

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50 and amendments thereto

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

OCT 19 2016



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

HAROLD JAY SLAUNWHITE

PLAINTIFF

AND:

PARKASH SAHOTA, PAL SAHOTA, GURDYAL SAHOTA, KIRIN SAHOTA,
BALMORAL HOTEL LTD., YAND-MYUNG HOTEL MANAGEMENT LIMITED,
SAHOTACORP and CITY OF VANCOUVER

DEFENDANTS

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

- (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.

S-169603

No.

Vancouver Registry

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,

- (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 PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff Harold Slaunwhite is a tenant who is currently residing at 821-159 East Hastings Street in Vancouver, British Columbia, and has resided there since September of 2014. 159 East Hastings Street is an eight-storey, 178 suite Single Resident Occupancy apartment building known as the Balmoral Hotel (the "Balmoral").
2. The Defendant Balmoral Hotel Ltd. ("BHL") is the registered owner and/or operator, or manager of the Balmoral. BHL appears to do business as "Balmoral Hotel" from time to time.
3. The Defendant Yang-myung Hotel Management Limited ("Yang-myung Mgmt") is involved in the operation and management of the Balmoral Hotel. Among other activities, Yang-myung Mgmt owns and operates the Astoria Beer and Wine Store and pays employees and contractors who work for, at and on the Balmoral Hotel in cash from the Astoria Beer and Wine Store till.
4. The Defendant Sahotacorp is beneficial owner, operator or manager of the Balmoral Hotel, BHL and Yang-myung Mgmt. Sahotacorp is a separate business entity or partnership that is distinct from BHL and Yang-myung Mgmt.
5. The Defendants Parkash Sahota, Pal Sahota, Gurdyal Sahota and Kirin Sahota (the "Sahota Defendants") are the owners or beneficial owners and/or operators of the Balmoral Hotel, and/or the shareholders or operators or managers of BHL and Yang-myung Mgmt and/or personally own and operate the Balmoral. Kirin Sahota is nominally the sole shareholder of Yang-myung Mgmt.
6. Rental revenues from the Balmoral flow to BHL, Yang-myung Mgmt, Sahotacorp and the Sahota Defendants. Liabilities, including employee wages, are paid by BHL, Yang-Myung Mgmt, Sahotacorp and/or the Sahota Defendants and/or entities other than the named defendants controlled by the Sahota Defendants.
7. The true corporate name of Sahotacorp, its relationship to the Sahota Defendants, BHL and Yang-Myung Mgmt and its true beneficial ownership and management structure will be ascertained on discovery.
8. BHL, Sahotacorp, Yang-myung Mgmt and the Sahota Defendants are all corporate alter egos of one another: their revenues and liabilities are intermingled, each of them borrows funds using others' assets as security, each has common employees and bookkeeping

practices, each make common use of nominee/employee designates to hold and/or conceal ownership of assets, and little or no effort is made to provide separate accounting for each entity. The Plaintiff intends to lift the corporate veil. The Plaintiff refers hereinafter to BHL, Yang-myung Mgmt, Sahotacorp and the Sahota Defendants, whether as separate entities or as corporate alter egos of each other, as "the Sahotas".

9. The Sahotas are the Plaintiff's landlords and they are jointly and severally responsible for the maintenance of the Balmoral.
10. The Defendant City of Vancouver ("Vancouver") is a municipal entity continued and sustained by *The Vancouver Charter*, RSBC 1953, c.55, as amended. Vancouver enacted and is responsible for the administration of the Standards of Maintenance Bylaws No. 5462.

Health and Safety Issues at The Balmoral

11. To the knowledge of all Defendants, there are serious health and safety issues resulting from the Sahotas' failure to maintain the Balmoral. These health and safety issues are common to all tenants. The common health and safety issues are as follows:

(a) Bathrooms and Showers. The walls in the common bathrooms and shower have holes, the tiling is cracked and some tiles are missing entirely, and the grouting and sealants are completely deteriorated. The bathtubs are not functional. The bathroom doors do not lock. Water leaks between floors. There is mould. The water temperature at the showers, bathtubs and sinks cannot be controlled due to deterioration of the plumbing fixtures and/or inconsistency of water temperature. Approximately one-half of the toilets and sinks are not operational.

(b) Structural Issues. The floor under the street level bar has been structurally unsound for more than four years. Numerous beams are rotten due to water ingress. The bar on the ground floor of the Balmoral was ordered closed as a result.

(c) Doors and locks. Doors to individual suites are not secure because doors do not fit into door frames, are gouged, locks are gouged and/or compromised by holes or gaps.

(d) Fire Escape Impassable. The fire escape for the Balmoral is an enclosed stairwell on the north (alley) side of the building. The bottom three floors of the stairwell are unlit and are pitch black; the stairwell is impassable without a flashlight. Emergency lighting is non-functional. The metal door to the back alley is often padlocked and the door providing access to the roof is always padlocked. In case of emergency, tenants would be trapped in an unlit stairwell.

(e) Elevator Chronically Broken. There is one elevator at the Balmoral and it is chronically out of service.

- (f) Pest Infestation. The Balmoral is chronically infested with rats, cockroaches and bedbugs. There is virtually no pest control program at the Balmoral, with the exception that a pest control company very occasionally sprays in specific room and drops off sticky pads and rat traps for untrained employees to administer.
- (g) Fire hazards. Fire separations are missing or damaged on floors 1, 6, 7 and 8. The 9th floor is not occupied and is being used unsafely as storage for flammable materials.
- (h) Windows. Due to the deterioration of the original 100 year old window pullies, panels and frames, most windows cannot be opened. The windows of the Balmoral are the only source of fresh air ventilation.
12. The conditions at the Balmoral put the health and safety of the tenants at risk. The Sahotas are aware that their tenants' health and safety are at risk from the conditions at the Balmoral.
 13. The City of Vancouver is fully aware of all of the health and safety issues at the Balmoral and has been aware of those issues from their inception. While the City of Vancouver has issued work orders in relation to some of these issues, the City of Vancouver has chosen not to meaningfully enforce the work orders and chooses to ignore the majority of the health and safety issues.
 14. The City of Vancouver has made a conscious choice not to enforce its Standards of Maintenance Bylaw with respect to the Balmoral on the basis that persons paying low rents are in a special category of tenants to whom the Standards and Maintenance Bylaw does not fully apply or applies only in attenuated form.
 15. The City of Vancouver and the Sahotas make express and implicit agreements from time to time that the Sahotas need not comply with aspects of the Standards of Maintenance Bylaw provided they promise to comply with other aspects of the Standards of Maintenance Bylaw. There is no legal authority for the City of Vancouver and/or the Sahotas to make such agreements. As a consequence or manifestation of such agreements, the City of Vancouver has not fined or adequately fined the Sahotas for their infractions of and offences against the Standards and Maintenance Bylaw.
 16. The Sahotas and their employees expressly or implicitly allow, condone, benefit from and/or participate in illicit activities in and from the Balmoral, the particulars of which will be provided in a separate document. These activities cause the residents of the Balmoral to be fearful, intimidated and subdued from making criminal reports or complaints regarding building maintenance to the appropriate authorities, including the City of Vancouver and the Residential Tenancy Board, and the activities diminish the quality of life at the Balmoral.

17. The Sahotas lack the wherewithal and do not intend to adequately manage the Balmoral. The Sahotas have consistently ignored serious infractions of the Standards of Maintenance Bylaw and have consistently ignored the few orders sporadically made by the City of Vancouver. The Sahotas devote available capital to purchasing new land holdings rather than conducting routine or even emergency maintenance on their existing holdings, including the Balmoral.

Part 2: RELIEF SOUGHT

18. The Plaintiff claims damages from the Defendants as follows:

(a) general damages;

(b) special damages;

(c) aggravated damages;

(d) punitive damages;

(e) an interim, interlocutory and permanent injunction allowing the Plaintiff or requiring the City of Vancouver to carry out work to remediate the health and safety issues at the Balmoral at the expense of the Sahotas;

(f) an order appointing, in place of the Sahotas, a suitable property management company with experience in building remediation to collect the rents, operate the Balmoral and facilitate the repair of the Balmoral by the City of Vancouver;

(g) an interim, interlocutory or final order restraining the Sahotas from having direct or indirect contact with the tenants of the Balmoral and requiring the Sahotas to keep the peace and be of good behaviour for the duration of the repairs to the Balmoral;

(h) as an alternative to the relief sought under paragraph (e), above, an interim, interlocutory and permanent injunction requiring the Sahotas to repair and remediate the health and safety issues at the Balmoral within as short a period as the Court may deem practicable;

(i) an interim, interlocutory and permanent injunction preventing the Sahotas from evicting any of the tenants while the health and safety issues are remediated;

(j) costs, including special costs and applicable taxes on those costs;

(k) interest pursuant to the *Court Order Interest Act*, RSBC 1996, c. 79, and amendments thereto; and

(l) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

1. The City of Vancouver Standards of Maintenance Bylaw sets out the following minimum standards for building upkeep and maintenance:

4.1(11) Retaining walls shall be maintained in good repair and free from accident hazards.

4.1(12) Every owner of land must keep the land, and any building or accessory building on it, in such condition that it will not afford harbourage for or become infested with pests.

4.1(13) If pests have infested land, or any building or accessory building on it, the owner of the land must eliminate the infestation.

5.1 Every part of a building shall be maintained in a structurally sound condition so as to be capable of sustaining safely its own weight and any additional load to which it may be subjected through normal use in accordance with the Vancouver Building By-law.

6.1(1) Foundation walls and other supporting members shall be maintained in good repair to prevent the entrance of moisture.

6.1(2) Without limiting the generality of Sentence (1), the maintenance of foundation walls and other supporting members may include: ...

(c) grouting masonry cracks;

7.1(1) Exterior walls, parapet walls, and the components thereof shall be maintained:

(a) in good repair,

(b) weather-tight;

(c) free from loose or unsecured objects and materials, and,

(d) in a manner to prevent and retard deterioration due to weather and infestation.

7.1(3) Canopies, marquees, awnings, screens, grilles, stairways, fire escapes, pipes, ducts, air conditions and all other similar equipment, attachments, extensions and their supporting members shall be maintained in good repair, properly and securely anchored and protected against deterioration and decay by the periodic application of a weathercoating material such as paint or other protective treatment, unless constructed of materials inherently resistant to deterioration.

9.1(1) The roof, including the flashing, shall be kept weather-tight and free from leaks.

11.1(1) Fire escapes, stairways, balconies or porches and landings in, on or appurtenant to a building shall be maintained:

(a) in a safe and clean condition,

(b) in good repair ...

11A.1(1) Every elevator in any building used for residential purposes shall be maintained in an operational condition at all times.

16.1(2) Every hand basin and bathtub, shower and sink shall have an adequate supply of hot and cold running water and every water closet shall have an adequate supply of running water. Hot water shall be supplied at a minimum temperature of 120EF (49EC) and a maximum of 140EF (60EC).

18.1(1) Heating systems shall be maintained in a safe and good working condition so as to be capable of safely attaining and maintaining an adequate temperature standard, free from fire and accident hazards and in all residential accommodation capable of maintaining every room at a temperature of 72E Fahrenheit (22E Celcius) measured at a point 5 feet (1.52 m) from the floor.

2. The Standards and Maintenance Bylaw allows the City of Vancouver to make work orders and levy fines against persons who breach or commit offences under the Bylaw. In addition, Section 23.8 allows City Council, by resolution, to order that failure to remedy any specified default in an order within 60 days after service of such order will result in the work being carried out by the City at the expense of the owner. Moreover, s.23.8A allows the Chief Building Official, after consulting the General Manager, Community Services, to order that failure to remedy any default specified in such order within 60 days will result in the work being carried out by the City at the expense of the

owners. If, after the expiry of 60 days after an order is issued under ss.23.8 or 23.8A, the City may, by its workers or others, enter upon the premises and effect such repairs, renovations or alterations as are necessary to make the building conform to the Bylaw. The cost of repair is to be paid by the owner within 30 days of the statement of account from the City or else it is to be entered on the Real Property Tax Roll as a charge against the property.

3. Any discretion exercised by the City of Vancouver must comport with the *Canadian Charter of Rights and Freedoms*. The health and safety issues at the Balmoral are an infringement or anticipatory infringement of the tenants' rights to life and security of the person. The decision of the City of Vancouver to exempt the Balmoral from aspects of the Standards of Maintenance Bylaw is arbitrary as it is contrary to the purposes of the Standards of Maintenance Bylaw.
4. Under s.32(1) of the *Residential Tenancy Act*, a landlord must provide and maintain residential property in a state of repair that complies with health, safety and housing standards required by law. Section 58(4) of the *Residential Tenancy Act* provides that the Supreme Court of British Columbia may hear a residential tenancy dispute if, pursuant to s.58(2)(a) or (c), the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act* or if the dispute is linked substantially to a matter that is before the Supreme Court. Both conditions are satisfied in this case.
5. Section 5 of the *RTA* provides that landlords may not avoid or contract out of the *RTA* or its regulations and that any attempt to avoid or contract out of the *RTA* or its regulations is of no effect. Any agreement between the Sahotas and the City of Vancouver to attenuate the application of the Standards of Maintenance Bylaw is thereby of no effect, or is otherwise void as being contrary to public policy.
6. The plaintiff says that the loss of heat, hot water, elevator and rats reduces his enjoyment of his residence and that the threats and intimidation within the Balmoral interferes with his entitlement under s.28 of the *RTA* to quiet enjoyment and freedom from unreasonable disturbance. The plaintiff claims on his own behalf and on behalf of all other residents of the Balmoral damages to be paid by the Sahotas in the amount of at least \$200 per tenant per month of tenancy.
7. The plaintiff says that the conduct of the Sahotas in placing the health and safety of their tenants at risk by failing to maintain the Balmoral and by expressly or implicitly allowing, condoning, benefitting from and/or participating in illicit activities in and from the Balmoral is sufficiently reprehensible to warrant punitive damages payable by the Sahotas in the amount of an additional \$200 per tenant per month of tenancy.

Plaintiff's address for service: Gratl & Company
Barristers and Solicitors
601-510 West Hastings Street
Vancouver, BC V6B 1L8
Attn: Jason Gratl

Place of Trial: Vancouver

The address of the registry is: The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: October 19, 2016

"JASON GRATL"

Signature of Jason Gratl
Lawyer for Plaintiff

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:

This is a claim in the nature of a class action for compensation and punitive damages from a landlord/owner of an apartment building, and for injunctive relief requiring the City of Vancouver to conduct necessary repairs to the apartment building at the expense of the landlord/owner.

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:

[Check all boxes below that apply to this case]

a class action

maritime law

aboriginal law

constitutional law

conflict of laws

none of the above

do not know

Part 4:

City of Vancouver Standards of Maintenance Bylaw

Residential Tenancy Act