

SEP 14 2022



Amended pursuant to Rule 6-1(1)(b)
Notice of Civil Claim filed March 31, 2021
Amended Notice of Civil Claim filed May 19, 2022

NO. S-213235
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTURBAN DEVELOPMENTS LTD., UPLANDS DRIVE
LIMITED PARTNERSHIP, 1134399 B.C. LTD., WILLOW
POINT (CAMPBELL RIVER) LIMITED PARTNERSHIP and
1157003 B.C. LTD.

PLAINTIFFS

AND:

SORENSEN TRILOGY ENGINEERING LTD. and BRIAN
MCCLURE

DEFENDANTS

FURTHER AMENDED 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 Properties

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 Uplands Drive Limited Partnership (“**Uplands Drive LP**”) is a limited partnership established under the laws of British Columbia, and the plaintiff 1134399 B.C. Ltd. (“**399**”) 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. Prior to approximately December 23, 2020, Uplands Drive LP and 399 (together, the “**Nanaimo Owners**”) were the beneficial and legal owners respectively of the lands located at 5085 Uplands Drive, Nanaimo, British Columbia, V8V 3K4 and legally described as follows:

PID: 026-410-443
 Lot 6 District Lot 20
 Wellington District Plan VIP79506

(the “**Nanaimo Property**”).

4. The Nanaimo Property was purchased by Westurban Holdings Group Ltd. (“**WU Holdings**”) on or about April 28, 2017. On or about October 19, 2017, WU Holdings transferred beneficial and legal ownership of the Nanaimo Property to Uplands Drive LP and 399 respectively. Uplands Drive LP and 399 were the beneficial and legal owners of the Nanaimo Property for the duration of the Nanaimo Project (as defined below) and at the time of the Discoveries (as defined below) in or around December 2020.

5. The plaintiff Willow Point (Campbell River) Limited Partnership (“**Willow Point LP**”) is a limited partnership established under the laws of British Columbia, and the plaintiff 1157003 B.C. Ltd. (“**003**”) 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.

6. Prior to approximately December 23, 2020, Willow Point LP and 003 (together, the “**Campbell River Owners**”) were the beneficial and legal owners respectively of the lands located at 2036 South Island Highway, Campbell River, British Columbia, V9W 1C1 and legally described as follows:

PID: 000-063-436
 Lot 2, District Lot 218
 Comox District, Plan 6972

(the “**Campbell River Property**”, and together with the Nanaimo Property, the “**Properties**”).

7. Prior to approximately May 15, 2018, the Campbell River Property was owned beneficially and legally by Terry Hoff and Kim Patrick. On or about May 15, 2018, Terry Hoff and Kim Patrick transferred beneficial and legal ownership of the Campbell River to Willow Point LP and 003 respectively. Willow Point LP and 003 were the beneficial and legal owners of the Campbell River Property for the duration of the Campbell River Project (as defined below) and at the time of the Discoveries (as defined below) in or around December 2020.

8. At all material times prior to approximately December 23, 2020, the Nanaimo Owners and the Campbell River Owners (together, the “**Owners**”) and WU Holdings were companies that were connected with Westurban.

9. The defendant Sorensen Trilogy Engineering Ltd. (“**Sorensen Trilogy**”) is a company duly incorporated under the laws of British Columbia with a registered and records office at 200 – 1808 Bowen Road, Nanaimo, British Columbia, V9S 5W4. Sorensen Trilogy is a structural engineering firm based in Nanaimo, British Columbia.

10. The defendant Brian McClure is a former structural engineer. Mr. McClure is a principal of Sorensen Trilogy.

The Projects and engagement of Sorensen Trilogy

11. In or around 2017, Westurban undertook a project to develop the Nanaimo Property, including construction of a 59-unit apartment complex known as “Arbutus” (the “**Nanaimo Project**”). At all material times, Westurban was the development and construction manager and the general contractor of the Nanaimo Project. Westurban was never the owner of the Nanaimo Project, and was never the beneficial or legal owner of the Nanaimo Property.

12. Pursuant to a written contract dated August 3, 2017 and made on or about September 18, 2017 (the “**Nanaimo Contract**”), Westurban engaged Sorensen Trilogy to act as structural engineers for the Nanaimo Project which included 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**”).

13. At the time the Nanaimo Contract was made, the Nanaimo Property was owned, beneficially and legally, by WU Holdings. As set out above, WU Holdings later transferred beneficial and legal ownership of the Nanaimo Property to Uplands Drive LP and 399 respectively on or about October 19, 2017. Sorensen Trilogy did not have, and never had, any contract with WU Holdings or the Nanaimo Owners, and never sought any contract with those entities or with the owner(s) of the Nanaimo Property or the Nanaimo Project. Westurban never represented to Sorensen Trilogy at any time that it was the owner of the Nanaimo Property or the Nanaimo Project.

14. In or around 2018, Westurban undertook a project to develop the Campbell River Property, including construction of a 51-unit apartment complex known as “Watermark” (the “**Campbell River Project**”, and together with the Nanaimo Project, the “**Projects**”). At all material times, Westurban was the development and construction manager and the general contractor the Campbell River Project. Westurban was never the owner of the Campbell River Project, and was never the beneficial or legal owner of the Campbell River Property.

15. Pursuant to a written contract dated March 20, 2018 and made on or about March 22, 2018 (the “**Campbell River Contract**”, and together with the Nanaimo Contract, the “**Contracts**”), Westurban engaged Sorensen Trilogy to act as structural engineers for the Campbell River Property which included, without limitation, the following services in relation to the construction of the apartment complex:

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

16. At the time the Campbell River Contract was made, the Campbell River Property was owned, beneficially and legally, by Terry Hoff and Kim Patrick. As set out above, Terry

Hoff and Kim Patrick later transferred beneficial and legal ownership of the Campbell River to Willow Point LP and 003 respectively on or about May 15, 2018. Sorensen Trilogy did not have, and never had, any contract with Terry Hoff and Kim Patrick or the Campbell River Owners, and never sought any contract with those entities or with the owner(s) of the Campbell River Property or the Campbell River Project. Westurban never represented to Sorensen Trilogy at any time that it was the owner of the Campbell River Property or the Campbell River Project.

17. For both Projects, the apartment complex buildings (together, the “**Buildings**”) were to be, and are, wood-frame construction supported on suspended concrete slabs over underground parking areas with concrete foundations. The lateral load resisting systems for the Buildings were to be, and are, wood panel shear walls with steel rod hold-down elements.

18. At all material times, Sorensen Trilogy owed the following express or implied contractual duties to Westurban pursuant to the Contracts, and more generally, the following duties of care to Westurban as the development and construction manager and the general contractor of the Projects and to the Owners as owners of the Properties, in respect of the Buildings:

- (a) to design all foundations and structural elements of the Buildings 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 (“**EGBC**”);
- (c) to inspect the foundations and structural elements of the Buildings 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 Buildings were rectified prior to occupancy;
- (e) to ensure at all times that the Buildings were 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 Buildings for which Sorensen Trilogy 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.

19. At all material times, Westurban and the Owners relied on Sorensen Trilogy's professional expertise and experience in structural engineering design in relation to the Projects.

20. Between approximately 2017 and 2019, Sorensen Trilogy acted as the structural engineering consultant on the Projects ~~and was responsible for the design and review of all structural elements of the Buildings~~. Brian McClure, an engineer with and principal of Sorensen Trilogy, was the structural engineer who carried out and was responsible for Sorensen Trilogy's work on the Projects. Specifically, Mr. McClure was the person who designed the foundations and structural elements of the Buildings and was responsible for Sorensen Trilogy's discharge of ~~the its~~ duties set out at paragraph 18 above.

Personal obligations of Mr. McClure

21. In addition to the foregoing, Mr. McClure personally acted as the structural engineer of record for both Projects pursuant to the 2012 Code.

22. As the structural engineer of record for the Projects, Mr. McClure was personally bound by obligations pursuant to the 2012 Code, and pursuant to duties owed to the plaintiffs, including the Owners, independent of any obligations of Sorensen Trilogy, to:

- (a) ensure that the structural designs of the Buildings substantially complied with the 2012 Code and other applicable enactments respecting safety, and to issue

stamped Schedule B Letters of Assurance in respect of the Buildings if and only if he was capable of providing such assurances of compliance and such assurances were true;

- (b) ensure that construction of the Buildings did not proceed unless and until he had issued stamped Schedule B Letters of Assurance in respect of the Buildings;
- (c) conduct field reviews to ensure conformance of construction of the Buildings with structural designs;
- (d) ensure that the completed structural elements of the Buildings substantially complied with the 2012 Code and other applicable enactments respecting safety, and to issue stamped Schedule C-B Letters of Assurance in respect of the Buildings if and only if he was capable of providing such assurances of compliance and such assurances were true;

23. As a registrant of the EGBC, Mr. McClure was personally bound by obligations pursuant to the EGBC Bylaws (the “Bylaws”), and pursuant to duties owed to the plaintiffs, independent of any obligations of Sorensen Trilogy, to:

- (a) ensure that documented independent reviews of the structural designs for the Buildings was complete before documents are issued for construction and before the start of construction; and
- (b) give notice in writing with respect to the existence and applicability of professional liability insurance to any engineering services rendered.

24. Further, Mr. McClure was personally bound by an overriding duty pursuant to *Engineers and Geoscientists Act*, R.S.B.C. 1996, c. 116 (now the *Professional Governance Act*, S.B.C. 2018, c. 47) (the “Act”), and pursuant to duties owed to the plaintiffs, independent of any obligations of Sorensen Trilogy, to hold paramount the safety, health and welfare of the public in carrying out his duties to the plaintiffs and his duties as a professional engineer registered with EGBC.

Completion of structural designs and assurance of Code-compliance

25. Sorensen Trilogy completed structural designs for the Buildings on the Nanaimo Project and the Campbell River Project in or around January 2018 and April 2018 respectively. Mr. McClure, as structural engineer of record, subsequently issued stamped Schedule B Letters of Assurance in respect of these structural designs on January 16, 2018 and April 27, 2018.

26. By virtue of the issuance of stamped Schedule B Letters of Assurance:

- (a) Mr. McClure personally represented to the plaintiffs, in his capacity as structural engineer of record, that the structural designs for the Buildings substantially complied with the 2012 Code and other applicable enactments respecting safety; and
- (b) Mr. McClure led the plaintiffs to believe that he had obtained documented independent reviews of the structural designs for the Buildings, as required by the Bylaws.

The plaintiffs relied on these representations in proceeding with construction of the Buildings according to Sorensen Trilogy's design.

27. In the course of construction of the Buildings, Mr. McClure recommended various changes to the structural designs for the Buildings, and personally represented to the plaintiffs, in his capacity as structural engineer of record, that such changes were necessary to ensure safety and compliance with the 2012 Code. The plaintiffs relied on these representations in accepting Mr. McClure's recommended changes.

Completion of the Projects

28. Construction of the Buildings achieved substantial completion in or around the autumn of 2019. Mr. McClure, as structural engineer of record on behalf of Sorensen Trilogy, issued stamped Schedule C-B Letters of Assurance ~~letters of assurance~~ in respect of the ~~building~~ structural elements of the Buildings on or about September 17, 2019 for the Nanaimo Project, and on or about October 28, 2019 for the Campbell River Project.

29. By virtue of the issuance of stamped Schedule C-B Letters of Assurance, Mr. McClure personally represented to the plaintiffs, in his capacity as structural engineer of record, that completed structural elements of the Buildings substantially complied with the 2012 Code and other applicable enactments respecting safety. The plaintiffs relied on these representations in obtaining occupancy permits for the Buildings, advertising the Buildings for new tenants, and moving tenants into the Buildings.

30. Occupancy permits for the residential units in the Buildings were issued on or about October 2, 2019 for the Nanaimo Project, and on or about December 3, 2019 for the Campbell River Project. An occupancy permit for office space was also issued on or about March 26, 2020 in relation to the Campbell River Project.

31. The Buildings are currently occupied at or near capacity by tenants.

The Negligent Designs and the Structural Defects

32. Unbeknownst to Westurban or the Owners at the time, Sorensen Trilogy's designs of the structural elements of both Buildings, particularly those made by Mr. McClure, were seriously deficient in that they did not comply with prudent design standards or applicable regulatory requirements, including the 2012 Code, and failed to adequately protect the Buildings from failure of their structural elements in connection with seismic or high-wind events (the "Negligent Designs"). Particulars of the Negligent Designs include, without limitation, the following:

- (a) in relation to the Nanaimo Project, the design:
 - (i) failed to provide for drag trusses or other mechanisms for transferring roof diaphragm shear to the wood-framed shear walls;
 - (ii) included a ductile plywood shear-wall system used in combination with a non-ductile concrete shear-wall system with no strengthening of the wood elements to meet the requirements of the 2012 Code;
 - (iii) failed to provide for adequate detailing of concrete walls;

- (iv) failed to provide for adequate top reinforcing or other systems for resistance of uplift forces; and
 - (v) failed to provide for adequate concrete footings beneath the foundation to meet required bearing capacity; and
- (b) in relation to the Campbell River Project, the design:
- (i) failed to provide for adequate detailing for interaction between concrete and wood-frame shear wall elements;
 - (ii) failed to provide for adequate top reinforcing or other systems for resistance of uplift forces; and
 - (iii) failed to provide for adequate concrete footings beneath the foundation to meet required bearing capacity.

33. Neither the structural designs for the Buildings, nor the completed structural elements of the Buildings, substantially complied with the 2012 Code or applicable enactments respecting safety. Accordingly, the representations made by Mr. McClure as structural engineer of record with respect to the Code-compliance and safety of the structural designs and the completed structural elements of the Buildings as set out in paragraphs 26(a), 27 and 29 above were false.

34. In addition to the foregoing, Mr. McClure ~~and Sorensen-Trilogy~~ failed to obtain independent reviews of the design of the foundations and structural elements of the Buildings prior to documents being issued for construction or implementation, contrary to industry practice and the Bylaws ~~bylaws of Engineers and Geoscientists BC~~. Accordingly, Mr. McClure's representation by omission that he had obtained documented independent reviews of the structural designs for the Buildings was false.

35. As a result of the Negligent Designs and the failure to obtain independent reviews, the Buildings contain significant material structural defects (the “**Structural Defects**”), including, without limitation, the following:

- (a) in relation to the Nanaimo Project:
 - (i) there are inadequate mechanisms for transferring roof diaphragm shear to the wood-framed shear walls;
 - (ii) there is a ductile plywood shear-wall system in combination with a non-ductile concrete shear-wall system with no strengthening of the wood elements, contrary to the 2012 Code;
 - (iii) there is inadequate detailing of concrete walls such that cracking may result in the suspended concrete slabs;
 - (iv) there is inadequate top reinforcing or other systems for resistance of uplift forces; and
 - (v) the concrete footings are significantly undersized; and
- (b) in relation to the Campbell River Project, the design:
 - (i) contains inadequate detailing for interaction between concrete and wood-frame shear wall elements;
 - (ii) contains inadequate top reinforcing or other systems for resistance of uplift forces; and
 - (iii) of the concrete footings is significantly undersized.

36. As of the filing of this Notice of Civil Claim, the structural elements of the Buildings do not comply with the regulatory requirements that were in place at the time, including the 2012 Code, nor currently regulatory requirements, including the British Columbia Building Code of 2018 (the “**2018 Code**”).

37. 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 Buildings from seismic or high-wind events, thereby presenting a real and substantial danger to the life and safety of occupants and others.

38. By creating and implementing the Negligent Designs, and by failing to identify and prevent the Structural Defects, Sorensen Trilogy breached its contractual duties to Westurban pursuant to the Contracts, and breached its duties of care owed to Westurban as the development and construction manager and the general contractor of the Projects and to the Owners as owners of the Properties.

39. Further, Mr. McClure breached his personal duties owed to the plaintiff set out at paragraphs 22-24 above with respect to his obligation to ensure the safety and Code-compliance of the structural designs and completed structural elements of the Buildings, and indeed, his acts and omissions caused, created or contributed to the Negligent Designs and the Structural Defects.

Failure to warn

40. At all material times, Mr. McClure and Sorensen Trilogy each knew or ought to have known that:

- (a) their designs of the structural elements of the Buildings did not or might not comply with prudent design standards or applicable regulatory requirements, including the 2012 Code;
- (b) independent reviews of the design of the foundations and structural elements of the Buildings were never obtained;
- (c) the Buildings 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 Buildings were at a serious risk of failure, thereby presenting a real and substantial danger to the life and safety of occupants and others.

41. Among other reasons, Mr. McClure and Sorensen Trilogy knew or ought to have known of the foregoing because they had prepared designs of foundations and structural elements of buildings which they knew, and had been advised:

- (a) were seriously deficient;
- (b) had not been the subject of independent reviews prior to documents being issued for construction or implementation, contrary to industry practice and the Bylaws ~~bylaws of Engineers and Geoscientists BC~~; and
- (c) caused structural defects which presented real and substantial dangers to the life and safety of building occupants and others

in respect of other recent projects, including, without limitation:

- (d) other projects undertaken by or connected with Westurban;
- (e) a project in Langford, British Columbia for the construction of a 90-unit residential apartment complex known as “Danbrook One” (which is the subject of Supreme Court of British Columbia Vancouver Registry Action No. S-2010013) (the “**Danbrook One Project**”); and
- (f) such further and other projects as the plaintiffs may advise.

42. With respect to the Danbrook One Project specifically:

- (a) Skyline Engineering raised serious concerns with Mr. McClure and Sorensen Trilogy in or around early 2019 regarding structural design issues with the subject building; and
- (b) ~~EGBC Engineers and Geoscientists BC~~ raised a series of issues with Mr. McClure and Sorensen Trilogy on or about May 27, 2019, and on several occasions thereafter, including with respect to structural design issues with the subject building and the failure to obtain independent reviews of designs.

43. Mr. McClure ~~was~~ is currently the subject of disciplinary proceedings and interim practice restrictions imposed by ~~EGBC Engineers and Geoscientists BC~~ in connection with, *inter alia*, his structural design work on the Danbrook One Project. In the course of these disciplinary proceedings, Mr. McClure’s registration with EGBC was cancelled on or about May 9, 2022 pursuant to a Consent Order.

44. At all material times, Sorensen Trilogy and Mr. McClure each 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 Buildings;
- (b) the fact that independent reviews of the design of the foundations and structural elements of the Buildings were never obtained, either prior to documents being issued for construction or implementation or at all;
- (c) the existence of some or all of Structural Defects;
- (d) the risk of failure of the structural elements of the Buildings; and
- (e) the real and substantial danger to the life and safety of occupants and others associated with the design and defective condition of the Buildings.

45. Sorensen Trilogy and Mr. McClure each breached ~~its duty~~ their respective duties of care to Westurban and the Owners by failing to warn them of the foregoing defects, lack of independent reviews, risks and dangers, and more particularly, failed to warn them of same even after knowing and/or being made aware of the same structural defects, lack of independent reviews, risks and dangers with respect to other projects, including, without limitation, the Danbrook One Project.

Sale of the Properties and the Discoveries

46. Pursuant to written contacts dated November 2, 2020, as amended, the Owners agreed to sell the Properties and the Buildings, among other assets (the “**Sale Transactions**”), to Starlight Acquisitions Ltd. (the “**Purchaser**”). At the time the Owners negotiated and first entered into the Sale Transactions, neither Westurban nor the Owners or any of them were aware of the Negligent Designs, the Structural Defects, or the risks and dangers associated therewith.

47. As part of the Sale Transactions, the Purchaser was entitled to, and did, conduct due diligence in relation to the Sale Transactions, including investigations into the physical condition of the Buildings.

48. On or about December 10, 2020, the Purchaser, Westurban and the Owners first learned of the Negligent Designs, the Structural Defects, and the risks and dangers associated therewith in connection with the Purchaser's due diligence (the "**Discoveries**").

49. On or about December 15, 2020, the Owners gave notice to Sorensen Trilogy and Mr. McClure of the Discoveries, the imminent completion of the Sale Transactions, and proposed steps for remediating the Structural Defects. The Owners also asked Sorensen Trilogy whether the Structural Defects were disputed, and whether it wished to propose any alternative remediation measures other than those the Owners intended to undertake.

50. On or about December 16, 2020, Sorensen Trilogy advised that it had no comment on the Structural Defects or the Owners' proposed remediation measures.

51. As result of the Discoveries:

- (a) the completion of the Sale Transactions was delayed; and
- (b) to avoid a collapse of the Sale Transactions, and in mitigation of its anticipated losses, the Owners agreed to:
 - (i) undertake, at their sole cost, extensive remediation work to rectify the Structural Defects and to mitigate the attendant risks and dangers;
 - (ii) pending completion of the remediation work, the Purchaser's holdback of approximately \$1,000,000 from the purchase prices under the Sale Transactions; and
 - (iii) otherwise assume the financial risk associated with the Structural Defects.

(together, the "**Remediation Covenants**").

52. Further to the completion of the Sale Transactions on or about December 23, 2020:

- (a) the Purchaser acquired 399 and 003, which companies remain the legal owners of the Properties; and

- (b) Uplands Drive LP and Willow Point LP remain bound by the Remediation Covenants.

Loss and damage

53. As a result of Sorensen Trilogy's breach of the Contracts, negligence, creation of dangerous defects in relation to the Buildings, and negligent failure to warn, and Mr. McClure's negligence, misrepresentations, creation of dangerous defects in relation to the Buildings, 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 Designs and the Structural Defects;
- (b) the cost of rectifying the Structural Defects and bringing the structural elements of the Buildings into compliance with current regulatory requirements, including the 2018 Code;
- (c) in addition to the cost set out at subparagraph (b) above, other losses associated with the Remediation Covenants;
- (d) losses associated with the delayed completion of the Sale Transactions; and
- (e) such further loss, damage and expense as may be proven at trial.

Part 2: RELIEF SOUGHT

- 1. General and special damages.
- 2. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
- 3. Costs.
- 4. Such further and other relief as this Court may deem just.

Part 3: LEGAL BASIS

- 1. Sorensen Trilogy owed contractual duties to Westurban pursuant to the Contracts, and duties of care to Westurban as the development and construction manager and the general contractor of the Projects and to the Owners as owners of the Properties, to design all

foundations and structural elements of the Buildings in accordance with prudent design standards and all applicable regulatory requirements, including the Code, and to ensure at all times that the Buildings were 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.

2. In breach of its contractual duties and duties of care, including a duty of care to warn of dangerous defects, Sorensen Trilogy created and implemented the Negligent Designs, and failed to identify and prevent the Structural Defects, which present a real and substantial danger to the life and safety of occupants of the Buildings, and others, thereby causing Westurban and the Owners considerable loss, damage and expense. Sorensen Trilogy is liable in breach of contract and in negligence for Westurban's and the Owners' losses.

3. Mr. McClure is an engineer with and principal of Sorensen Trilogy. Sorensen Trilogy is vicariously liable for the acts or omissions of Mr. McClure, whom carried out and was responsible for Sorensen Trilogy's work on the Projects, to the extent of his acts or omissions in his capacity as an agent or representative of Sorensen Trilogy.

4. In addition to the foregoing, as the structural engineer of record for the Projects, Mr. McClure was personally bound by obligations pursuant to the 2012 Code, and pursuant to duties owed to the plaintiffs, independent of any duties owed by Sorensen Trilogy, to ensure the safety and Code-compliance for the structural designs and the completed structural elements of the Buildings. In breach of his personal duty of care, including a personal duty to warn, Mr. McClure failed to ensure the structural safety and Code-compliance of the Buildings, and indeed, his acts and omissions caused, created or contributed to the Negligent Designs and the Structural Defects, thereby causing Westurban and the Owners considerable loss, damage and expense. Mr. McClure is personally liable in negligence for Westurban's and the Owners' losses.

5. Mr. McClure also personally represented to the plaintiffs as structural engineer of record, and led the plaintiffs to believe, that the structural designs and the completed structural elements of the Buildings were safe and Code-compliant, and that he had obtained documented independent reviews of the structural designs for the Buildings. These representations were false, and were relied on by the plaintiffs in obtaining occupancy permits for the Buildings, advertising

