

REGISTRY FILE NUMBER	87751
REGISTRY LOCATION	Surrey

REPLY

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA (SMALL CLAIMS COURT)

- To a Claim
 To a Counterclaim

TO:
 Copy the name, address and telephone number of the claimant from the Notice of Claim or Notice of Civil Resolution Tribunal Claim.

NAME Miriam Yaniv and Jessica Simpson CLAIMANT(S)
 ADDRESS PH4 - 8880 202 Street
 CITY, TOWN, MUNICIPALITY Langley PROV. British Columbia POSTAL CC DE V1M 4E7 TEL. # miriyaniv@gmail.com

FROM:
 Fill in the name, address and telephone number of the defendant filing this reply.

NAME The Owners, Strata Plan BCS 1359 DEFENDANT
 ADDRESS c/o AHBL LLP, ATTN: Lisa Mackie, 2700 - 700 West Georgia Street
 CITY, TOWN, MUNICIPALITY Vancouver PROV. British Columbia POSTAL CC DE V7Y 1B8 TEL. # 604 484 1700

DISPUTE:

Using the "HOW MUCH" section of the Notice of Claim or the Notice of Civil Resolution Tribunal Claim as a guide, tell why you disagree with each part (a - e). If you agree with parts of the claim say so.

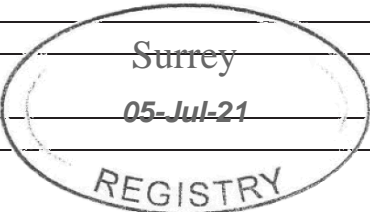
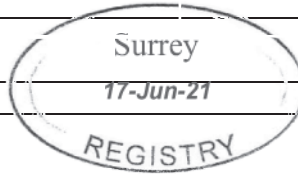
a Please see attached Schedule "A"

b _____

c _____

d _____

e _____



AGREEMENT WITH THE CLAIM:

I miriyaniv@gmail.com agree to pay \$ _____
 I could make the following payments:
(GIVE DATES AND AMOUNTS)

COUNTERCLAIM

(YOU SHOULD ONLY FILL OUT THIS PART OF THE FORM IF YOU WISH TO MAKE A CLAIM AGAINST THE CLAIMANT)
 (THIS PART IS NOT TO BE USED WHEN REPLYING TO A COUNTERCLAIM OR TO A NOTICE OF CIVIL RESOLUTION TRIBUNAL CLAIM)

WHAT HAPPENED?

Briefly tell what has led to your counterclaim.

HOW MUCH?

Tell what you are claiming. If your counterclaim has more than one part, separate each part and fill in each individual amount, then add the individual amounts to make the total.

a	\$	
b	\$	
c	\$	
TOTAL		\$ 0.00
+ FILING FEES		\$
= TOTAL CLAIMED		\$

REPLY

court copy

REPLY TO NOTICE OF CLAIM
Yaniv v. The Owners, Strata Plan BCS 1359
Provincial Court Action No. SUR-P-C-87715 Surrey Registry
Schedule "A"

I. General Submissions

1. The Defendant, The Owners, Strata Plan BCS 1359 (the "**Defendant**") denies each and every allegation in the Notice of Claim unless specifically admitted herein, and puts the Claimants, Miriam Yaniv and Jessica Simpson (the "**Claimants**"), to the strict proof thereof.
2. The Defendant denies that the Claimants suffered any loss, damage or expense, as alleged or at all, and puts the Claimants to the strict proof thereof.
3. In further answer to the Notice of Claim, the Defendant denies that it breached any duty, statutory or otherwise, and denies that it owes any duty to compensate the Claimants for any and all amounts, as alleged or at all.
4. In further answer to the Notice of Claim, the Defendant says that if the Claimants suffered any loss, damage or expense, which is not admitted, but specifically denied, any loss, damage or expense was not a result of any act, omission, negligence, fault, breach of duty, statutory or otherwise, on the part of the Defendant, or its employees, agents and/or contractors.
5. Further, or in the alternative, if the Claimants did suffer any loss, damage and/or expense as alleged, or at all, which is not admitted but specifically denied, such loss, damage and/or expense was caused or contributed to by the negligence of the Claimants; particulars of which will be provided as they become known.
6. Further, or in the alternative, the Defendant says that if the Claimants suffered loss, damage or expense as alleged, or at all, which is not admitted but specifically denied, the Claimants ~~has~~ have failed to mitigate such loss, damage or expense.

II. The Parties

7. The Defendant says that it is a multi-unit strata corporation that operates pursuant to section 2 of the *Strata Property Act*, SBC 1998, c. 43 ("**Strata Property Act**").
8. Pursuant to section 3 of the *Strata Property Act*, the Defendant is responsible for managing and maintaining the common property and common assets of the strata corporation for the benefit of the community's owners.
9. Pursuant to section 4 of the *Strata Property Act*, the powers and duties of the Defendant are exercised and performed by its Strata Council.
10. For the limited purposes of this action, the Defendant has an address for service of 2700 - 700 West Georgia Street, Vancouver, BC, V7Y 1B8.

2021/07/05

in agreement.

11. The Claimant, Ms. Yaniv, is the sole registered owner of PH4 - 8880 202nd Street, Langley, BC, V1M 4E7, legally described as:

STRATA LOT 83 SECTION 35 TOWNSHIP 8 NEW WESTMINSTER DISTRICT STRATA PLAN BCS1359 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V (the "**Strata Lot**")

12. The Strata Lot is part of the Defendant's strata community.

13. The Claimant, Ms. Simpson, alleges to rent a part of the Strata Lot for office space.

III. Related Litigation

14. On or about June 5, 2021, the Claimant, Ms. Yaniv, filed a complaint in the Human Rights Tribunal wherein the Defendant is identified as the sole Respondent (the "**Complaint**").

15. A review of the Complaint indicates that the Claimant, Ms. Yaniv, has (i) plead the same or similar alleged facts as found in the subject Claim and (ii) seeks the same or similar relief as found in the subject Claim.

III. IV. No Reasonable Prospect of Success

16. The Defendant submits that the Claimants ~~has~~ have not identified any factual or legal basis upon which to sustain the Notice of Claim against the Defendant. As a result, the Claim ought to be dismissed as it has no reasonable prospect of success and/or discloses no triable issue.

a. Lack of Jurisdiction - Improper Forum

17. The Claimant's Claimants' claim is appropriately characterized as a governance dispute between the Defendant and the Claimants. Pursuant to the *Strata Property Act* and the *Civil Resolution Tribunal Act*, such claims are only within the jurisdiction of the British Columbia Supreme Court or the Civil Resolution Tribunal.

18. In addition, or in the alternative, the Claimant's Claimants' claim is appropriately characterized as a human rights dispute between the Defendant and the Claimants. Pursuant to the *Strata Property Act* and the *Human Rights Code*, such claims are only within the jurisdiction of the Human Rights Tribunal.

b. Limitation Period

19. Pursuant to the *Limitation Act*, the Claimant's Claimants' claim for loss, damage or expense is barred by the passing of a limitation period. Indeed, the Claimants' ~~has~~ alleges to have discovered ~~her~~ their claim in 2017.

c. Abuse of Process

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Ms. Simpson

20. In *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 ("**Figliola**"), Justice Abella, writing for the majority, held that the common principles underlying issue estoppel, collateral attack, and abuse of process include finality in litigation, avoidance of multiple proceedings, and the protection of the integrity of the administration of justice.
21. In *Pirie v. Edwards*, 2013 BCPC 161, the Provincial Court held, "*Courts have been diligent in not allowing a multiplicity of proceedings*".
22. The Defendant submits that the Claimants' commencement of the subject Claim and the Complaint, which are based on the same or similar alleged facts and which seek the same or similar relief, are an abuse of process.

IV. V. Legal Basis

23. The Defendant pleads and relies on the following statutes:
- (a) *Strata Property Act*, SBC 1998, c 43, as amended.
 - (b) *Strata Property Regulation*, BC Reg 43/2000, as amended.
 - (c) *Civil Resolution Tribunal Act*, SBC 2012, c 25, as amended.
 - (d) *Human Rights Code*, RSBC 1996, c 210, as amended.
 - (e) *Limitation Act*, SBC 2012, c 13, as amended.
 - (f) *Small Claims Act*, RSBC 1996, c 430, as amended.
 - (g) *Small Claims Rules*, BC Reg 261/93, as amended.

WHEREFORE the Defendant asks that the Claimant's claim against it be dismissed with all reasonable costs, disbursements and expenses payable to the Defendant. In addition, and given that the Claimant has no reasonable basis for success, the Defendant will also seek an order that the Claimant pay a penalty of 10% of the amount claimed should the Claimant proceed through trial.