IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1020840 BC Ltd. v. The TDL Group Corp.,* 2025 BCSC 1039

Date: 20250606
Docket: S230494
Registry: Vancouver

Between:

1020840 BC Ltd. and Nancy Gareau

Plaintiffs

And

The TDL Group Corp.

Defendant

And

Kootenay Lake Log Structures Ltd.

Third Party

Before: Associate Judge Harper

Reasons for Judgment

Counsel for the Plaintiffs:	G. Douvelos
Counsel for the Defendant:	P. Elahi-Khansari D. Brommeland
The Third Party, Kootenay Lake Log Structures Ltd.:	No appearance at this hearing
Place and Date of Hearing:	Vancouver, B.C. April 17, 2025
Place and Date of Judgment:	Vancouver, B.C. June 6, 2025

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Introduction

[1] The plaintiffs, 1020840 BC Ltd. ("102") and Nancy Gareau, operate a Tim Hortons franchise in Creston, BC in premises (the "Premises") that they sublease from the defendant, The TDL Group Corp. ("TDL"). The Premises are owned by the third party, Kootenay Lake Log Structures Ltd. ("Kootenay"). The plaintiffs operate the franchise pursuant to a licence agreement with TDL.

[2] The notice of civil claim was filed on January 20, 2023 (the "Original Claim"). TDL interprets the plaintiffs' claims as follows:

a) the Premises suffer from defects in their materials, workmanship, design, or construction that were not disclosed to them;

b) the defects have not been adequately repaired and/or remedied;

c) TDL failed to remedy an alleged overpayment by the plaintiffs to Kootenay for property taxes in breach of the lease; and

d) TDL and Kootenay collectively failed to remedy issues regarding garbage collection at the Premises.

[3] The Original Claim advances causes of action in breach of contract, breach of the *Franchises Act*, S.B.C. 2015, c. 35, negligence, and unjust enrichment.

[4] The plaintiffs seek leave to file an amended notice of civil claim (the "Proposed Claim") to add claims they describe in their notice of application as "regarding terms of the sublease and licence agreement; the tort of unlawful means and private nuisance; and fraudulent representations made by the Defendant".

[5] TDL's interpretation of the Proposed Claim is that it purports to plead new allegations regarding:

i. the terms of the Sublease and Licence Agreements;

ii. representations made by TDL to the plaintiffs;

iii. harms suffered by the plaintiffs (including personal injuries to Ms. Gareau, such as "emotional mental distress" and "mental anxiety");

a) several entirely new causes of action against TDL, including allegations of fraudulent misrepresentation, private nuisance, and "the unlawful means

tort of interference with business expectancy" involving a non-party to the proceeding, Dane Walter; and

b) recovery of special damages and special costs.

[6] The plaintiffs' position on the application is that the amendments contained in the Proposed Claim are sufficiently pleaded. TDL's position is that the application should be dismissed because the claims are confusing; they are unsupported by the pleading of material facts; they seek to add new causes of action; and they are made too late in the proceeding.

[7] The Proposed Claim is attached to these reasons as Schedule "A".

The Application

[8] The application is brought pursuant to Rule 6-1(1) of the *Supreme Court Civil Rules*. I wish to make two preliminary observations.

[9] First, this application is not the first attempt the plaintiffs have made to amend their claim. The plaintiffs filed a notice of trial on October 25, 2023, setting the trial for September 9, 2024. On August 2, 2024, the parties adjourned the trial by consent. On August 9, 2024, the plaintiffs filed and served an amended notice of civil claim containing amendments that are identical to those in the Proposed Claim. The plaintiffs apparently took the position that once the trial had been adjourned, they could file an amended notice of civil claim without leave or written consent of the parties. This view of the law is incorrect. An adjournment of a trial does not displace the requirement to seek leave to amend. The plaintiffs breached Rule 6-1(1)(b) by filing the amended notice of civil claim without leave of the court or written consent of the parties. Despite TDL's repeated advice to the plaintiffs that it objected to the improperly filed notice of civil claim, the plaintiffs refused to concede the breach of the *Rules* and refused to seek leave to amend. Eventually, the improperly filed amended notice of civil claim was set aside by the order of Justice Wilkinson made February 12, 2025. The plaintiffs wasted valuable time in maintaining their position that they could file an amended notice of civil claim without leave or consent.

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[10] Second, because of the limitations of the notice of application, it is difficult to understand and analyze the proposed amendments. The legal basis in a notice of application should contain a brief, comprehensive legal analysis*: Dupre v. Patterson*, 2013 BCSC 1561 at paras. 47–56. In the present case, the legal basis of the notice of application cites Rule 6-1(1) and some case authorities that consider the rule, but the legal basis fails to apply the law to the facts of the case. There is no attempt to explain how the authorities support that exercise of discretion to permit the amendments to the case at bar. In particular, the factors set out in the seminal case, *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 19 B.C.L.R. (3d) 282 (C.A.) [*Teal Cedar*] are not addressed. TDL did not object to counsel for the plaintiffs addressing the *Teal Cedar* factors only in oral submissions, but that concession does not adequately resolve the problem created by the inadequate legal basis. Further, the legal basis fails to explain how each of the proposed amendments conforms to the requirements of proper pleading. In contrast, the application response provides extensive argument on both the principles that govern applications to amend and the principles that apply to the substantive claims in the proposed amendments.

The Original Claim

[11] In order to make sense of the amendments sought, it is necessary first to make sense, if possible, of the Original Claim. The Original Claim is replete with non-sequiturs and confusing construction. Some sentences make no grammatical sense. TDL, however, filed its response to civil claim without objecting to the drafting and without seeking to strike out any portion of the Original Claim. The litigation proceeded on the basis that TDL understood the claim as pleaded. The case was ready for trial, but at the last minute, the parties agreed to adjourn the trial for reasons that are unclear to me. Despite the advanced stage of the proceedings, and the apparent understanding between the parties as to what the case is about, the Original Claim on its face does not clearly set out the claims being advanced.

[12] Reading the Original Claim generously, the following facts emerge:

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a) the plaintiffs operate the Tim Hortons franchise pursuant to a sublease and licence agreement with TDL;

b) contrary to the terms of the sublease or licence agreement, there is water damage to the restaurant;

c) there is something wrong with the garbage removal and recycling, the details of which are not apparent in the notice of civil claim;

d) TDL failed to remedy the garbage disposal health concerns;

e) there is a water flow or stream below the ground level of the Premises;

f) there are defects to the foundation of the Premises;

g) the plaintiffs overpaid the "landlord of the Premises";

h) there are ongoing issues with pipes and there is no staff bathroom and there are garbage access issues;

i) the ongoing issues caused a delay in the plaintiffs finding a buyer for 102, and caused a delay in finding a buyer for 102 and jeopardized the sale of 102, which delay resulted in a loss to 102.

j) TDL failed to remedy "the Plaintiffs' issues" (presumably this means the issues identified in paragraph 32 of the Factual Basis being: the garbage disposal issues; the latent defects to the Property [sic]; and property taxes that the plaintiffs overpaid.

[13] Under Relief Sought, the plaintiffs claim specific performance or, alternatively, general damages, punitive damages, costs, and interest.

[14] Under Legal Basis, the plaintiffs claim (and I quote verbatim): breach of contract, tort law; the law of estoppel by representation; the law of agency; alternatively, the law of unjust enrichment; the *Law and Equity Act*, R.S.B.C. 1996, c. 253, s. 4, 25, and 44; the *Franchises Act*, S.B.C. 2015, c. 35; and such further and alternative legal bases of [sic] counsel may advise at the hearing on the matter.

[15] In its response to civil claim, TDL agrees that the plaintiffs and TDL entered into the sublease agreement and licence agreement. TDL denies that the Premises have any defects, or, if the Premises have had any defects, TDL says they are not

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caused by TDL. TDL denies that it has any duty to investigate or maintain the condition of the Premises.

[16] TDL denies any ongoing garbage collection problems.

[17] TDL says it has exercised reasonable skill and diligence in investigating the alleged overpayment of property taxes by the Plaintiffs to Kootenay. TDL denies it has any obligation to recover any alleged overpayment on the plaintiffs' behalf.

[18] As additional facts, TDL says that the plaintiffs are responsible for managing and maintaining the condition of the Premises and making all necessary or desirable repairs.

[19] Under Legal Basis, TDL asserts that it has complied with the sublease and licence agreements and with the *Franchises Act*. TDL claims, broadly, that it did not owe the plaintiffs a duty of care and that if it did owe a duty of care, TDL exercised reasonable care. TDL denies that the plaintiffs have suffered damage, but that if the plaintiffs have suffered damage, it is the fault of the plaintiffs or other parties.

[20] TDL denies the unjust enrichment claim.

[21] TDL denies that it has conducted itself in a manner that represents a marked departure from ordinary standards of decent behaviour and denies there is any basis for an award of punitive damages.

[22] In its third party notice issued against Kootenay, TDL interprets the plaintiffs' allegations as follows: (a) there are defects and deficiencies in the design and construction of the Premises which the plaintiffs allege were caused or contributed to by TDL; and (b) Kootenay collected excess payment from the plaintiffs for property taxes for the Premises in breach of the lease which the plaintiffs claim TDL allegedly failed to diligently recover from Kootenay on their behalf.

[23] In its response to third party notice, Kootenay alleges that TDL was responsible for the planning and construction of the building on the Premises. Further, Kootenay alleges that in the fall of 2009, Kootenay hired two engineering

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firms to prepare reports regarding the suitability of the ground soil prior to TDL commencing its construction of the building on the Premises. These reports were provided to TDL prior to construction. Kootenay also addresses the garbage system and the property tax issue including how property taxes were collected from TDL.

[24] Under Additional Facts, Kootenay cites provisions of the lease agreement regarding taxes, utilities, repairs, tenant's contribution to maintenance costs, and tenant's right to cure landlord's defaults.

[25] I infer from the fact that TDL filed a response to civil claim that it understood the facts and claims pleaded in the Original Claim and, hence, understood the case it had to meet. It is possible that as the case proceeded, the parties clarified both the claims and the defences, leaving the confusing Original Claim behind them. I note that the parties attended mediation. By that time, they must have understood the case adequately. If so, the parties were in a better position than I am. Bear in mind that an application to amend a notice of civil claim succeeds or fails on the quality of the drafting of the existing claim and not on the case as it has developed over time. The court will not condone the grafting of unclear amendments onto an unclear pleading. The proposed pleading must be intelligible on a plain reading.

Legal Principles

[26] The factors to be considered on an application for leave to amend pleadings were discussed in *Chouinard v. O'Connor*, 2011 BCCA 161, citing with approval the chambers judge's statement of general principles at para. 11:

> 1. amendments should be permitted as necessary to determine the real question and issues between the parties;
> 2. the party is not required to adduce evidence in support of a pleading before trial;
> 3. on an application to amend, the facts alleged are taken as established; and
> 4. the discretion is to be exercised judicially in accordance with the evidence adduced and the guidelines of the authorities.

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[27] The court must have regard to the following guidelines: the extent of the delay; the reasons for the delay; the degree of prejudice caused by the delay; and the extent of the connection if any between the existing claims and the proposed new cause of action: *Chouinard* at para. 10.

[28] The court has broad discretion to allow or disallow an amendment. The overriding test is whether it is just and convenient to allow the amendments: *Chouinard* at para.18 citing *Teal Cedar*.

[29] Amendments must comply with the rules of pleading. An application for leave to amend should be considered on the same basis as an application to strike existing pleadings pursuant to Rule 9-5(1): *Shaw Cablesystems Ltd. v. Concord Pacific Group Inc*., 2009 BCSC 203 at para. 8. If it is plain and obvious that a proposed pleading would be struck out if it were included in the original pleading, then the proposed amendments should not be allowed.

Discussion

[30] The amendments sought expand the issues and are drafted without sufficient clarity to permit TDL to know the case it has to meet. The amendments are confusing and difficult to understand and if pleaded initially, would have been struck out as “frivolous or vexatious”: Rule 9-5(1)(b).

[31] There is no evidence and no legal argument contained in the notice of application to explain the delay in seeking leave to amend. The only explanation provided by the plaintiffs was through counsel’s oral submissions. Mr. Douvelos, counsel for the plaintiffs, submitted that the plaintiffs were prepared to go to trial based on the existing notice of civil claim, but now that the trial has been adjourned, the plaintiffs wish to make additional claims.

[32] The requirements of a notice of civil claim were thoroughly discussed in *Sahyoun v. Ho*, 2013 BCSC 1143 at paras. 15 to 54. The reasoning in *Sahyoun* applies equally to the present case.

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The Fraudulent Misrepresentation Amendments

[33] Fraudulent misrepresentation is a serious allegation. Full particulars, with "dates and items" must be stated in the pleading: Rule 3-7(18). To establish a claim in fraudulent misrepresentation, a plaintiff must plead and then eventually prove at trial:

a) the defendant made a representation of fact to the plaintiff;'

b) the representation was, in fact, false;

c) the defendant knew the representation was false when it was made, or made the false representation recklessly, not knowing if it was true or false;

d) the defendant intended the plaintiff to act on the representation; and

e) the plaintiff relied upon the false representation and thereby suffered a detriment.

Wang v. Shao, 2018 BCSC 377 at para. 196.

[34] I agree with TDL's argument as set out in its application response at paragraphs 36 through 38 of the Legal Basis. No material facts are pleaded to establish that TDL made a representation of fact to the plaintiffs. No material facts are pleaded in support of detrimental reliance. The new causes of action are confusing and poorly defined. It is unclear which facts apply to which misrepresentation claims. The misrepresentation claims are unintelligible, confusing, and difficult to understand.

[35] A further concern is that these confusing amendments would be grafted onto a pleading that is already confusing (albeit a pleading that TDL has responded to). It is important to bear in mind that the pleading should not only be intelligible to the party responding, but also to the trial judge. The just, speedy, and inexpensive resolution of this case on its merits would be impeded by permitting the fraudulent misrepresentation amendments.

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The Private Nuisance Amendments

[36] There is only one sentence to support this new claim: “The Defendant’s failure […] to remedy the garbage disposal health concerns and defects in the parking area of the Premises has caused and continues to cause physical injury to the Premises and an unreasonable and substantial interference to the plaintiffs’ use and enjoyment of the Premises”. This sentence is a legal conclusion. There are no material facts to support the conclusion.

Intentional Interference with Economic Relations Amendments

[37] The plaintiffs wish to add amendments to plead the unlawful means tort, or the tort of intentional interference with economic relations. The amendment appears to arise from an allegation contained in the notice of civil claim that the “issues” with the Premises caused a delay in finding a buyer for 102 and jeopardized the sale of 102, delay which resulted in a loss to 102.

[38] The proposed amendments are:

> 34. There was a valid business expectancy between the Plaintiffs and Dane Walter, arising out of a business expectancy, that Dane Walter would purchase the License Agreement and take over the Sub-Lease for the Premises from the Plaintiffs.
> 35. The Defendant knew of the business expectancy between the Plaintiffs and Dane Walter.
> 36. The Defendant intentionally interfered with the business expectancy between the Plaintiffs and Dane Walter by not allowing the Plaintiffs to complete the transfer of the License Agreement and take over the Sub-Lease with Dane Walter
> 37. The Defendant’s intentional interference with the business expectancy between the Plaintiffs and Dane Walter induced Dane Walter to terminate the business expectancy between the Plaintiffs and Dane Walter. in that Dane Walter could not purchase the Licensing Agreement, to operate the Tim Hortons at the Premises.
> 38. The acts of the Defendant that constituted intentional interference with a business expectancy between the Plaintiffs and Dane Walter. that induced Dane Walter to terminate the business expectancy between the Plaintiffs and Dane Walter constituted a tort that is actionable by Dane Walter or would have been ii Dane Walter had suffered loss against the Defendant in that:

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a) Dane Walter, could have purchased the license agreement for a Tim Horton's store that is profitable;

b) It is the only Tim Horton franchise in Creston. BC.

39. The interference by the Defendant was the proximate cause of the termination of the business expectancy between the Plaintiffs and Dane Walter, in that but for the conduct of the Defendant, the business expectancy or relationship would have continued.

40. As a result of the termination of the business expectancy or relationship between the Plaintiffs and Dane Walter caused by the unlawful conduct of the Defendant, the Plaintiffs have suffered and continue to suffer loss and damages including special damages, particular which are as follows:

a) loss of business opportunity to sell the business license and to end a Sub-Lease, which has caused hardship and emotional mental stress to Nancy;

b) caused ongoing litigation costs and mental anxiety for Nancy.

[39] In the proposed amendment to the Legal Basis of the Original Claim, the plaintiffs call the tort the "unlawful means tort of interference with business expectancy". This framing does not comply with how the Supreme Court of Canada has framed this cause of action: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd*., 2014 SCC 12 [*Bram*].

[40] The notice of application entirely omits any argument whatsoever, including any case authorities, to support the amendment as disclosing a reasonable cause of action. TDL's application response sets out a detailed argument as to why the amendment should not be allowed. Counsel for the plaintiffs was left to attempt to persuade the court in oral submissions, relying on *Bram* (a decision relied on by TDL, but not by the plaintiffs) that the amendment was sound. Counsel for the plaintiffs submitted that the amendments were sufficiently pleaded. I do not agree.

[41] To establish the unlawful means tort, the plaintiff must show that:

a) the defendant committed an unlawful act against a third party;

b) with the intention to cause economic harm to the plaintiff; and

c) the conduct did in fact result in economic harm to the plaintiff.

Bram at para. 5; *Low v. Pfizer Canada Inc*., 2015 BCCA 506 at para. 77.

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[42] I agree with TDL's argument as set out in its application response at paragraphs 46 through 49:

> 46. Two of the key elements of the tort are unlawful conduct directed at a third party and intention to cause harm. The plaintiffs fail to plead either in the Proposed Claim.
>
> *Muldoe v. Derzak*, 2021 BCCA 199 at para. 33
>
> 47. Conduct is unlawful for the purposes of this tort if it was actionable by the third party or would have been actionable if the third party had suffered loss as a result of it. The Proposed Claim does not plead how or in what way TDL's conduct toward Dane Walter was unlawful or illegal. Instead, the plaintiffs baldly assert that the "acts of the Defendant...constituted a tort that is actionable by Dane Walter or would have been if, Dane Walter had suffered a loss against the Defendant", without pleading what tort and without pleading any supporting material facts.
>
> *Bram* at para. 23
>
> *E.B.* [*v. British Columbia (Child, Family and Community Services)*, 2021 BCCA 47] at para. 65
>
> Proposed Claim, Part 1 at para. 38
>
> 48. The unlawful means tort requires that the tortfeasor is "aiming at" or "targeting" the plaintiff with their conduct. The Proposed Claim does not plead that TDL's intention was to *target the plaintiffs* through its alleged "intentional interference with the business expectancy between the [plaintiffs and Dane Walter". This is not something that can be saved by amendment, because such a suggestion is groundless and fanciful.
>
> *Latifi* v. *The TDL Group Corp.,* 2024 BCSC 832 at para. 49
>
> *Dempsey* [*et al. v. Envision Credit Union et al.,* 2006 BCSC 750] at para. 17
>
> Proposed Claim, Part 1 at paras. 36-37
>
> 49. The material facts needed to sufficiently plead the elements of this tort are entirely missing. Further, permitting them to be made will require additional discovery from Mr. Walter, who is not a party to this action. These amendments ought not to be permitted

Amendments alleging Emotional Mental Stress and Mental Anxiety to Ms. Gareau

[43] There are no material facts pleaded to support these claims. There is no legal basis identified for the recovery of damages for mental stress or mental anxiety for the types of claims the plaintiffs assert.

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Are the Proposed Amendments Time-Barred?

[44] TDL argues that the plaintiffs are seeking leave to plead three new causes of action more than two years after the notice of civil claim was filed, after the expiry of the limitation period, and based on facts that were known to the plaintiffs from the outset. The only reason for the plaintiffs bringing the application at this time is that they wish to add new claims now that the trial has been adjourned. To allow the amendments at this stage would not be just and convenient even with an order that the plaintiffs pay TDL its costs of the application in any event of the cause, and that TDL be entitled to a further examination for discovery of Ms. Gareau at the plaintiffs' expense,

[45] The notice of application contains no legal analysis of the limitation defence issue save and except the following statement: "To the extent that the Defendant [sic] may have been prejudiced by delay in applying to amend the Notice of Civil Claim to plead a new cause of action, a limitation issue, if any, is a matter for trial." In my view, this is not a correct statement of the law.

[46] It is insufficient for the plaintiffs to propose that any limitation defences that TDL may have be preserved. On an application to amend a notice of civil claim, the parties are required to address the limitation period issues and take a position on the ruling they say the court ought to make as to whether the limitation period has expired or not. In certain circumstances, the court on an application to amend may order that the limitation defence be preserved, but that order is not made unless and until the parties have provided the court with an analysis of the limitation period issue as it pertains to the facts of the case, including their position as to whether the court should allow the amendments even though the limitation period has expired.

Should the Plaintiffs be Permitted to Reapply?

[47] I have determined that none of the amendments should be permitted except the amendments to which TDL does not object.

[48] The question now becomes: should the plaintiffs be permitted to try again with improved drafting and with an improved notice of application that contains a proper legal basis that adequately applies the legal principles that govern applications to amend to the facts of the case?

[49] Counsel for the plaintiffs does not concede that there are any defects in the drafting of the amendments. I am not confident that any improvements will be made such that a further application should be permitted. If leave to reapply were granted, time that should be spent preparing for trial would be eaten up. The next trial date might be at risk. It is important to note that the plaintiffs were satisfied with the claims they originally brought. The plaintiffs wasted valuable time by refusing to concede that their improperly filed amended notice of claim should be withdrawn.

[50] On the other hand, it is possible that if the amendments were drafted in accordance with the rules of proper pleading, the plaintiffs could persuade the court that TDL would not be prejudiced by the amendments because the trial is a year away and TDL could preserve their limitation defence for trial. However, the difficulty with the plaintiffs' argument is that the court cannot consider prejudice in the absence of proper pleadings.

[51] In *Sommer v. Coast Capital Savings Credit Union*, 2013 BCSC 881, at para. 23, the court referred to *McIntosh v. Nilsson Bros, Inc*., 2005 BCCA 297. In *McIntosh* at para. 10, Mr. Justice Lambert, for the court, noted that the fault of a solicitor should not be visited upon the party unless the conduct of the solicitor was the cause of "irremediable prejudice to the other side". In the present case, the drafting errors were not committed by the plaintiffs themselves, but by their counsel. I do not think it is appropriate that the fault of counsel be visited on his clients. Allowing the plaintiffs to reapply will not cause irremediable prejudice to TDL.

[52] Nothing in these reasons should be interpreted as offering any prediction as to the likely success or failure of a future application. I will not be seized of any future application.

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Conclusion

[53] The application is dismissed with leave to reapply.

[54] Costs of this application will be to TDL in the cause.

"Harper A.J."

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Schedule "A"

Amended pursuant to Rule 6-1(1)(b)(i) of the *Supreme Court Civil Rules* and
Original filed: January 20, 2023

NO. VLC-S-S-230494
Vancouver Registry

In the Supreme Court of British Columbia

BETWEEN:

1020840 BC LTD and NANCY GAREAU

PLAINTIFFS

AND:

THE TDL GROUP CORP.

DEFENDANT

AMENDED 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(s),

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

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(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

1. The Plaintiff, 1020840 BC LTD (the "102"), is a British Columbia corporation with an address for service c/o DG Barristers 428-755 Burrard Street, Vancouver, B.C.

2. The Plaintiff, Nancy Gareau ("Nancy"), is a business woman with an address for service address for service c/o DG Barristers 428-755 Burrard Street, Vancouver, B.C.

3. The Defendant, The TDL Group Corp. (the "Defendant"), is a British Columbia Corporation amalgamated under the *Business Corporations Act* (British Columbia), and a subsidiary of Restaurants Brands International Limited Partnership, and the Defendant has an address for service located at 1700- 666 Burrard Street, Vancouver, BC V6C 2X8.

4. The Defendant has been engaged in the line of business associated under the trade name "Tim Hortons" in the franchise business sector.

5. On or about December 1, 2018, the Defendant entered into a lease agreement (the Sub-Lease") with the Defendant who is the sub-landlord for the land located at 1720 Northwest Boulevard, Creston, BC, V0B 1G0 and with legal description:

   PID: 008 399 603
   Lot 1 District Lot 892 Kootenay District Plan 15689, except part included in Plan NEP 20614
   (the "Premises").

6. Executed contemporaneously with the Sub-Lease the Plaintiffs entered into a licence agreement (the "Licence Agreement") with the Defendant under which the Defendant would operate licensed business as that term is defined in the Licence Agreement, subject to the terms of the Licence Agreement and the Sub-Lease.

7. On or about November 9, 2009, the Defendant entered into a head lease with Kootenay Lake Log Structures Ltd., for the Premises.

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8. It was a material term of the Licence Agreement that the British Columbia *Franchises Act*, be included the Licence Agreement, which terms include:

   a) A prospective franchisee should seek information on the franchisor and on the franchisor's business background, banking affairs, credit history and trade references.

   b) A prospective franchisee should seek expert independent legal and financial advice in relation to franchising and the franchise agreement before entering into the franchise agreement.

   c) A prospective franchisee should contact current and previous franchisees before entering into the franchise agreement.

   d) Lists of current and previous franchisees and their contact information can be found in this disclosure document.

9. Despite the material terms incorporated in the Licence Agreement, the Defendant did not provide the Plaintiffs with time and an opportunity to seek expert independent legal and financial advice before entering into the Licence Agreement and Sub-Lease.

10. It was a implied, alternatively a tacit term of the Licence Agreement or the Sub-Lease and to that the Premises leased would:

   a) be free from any defects or latent defects, which defects include but not limited the foundation of the Premises;

   b) the irrigation system timer and electrical work would be to code and GFI protected;

   c) be free from water system that runs underneath the Premises that has caused and continues to cause damage to the building envelope of the structure, which is the Tim Hortons restaurant of the Premises licenced from the Defendant;

   d) allow for easy access of vehicles to be able to remove debris and garbage material, however, servicing the recycle bin at the Premises does not allow for room to maneuver to avoid injury

11. The Defendant had a duty of care to at all material times before entering into a Sub-Lease to inform the Plaintiffs of the any defects or possible defects in the Premise but were not limited to:

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a) assessing and analyzing foreseeable risks to the integrity of the Premises and insure the Plaintiffs against damages;

b) informing the Plaintiffs of necessary remedial work required to the foundations of the Premises or any part of the Premises; and

c) advising the Plaintiffs of the water flow or stream below the ground level of the Premises.

12. Alternatively, the Defendant had a duty to remedy the Premise of any and all defects which it failed, alternatively refused, further alternatively, neglected to remedy satisfactory and in good workman like order, before entering into the Sub-Lease and License Agreement that were entered into contemporaneously.

13. The Defendant knew or alternatively ought to have known of the defects in the Premises and the defects in particular to the ground foundation of the Premises.

14. Alternatively, the Defendant failed, or neglected, to advise the Plaintiffs of a material change, in its disclosure to the Plaintiffs.

15. The Plaintiffs say that the Defendant failed ~~into~~ negotiate in good faith in entering into the Sub-Lease and Licensing Agreement.

16. During the course of the Sub-Lease and Licence Agreement, the Plaintiffs have been reminded that the Defendant make the necessary repairs to the Premises, which the Defendant has neglected, alternatively failed, further alternatively refused to remedy.

17. The Defendant neglected to remedy any defects to the Premises, and the Defendant breached the Sub-Lease and Licence Agreement, in hindering the Plaintiffs and causing loss of profit to the Plaintiffs.

18. Further alternatively, the Defendant failed to make a disclosure as required pursuant to the requirements of *Franchises Act* [SBC 2015] Chapter 3.

19. Alternatively, if the Defendant advised the Plaintiffs of the latent defects to the Premises, then the defendant failed to disclose a material change.

20. Further alternatively, the Defendant represented that the latent defects have been remedied, to which the Plaintiffs relied on the representation to its detriment. Particulars of the representation are as follows:

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a) Matthew St. Pierre on behalf of the Defendant informed Nancy in writing on August 13, 2021 that he would communicate Nancy's concerns regarding the parking area defects on the Premises.

21. The Defendant also represented to the Plaintiffs that they would diligently deal with the landlord of the Premises as agent for the Plaintiffs to remedy any overpayment with the landlord collected from the Plaintiffs. Particulars of the representation are as follows:

a) Matthew St. Pierre on behalf of the Defendant informed Nancy in writing on October 21, 2022 writing that he would communicate Nancy's concerns regarding the overpayment of the property taxes.

22. By virtue of the Defendant's position was vested with the express or implied or apparent authority on behalf of the Plaintiffs.

23. Despite the Defendant's representation to the Plaintiffs, it has failed, alternatively neglected, to remedy and collect the ~~other~~ overpayment payment made by 102, for the Premises and failed to act diligently as the Plaintiffs' agent.

24. The Defendant had a duty of care to the Plaintiffs to collect the property taxes on their behalf.

25. The Defendant also represented to the Plaintiffs that they would diligently work with the landlord to the Premises on behalf of 102, to remedy the garbage disposal health concerns at the Premises. Particulars of the representation are as follows:

a) Matthew St. Pierre on behalf of the Defendant informed Nancy in writing on August 18, 2022 that he would communicate Nancy's concerns regarding the garbage removal.

26. Despite repeated demands to the Defendant by the Plaintiffs to rectify the garbage disposal health concerns for the Premises which the Defendant represented it would do, the Defendant failed to do so, which has caused financial and operational hardship, losses and damaged to the Plaintiffs, which continue to be incurred by 102.

26A. The Plaintiffs' relied up on the representations and were induced by the Defendants, to continue to operate the Tim Horton's franchise, and continue with the Sub-Lease and Licence Agreement.

26B. The Defendant's representations were false in that:

a) The garbage removal health concerns continue to persist;

b) The overpayment of property taxes have not been returned 102; and

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c) The defects in the parking area at the premises continue to persist.

26C. The Defendant's failure, alternatively, neglect to remedy the garbage disposal health concerns and defects in the parking area of the Premises has caused and continues to cause physical injury to the Premises and an unreasonable and substantial interference to the Plaintiffs' use and enjoyment of the Premises and is private nuisance to the Plaintiffs.

26D. The Defendant was negligent in making the representations paragraph 25 a) and 25 b) which the Plaintiffs reasonably relied and were induced to continue to operate the Tim Horton's franchise, and continue with the Sub-Lease and Licence Agreement.

26E. The Defendant made the representation in paragraph 21a) fraudulently in that the Defendant made it knowingly that it would be false or made it without belief in its truth or made it recklessly, and with willful blindness in not caring whether it was true of false, as the overpayment of property taxes continue not being returned to 102 despite repeated demand.

27. The Defendant had a duty of care to the Plaintiffs to remedy the garbage disposable health concerns for 102 to operate a profitable and compliant business with health authorities.

28. On or about September 19, 2020, the Plaintiffs investigated selling 102 and went through the valuation process with the Defendant. The ongoing issues with pipes and without staff bathroom at the Premises and the garbage access issues that were not remedied despite the Defendant's representation that they would be, caused a delay and/or inhibited the Plaintiff in finding a buyer for 102 and jeopardized the sale of 102. ~~delay~~ which resulted in a loss to 102.

29. The Plaintiffs also advised the Defendant that it required the Defendant remedy the Plaintiffs' issues raised, so that it can remain competitive as against a new McDonald's Restaurant franchise that would operate in close proximity and the McDonald's store opened on or about December 2022.

30. The Defendant fail in its duty imposed to allow 102 to remain competitive and profitable.

31. The Defendant knew or ought to have known that failing to remedy the Plaintiffs' issues which the Defendant was informed about, the Plaintiffs would suffer damages and loss if not rectified.

32. Despite the Plaintiffs' demands, the Defendant neglected to remedy the Plaintiffs' repeated requests as to the garbage disposal issues, latent defects to the Property, and property taxes that the Plaintiffs have made overpayment for which the Defendant represented it would remedy on the Plaintiffs' behalf.

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32A. From on or about January 2019 to the present time the Defendant, has failed, alternatively neglected, further alternatively refused, to have monies returned or caused to have returned to 102 as 102's agent in contract, for overpayment of property taxes by 102, which the Defendant knew or ought to have known were made by 102.

32B. In the alternative, the Plaintiffs say that if the Defendant was not acting as agent for 102 and without a juristic reason then the Defendant has been unjustly enriched to the corresponding impoverishment of 102, by the overpayment amount of the property taxes collected by the Defendant.

32C. The Defendant has been enriched by collecting monthly rent from the Plaintiffs to the corresponding impoverishment of the Plaintiff without juridical cause as between the Plaintiffs and the Defendant, as the Defendant is refusing, alternatively, neglecting to remit the lease payment of the Plaintiff to the landlord.

33. As a result of the neglect of the Defendant in remedying any defects or latent defects to the Premises by failing to remedy such defects before entering into the Sub-Lease or Licensing Agreement with the Defendant, the Defendant has caused loss and/or damages to the Plaintiffs which loss it continues to incur and suffer.

34. There was a valid business expectancy between the Plaintiffs and Dane Walter, arising out of a business expectancy, that Dane Walter, would purchase the License Agreement and take over the Sub-Lease for the Premises from the Plaintiffs.

35. The Defendant knew of the business expectancy between the Plaintiffs and Dane Walter.

36. The Defendant intentionally interfered with the business expectancy between the Plaintiffs and Dane Walter, by not allowing the Plaintiffs to complete the transfer of the License Agreement and take over the Sub-Lease with Dane Walter

37. The Defendant's intentional interference with the business expectancy between the Plaintiffs and Dane Walter induced Dane Walter to terminate the business expectancy between the Plaintiffs and Dane Walter, in that Dane Walter could not purchase the Licensing Agreement, to operate the Tim Hortons at the Premises.

38. The acts of the Defendant that constituted intentional interference with a business expectancy between the Plaintiffs and Dane Walter, that induced Dane Walter to terminate the business expectancy between the Plaintiffs and Dane Walter constituted a tort that is actionable by Dane Walter or would have been if, Dane Walter had suffered loss against the Defendant in that:

a) Dane Walter, could have purchased the license agreement for a Tim Horton's store that is profitable;

b) It is the only Tim Horton franchise in Creston, BC.

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39. The interference by the Defendant was the proximate cause of the termination of the business expectancy between the Plaintiffs and Dane Walter, in that but for the conduct of the Defendant, the business expectancy or relationship would have continued.

40. As a result of the termination of the business expectancy or relationship between the Plaintiffs and Dane Walter caused by the unlawful conduct of the Defendant, the Plaintiffs have suffered and continue to suffer loss and damages including special damages, particular which are as follows:

    a) loss of business opportunity to sell the business license and to end a Sub-Lease, which has caused hardship and emotional mental stress to Nancy;

    b) caused ongoing litigation costs and mental anxiety for Nancy.

Part 2: RELIEF SOUGHT

The Plaintiffs seek:

1. Breach of contract requiring specific performance;
2. *Alternatively*, general damages.
3. Punitive damages and special damages;
4. Costs and special costs;
5. Interest pursuant to the *Court Order Interest Act, R.S.B.C.* 1996, c.79 and amendments thereto; and
6. Such further and/or other relief as counsel may advise and this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. Breach of contract.
2. Tort law, more particularly, for actionable misrepresentations by the Defendant, the tort for private nuisance and the unlawful means tort of interference with business expectancy.
3. The law of estoppel by representation.
4. The law of agency.
5. Alternatively, the law of unjust enrichment.
6. *The Law and Equity Act* [RSBC 1996] Chapter 23 s. 4, 25 and 44.

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7. *Franchises Act* [SBC 2015] Chapter 35.

8. Such further and alternative legal basis of counsel may advise at the hearing on the matter.

Plaintiffs' address for service:	George Douvelos Law Corporation c/o DG Barristers Suite 428-755 Burrard Street Vancouver, BC. V6Z 1X6 Attention: George Douvelos
Fax number address for service:	604-637-6385
E-mail address for service:	N/A
Place of trial:	Vancouver
The address of the registry is:	Vancouver Law Courts 800 Smithe Street Vancouver, BC. V6Z 2E1

Date: April __, 2025

Original Date: January 20, 2023

Signature of [x] lawyer for Plaintiffs
George Douvelos

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.

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Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:
Damages arising from breach of contract, agency and tort

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
[X] construction defects
[ ] real property (real estate)
[ ] personal property
[ ] the provision of goods or 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
[x] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[ ] a class action
[ ] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflict of laws
[x] none of the above
[ ] do not know

Part 4:

The Law and Equity Act [RSBC 1996] Chapter 23 s. 4. 25 and 44.

Franchises Act [SBC 2015] Chapter 35.

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