



NO. Court File No. **ABB-S-S-02429**
ABBOTSFORD REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTURBAN DEVELOPMENTS LTD., GREEN ROAD
(DUNCAN) LIMITED PARTNERSHIP and 1137364 B.C. LTD.

PLAINTIFFS

AND:

KRAHN ENGINEERING LTD.

DEFENDANT

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 plaintiffs.

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-noted 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 plaintiffs 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 were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with 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

The parties and the Property

1. The plaintiff Westurban Developments Ltd. (“**Westurban**”) is a company duly incorporated under the laws of British Columbia with an address for service in this proceeding at 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2. Westurban is a residential and commercial real estate development company based on Vancouver Island.

2. The plaintiff Green Road (Duncan) Limited Partnership (“**Green Road LP**”) is a limited partnership established under the laws of British Columbia, and the plaintiff 1137364 B.C. Ltd. (“**364**”) is a company duly incorporated under the laws of British Columbia, both with an address for service in this proceeding at 1600 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.

3. At all material times, Green Road LP and 364 (together, the “**Owners**”) were the beneficial and legal owners respectively of the lands located at 4114 Crosland Place (formerly, 6387 Green Road), North Cowichan, British Columbia, V9L 6C7 and legally described as follows:

PID: 009-768-904
 Parcel B (DD 44318I) of Section 2
 Range 5 Somenos District
 Except Part in Plan 15559 and Except Part in Plan 904 BL

(the “**Property**”).

4. The defendant Krahn Engineering Ltd. (“**Krahn**”) is a company duly incorporated under the laws of British Columbia with a registered and records office at 400 – 34077 Gladys Avenue, Abbotsford, British Columbia, V9S 5W4. Krahn is a structural engineering firm based in Abbotsford, British Columbia.

The Project and engagement of Krahn

5. In or around 2018, Westurban undertook a project to develop the Property (the “**Project**”), including construction of a 64-unit apartment complex building known as “Magdalena” (the “**Building**”). The Building was to be, and is, a light wood-frame structure on a reinforced concrete podium with a below-grade parkade. At all material times, Westurban was the development and construction manager and the general contractor of the Project.

6. Pursuant to a written contract dated February 23, 2018 (the “**Contract**”), Westurban engaged Krahn to act as structural engineers for the Project including the following services in relation to the construction of the apartment complex:

- (a) design of the building foundations and superstructure;
- (b) preparation of building permit and construction documents;
- (c) conduct of field reviews during construction to ensure compliance with construction drawings; and
- (d) conduct of a professional field review upon completion of construction and issue letters of assurance with respect to regulatory compliance, including compliance with the British Columbia Building Code of 2012 (the “**2012 Code**”).

7. At all material times, Krahn owed the following express or implied contractual duties to Westurban pursuant to the Contract, and more generally, the following duties of care to Westurban as developer of the Project and to the Owners as owners of the Property, in respect of the Building:

- (a) to design all foundations and structural elements of the Building in accordance with prudent design standards and all applicable regulatory requirements, including the 2012 Code;

- (b) to ensure that the design of the foundations and structural elements of the Buildings underwent independent review prior to documents being issued for construction or implementation in accordance with industry practice and the bylaws of Engineers and Geoscientists BC;
- (c) to inspect the foundations and structural elements of the Building during construction to ensure that:
 - (i) the construction complied with all drawings, specifications and all applicable regulatory requirements, including the 2012 Code;
 - (ii) all work complied with standards of good workmanship; and
 - (iii) all materials were suitable and fit for their intended purpose; and
- (d) to ensure that after construction, any defects in the structural elements of the Building were rectified prior to occupancy;
- (e) to ensure at all times that the Building was free of any material structural defects, particularly any defects that may amount to a real and substantial danger to the life and safety of occupants; and
- (f) to issue letters of assurance only if the structural elements of the Building for which Krahn were responsible substantially complied in all material respects with design documents, all applicable regulatory requirements, including the 2012 Code, and other applicable enactments respecting safety.

8. At all material times, Westurban and the Owners relied on Krahn's professional expertise and experience in structural engineering design in relation to the Project.

9. Between approximately 2018 and 2019, Krahn acted as structural engineer on the Project and was responsible for the design and review of all structural elements of the Building.

10. Construction of the Building achieved substantial completion in or around the autumn of 2019. Krahn issued letters of assurance in respect of the structural elements the Building on or about October 22, 2019.

11. Occupancy permits for the residential units in the Building were issued by the Municipality of North Cowichan on or about December 27, 2019.

The Negligent Design and the Structural Defects

12. Unbeknownst to Westurban or the Owners at the time, Krahn's design of the structural elements of the Building was deficient in that it did not comply with prudent design standards or applicable regulatory requirements, including the 2012 Code, and failed to adequately protect the Building from failure of its structural elements, either generally or in connection with seismic or high-wind events (the "**Negligent Design**"). Particulars of the Negligent Design include, without limitation, the following:

- (a) failure to provide for adequate reinforcement of the suspended concrete slab main floor, particularly inadequate punching shear reinforcement where the concrete columns support the concrete slab main floor;
- (b) failure to provide for adequate concrete pad footings below the concrete columns supporting the concrete slab main floor;
- (c) failure to provide for adequate lateral force resistance capacity for seismic or high-wind events, particularly with respect to the plywood-panelled shear walls;
- (d) such other design failures as may be identified at trial.

13. As a result of the Negligent Design, the Building contains significant material structural defects (the "**Structural Defects**"), including, without limitation, the following:

- (a) inadequate reinforcements of the suspended concrete main floor;
- (b) significantly undersized concrete footings; and
- (c) shear wall elements with inadequate lateral force resistance capacity;
- (d) such other structural defects as may be identified at trial.

14. As of the filing of this Notice of Civil Claim, the structural elements of the Building do not comply with the regulatory requirements that were in place at the time, including

the 2012 Code, nor current regulatory requirements, including the British Columbia Building Code of 2018 (the “**2018 Code**”).

15. The Structural Defects, whether individually or taken together, are dangerous defects in that if not rectified, there is a serious risk of failure of structure elements of the Building either generally or in connection with seismic or high-wind events, thereby presenting a real and substantial danger to the life and safety of occupants and others.

16. By creating and implementing the Negligent Design, and by failing to identify and prevent the Structural Defects, Krahn breached its contractual duties to Westurban pursuant to the Contract, and breached its duties of care owed to Westurban as development and construction manager and the general contractor of the Project and to the Owners as owners of the Property.

17. As a result of the existence of the Structural Defects, the Owners have been required to undertake significant remediation work on the Building to rectify the Structural Defects, remove the real and substantial danger to the life and safety of occupants and others, and to bring the structural elements of the Building into compliance with current regulatory requirements, including the 2018 Code (the “**Remediation Work**”), at significant expense.

Failure to warn

18. At all material times, Krahn knew or ought to have known that:

- (a) its design of the structural elements of the Building did not or might not comply with prudent design standards or applicable regulatory requirements, including the Code;
- (b) independent reviews of the design of the foundations and structural elements of the Building were never obtained;
- (c) the Building contained or might contain some or all of the Structural Defects; and
- (d) because of the Negligent Design and the existence of some or all of Structural Defects, the structural elements of the Building were at a serious risk of failure,

thereby presenting a real and substantial danger to the life and safety of occupants and others.

19. At all material times, Krahn owed a duty of care to Westurban and to the Owners to warn them of:

- (a) the risks associated with their design of the structural elements of the Building;
- (b) the existence of some or all of Structural Defects;
- (c) the risk of failure of the structural elements of the Building; and
- (d) the real and substantial danger to the life and safety of occupants and others associated with the design and defective condition of the Building.

20. Krahn breached its duty of care to Westurban and the Owners by failing to warn them of the foregoing defects, risks and dangers.

Loss and damage

21. As a result of Krahn's breach of the Contract, negligence, creation of dangerous defects in relation to the Building, and negligent failure to warn, Westurban and the Owners have suffered, and will continue to suffer, considerable loss, damage and expense, including, without limitation:

- (a) the cost of investigating the Negligent Design and the Structural Defects;
- (b) the cost of the Remediation Work;
- (c) lost rent revenue for the Building;
- (d) costs associated with tenancy issues and landlord-tenant proceedings arising from the Structural Defects and the need to undertake the Remediation Work, including without limitation, legal fees incurred in connection with landlord-tenant proceedings; and
- (e) such further loss, damage and expense as may be proven at trial.

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Vancouver, in the Province of British Columbia, this 1st day of June,
2022.

Lawson Lundell LLP (SBH)
Lawson Lundell LLP
Solicitors for the plaintiffs

This Notice of Civil Claim is filed by Michael B. Morgan and Paul Kressock, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is 1600 – 925 West Georgia Street, Vancouver, British Columbia V6C 3L2.

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.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of contract and negligence

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:

Nil.

NO.
ABBOTSFORD REGISTRY

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925 West Georgia Street
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V6C 3L2

Phone: (604) 685-3456

Attention: Michael B. Morgan / Paul Kressock

PAK/MBM