



Amended pursuant to Supreme Court Civil Rule 6-1(5).
Original filed on Nov. 23, 2022.

No. ABB-S-S-02704
ABBOTSFORD REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

STEVEN HEIMBURGER and DAVID JOHN BUDDLE

PLAINTIFFS

AND:

BIGSTEELBOX CORPORATION

DEFENDANT

Brought under the Class Proceedings Act, RSBC 1996, c. 50

RESPONSE TO FURTHER AMENDED CIVIL CLAIM

Filed by: BIGSTEELBOX CORPORATION (the "**Defendant**")

Part 1: **RESPONSE TO FURTHER AMENDED NOTICE OF CIVIL CLAIM
FACTS**

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs ~~2 and 3~~, 4, 5, 15, 16, 29, and 30 of Part 1 of the Further Amended Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs ~~4, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24~~, 25, 26, 27, 28, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of Part 1 of the Further Amended Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1, 2, and 7 ~~and 5~~ of Part 1 of the Further Amended Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant's Version of Facts

1. The Defendant denies each and every allegation of fact contained in the ~~Plaintiff's~~ Further Amended Notice of Civil Claim except as expressly admitted herein.
2. In addition to any definitions set out herein, the Defendant adopts the definitions set out in the Further Amended Notice of Civil Claim for the purpose of this Response to Further Amended Civil Claim.

3. In answer to the whole of the Plaintiffs Further Amended Notice of Civil Claim, the Defendant denies that the Plaintiffs has suffered loss, damage or expense as alleged and puts the Plaintiffs to the strict proof thereof.
4. The Defendant, BigSteelBox Corporation ("**BigSteelBox**") leases a property located at a municipal address described as 37400 North Parallel Road, Abbotsford, BC, V3G 2K1 (the "**Abbotsford Property**").
5. BigSteelBox carries on the business of renting shipping containers (the "**Containers**" or a "**Container**") to customers, where Containers are stored on customer property or at one of thirty-five BigSteelBox locations across Canada.
6. BigSteelBox has an address for service in these proceedings only, care of Branch MacMaster LLP, 1410-777 Hornby Street, Vancouver, British Columbia.
7. BigSteelBox sources its shipping containers from distribution companies in China, with a network of suppliers and manufacturers of ocean grade shipping containers.
8. Containers used by BigSteelBox for storage purposes are manufactured to International Standard Requirements which is necessary for use in ocean shipping.
9. Although this action is a proposed class proceeding under the *Class Proceedings Act*, RSBC 1996, c 50 it has not been certified as a class proceeding. Accordingly, this Response to Further Amended Notice of Civil Claim addresses claims pleaded by Steven Heimburger and David John Buddle and only tangentially and generally responds to certain allegations made with respect to proposed class members, all without prejudice to such further defences as may be raised in the context of any claims advanced by class members should this action be certified as a class proceeding.
10. While BigSteelBox denies this action is appropriate for certification as a class proceeding, it reserves its right to amend this response to the further Amended notice of civil claim to defend against claims that may be advanced by any class members if the matter is certified as a class proceeding.

The Heimburger Agreement

11. During the relevant time period, BigSteelBox regularly entered into agreements with customers in relation to the storage of customers' goods within Containers and which were located on the Abbotsford site Property.
12. BigSteelBox and the plaintiff Steven Heimburger entered into an agreement in writing, entitled "Residential Master Agreement", dated June 28, 2021 (the "**Heimburger Agreement**").

13. The Heimburger Agreement contained a number of clauses, and contained four representations made by Heimburger Plaintiff to BigSteelBox. The four representations made by ~~the~~ Heimburger Plaintiff to BigSteelBox were:
- a. I acknowledge and agree that I will only place property solely owned by me within the Equipment and I will not allow property of third parties to be stored within the Equipment.
 - b. I understand that BSB does not insure contents, is not responsible for loss or damage to Customer Contents, and that I am responsible to acquire contents insurance for the duration of all rentals.
 - c. We are not storing flammable or combustible contents, and have emptied the fuel tanks of stored items.
 - d. I agree to limit the liability of BSB, and it's employees, officers/directors, and agents, for any claim of loss, damage or expense pursuant to the *Warehouse Receipt Act*, RSBC 1996, c 481, or equivalent legislation in the Province in which the Equipment is located, to the value of monies paid by Customer pursuant to this Agreement up to a maximum of \$1,000.00 CAD.
- (collectively, the “**Heimburger Representations**”)
14. The Heimburger Agreement was signed by ~~the~~ Heimburger Plaintiff on the last page of the Heimburger Agreement, and ~~the~~ Heimburger Plaintiff wrote his initials under each of the four Heimburger Representations described in paragraph 8 13, above.
15. BigSteelBox pleads and relies on all terms of the Heimburger Agreement.
16. BigSteelBox pleads and relies on the Heimburger Representations.
17. Without limiting the generality of the foregoing, BigSteelBox pleads and relies on the following terms of the Heimburger Agreement.

8. INSURANCE:

[...]

c. Customer acknowledges and understands that BSB does not insure nor guarantee against loss of Customer's property, and BSB has no liability whatsoever as to claims for loss or damage to such property. Customer hereby waives, releases and indemnifies BSB from and against any and all claims whatsoever against BSB for loss of and damage to any and all property howsoever arising.

12. LIMITATION OF WARRANTIES:

- a. Equipment is provided on an “as is, where is” basis. As long as Customer is not in default of this Agreement, Customer will have quiet possession of the Equipment. BSB gives no warranties of any kind whatsoever with respect to the Equipment, its condition or performance, its merchantability or its fitness for any particular purpose.
- b. Customer agrees that use of Equipment shall be at Customer's own risk, and Customer unconditionally and voluntarily assumes the entire risk of any and all accidents, incidents or personal injury, including death, which Customer or any third party may suffer, however caused.
- c. BSB is not liable to the Customer or any third party, in contract tort or otherwise, for any damage, including direct, indirect, special, consequential, or incidental loss or damage arising from the breach or non-performance of any obligations under this Agreement, or from the supply, use or condition of the Equipment, or for loss or damage to Customer's property.
- d. Customer is solely responsible for determining the specific location(s) on the Site where Equipment will be placed. BSB makes no representation or warranty as to the suitability of Equipment for stacking or supporting loads of any kind. Customer is solely responsible for, and assumes all risks arising from, placing any containers, structures, materials or any other objects on top of Equipment.

13. WAIVER, RELEASE FROM CLAIMS:

- a. The Customer hereby waives, releases and forever discharges BSB, inclusive of its employees, contractors, agents or others for whom it is responsible at law) from and against any and all actions or claims which the Customer or his heirs or successors or assignees may now have or at any time in the future have against BSB for any loss, damage, expense or injury, including death, that the Customer may suffer as a result of the services provided by BSB and/or the use, storage of property in, or transport of Equipment and property contained therein or anything related thereto, including, without limitation, property damage, theft, delay, damage to goods, negligence, gross negligence, willful misconduct, breach of this Agreement or any other contract, non-compliance with licensing, or breach of any statutory or other duty of care on the part of BSB and/or the Customer and specifically:
 - i. waive, release and discharge BSB from any duty of care it may have pursuant to the *Occupiers Liability Act*, RSBC 1996, c 337 or

equivalent legislation in the Province in which the Equipment is located and any claim for loss or damage the Lessee may have thereunder; and

ii. limit the liability of BSB for any claim of the Customer for loss, damage or expense pursuant to the *Warehouse Receipt Act*, RSBC 1996, c 481, or equivalent legislation in the Province in which the Equipment is located, to the value of monies paid by Customer pursuant to this Agreement up to a maximum of \$1,000.00 CAD.

14. INDEMNITY:

[...]

b. Customer hereby agrees to hold harmless, indemnify and reimburse BSB against all liabilities, claims, demands, actions, causes of action, damages, losses, costs, expenses, property damage, bodily injury or death, suffered or incurred by Customer and/or any third party as a result of the services provided by BSB or its agents, and/or the use, storage of property in or transport of Equipment by the Customer and/or BSB including, all fines, forfeitures, seizures, penalties and liabilities that may arise from any infringement or violation of any law or regulation and for any damage to Equipment, whether caused by BSB, a third party, or due to vandalism, collision, fire, lightning, theft, explosion, flood, windstorm. Act of God or any other intervening factor.

18. Before Heimburger entered entering into the Heimburger Agreement, ~~the~~ he Plaintiff had the opportunity to review and consider the Heimburger Agreement and to seek legal advice.
19. The terms of the Heimburger Agreement were negotiable.
20. The terms of the Heimburger Agreement, including the Exclusion Clauses as defined at part 1, paragraph 23 of the Further Amended Notice of Civil Claim, were specifically brought to the attention of the Heimburger Plaintiff. Notably, ~~the Heimburger Plaintiff~~ specifically represented to BigSteelBox, as part of the Heimburger Representations, that he (the Plaintiff) understood that BigSteelBox does not insure contents within a Container, BigSteelBox is not responsible for loss or damage to contents within a Container, and that he (the Plaintiff) was responsible to acquire contents insurance for the duration of all rentals.

The Buddle Agreement

21. BigSteelBox and plaintiff David John Buddle entered into an agreement in writing, entitled "Moving Service Agreement", dated January 15, 2021 (the "Buddle Agreement").

22. The Buddle Agreement includes three representations made by Buddle to BigSteelBox, as follows (the “**Buddle Representations**”):
- a. I acknowledge and agree that I will only place property owned solely by me within the Equipment and I will not allow property of third parties to be stored within the Equipment.
 - b. I understand that BSB does not insure contents, is not responsible for loss or damage to Customer contents, and that I am responsible to acquire contents insurance.
 - c. I agree to limit the liability of BSB and it's employees, officers/directors, and agents, for any claim of loss or expense pursuant to the *Warehouse Receipt Act*, RSBC 1996, c. 481, or equivalent legislation in the Province in which the Equipment is located, to the value of monies paid by the Customer pursuant to this Agreement up to a maximum of \$1,000.00 CAD.
23. Buddle signed the Buddle Agreement and affixed his initials under each of the three Buddle Representations.
24. BigSteelBox pleads and relies upon all terms of the Buddle Agreement.
25. BigSteelBox pleads and relies upon the Buddle Representations.
26. Without limiting its rights under the entire Buddle Agreement, BigSteelBox pleads and relies upon the following terms of the Buddle Agreement.

6. INSURANCE:

[...]

c. Customer acknowledges and understands that BigSteelBox Corporation does not insure or guarantee against loss of Customer contents or property, and BigSteelBox Corporation has no liability whatsoever as to claims for loss or damage to such contents or property. Customer hereby waives, releases, and indemnifies the BigSteelBox Corporation from and against any and all claims whatsoever against BigSteelBox Corporation for loss of and damage to any and all property or contents howsoever arising.

8. LIMITATION OF WARRANTIES AND LIABILITY:

a. BigSteelBox Corporation is not liable to the Customer or any third party, in contract tort or otherwise, for any damage, including direct, indirect, special, consequential, or incidental loss or

damage arising from the breach or non performance of any obligation under this Agreement.

b. BigSteelBox Corporation will not be liable for delay, damage to or loss of goods caused or contributed to by defects or inadequately of the packaging used by the Customer, or for damage or loss of the packaging used by the Customer.

10. INDEMNITY

a. Customer will indemnify and save BigSteelBox Corporation harmless from any loss, damage, cost and expense, including legal fees, and disbursements, resulting from the movie, and from all fines, forfeitures, seizures, penalties and liabilities that may arise from any infringement or violation of any law or regulation by Customer, its employees, contractors, or others for whom Customer is responsible at law.

27. Before entering into the Buddle Agreement, Buddle had a reasonable opportunity to review and consider the Buddle Agreement, and to seek legal advice respecting the same.
28. The terms of the Buddle Agreement were negotiable.
29. The terms of the Buddle Agreement, including the Exclusion Clauses as defined at part 1, paragraph 23 of the Further Amended Notice of Civil Claim, were brought to Buddle's attention.
30. Buddle represented to the BigSteelBox, as part of the Buddle Representations, that he understood that BigSteelBox would not insure contents within a Container, BigSteelBox would not be responsible for loss or damage to contents within a Container, and that Buddle was responsible to acquire contents insurance for items he chose to store.

Representations Made by BigSteelBox

31. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to gaskets on the Containers, wrote: "Located on both sides of the door. Creates a tight seal on the doors. No leaking, even with heavy rain or melting snow."
32. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to the Containers, wrote: "... are actually shipping containers, so they're made from 8 - guage corten steel and built to stand up to the harshest elements. They are wind, water and rodent-proof, so your things will stay safe and dry inside all year round."
33. Before the 2021 BC Floods, BigSteelBox, on its website, in reference to the Containers, wrote: "Our containers are wind, water and rodent-proof. They're

made of 8-gauge steel, so they won't bend or shift from the weight of your contents."

34. The representations described above (collectively referred to as the "**Container Representations**") were accurate and not misleading.
35. BigSteelBox denies making false or misleading representations, as alleged.
36. Alternatively, if the Container Representations were inaccurate or misleading, the Container Representations were made in accordance with applicable standard of care.
37. Alternatively, if the Container Representations were inaccurate or misleading, the Plaintiffs did not rely on the Container Representations.
38. Alternatively, if the Plaintiffs relied on the Container Representations, then such reliance was not reasonable.

The 2021 BC Floods

39. Between November 14, 2021, and December 17, 2021, heavy rainfall resulted in flooding of the Abbotsford Site Property.
40. Depending on their location at the Abbotsford Site Property, certain Containers were submerged under water, while other Containers were not submerged.
41. Entire areas adjacent to the Abbotsford Site Property, for kilometres in distance, were also submerged.
42. The flooding of the Abbotsford Site Property was an "act of god" (as that term is understood in the legal sense) and was an unforeseeable event.
43. The Abbotsford Site Property was not situated on a known flood plain.

Division 3 – Additional Facts

44. ~~There are no additional facts.~~ The Abbotsford Chamber of Commerce, the Abbotsford Community Foundation and the University of the Fraser Valley established the Abbotsford Disaster Relief Fund to assist people impacted by the subject flooding.
45. Funding was established through the Abbotsford Chamber of Commerce for customers of commercial storage facilities who suffered flood-related losses.
46. Applications for funding were open from February 15, 2022 to March 15, 2022. Eligible applications received a minimum of \$2,500.

47. The plaintiffs obtained funding pursuant to the above and as such did not sustain damage, as alleged, or at all; or were recompensed for their alleged loss and damage.
48. Such further and other additional facts as counsel may advise.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in none of the paragraphs of Part 2 of the Further Amended Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in all paragraphs of Part 2 of the Further Amended Notice of Civil Claim.
3. The Defendant takes no position on the granting of the relief sought in none of the paragraphs of Part 2 of the Further Amended Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The law of contract, including the law of insurance.
2. The law of tort.
3. The law of equity, including unjust enrichment, restitution, disgorgement.
4. The legislation cited within the Further Amended Notice of Civil Claim.
5. The law of damages and recovery.
6. The inherent and general jurisdictions of this Honourable Court.
7. Such further other legal bases as counsel may advise and this court may permit.
8. With respect to the specific legal bases included within the Further Amended Notice of Civil Claim (where the term, "Rental Agreement", is meant to refer to the "Heimburger Agreement" and the "Buddle Agreement". The Heimberger Agreement and the Buddle Agreement are defined herein as the "Rental Agreements"):
 - a. The Rental Agreements and/or Exclusion Clauses were not unconscionable bargains and were not contrary to public policy;
 - b. The Rental Agreements was were not unreasonable;
 - c. The Plaintiffs were was capable of protecting his their interests at the time of contractual formation, and, alternatively, if the Plaintiffs were was unable to protect his their interests, BigSteelBox did not gain any undue advantage or benefit that was secured as a result;

- d. The Rental Agreements was were not an improvident bargain;
- e. The Plaintiffs understood and appreciated the meaning and significance of the Exclusion Clauses;
- f. The terms of the Rental Agreements were fair;
- g. As result of the Exclusion Clauses, the ~~Heimburger~~ Rental Agreements, ~~and the Heimburger Representations and Buddle Representations~~, the Plaintiffs are ~~is~~ foreclosed from claiming for loss or damage as against BigSteelBox pursuant to section 36 of the *Competition Act* or section 171 of the *BPCPA*, and such foreclosure is not prevented by the either the *Competition Act* or the *BPCPA*;
- h. The Exclusion Clauses, ~~Heimburger~~ Rental Agreements, ~~and the Heimburger Representations and Buddle Representations~~ are not affected by the *BPCPA*;
- i. It was not an implied term of the ~~Heimburger~~ Rental Agreements, that the Containers were waterproof, watertight, and capable of withstanding heavy rainfall without leakage;
- j. It was not an implied term of the ~~Heimburger~~ Rental Agreements that the Containers be stored in a location that did not pose undue risk of property damage;
- k. BigSteelBox performed its primary obligations under the ~~Heimburger~~ Rental Agreements;
- l. BigSteelBox did not fundamentally breach the ~~Heimburger~~ Rental Agreements;
- m. Representations made by BigSteelBox did not form collateral contracts or warranties;
- n. BigSteelBox was not in a proximate and special relationship with the Plaintiffs;
- o. BigSteelBox did not owe a duty of care to the Plaintiffs, or, alternatively, did not breach a duty of care;
- p. BigSteelBox made accurate representations in relation to the Containers;
- q. The Abbotsford Property Site was not situated on a known flood plain, or alternatively, BigSteelBox did not know that the Abbotsford Property Site was located on a known flood plain, and ought not to have known such information;

- r. BigSteelBox took adequate steps to ensure the accuracy of representations which it made with respect to the Containers;
 - s. BigSteelBox's representations with respect to the Containers were not material to the Plaintiff's' decision to enter into the Heimbürger Rental Agreements, and there was no reliance by the Plaintiffs upon same;
 - t. BigSteelBox was not negligent in any manner and satisfied any applicable standard of care;
 - u. BigSteelBox denies that it engaged in any tortious behavior, and, alternatively, if it is found that BigSteelBox engaged in any tortious behavior, disgorgement of any benefit received by BigSteelBox is inappropriate;
 - v. BigSteelBox denies that it was unjustly enriched;
 - w. BigSteelBox denies that the Exclusion Clauses were representations and, alternatively, that such representations constituted a deceptive act or practice;
 - x. BigSteelBox denies that it committed any behavior which would be considered a deceptive act or practice, pursuant to the *BPCPA*;
 - y. BigSteelBox denies that it committed any behaviour which would be considered an unconscionable act or practice under the *BPCPA*;
 - z. BigSteelBox has not breached any provisions of the *BPCPA*;
 - aa. BigSteelBox has not breached any section of the *Competition Act*;
 - bb. BigSteelBox's conduct has never been high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and in contumelious disregard of the Plaintiff's' rights; and
 - cc. BigSteelBox is not liable to pay aggravated or punitive damages
9. BigSteelBox denies each and every allegation and cause of action pleaded in the Further Amended Notice of Civil Claim and puts the Plaintiffs to the strict proof thereof.
10. BigSteelBox denies that this action meets the requirements for certification as a class proceeding pursuant to s. 4(1)(a) of the *Class Proceeding Act*, RSBC 1996, c. 50.

Rental Agreements and/or Exclusion Causes are Valid and not Unconscionable

11. The Rental Agreements and Exclusion Clauses were not unconscionable bargains and were not contrary to public policy.
12. The Rental Agreements were not unreasonable.
13. The Plaintiffs were capable of protecting their respective interests at the time of contract formation, and, alternatively, if the Plaintiffs were unable to protect their respective interests, BigSteelBox did not gain any undue advantage or benefit that was secured as a result.
14. The Rental Agreements were not improvident bargains.
15. The Plaintiffs understood and appreciated the meaning and significance of the Exclusion Clauses.
16. The terms of the Rental Agreements were fair.

No Breach of Contract

17. BigSteelBox performed its obligations under the Rental Agreements.
18. It was not an implied term of the Rental Agreements that the Containers were waterproof, watertight, and capable of withstanding heavy rainfall without leakage.
19. It was not an implied term of the Rental Agreements that the Containers be stored in a location that did not pose undue risk of property damage.
20. Representations made by BigSteelBox did not form collateral contracts or warranties.
21. BigSteelBox did not fundamentally breach the Rental Agreements.

No Negligence or Gross Negligence, Negligent Misrepresentation or Duty to Warn

22. The Plaintiffs have no cause of action in negligence against BigSteelBox.
23. BigSteelBox was not in a proximate and special relationship with the Plaintiffs.
24. BigSteelBox did not owe a duty of care to the Plaintiffs, or, alternatively, did not breach a duty of care.
25. BigSteelBox was not negligent in any manner and satisfied any applicable standard of care.
26. BigSteelBox made accurate representations in relation to the Containers.

27. BigSteelBox took reasonable steps to ensure the accuracy of representations which it made with respect to the Containers.
28. BigSteelBox's representations with respect to the Containers were not material to the Plaintiffs' decision to enter into the Rental Agreements, and there was no reliance by the Plaintiffs upon same.
29. BigSteelBox denies that any alleged breach (which is expressly denied) caused foreseeable harm to the Plaintiffs.
30. Further, or in the alternative, any alleged injury, loss, damage or expense suffered by the Plaintiffs was not reasonably foreseeable or was too remote in fact and in law and BigSteelBox is not liable in law to the Plaintiffs.
31. If the Plaintiffs have suffered any injury, loss, damage or expense, which is not admitted but expressly denied, the Plaintiffs failed to take reasonable steps to mitigate such loss, damage or expense and are precluded from recovering the same from BigSteelBox.
32. The Plaintiffs are not entitled to claim in damages for any alleged losses for which they have already received compensation (e.g. through municipal, provincial or federal disaster relief efforts or financial assistance as this would result in double recovery.
33. Any financial assistance provided to the Plaintiffs under the Abbotsford Disaster Relief Fund or any other program to provide financial relief to person suffering a loss as a result of the 2021 BC Flood, must be set off against damages which may be awarded to the Plaintiffs in this action (none of which are admitted), provided the assistance was paid in relation to a loss which is also a basis of the damages award, if any.

No Unjust Enrichment or Waiver of Tort

34. BigSteelBox did not make any misrepresentations, nor did it engage in any unlawful conduct.
35. BigSteelBox denies that it engaged in any tortious behavior, and, alternatively, if it is found that BigSteelBox engaged in any tortious behavior, disgorgement of any benefit received by BigSteelBox is inappropriate.
36. Canadian courts do not accept the concept of "waiver of tort".
37. BigSteelBox denies that it was unjustly enriched.
38. The Plaintiffs have failed to allege any or sufficient material facts to demonstrate either a correspondence between any profits earned by BigSteelBox and any loss or deprivation by the Plaintiffs; or lack of a juristic reason for BigSteelBox's profits.

No Breach of the BPCPA

39. BigSteelBox has not breached the *BPCPA*.
40. The Exclusion Clauses, the Rental Agreements, the Heimburger Representations, and the Buddle Representations, are not affected by the *BPCPA*.
41. BigSteelBox denies that the Exclusion Clauses were representations and, alternatively, that such representations constituted a deceptive act or practice.
42. BigSteelBox denies that it engaged in any conduct that qualifies as a deceptive act or practice, pursuant to the *BPCPA*.
43. BigSteelBox denies that it engaged in any conduct that qualifies as an unconscionable act or practice under the *BPCPA*.
44. As result of the Exclusion Clauses, the Rental Agreements, the Heimburger Representations, and the Buddle Representations, the Plaintiffs are foreclosed from claiming for loss or damage as against BigSteelBox pursuant to section 171 of the *BPCPA*, and such foreclosure is not prevented by the *BPCPA*.

No Breach of the Competition Act

45. BigSteelBox did not breach s. 52 of the *Competition Act*, and therefore cannot be liable under s.36 of the *Competition Act*.
46. The Plaintiffs' claims under the *Competition Act* are all predicated on alleged misrepresentations made by BigSteelBox willfully or recklessly.
47. BigSteelBox it did not make any or all of the pleaded misrepresentations.
48. BigSteelBox did not make any or all of the pleaded misrepresentation knowingly or recklessly.
49. If BigSteelBox did make any of the pleaded misrepresentations, none or not all were:
 - a. Made for the purpose of promoting any business interest;
 - b. Made to the public; or
 - c. False and misleading in a material respect.
50. BigSteelBox has not breached any section of the *Competition Act*.
51. Accordingly, no liability is established, and no damages or investigation costs are available from BigSteelBox under the *Competition Act*.

52. As result of the Exclusion Clauses, the Rental Agreements, the Heimburger Representations, and the Buddle Representations, the Plaintiffs are foreclosed from claiming for loss or damage as against BigSteelBox pursuant to section 36 of the Competition Act, and such foreclosure is not prevented by the Competition Act.

No Aggravated or Punitive Damages

53. BigSteelBox's conduct has never been high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, willful and in contemptuous disregard of the Plaintiffs' rights.
54. BigSteelBox is not liable to pay aggravated or punitive damages.
55. Damages, if any, are confined to those specified in the Rental Agreements.

Statutes

56. BigSteelBox pleads and relies upon the provisions of the following statutes and regulations thereto:
- a. Business Practices and Consumer Protection Act, SBC 2004, c. 2;
 - b. Class Proceedings Act, RSBC 1996, c. 50 ;
 - c. Competition Act, RSC 1985, c. 19;
 - d. Court Order Interest Act, RSBC, c. 79;
 - e. Occupiers Liability Act, RSBC 1996, c 337
 - f. Negligence Act, RSBC 1996, c 333, as amended;
 - g. Sale of Goods Act, RSBC 1996, c 410;
 - h. Warehouse Receipt Act, RSBC 1996, c 481;
 - i. The inherent and general jurisdictions of this Honourable Court.
 - j. Such further other statutes and regulations as counsel may advise and this court may permit.

Defendant's address for service:

Branch MacMaster LLP
1410 - 777 Hornby Street
Vancouver, BC V6Z 1S4
Telephone: (604) 654-2999
(File No.: B47-001)

Fax number address for service (if any): (604) 684-3429

E-mail address for service (if any): service@branmac.com

~~Nixon Wenger LLP~~

~~Barristers and Solicitors~~

~~301, 2706 30th Avenue~~

~~Vernon, British Columbia, V1T 2B6~~

~~Fax number address for service: (250) 542-7273~~

~~Email address for service: N/A~~

DATED this 23rd day of November, 2022.

Amended: January 15, 2025



CHRISTOPHER T. HART

CHRISTOPHER RHONE

Lawyer for the Defendant

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 provide 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.