



S E 2 4 6 2 3 0

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

INTRACORP VANNESS LIMITED PARTNERSHIP

PLAINTIFF

AND:

**THE OWNERS, STRATA PLAN LMS992, and CROWE
MACKAY & COMPANY LTD., AS LIQUIDATOR OF THE
OWNERS, STRATA PLAN LMS992**

DEFENDANTS

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 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 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 notice of civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. The Plaintiff is the purchaser under a Purchase and Sale Agreement dated January 11, 2021, as amended from time to time (collectively, the "**Agreement**") respecting the sale of certain land and buildings located at 3362, 3364, 3366, 3368, 3370, 3372, 3374, 3376, 3378, 3380, 3382 and 3384 Vanness Avenue, Vancouver, British Columbia (the "**Property**") made in the context of a voluntary liquidation and winding up of The Owners, Strata Plan LMS992 (the "**Vendor**" or the "**Strata Corporation**"), with Crowe MacKay & Company Ltd. as liquidator (the "**Liquidator**").

2. Pursuant to the Agreement, the Plaintiff and the Liquidator agreed on a closing date of September 9, 2024 (the "**Closing Date**").
3. The Agreement imposes obligations on the Vendor to maintain and repair the Property to the same condition as on the date of the Agreement.
4. In breach of the Agreement, the Vendor has failed to keep the Property's fire alarm system and townhouses on the Property in the same condition as on the date of the Agreement.
5. The Agreement also contains a representation by the Vendor that, as at the date of the Agreement and continuing through to closing, there is no pending or threatened claim, litigation, or proceeding before any court, tribunal, or government agency that pertains to the Property.
6. The Vendor has been subject to several work orders from the Provincial Court of British Columbia, both prior and subsequent to the date of the Agreement, to remediate unsafe building conditions on the Property, the most recent of which was issued on or around November 30, 2023, and with which the Vendor has not complied and will not comply.
7. In spite of the foregoing, the Plaintiff intends to proceed with closing on the Closing Date, subject to the Plaintiff reserving all rights and remedies against the Vendor for breaches of the Agreement.
8. The Property remains occupied by existing owners and tenants of the Property's strata lots (the "**Occupants**") who, under the Agreement, may remain in possession of their strata lot for up to twelve months after the Closing Date (in the case of owners), or until the owner is entitled to terminate the tenancy agreement (in the case of tenants).
9. The Property, and in particular the townhouses, require extensive work, to ensure that the Property is safe for the Occupants to remain in their strata lots, as

permitted under the Agreement. The Vendor has not undertaken this necessary repair work despite multiple remediation orders and court orders.

The Parties

10. The Plaintiff, Intracorp Vanness Limited Partnership (the “**Plaintiff**” or “**Intracorp**”), is a limited partnership formed pursuant to the laws of the Province of British Columbia with an address for service in this proceeding at 2200 – 885 West Georgia Street, Vancouver, British Columbia, Canada, V6C 3E8.
11. The Defendant Strata Corporation is a strata corporation incorporated pursuant to the *Strata Property Act*, S.B.C. 1998, c. 43 with an address for service care of 1600 - 925 West Georgia Street, Vancouver, British Columbia, Canada, V6C 3L2.
12. The Defendant Liquidator is named in its capacity as liquidator of the Defendant Strata Corporation.

Background

13. On or about January 11, 2021, Intracorp Acquisition Co. Ltd. and the Vendor entered into the Agreement for the purchase of the Property.
14. On or about August 21, 2021, Intracorp Acquisition Co. Ltd. assigned, transferred, and conveyed to the Plaintiff its right, title, and interest in and to the Agreement and the Property pursuant to an Assignment Agreement.
15. The Agreement was subject to Court approval pursuant to the liquidation and winding up provisions of the *Strata Property Act*.
16. On October 19, 2022, on application of the Strata Corporation to this Court, Justice Marzari granted an order approving the Agreement, confirming the Strata Corporation's liquidation and winding up, and appointing the Liquidator.
17. The Property is a mixed-use strata development comprised of fifty-two (52) residential strata lots located in a 12-storey tower (the “**Tower**”), eight (8)

townhouse strata lots (the "Townhouses"), and three non-residential strata lots located at the ground floor of the Tower.

18. The Plaintiff intends to redevelop the Property.
19. Residential units in the Tower and the some of the Townhouses remain occupied by the Occupants.

Terms of the Agreement

20. Section 1(e) of Schedule C to the Agreement contains the following representation by the Vendor, which the Vendor represented and warranted was true when the parties entered into Agreement, would remain true at the time of completion, and will continue and survive the Plaintiff's purchase of the property [emphasis added]:

to the best of the Vendor's knowledge, there is no claim, litigation or proceeding, pending or threatened, by or before any court, government agency, commission, department, board, officer or other authority having jurisdiction that pertains in any manner to the Property or the right of the Purchaser to own the Property or to receive benefits therefrom;

21. Section 2 of Schedule C to the Agreement contains the Vendor's covenants. In particular, in section 2(a), the Vendor covenants and agrees as follows [emphasis added]:

From and after the date of this Agreement, the Vendor will cause the Property to be kept, repaired, and maintained to substantially the same condition and state of repair as of the date of this Agreement and to be insured at the Vendor's cost and expense so that on the Completion Date, the Purchaser will acquire the Property in substantially the same condition and state of repair as of the date of this Agreement, subject to reasonable wear and tear and save as otherwise provided for herein.

22. Section 10 of the Agreement provides that the Property will be and remain at the Vendor's risk until a transfer, as defined within the Agreement, is filed for registration with the Land Title Office.
23. Section 14(b) of the Agreement provides that an owner of a residential strata lot within the Property may remain in possession of their respective lot for up to twelve months after the Closing Date.

The Vendor's Breaches

24. In breach of its covenants under section 2(a) of Schedule C, the Vendor has failed to maintain the Property's condition by failing, among other things, to:

- (a) keep the fire alarm system in working order, to the point that the Property's annunciator panel is no longer working and/or no is no longer connected to local fire services, posing a health and safety risk for residents of the Tower. While the Vendor was working on fixing the fire alarm system up to the Closing Date, as of the time of filing this Notice of Civil Claim, the Plaintiff has not received confirmation that the fire alarm system is once again operational and has passed inspection; and
- (b) maintain and repair the Townhouses, such that they have fallen into further disrepair and may pose health and safety risks to their Occupants.

(together, the "**Maintenance Breaches**").

25. On or around October 7, 2019, and November 18, 2019, the Vendor received orders from the City of Vancouver requiring the Vendor to install shoring to make the Property's townhouses safe for occupancy, contrary to the Vendor's representations in section 1(e) of Schedule C.

26. Thereafter, the Vendor was the subject of the following Provincial Court of British Columbia orders respecting the Townhouses, all of which the Vendor failed to comply with:

- (a) An order, issued on December 11, 2020, pursuant to a guilty plea by the Vendor, requiring the Vendor to complete remediation work to correct unsafe building conditions by or before January 31, 2021 (the "**December 2020 Order**");
- (b) An order, issued on April 5, 2023, pursuant to a guilty plea by the Vendor for breaching the December 2020 Order, requiring the Vendor to take

certain steps towards remediating the unsafe building conditions by or before December 31, 2023 (the **April 2023 Order**"); and

- (c) An order, issued on November 30, 2023, pursuant to the Vendor's application, extending the deadline for compliance with the April 2023 Order to September 30, 2024 (the "**November 2023 Order**")

(together, the "**Court Orders**").

- 27. The Vendor has not and will not comply with November 2023 Order prior to the Closing Date, and the Vendor will remain subject the Court Orders on the Closing Date, contrary to section 2(a) of Schedule C of the Agreement.
- 28. On or shortly after the Closing Date, the Liquidator acting on behalf of the Vendor intends to distribute the sales proceeds to the strata lot owners of the Strata Corporation.
- 29. The Vendor's breaches of the Agreement have, and will continue to cause, the Plaintiff loss and damage for which the Vendor is liable.

Part 2: RELIEF SOUGHT

- 30. The Plaintiff seeks the following relief:
 - (a) damages for breach of contract by the Vendor;
 - (b) an interim and interlocutory order requiring the Liquidator, through its counsel, to hold back \$525,000, or such other reasonable amount as this court orders, from the sales proceeds pending final disposition of the Plaintiff's claim or further court order;
 - (c) interest pursuant to the *Court Order Interest Act*;
 - (d) costs; and

- (e) such further and other relief as this Honourable Court may deem just and appropriate.

Part 3: LEGAL BASIS

- 31. The Plaintiff relies on the common law of contract and negligent misrepresentation.
- 32. The Plaintiff reasonably relied on the Vendor's representations, warranties, and covenants set out within the Agreement.
- 33. The Plaintiff has, at all material times, complied with the terms of the Agreement.
- 34. The Vendor has breached the Agreement, including by:
 - (a) committing the Maintenance Breaches, contrary to section 2(a) of Schedule C to the Agreement; and
 - (b) making negligent misrepresentations respecting the Court Orders, allowing the Property to be subject to the Court Orders, and failing to correct such misrepresentations by complying with the Court Orders, contrary to section 1(e) of Schedule C to the Agreement.
- 35. *As a result of the Vendor's breaches of the Agreement, the Plaintiff will suffer damages, including among other things:*
 - (a) increased costs and expenses for repairs necessary to ensure the Property is safe for occupancy by the Occupants, which are a result of the Maintenance Breaches;
 - (b) increased costs and expenses to remediate the Property to comply with the Court Orders; and
 - (c) potential liability flowing from the Vendor's failure to comply with the Court Orders, which the Plaintiff will be exposed to as the purchaser of the Property.

36. The Plaintiff also pleads and relies on:
- (a) the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
 - (b) the *Strata Property Act*, S.B.C. 1998, c. 43; and
 - (c) the *Business Corporations Act*, S.B.C. 2002, c. 57

Plaintiff's address for service: Cassels Brock & Blackwell LLP
Suite 2200, RBC Place
885 West Georgia Street
Vancouver, BC V6C 3E8

Attention:
Jordanna Cytrynbaum / Rajit Mittal


Fax number for service (if any): N/A

Email address for service (if any): jcytrynbaum@cassels.com and
rmittal@cassels.com

Place of trial: Vancouver

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

Dated: 9/September/2024


Signature of lawyer for the Plaintiff
Jordanna Cytrynbaum / Rajit Mittal

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:

Claim for breach of contract.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- x another cause

A dispute concerning:

- contaminated sites
- construction defects
- x real property (real estate)
- personal property
- the provision of goods and 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
- conflicts of law
- none of the above
- do not know

Part 4: