

COURT FILE NO.

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFF ZACHARY MENZEL and LIANE MENZEL

DEFENDANTS KIMBERLEY GENERAL PARTNER LTD. operating as KIMBERLEY DEVELOPMENTS LP  
operating as KIMBERLEY HOMES, SUMMERS HOLDINGS LTD. operating as  
SUMMERS DRILLING, SUMMERS DRILLING INC. operating as SUMMERS DRILLING,  
and ABC CORPORATION.

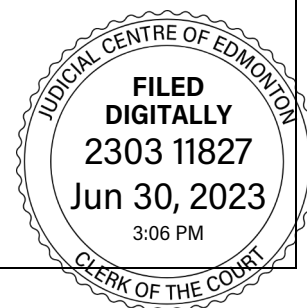
DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

VERHAEGHE LAW OFFICE  
#203 Mayfield Business Centre  
10525 170 Street  
Edmonton, AB T5P 4W2

Lawyer: Bradley J. Smith  
Telephone: 587 404 1204  
Fax: 587 404 1204  
Email: bradley@freedomlaw.ca  
File No.: 23-08-018

Clerk's Stamp

**NOTICE TO DEFENDANTS**

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

**Statement of facts relied on:**

1. The Plaintiffs ZACHARY MENZEL and LIANE MENZEL are married and both reside in Sturgeon County, in the Province of Alberta.
2. The Defendant, KIMBERLEY GENERAL PARTNER LTD. operating as KIMBERLEY DEVELOPMENTS LP operating as KIMBERLEY HOMES, ("**Kimberley Homes**") is an Alberta company registered pursuant to the laws of Alberta that, among other activities, acts as a general contractor in the construction of residential properties.
3. The Defendant, SUMMERS HOLDINGS LTD. is an Alberta company registered pursuant to the laws of Alberta that, among other activities, conducts business drilling water wells on residential properties.

4. The Defendant, SUMMERS DRILLING INC., is an Alberta company registered pursuant to the laws of Alberta that, among other activities, conducts business drilling water wells on residential properties.
5. The Plaintiffs state that, Summer Holdings Ltd. and Summers Drilling Inc. (**collectively, "Summers Drilling"**) are, for all intents and purposes, the same company.
6. The Defendant, ABC Corporation, is a corporation or similar entity with a fictitious name that is used to describe a Defendant or Defendants, the identity of which is unknown to the Plaintiffs. The fictitious name is used to describe an individual, individuals, a partnership, corporation, sole proprietorship or other legal entity or other entities. Furthermore, the fictitious name includes reference to a business itself and its employees and representatives.
7. The Plaintiffs are currently the registered owners as joint tenants of the residential property in Sturgeon County, Alberta, municipally described as 55231 Range Road 255 and legally described as:  
  
LOT 1  
PLAN 9925519  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
  
(**the "Property"**).
8. The Property is currently a 2.47 acre lot with a newly constructed house on it.

#### Contract

9. On or around February 21, 2021, the Plaintiffs entered into an agreement (**the "Contract"**) with Kimberley Homes for the construction a new house on the Property.
10. The Contract includes the following terms and conditions, either express or implied:
  - (a) Kimberley Homes shall build a 3216 square foot house on the Property (**the "Project"**).
  - (b) A total contract price of \$949,000.00 including GST (**the "Contract Price"**) shall be paid by the Plaintiffs to Kimberley Homes.
  - (c) The Contract Price includes a "services allowance" of \$100,000.00 for the installation of a gravel driveway and services, including power to the Property and a water well;
  - (d) Kimberley Homes would perform all work on the Project in a good and workmanlike manner;
  - (e) Kimberley Homes would not cause damage to the Property;
  - (f) The Property could not be possessed or occupied by the Plaintiffs until the full Contract Price was paid to Kimberley Homes at the conclusion of the Project; and,
  - (g) The Plaintiffs were not allowed to access the Property while the Project was ongoing unless the access was pre-approved by Kimberley Homes. The Plaintiffs were limited to 4 site inspections during the construction of the Project.

11. At all material times, Kimberley Homes was occupying and in control of the Property, as set out by the Contract. Furthermore, at the material times, the Plaintiffs did not occupy the Property nor were they in control of the Property.
12. On or around May 5, 2021, Kimberley Homes subcontracted Summers Drilling to drill the water well on the Property as part of the Project.
13. The Plaintiffs did not have any direct contract with Summers Drilling, nor were they in any direct contractual relationship with Summers Drilling.
14. On or around May 7, 2021, the Plaintiffs signed a Construction Change Order with Kimberley Homes for the drilling of a water well on the Property.

#### Performance

15. On or around August 2021, Kimberley Homes commenced work on the Project.
16. Pursuant to the Contract, the Plaintiffs provided two deposits to Kimberley Homes:
  - (a) \$50,000.00 on February 27, 2021; and,
  - (b) \$50,000.00 on September 15, 2021.
17. Further to the Contract, the Plaintiffs completed their draw mortgage through Alberta Treasury Branch. On October 29<sup>th</sup>, 2021, the first draw was taken by Kimberley Homes for \$135,190.00. Kimberley Homes then continued to take draws until the full amount of the Contract Price was paid to Kimberley Homes.

#### The Incident

18. On or around December 15, 2021, at the direction of Kimberley Homes, Summers Drilling attended the Property to drill a water well.
19. While drilling at a depth of approximately 300 ft, Summers Drilling hit a pocket of natural gas which ignited. This started a serious and extremely dangerous fire on the Property (**the "Incident"**).
20. Fire crews from Sturgeon County Emergency Services (**the "Fire Crew"**) responded to the Incident and brought much of the fire under control; however, the Fire Crew was unable to control the gas well fire due to the ongoing flow of natural gas. Therefore, the Fire Crew hired Capstone Oilfield Services Ltd. (**"Capstone"**), who are specialists in the areas of oil and gas well fires, to assist them.
21. Between December 16 and December 17, 2023, Capstone and the Fire Crew took steps to mitigate and extinguish the fire. On December 17, 2023, the fire was successfully extinguished.
22. On February 28, 2022, the Plaintiffs received an invoice from Sturgeon County Emergency Services for \$206,087.45 plus GST (**the "Invoice"**) for reimbursement of firefighting costs related to the Incident.
23. On or around July 27, 2022, Kimberley Homes completed the Project. At that time, the Plaintiffs moved into and otherwise gained control of the Property.

### Negligence

24. Kimberley Homes subcontracted Summers Drilling to drill the water well on the Property. At all material times, Kimberley Homes is responsible for, and vicariously liable, all work performed by Summers Drilling on the Project.
25. The Plaintiffs state that at all material times, the Defendants owed the Plaintiffs a duty of care.
26. The Plaintiffs state that the Defendants breached their duty of care in the following ways, among others:
  - (a) Failing to ensure that the well location was a safe spot to drill on the Property and including by ensuring the drill site was free from natural gas pockets or other hazards;
  - (b) Failing to have an Emergency Response Plan in place for dealing with situations like the Incident; and,
  - (c) Otherwise failing to take reasonable care to avoid causing damage on the Property.

### Breach of Contract

27. Further, or in the alternative, the Plaintiffs state that the acts and omissions that constitute negligence on the part of the Defendants also constitute a breach of the Contract.

### Damages

28. Due to the Defendants' negligence and breach of Contract, the Plaintiffs incurred substantial damages including financial losses. As a result, the Plaintiffs have incurred an additional \$216,391.83 in costs which were not contemplated at the time the Contract was formed.

### **Remedy sought:**

29. Judgment for damages in the amount of \$216,391.83 or such other amount as may be proven at the Trial of this Action, representing the amount of the Invoice;
30. Interest pursuant to the *Judgment Interest Act*;
31. Costs; and,
32. Such further and other relief as the Court may award.

**NOTICE TO THE DEFENDANTS**

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta;

1 month if you are served outside Alberta but in Canada; or

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of King's Bench at Edmonton, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiffs' address for service.

**WARNING**

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a Court may give a judgment to the Plaintiffs against you.

Clerk's Stamp

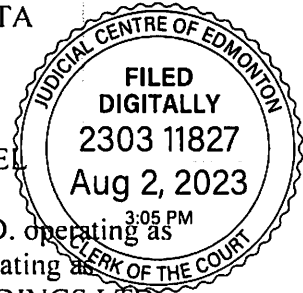
COURT FILE NO.: 2303 11827

COURT: COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

PLAINTIFFS: ZACHARY MENZEL and LIANE MENZEL

DEFENDANTS: KIMBERLEY GENERAL PARTNER LTD. operating as  
KIMBERLEY DEVELOPMENTS LP operating as  
KIMBERLEY HOMES, SUMMERS HOLDINGS LTD.  
operating as SUMMERS DRILLING, SUMMERS  
DRILLING INC. operating as SUMMERS DRILLING, and  
ABC CORPORATION



DOCUMENT STATEMENT OF DEFENCE

PARTY FILING THIS DOCUMENT: KIMBERLEY GENERAL PARTNER LTD., operating as  
KIMBERLEY DEVELOPMENTS LP, operating as  
KIMBERLEY HOMES

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: **CHOMICKI BARIL MAH LLP**  
**Attention: Galan T. Lund**  
1201, 10088 102 Ave  
Edmonton, AB T5J 4K2  
Phone: (780) 702-2313  
Fax: (780) 420-1763  
File: 29792-0078

**Statement of facts relied on:**

1. Except as hereinafter expressly admitted, the Defendant, KIMBERLEY GENERAL PARTNER LTD., operating as KIMBERLEY DEVELOPMENT LP, operating as KIMBERLEY HOMES ("Kimberley Homes"), denies each and every allegation set forth in the Statement of Claim.
2. Kimberley Homes admits paragraphs 1, 2, 3, 4, 7 and 9 of the Statement of Claim.
3. On May 3, 2021, Kimberley Homes, acting for and on behalf of the Plaintiffs, obtained a quote from Summers Drilling Inc. (the "Summers Quote"), for drilling and casing a water well on the Property.
4. The Plaintiffs accepted the Summers Quote. On May 7, 2021, the Plaintiff, Zachary Menzel, entered into a contract in writing with Summers Drilling, for drilling and casing of

a water well on the Property (the “Drilling Contract”), and the Plaintiffs authorized Kimberley Homes to engage, retain or hire Summers Drilling, as an independent contractor or subcontractor, to complete that work.

5. To the knowledge of Kimberley Homes, Summers Drilling was an established drilling company, with expertise and experience drilling water wells in Sturgeon County.
6. Pursuant to the Drilling Contract or subcontract with Kimberley Homes, Summers Drilling supplied all personnel and equipment involved in the drilling of the water well, including but not limited to the use of a Versa Drill V100X Drill Rig #11 (the “Drill Rig”).
7. Kimberley Homes admits that on December 15, 2021, Summers Drilling attended the Property to drill and case a water well, at a location on the Property agreed to by the Plaintiffs.
8. Prior to commencing work on December 15, 2021, Summers Drilling retained Apex Utilities Inc. to locate and identify all underground utilities and facilities within the Property.
9. Kimberley Homes admits that on December 15, 2021, while Summers Drilling was operating the Drill Rig, it encountered a pocket of methane gas and a fire ensued.
10. At no time was Kimberly Homes aware that ground beneath the Property contained a pocket of methane gas or that there was any known risk or danger of encountering a pocket of methane gas.

**Any matters that defeat the claim of the Plaintiff:**

11. Kimberley Homes denies that it was negligent or breached any duty of care owed to the Plaintiffs, as alleged or at all.
12. Kimberley Homes denies that it breached the Contract with the Plaintiffs, as alleged or at all.
13. Summers Drilling is a separate and distinct corporate entity from Kimberley Homes and at all times, Summer Drilling was operating under a Drilling Contract with the Plaintiffs or as an independent contractor or subcontractor of Kimberley Homes.
14. Kimberley Homes denies that it is vicariously liable for Summers Drilling, as alleged or at all.
15. Kimberley Homes denies that it was an occupier of the Property, as alleged or at all.
16. Kimberley Homes denies that the Property sustained any physical loss or damage as a result of the Fire.

17. Kimberley Homes denies that the Plaintiff suffered any loss or damage, as alleged or at all.
18. If the Plaintiffs did suffer loss or damage, which is denied, then any such loss or damage was unforeseeable, and was not caused by negligence or breach of contract.

**Remedy sought:**

19. Kimberley Homes prays that this action is dismissed with costs.



COURT FILE NUMBER      2303 11827

COURT                      COURT OF KING'S BENCH OF  
ALBERTA

JUDICIAL CENTRE        EDMONTON

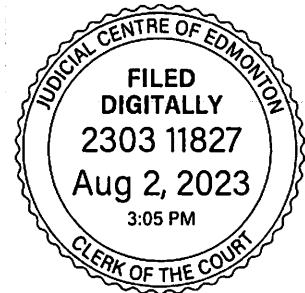
PLAINTIFFS                ZACHARY MENZEL and LIANE  
MENZEL

DEFENDANTS              KIMBERLEY GENERAL PARTNER  
LTD. operating as KIMBERLEY  
DEVELOPMENTS LP operating as  
KIMBERLEY HOMES, SUMMERS  
HOLDINGS LTD. operating as  
SUMMERS DRILLING, SUMMERS  
DRILLING INC. operating as SUMMERS  
DRILLING, and ABC CORPORATION

DOCUMENT                NOTICE OF CLAIM AGAINST CO-  
DEFENDANT

ADDRESS FOR SERVICE  
AND  
CONTACT INFORMATION  
OF  
PARTY FILING THIS  
DOCUMENT                CHOMICKI BARIL MAH LLP  
Attention: Galan T. Lund  
1201, 10088 102 Ave  
Edmonton, AB T5J 4K2  
Phone: (780) 702-2313  
Fax: (780) 420-1763  
File: 29792-0078

Clerk's Stamp



**NOTICE TO THE CO-DEFENDANT, SUMMERS HOLDINGS LTD. operating as SUMMERS DRILLING, SUMMERS DRILLING INC. operating as SUMMERS DRILLING**

This claim for contribution or indemnity, or both, is made against you.

Go to the end of this document to see what, if anything, you must do.

**The Defendant, KIMBERLEY GENERAL PARTNER LTD. operating as KIMBERLEY DEVELOPMENTS LP operating as KIMBERLEY HOMES, claims contribution or indemnity, or both, against you under the *Contributory Negligence Act*.**

**NOTICE TO THE CO-DEFENDANT(S)**

You need not file a pleading in respect of your claim or defence under the *Tort-feasors Act* or the *Contributory Negligence Act* unless the Court otherwise orders.

The defendant also need not file and serve a third party claim on you.

**NOTE**

This claim against you under the *Tort-feasors Act* or *Contributory Negligence Act* must be determined at the trial of the plaintiff's claim against the defendants, or if there is no trial, as directed by the Court (Rule 3.43(3)).