

Court File No. VLC-S-S-241186
No.....
. Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

THE OWNERS, STRATA PLAN EPS 3084

PLAINTIFF

AND

SCOTT GILBERT, SCOTT GILBERT dba SCOTT GILBERT CO., VICTORIA MANSFIELD, and
INSURANCE CORPORATION OF BRITISH COLUMBIA

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.

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 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.

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

Parties

1. The Plaintiff, the Owners, Strata Plan EPS 3084 (the "Strata Corporation"), is a strata corporation located at 138 East Hastings Street, Vancouver, British Columbia, and operating pursuant to the Strata Property Act, SBC 1998, c 43.
2. The Defendant Scott Gilbert ("Gilbert") is an individual whose place of residence is unknown to the Strata Corporation.
3. Although at times material hereto, Gilbert represented himself as the principal of "Scott Gilbert Co.," to the best of the Strata Corporation's knowledge and information, Scott Gilbert Co. is not an existing legal entity.
4. Where the defined term the "Gilbert Defendants" is used herein, it refers to the Defendants Gilbert and Scott Gilbert dba Scott Gilbert Co., or either one of them.
5. The Defendant Victoria Mansfield ("Mansfield") is an individual presently residing at 313-138 East Hastings Street, Vancouver, British Columbia.
6. The Defendant Insurance Corporation of British Columbia ("ICBC") is a British Columbia crown corporation with a head office at 151 West Esplanade, North Vancouver, British Columbia.

Relationship between the parties

7. At all, or certain, times material hereto, the Strata Corporation retained the Gilbert Defendants to provide cleaning and building management services (the "Building Management Contract").
8. Gilbert was at all, or certain, times material hereto in a romantic relationship with Mansfield.
9. At all, or certain, material times hereto, the Gilbert Defendants employed, or otherwise retained, Mansfield to assist in carrying out the Building Management Contract, and Mansfield received consideration for same.
10. To the best of the Strata Corporation's knowledge and information, Gilbert and Mansfield were involved in a romantic relationship at certain, or all, times material to this action.
11. ICBC provided motor vehicle insurance to the Gilbert Defendants, including with respect to a cube van owned by, or otherwise in the possession of, the Gilbert Defendants having the license plate number PM8603 (the "Van").

The Gate Collision

12. On or about February 20, 2022, at or around 3:55 a.m., Mansfield was driving the Van out of the Strata Corporation's loading bay when the Van's roof beams collided with (the "Gate Collision") the loading bay's rolled-up gate (the "Gate").
13. Before, and at the time of, the Gate Collision, Gilbert was standing next to the Van and guiding Mansfield out with hand gestures and instructions.
14. The Collision caused significant damage to the Gate, ultimately rendering it inoperable (the "Gate Damage").

The Misrepresentation

15. Following the Gate Collision, Gilbert reported the Gate Damage to the Strata Corporation, but misrepresented the cause of such damage.
16. Gilbert misrepresented to the Strata Corporation that the Gate Damage was caused by an unknown vandal (the "Misrepresentation") when in fact it was caused by the Gilbert Defendants and/or Mansfield.

The Repair Contract

17. Following the Misrepresentation, Gilbert offered to repair the Gate in consideration of a fee.

18. The Strata Corporation accepted Gilbert's offer, and the Strata Corporation entered into an agreement with the Gilbert Defendants, material terms of which included, inter alia:

- a. the Gilbert Defendants would perform repairs to the Gate subject to and pursuant to the Strata Corporation's approvals (the "Repairs");
- b. the Strata Corporation would pay the Gilbert Defendants the amounts shown in the invoices he issued to the Strata Corporation for the Repairs he performed (the "Invoices"); and
- c. Mr. Gilbert would perform the Repairs in a good and workmanlike manner in accordance with prevailing industry standards and practices

(the "Repair Contract").

19. The Strata Corporation approved all, or some, of the Repairs that the Gilbert Defendants recommended pursuant to the Repair Contract.

The Strata Corporation's performance of the Repair Contract

20. In accordance with the Repair Contract, the Strata Corporation paid the Invoices in full.

Breach of the Repair Contract

21. The Gilbert Defendants breached the Repair Contract, particulars of which include, inter alia:

- a. carrying out, and invoicing for, Repairs that the Strata Corporation did not approve;
- b. failing to carry out the Repairs in a good and workmanlike manner in accordance with prevailing industry standards and practices; and/or
- c. invoicing for Repairs that were not carried out.

The Gate Issues

22. In or about June or July 2022, the Strata Corporation became aware that the Gilbert Defendants had not properly repaired the Gate Damage, and that a number of issues with the Gate were persisting (the "Gate Issues").

23. The Gate Issues rendered the Gate unsafe to operate in the absence of an operator ensuring safety by manually opening and closing the Gate as required (an "Operator").

24. The Gate Issues included, inter alia:

- a. the Gate's "curtain," or door facing (the "Curtain"), was outside the guides (the "Guides") in which it was designed to run;
- b. at least one horizontal aluminium tube Curtain link spacer was broken;
- c. at least one of the Guides was damaged;
- d. the Curtain itself was damaged.

25. The Strata Corporation operated the Gate with an Operator until about October 13, 2022, at which time the Gate began to buckle. At that time, it was determined that the Gate could not be repaired and required replacement.

26. The Strata Corporation subsequently boarded up the Gate for safety reasons, precluding ingress and egress.

The Garbage Container Rental

27. The Strata Corporation had an industrial grade garbage container that would be moved through the Gate to be emptied from time to time by a garbage removal service provider.

28. Following the Gate Damage and the Gate Issues, the garbage container could not be moved through the Gate to be emptied, and it was thereby rendered useless.

29. In order to meet its ongoing garbage removal requirements, the Strata Corporation had to rent a separate garbage container to be placed outside the Gate (the "Garbage Container Rental").

30. This temporary solution was problematic because:

a. the heat during the summer months caused the Garbage Container Rental to emanate an unpleasant odour; and

b. the height of the Garbage Container Rental made its use difficult, or impossible, for the Strata Corporation's physically disabled and/or limited residents. Prior to

the Gate Collision, these residents used the garbage chute on the second floor of the strata building to dispose of their garbage.

The Gate replacement

31. The Strata Corporation has replaced the Gate at a cost of \$39,007.50, or approximately that amount.

Part 2: RELIEF SOUGHT

1. As against the Gilbert Defendants and Mansfield, jointly and severally, damages in tort, including damages the Strata Corporation suffered in respect of the Gate Damage and the Gate Issues.

2. As against the Gilbert Defendants, jointly and severally, damages for breach of contract.

3. As against the Gilbert Defendants, judgment on the basis of unjust enrichment.

4. As against the Gilbert Defendants and Mansfield, jointly and severally, damages in tort for:

a. civil conspiracy;

b. fraudulent misrepresentation; and/or

c. negligent misrepresentation.

5. As against the Gilbert Defendants and Mansfield, jointly and severally, aggravated damages.

6. As against the Gilbert Defendants and Mansfield, jointly and severally, punitive damages.

7. Interest pursuant to the Court Order Interest Act, RSBC 1996, c 79.

8. Costs of this action.

9. Such further and other relief and this Honourable Court may deem just and fair.

Part 3: LEGAL BASIS

1. The Strata Corporation pleads and relies on the Negligence Act, RSBC 1996, c 333.

Mansfield

Negligence

2. Ms. Mansfield owed the Strata Corporation a duty of care.
3. Ms. Mansfield breached the applicable standard of care by causing and/or contributing to the Gate Collision.
4. Mansfield's breach of the standard of care caused the Strata Corporation to suffer damages and/or loss.

The Gilbert Defendants

Negligence in the Collision

5. The Gilbert Defendants owed the Strata Corporation a duty of care.
6. The Gilbert Defendants breached the applicable standard of care by causing and/or contributing to the Gate Collision.
7. The Gilbert Defendants' breach of the standard of care caused the Strata Corporation to suffer damages and/or loss.

Vicarious and/or Statutory Liability

8. At the time of the Gate Collision:
 - a. Mansfield was in possession of the Van with the consent of Gilbert pursuant to s. 86 of the Motor Vehicle Act, RSBC 1996, c 318 (the "MVA"),
 - b. further or in the alternative, Mansfield was operating the Van:
 1. as an employee of the Gilbert Defendants; and
 11. in the course and/or within the scope of her employment with the Gilbert Defendants.
 - c. further or in the further alternative, Mansfield was operating the Van:
 1. as an agent of the Gilbert Defendants; and
 11. within the scope of the agency.
9. The Gilbert Defendants are vicariously and/or statutorily liable for the acts and/or omissions of Mansfield herein.

Fraudulent and/or Negligent Misrepresentation

10. The Gilbert Defendants knew or ought to have known that their representation to the Strata Corporation that the Gate Damage was caused by vandals was false (the "Misrepresentation").
11. The Gilbert Defendants made the Misrepresentation with the intention that the Strata Corporation rely on it.
12. The Strata Corporation reasonably relied on the Misrepresentation to its detriment, including, inter alia, by entering into the Repair Contract.
13. The Misrepresentation caused the Strata Corporation to suffer damages and/or loss.

Negligence in carrying out the Repairs

14. The Gilbert Defendants owed the Strata Corporation a duty of care in carrying out the Repairs

15. The Gilbert Defendants breached the applicable standard of care by failing to carry out the Repairs in a good and workmanlike manner in accordance with prevailing industry standards and practices.

16. The Gilbert Defendants' breach of the applicable standard of care caused the Strata Corporation to suffer damages and/or loss.

Breach of contract

17. The Gilbert Defendants breached the repair contract by, inter alia:

- a. carrying out, and invoicing for, Repairs that the Strata Corporation did not approve;
- b. failing to carry out the Repairs in a good and workmanlike manner in accordance with prevailing industry standards and practices; and/or
- c. invoicing for Repairs that were not carried out.

18. The Gilbert Defendants' breach of the Repair Contract caused the Strata Corporation to suffer damages and/or loss.

Unjust enrichment

19. Further or in the alternative, the Gilbert Defendants were unjustly enriched as follows:

- a. the Gilbert Defendants were enriched;
- b. the Strata Corporation incurred a corresponding deprivation; and
- c. there was no juristic reason for Gilbert Defendants' enrichment and the Strata Corporation's corresponding deprivation.

Civil Conspiracy

20. Gilbert and Mansfield were two persons who shared a common intention to injure the Strata Corporation where they intended to defraud the Strata Corporation (the "Common Intention").

21. They acted in accordance with the Common Intention through the Misrepresentation and caused the Strata Corporation damages and/or losses.

22. In the alternative, Gilbert and Mansfield were two persons who acted unlawfully through the Misrepresentation.

23. Gilbert and Mansfield directed their unlawful acts towards the Strata Corporation.

24. Gilbert and Mansfield knew or should have known that by their unlawful acts, they were likely to cause the Strata Corporation damages and/or losses.

25. In either alternative, the Strata Corporation suffered damages and/or losses as a result of Gilbert's and Mansfield's actions.



ICBC

26. The Strata Corporation pleads and relies on:

- a. Section 76 of the Insurance (Vehicle) Act, RSBC 1996, c 231 (the "IVA"), including s. 76 thereof; and
- b. the MVA, including s. 86 and Part 3 thereof.

27. Pursuant to s 76 of the IVA, third-party claimants may bring actions against insurers to have insurance money applied to any judgments the claimants might recover against an insured.

28. The Strata Corporation is a third-party claimant that has claims against the Gilbert Defendants whose Van was insured by ICBC at the time of the Gate Collision.

Plaintiffs address for service:

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Email address for service:

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Place of trial:

Vancouver, British Columbia

The address of the registry is:

Law Courts

800 Smithe Street Vancouver, B.C. V6Z 2E1

Date: February 20, 2024

Lawyer for the Plaintiff

