

Amended pursuant to Rule 6-1(5)(a) and 6-1(7)
Response to Civil Claim files May 17, 2021



No. S213235
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

AMENDED RESPONSE TO CIVIL CLAIM

Filed by: **Sorensen Trilogy Engineering Ltd.** (“Sorensen Trilogy”) and Brian McClure
(“McClure”) (collectively, the “defendants”)

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. The facts alleged in paragraphs 9-10 in Part 1 of the Further Amended Notice of Civil Claim are admitted.
2. The facts alleged in the balance of the Further Amended Notice of Civil Claim are denied, unless specifically admitted herein.

Division 2 – Defendant’s Version of Facts

3. The defendants Sorensen Trilogy adopts the defined terms set out in the Further Amended Notice of Civil Claim for reference purposes only, unless terms are otherwise defined herein.

4. In response to the whole of the Further Amended Notice of Civil Claim, Sorensen Trilogy ~~the defendants~~ denies that ~~they~~ it owed the Nanaimo Owners or the Campbell River Owners any duty, contractual, statutory, at common law or otherwise as alleged, or at all.
5. In response to the whole of the Further Amended Notice of Civil Claim, Sorensen Trilogy ~~the defendants~~ says that Upland's Drive LP and Willow Point LP, having presently unknown arrangements with 399 and 003 concerning the Nanaimo Property and the Campbell River Property respectively and, having no legal interest in same, have no standing to bring the claims made by them in this action against ~~the defendants~~ Sorensen Trilogy.
6. In response to paragraph 912 of the Further Amended Notice of Civil Claim, ~~the defendants~~ Sorensen Trilogy admits that ~~it~~ Sorensen Trilogy was retained by Westurban pursuant to a contract, referred to here as the Nanaimo Contract for reference only, but otherwise deny~~ies~~ the paragraph.
7. In further response to paragraph 912 of the Notice of Civil Claim, Sorensen Trilogy says that the Nanaimo Contract provided that Sorensen Trilogy would provide the following services in relation to the Nanaimo Project:
 - (a) Design of building foundations & superstructure;
 - (b) Preparation of Building Permit and Construction Documents;
 - (c) Schedule CB on completion of project;
 - (d) Field Review of Construction to ensure compliance with drawings.
8. In further response to paragraph 912 of the Further Amended Notice of Civil Claim, Sorensen Trilogy says that it was a specific term of the Nanaimo Contract that Sorensen Trilogy's liability for the Nanaimo Project would be limited.
9. The Nanaimo Contract contained the following:

"Liability

STEL is only liable for loss and damage that is directly attributable to its negligent acts or omissions (the "Recoverable Loss and Damage") and in the event of a claim for Recoverable Loss and Damage, the parties agree that the maximum liability of STEL, whether in contract or tort, is limited to the amount of fees paid by the Client to STEL on account of Services (or Additional Services) in relation to the Project as of the date the claim is made.

In no event will STEL be liable for any indirect, incidental, special, consequential or punitive damages as a consequence of any breach by STEL or the failure of STEL to satisfy and/or perform, any term or provision of this Agreement and without limiting the generality of the foregoing, STEL shall not, under any circumstances, be liable for loss or damage resulting

from delays in the completion of the Project, or loss of earnings or loss of profits, howsoever caused.” ~~In response to paragraph 11 of the Notice of Civil Claim, Sorensen Trilogy admits that it was retained by Westurban with respect to the Campbell River Contract, but otherwise denies the paragraph.”~~

10. In response to paragraph ~~15~~ of the Further Amended Notice of Civil Claim, ~~Sorensen Trilogy~~the defendants admits that ~~it~~Sorensen Trilogy was retained by Westurban pursuant to a contract, referred to here as the Campbell River Contract for reference only, but otherwise ~~denies~~ the paragraph.
11. In further response to paragraph ~~15~~ of the Further Amended Notice of Civil Claim, Sorensen Trilogy says that the Campbell River Contract provided that Sorensen Trilogy would provide the following services in relation to the Campbell River Project
 - (a) Design of building foundations & superstructure
 - (b) Preparation of Building Permit and Construction Documents
 - (c) Schedule CB on completion of project
 - (d) Field Review of Construction to ensure compliance with drawings
12. In further response to paragraph ~~15~~ of the Further Amended Notice of Civil Claim, Sorensen Trilogy says that it was a specific term of the Campbell River Contract that Sorensen Trilogy's liability for the Nanaimo Project would be limited.
13. The Campbell River Contract contained the following:

"Liability

STEL is only liable for loss and damage that is directly attributable to its negligent acts or omissions (the “Recoverable Loss and Damage”) and in the event of a claim for Recoverable Loss and Damage, the parties agree that the maximum liability of STEL, whether in contract or tort, is limited to the amount of fees paid by the Client to STEL on account of Services (or Additional Services) in relation to the Project as of the date the claim is made.

In no event will STEL be liable for any indirect, incidental, special, consequential or punitive damages as a consequence of any breach by STEL or the failure of STEL to satisfy and/or perform, any term or provision of this Agreement and without limiting the generality of the foregoing, STEL shall not, under any circumstances, be liable for loss or damage resulting from delays in the completion of the Project, or loss of earnings or loss of profits, howsoever caused.”

14. In response to paragraphs ~~18-20, 32, 38, 40, and 44-45~~13, 14, 15, 19, 23, 24, 25 and 26 of the Further Amended Notice of Civil Claim, and in further response to the whole of the

Further Amended Notice of Civil Claim, the defendants deny that either of them owed any duty of care to any of the plaintiffs, as alleged or at all. In the alternative, any services provided by the defendants Sorensen Trilogy in respect of the design of the Projects were provided with the appropriate level of care, skill, diligence, and competence and in accordance with the appropriate standard of care.

15. In response to paragraphs 21-24 of the Further Amended Notice of Civil Claim, McClure admits that he was the structural engineer of record for the Projects, but denies that he owed any duties to any of the plaintiffs. Any duties or obligations that McClure had vis-à-vis EGBC as a member of EGBC, or to the relevant Authority Having Jurisdiction pursuant to the relevant building code, do not give rise to any private law duty or obligation.
16. In response to paragraphs 25-26 and 28-29 of the Further Amended Notice of Civil Claim, McClure admits that he issued stamped Schedule B and C-B Letters of Assurance, but says that those documents are creations of the Building Code, are explicitly addressed to the Authority Having Jurisdiction, are not representations to the plaintiffs, and cannot be relied on by anyone other than the authority having jurisdiction.
- 14:17. In response to the whole of the Further Amended Notice of Civil Claim, McClure denies making any representations to the plaintiffs, in his personal capacity or at all.
18. In response to paragraphs ~~35-37~~20, 21 and 22, and in further response to the whole of the Further Amended Notice of Civil Claim, if the alleged Structural Defects exist, which is not admitted but denied, the Structural Defects did not result from, and/or were not caused by, any breach of any duty, contractual, statutory or otherwise, on the part of the defendants Sorensen Trilogy, but were in fact caused or alternatively contributed to by the negligence, breach of contract or other breach of duty to the plaintiffs, or any one or more of them, on the part of Westurban.
- 15:19. In response to paragraphs 41-43 and 45 of the Further Amended Notice of Civil Claim, the defendants say that allegations or matters respecting other projects are legally irrelevant.
20. In response to paragraphs ~~51-53~~32, 33 and 34 of the Further Amended Notice of Civil Claim, and in further response to the whole of the Further Amended Notice of Civil Claim, if the Plaintiffs suffered loss, damage or expense, as alleged or at all, which is not admitted but denied, some or all of the said loss, damage or expense represents purely economic loss with respect to which ~~Sorensen Trilogy~~the defendants owed and owe no duty of care to some or all of the plaintiffs.
- 16:21. In further response to the whole of the Further Amended Notice of Civil Claim, if either of the defendants is liable to Westurban, as alleged or at all, then the limitations of liability in the Nanaimo Contract and the Campbell River Contract apply.

Division 3 – Additional Facts

- ~~17.~~22. Uplands Drive GP Inc. ("Uplands Drive GP") was at all material times the general partner of Uplands Drive LP.
- ~~18.~~23. Willow Point (Campbell River) GP Inc. ("Willow Point GP") was at all material times the general partner of Willow Point LP.
- ~~19.~~24. Terry Hoff ("Hoff") is an individual with the mailing address of 509 South Murphy Street, Campbell River, British Columbia and was at all material times a director of Westurban, Upland's Drive GP, 399, Willow Point GP and 003.
- ~~20.~~25. Sean Roy ("Roy") is an individual with a mailing address of 3447 Montana Drive, Campbell River, British Columbia and was at all material times a director of Westurban, Upland's Drive GP, 399, Willow Point GP and 003.
- ~~21.~~26. Hoff and Roy were at all material times together the directing minds of, and completely controlled and directed the operations and management of Westurban, 399 and Upland's Drive GP, and therefore Uplands Drive LP (the "Nanaimo Project Participants").
- ~~22.~~27. At all material times Hoff and Roy, and therefore the Nanaimo Project Participants, owed Sorensen Trilogy a duty of good faith and honest performance with respect to the Nanaimo Contract and the Nanaimo Project generally.
- ~~23.~~28. As the directing minds of the Nanaimo Project Participants, Hoff and Roy had at all material times complete control over how the risks associated with the Nanaimo Project, including the risk of the occurrence of the Negligent Designs and the Structural Defects, would be allocated as between the Nanaimo Project Participants.
- ~~24.~~29. Hoff and Roy caused 399, on its own behalf and on behalf of Upland's Drive GP and therefore Uplands Drive LP, to enter into a contract with Westurban whereby Westurban would be fully responsible to 399, on its own behalf and on behalf of Upland's Drive GP and therefore Uplands Drive LP, for the design and construction of the Nanaimo Project, thereby allocating the risk of the occurrence of the Negligent Designs and the Structural Defects, as between the Nanaimo Project Participants, to Westurban.
- ~~25.~~30. Hoff and Roy caused Westurban to enter into the Nanaimo Contract with Sorensen Trilogy, and to agree to the terms set out above, thereby allocating the risk of the occurrence of the Negligent Designs and the Structural Defects, as between Westurban and Sorensen Trilogy, to Sorensen Trilogy up to the amount of the fees paid by Westurban to Sorensen Trilogy and to Westurban for all amounts in excess of same.
- ~~26.~~31. Hoff and Roy, and therefore the Nanaimo Project Participants, were at all material times aware of this allocation, as between the Nanaimo Project Participants themselves and as between Westurban and Sorensen Trilogy, of the risks associated with the Nanaimo Project, including the risk of the occurrence of the Negligent Designs and the Structural Defects (the "Scheme With Respect to the Allocation of the Risks of the Nanaimo Project"), and in particular, Hoff and Roy, and therefore the Nanaimo Project Participants,

were at all material times aware that Sorensen Trilogy's understanding was that its liability, whether in contract or tort, for the Nanaimo Project, including liability for the Negligent Designs and the Structural Defects, was limited to the amount of the fees paid by Westurban to Sorensen Trilogy, and Hoff and Roy, and therefore the Nanaimo Project Participants led Sorensen Trilogy to believe, or knowingly allowed Sorensen Trilogy to believe, that this would be the case.

27:32. Hoff and Roy were at all material times together the directing minds of, and completely controlled and directed the operations and management of Westurban, 003, Willow Point GP and therefore Willow Point LP (the "Campbell River Project Participants").

28:33. At all material times Hoff and Roy, and therefore the Campbell River Project Participants, owed Sorensen Trilogy a duty of good faith and honest performance with respect to the Campbell River Contract and the Campbell River Project generally.

29:34. As the directing minds of the Campbell River Project Participants, Hoff and Roy had at all material times complete control over how the risks associated with the Campbell River Project, including the risk of the occurrence of the Negligent Designs and the Structural Defects, would be allocated as between the Campbell River Project Participants.

30:35. Hoff and Roy caused 003, on its own behalf and on behalf of Willow Point GP and therefore Willow Point LP, to enter into a contract with Westurban whereby Westurban would be fully responsible to 003, on its own behalf and on behalf of Willow Point GP and therefore Willow Point LP, for the design and construction of the Campbell River Project, thereby allocating the risk of the occurrence of the Negligent Designs and the Structural Defects, as between the Campbell River Project Participants, to Westurban.

31:36. Hoff and Roy caused Westurban to enter into the Campbell River Contract with Sorensen Trilogy, and to agree to the terms set out above, thereby allocating the risk of the occurrence of the Negligent Designs and the Structural Defects, as between Westurban and Sorensen Trilogy, to Sorensen Trilogy up to the amount of the fees paid by Westurban to Sorensen Trilogy and to Westurban for all amounts in excess of same.

37. Hoff and Roy, and therefore the Campbell River Project Participants, were at all material times aware of this allocation, as between the Campbell River Project Participants themselves and as between Westurban and Sorensen Trilogy, of the risks associated with the Campbell River Project, including the risk of the occurrence of the Negligent Designs and the Structural Defects (the "Scheme With Respect to the Allocation of the Risks of the Campbell River Project"), and in particular, Hoff and Roy, and therefore the Campbell River Project Participants, were at all material times aware that Sorensen Trilogy's understanding was that its liability, whether in contract or tort, for the Nanaimo Project, including liability for the Negligent Designs and the Structural Defects, was limited to the amount of the fees paid by Westurban to Sorensen Trilogy, and Hoff and Roy, and therefore the Nanaimo Project Participants led Sorensen Trilogy to believe, or knowingly allowed Sorensen Trilogy to believe, that this would be the case.

32.38. As the individual performing the services contemplated by the Nanaimo Contract and the Campbell River Contract, McClure is entitled to the benefit of the Scheme With Respect to the Allocation of the Risks of the Nanaimo Project and the Scheme With Respect to the Allocation of the Risks of the Campbell River Project, to the same extent as Sorensen Trilogy.

Part 2: RESPONSE TO RELIEF SOUGHT

33.39. ~~Sorensen Trilogy~~The defendants opposes the granting of ALL of the relief sought in paragraphs of Part 2 of the Further Amended Notice of Civil Claim.

34.40. In the alternative, ~~Sorensen Trilogy~~the defendants seeks a set off.

35.41. In the further alternative, ~~Sorensen Trilogy~~the defendants seeks an apportionment of liability.

36.42. The defendants~~Sorensen Trilogy~~ seeks costs.

Part 3: LEGAL BASIS

37.43. Sorensen Trilogy denies that it was in breach of any duty to any party, contractual, statutory or otherwise.

38.44. In the alternative, Sorensen Trilogy was not retained by the Nanaimo Owners or the Campbell River Owners and owed or owes no duty to any of them.

45. In the further alternative, with respect to the plaintiffs' losses which have no real and substantial connection to any danger, Sorensen Trilogy owed or owes no duty to any of the plaintiffs.

39.46. McClure denies that he owed any duty to any of the plaintiffs. In the alternative, he did not breach any duty owed to any of the plaintiffs.

40.47. Having been aware at all material times of the Scheme With Respect to the Allocation of the Risks of the Nanaimo Project, the plaintiffs cannot circumvent same through their present claims against ~~Sorensen Trilogy~~the defendants, and ~~Sorensen Trilogy~~the defendants therefore owes or owed no duty of care to the plaintiffs with respect to the Negligent Designs and Structural Defects, the existence of which is not admitted but denied.

41.48. In the alternative, having been aware at all material times of the Scheme With Respect to the Allocation of the Risks of the Nanaimo Project, any reliance by any of the plaintiffs on ~~Sorensen Trilogy~~the defendants is subject to the terms of the Nanaimo Contract, including the limitation on ~~Sorensen Trilogy~~'sthe defendants' liability therein.

42.49. In the alternative, having created an ownership structure designed and intended to have the effect of circumventing the Scheme With Respect to the Allocation of the Risks of the

Nanaimo Project, and having led Sorensen Trilogy to believe, or knowingly allowed Sorensen Trilogy to believe, that the Scheme With Respect to the Allocation of the Risks of the Nanaimo Project was in place, the Nanaimo Project Participants breached their duty of good faith and honest performance to Sorensen Trilogy, and Sorensen Trilogy accordingly seeks a set off of any liability it may have to the Nanaimo Project Participants. Further, McClure is entitled to the benefit of the Scheme With Respect to the Allocation of the Risks of the Nanaimo Project, to the same extent as Sorensen Trilogy, and shares Sorensen Trilogy's claim of set off.

43.50. Having been aware at all material times of the Scheme With Respect to the Allocation of the Risks of the Campbell River Project, the plaintiffs cannot circumvent same through their present claims against ~~Sorensen Trilogy~~the defendants, and ~~Sorensen Trilogy~~the defendants therefore owes or owed no duty of care to the plaintiffs with respect to the Negligent Designs and Structural Defects, the existence of which is not admitted but denied.

44.51. In the alternative, having been aware at all material times of the Scheme With Respect to the Allocation of the Risks of the Campbell River Project, any reliance by any of the plaintiffs on ~~Sorensen Trilogy~~the defendants is subject to the terms of the Campbell River Contract, including the limitation on ~~Sorensen Trilogy's~~the defendants' liability therein.

45.52. In the alternative, having created an ownership structure designed and intended to have the effect of circumventing the Scheme With Respect to the Allocation of the Risks of the Campbell River Project, and having led Sorensen Trilogy to believe, or knowingly allowed Sorensen Trilogy to believe, that the Scheme With Respect to the Allocation of the Risks of the Campbell River Project was in place, the Campbell River Project Participants breached their duty of good faith and honest performance to Sorensen Trilogy, and Sorensen Trilogy accordingly seeks a set off of any liability it may have to the Campbell River Project Participants. Further, McClure is entitled to the benefit of the Scheme With Respect to the Allocation of the Risks of the Campbell River Project, to the same extent as Sorensen Trilogy, and shares Sorensen Trilogy's claim of set off.

46.53. ~~Sorensen Trilogy~~The defendants pleads and relies upon the common law of negligence, contract and damages.

47.54. ~~Sorensen Trilogy~~The defendants pleads and relies upon the *Negligence Act*, RSBC 19196, c. 333, as amended, and seeks an apportionment of liability as between ~~Sorensen Trilogy~~the defendants and Westurban and/or the other plaintiffs.

Defendants' address for service:

c/o ~~Clyde & Co Canada LLP~~SHK Law Corporation
Suite 700, Two Bentall Centre
555 Burrard Street
Vancouver, B.C. V7X 1M8

Fax number address for service (if any): N/A 604-684-7094

E-mail address for service (if any): Craig.Wallace@clydeco.ca caew@shk.ca

Dated: September 19, 2022 ~~May 17, 2021~~



Craig A. Wallace, counsel for
Sorensen Trilog Engineering Ltd. and
Brian McClure

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.