood of catastrophic consequences.
50. Prior to the Fire, the City met regularly with the Atira Defendants to discuss fire safety in SROs they operated, including the Winters Hotel. Their most recent meeting was on April 5, 2022, the week before the Fire. As a result of these meetings, fire inspections, and attending at fires, the City was aware that there were unmitigated fire safety hazards in the Winters Hotel.
51. On April 8, City firefighters responded to a fire at the Winters Hotel. The City was aware that:
 - (a) the fire had been extinguished before firefighters arrived;
 - (b) the fire alarm system was not functioning;

- (c) the automatic sprinkler system was activated; and,
 - (d) residents and staff had used portable fire extinguishers to fight the fire.
52. The City shut off the sprinkler system. It arranged for fans to be placed throughout the Winters Hotel to improve ventilation and dry surfaces soaked by the sprinklers.
53. As a result of its attendance on April 8 and other visits, the City was aware of the following hazards and violations at the Winters Hotel but took no steps to have them remedied:
- (a) Portable fire extinguishers needed replacement and servicing;
 - (b) Fire escapes were not functioning; and,
 - (c) Fire exits were locked or obstructed.
54. The City issued orders to an employee of one of the Atira Defendants to:
- (a) Have the fire alarm system serviced;
 - (b) Have the sprinkler system serviced;
 - (c) Have a 24 hour fire watch until the fire alarm system was fully functional; and,
 - (d) Call Fire Hall #2 when the corrective action was complete.
55. The Atira Defendants did not have staff at the Winters Hotel who were properly trained to conduct a fire watch. The City knew that the Atira Defendants did not have sufficient staff at the Winters Hotel, let alone properly trained staff, to maintain an effective fire watch.
56. The Atira Defendants and Winters Residence did not maintain a reasonable fire watch after the April 8 fire.

57. The City, Winters Residence, and Atira Defendants knew that, if another fire were to occur before all defects were remedied, residents were likely to suffer catastrophic consequences. The City, Winters Residence, and Atira Defendants did not take reasonable steps to mitigate the risk of another fire or warn residents.
58. The Atira Defendants did not contact a fire inspection company to reset the sprinkler and alarm systems until the morning of April 11. The City was aware that the fire alarm and sprinkler systems had not been reset by the morning of April 11 because no one called Fire Hall #2 as ordered.

The Fire

59. On the morning of April 11, shortly before 11 a.m., the Fire began by accident in unit 206 of the Winters Hotel.
60. The fire alarm and sprinklers did not activate because they had not been serviced.
61. A resident noticed black smoke coming from unit 206. He and other residents and staff attempted to extinguish the fire. They searched in vain for functioning fire extinguishers, but all they could find were empty canisters. Some residents grabbed fire extinguishers from their rooms or nearby buildings. Another resident tried fighting the Fire with water.
62. Despite their best efforts, residents were unable to extinguish the Fire.
63. Because there were no fire alarms, some residents and staff took it upon themselves to warn other occupants of the building. They ran through the halls, knocking on doors and yelling warnings. Many residents were saved by these actions, but some were not warned in time.
64. The Fire spread quickly because of the design of the Winters Hotel and the ventilation fans left by the City.
65. Smoke, and dangerous chemicals released by the Fire, filled the halls and were inhaled by class members.

66. Some class members had to run through fire to escape. Others had to jump from windows or fire escapes because the ladders would not drop. Some were trapped due to lack of fire alarms and appropriate exits.
67. Two residents died, and many more suffered serious physical and psychological injuries. As a result of their injuries, many class members have been unable to work and enjoy their lives to the same extent as before the Fire.
68. If the fire safety systems had been serviceable, the Fire would have been extinguished before it spread from unit 206 and none of the residents or visitors would have been injured.

After the Fire

69. Following the Fire, efforts were made to rehome residents but many were homeless for days or weeks.
70. Because of structural damage, residents were not permitted to return to the Winters Hotel to salvage any possessions or rescue their pets.
71. The Winters Hotel was demolished, and along with it so were all of the possessions that class members had in the building. Some pets were still in the building when it was demolished.
72. AWRS began a campaign to collect donations for residents. AWRS requested money and donations of items such as toiletries, blankets, bedding, towels, clothing, food, and pet supplies. Donors contributed money and items with the intent that they would go to residents of the Winters Hotel.
73. AWRS did not distribute all of the donations to residents, and for those donations that it did distribute to residents, it did not distribute them evenly.

PART 2: RELIEF SOUGHT

74. The plaintiff and class members seek:

- (a) an order certifying this action as a class proceeding;
- (b) an order appointing the plaintiff as a representative plaintiff for the class;
- (c) general damages;
- (d) damages pursuant to the *Family Compensation Act*, RSBC 1996, c. 126;
- (e) special damages;
- (f) damages in trust for friends and family members who provided care;
- (g) past and future loss of income and earning capacity;
- (h) health care costs, including past and future cost of health care services as defined in the *Health Care Costs Recovery Act*, SBC 2008, c. 27;
- (i) aggravated damages;
- (j) punitive damages;
- (k) tax gross-up and management fees;
- (l) a declaration that the Atira Defendants held donations in trust for the benefit of residents of the Winters Hotel;
- (m) an accounting of the collection and distribution of donations;
- (n) court order interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79;
- (o) costs; and,
- (p) any other relief the Court may order.

PART 3: LEGAL BASIS

75. The Fire caused harm to the class as a result of the negligence of the defendants.

76. The harm suffered by class members includes:
- (a) loss of life;
 - (b) personal injury;
 - (c) loss of use and enjoyment of property, including their homes;
 - (d) loss of cherished property, including irreplaceable property with non-economic value greatly in excess of the economic value of similar property.
77. There is no upper limit on non-pecuniary damages for loss of property.
78. The defendants are jointly and severally liable for the damages suffered by class members as a result of the Fire.
79. The conduct of the defendants is sufficiently worthy of condemnation to award punitive damages.

Winters Residence

80. Winters Residence was an occupier of the Winters Hotel, within the meaning of the *Occupiers Liability Act*, because it had responsibility for, and control over, the condition of the Winters Hotel, the activities conducted there, and the persons allowed there.
81. Winters Residence owed a duty under the *Occupiers Liability Act* to class members to take reasonable care that class members, and their property, would be reasonably safe in the Winters Hotel.
82. Winters Residence owed a common law duty to class members to take reasonable care that class members and their property would be reasonably safe in the Winters Hotel. This duty arises from:
- (a) the relationship of proximity between the Winters Residence, as building owner, and class members, as residents or visitors to the building; and,

- (b) the reasonable foreseeability of a fire causing harm to class members and their property if the Winters Hotel's fire safety systems were not properly maintained and operated.
83. Winters Residence breached the standard of care required of it in the circumstances. Particulars of its breaches of the standard include:
- (a) Choosing not to have and maintain fire safety systems in the Winters Hotel to a reasonable standard;
 - (b) Failing to clearly define the responsibilities of lessees of the Winters Hotel with respect to fire safety systems;
 - (c) Permitting the fire alarm and sprinkler systems to be disabled for an unreasonable amount of time;
 - (d) Failing to comply with orders from the fire department;
 - (e) Permitting fire exits and escapes to be locked; and,
 - (f) Failing to warn residents that fire safety systems were not active.

The Atira Defendants

84. The Atira Defendants were occupiers of the Winters Hotel, within the meaning of the *Occupiers Liability Act*, because:
- (a) they had physical possession of the Winters Hotel; and,
 - (b) they had responsibility for, and control over, the condition of the Winters Hotel, the activities conducted there, and the persons allowed there.
85. The Atira Defendants owed a duty under the *Occupiers Liability Act* to class members to take reasonable care that class members, and their property, would be reasonably safe in the Winters Hotel.

86. The Atira Defendants owed a common law duty to class members to take reasonable care that class members and their property would be reasonably safe in the Winters Hotel. This duty arises from:
- (a) the relationship of proximity between the Atira Defendants, as lessees and operators of the SRO, and class members, as residents or visitors to the building; and,
 - (b) the reasonable foreseeability of a fire causing harm to class members and their property if the Winters Hotel's fire safety systems were not properly maintained and operated.
87. The Atira Defendants breached the standard of care required of them in the circumstances. Particulars of their breaches of the standard include:
- (a) Choosing not to have and maintain fire safety systems in the Winters Hotel to a reasonable standard;
 - (b) Permitting the fire alarm and sprinkler systems to be disabled for an unreasonable amount of time;
 - (c) Failing to comply with orders from the fire department;
 - (d) Failing to communicate orders from the fire department to Winters Residence;
 - (e) Permitting fire exits and escapes to be locked; and,
 - (f) Failing to warn residents that fire safety systems were not active.
88. AWRS solicited and received donations that were explicitly intended to be for the benefit of residents of the Winters Hotel. It held these donations in trust for residents of the Winters Hotel, but did not distribute the donations in accordance with its trust obligations.

The City

89. The City was in a relationship of proximity with class members as a result of:
- (a) Its responsibility for inspecting and ensuring compliance with Vancouver's Fire Bylaw;
 - (b) Specific interactions with the Atira Defendants regarding fire safety in their SROs, including the Winters Hotel;
 - (c) Interactions with class members regarding fire safety in the Winters Hotel;
 - (d) Its knowledge that occupants of the Winters Hotel were at an extremely high risk of harm from fires as a result of conditions in the Winters Hotel;
 - (e) Its knowledge that fire safety systems were not active in the Winters Hotel between April 8 and April 11.
90. It was reasonably foreseeable to the City that class members would be harmed if it did not ensure fire safety systems were functioning in the Winters Hotel.
91. The City owed a duty of care to class members to ensure that fire safety systems were functioning in the Winters Hotel.
92. The City breach the standard of care required of it in the circumstances. Particulars of its breach of the standard of care include:
- (a) Shutting down fire safety systems in the Winters Hotel without ensuring they were reactivated in a reasonable time;
 - (b) Issuing orders to an employee of one or more of the Atira Defendants without ensuring that the employee had the training and responsibility to respond to the orders;
 - (c) Failing to issue orders directly to Winters Residence;

- (d) Holding the Winters Hotel to a lower standard of compliance than other buildings in Vancouver;
- (e) Permitting fire code violations in the Winters Hotel to remain undealt with for long periods of time;
- (f) Failing to require the Atira Defendants and Winters Residence to replace fire extinguishers following the April 8 fire; and,
- (g) Failing to warn class members that fire safety systems were not functioning in the Winters Hotel.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN LLP
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Tel: (604) 689-7555
Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Place of trial: Vancouver Law Courts

Address of the registry: 800 Smithe Street, Vancouver, BC V6Z 2E1

Date: 11/Apr/2023



Signature of lawyer
for plaintiff

Jamie Thornback
CFM Lawyers

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

[The following information is provided for data collection purposes only and is of no legal effect.]

CONCISE SUMMARY OF NATURE OF CLAIM:

A class action to recover damages for death, personal injury, and loss of property for residents and guests of the Winters Hotel caused by a fire.

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

THIS CLAIM INVOLVES:

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

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Occupiers Liability Act, RSBC 1996, c. 337*
2. *Class Proceedings Act*
3. *Family Compensation Act.*