

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

NO : 500-06-001071-204

EVANGELINA MORFONIOS, personally and in her quality as heir and liquidator to **THE ESTATE OF THE LATE OLGA SARLIS**, [REDACTED]

Petitioner

v.

VIGI SANTÉ LTÉE, a legal person, duly constituted according to law, with its head office located at 197 Thornhill Street, in the city of Dollard-des-Ormeaux, district of Montreal, province of Quebec, H9B 3H8;

Respondent

<p>APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE (Articles 574 et seq. C.C.P.)</p>
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**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTRÉAL, PETITIONER
RESPECTFULLY SUBMITS THE FOLLOWING:**

1. Petitioner wishes to exercise a class action against the Respondent on behalf of the physical persons who are part of the following Group:

“Every person who resided at CHSLD Vigi Mont-Royal at any time since March 13th, 2020, their spouse, their family caregiver(s), their children and grandchildren, their heirs and successors.”

Hereafter designated as “the Group”.

A. THE PARTIES

2. The Petitioner, Ms. Evangelina Morfonios, is the daughter, heir and liquidator of the estate of the late Olga Sarlis, born on February 24th, 1929 and deceased on April 28th, 2020, as appears from the will of Ms. Sarlis filed as **Exhibit P-1**;
3. The Respondent, Vigi Santé Inc., is a private institution under agreement that owns fifteen (15) Residential and Long-Term Care Centres (CHSLD), including CHSLD Vigi Mont-Royal located at 275, Brittany Avenue, in the Town of Mount Royal, province of Quebec, H3P 3C2, as appears from an extract of the *Registre des entreprises du Québec* filed as **Exhibit P-2**;
4. From March 2016 until April 23rd, 2020, Ms. Sarlis resided at CHSLD Vigi Mont-Royal;
5. As a Residential and Long-Term Care Centre, CHSLD Vigi Mont-Royal has the obligation, under article 83 of the *Act Respecting Health Services and Social Services* (hereafter referred to as LSSSS), “*to offer, on a temporary or permanent basis, an alternative environment, lodging, assistance, support and supervision services as well as rehabilitation, psychosocial and nursing care and pharmaceutical and medical services to adults who, by reason of loss of functional or psychosocial autonomy can no longer live in their natural environment, despite the support of their families and friends*”;
6. As an institution under LSSSS, Respondent has, by virtue of article 100 of LSSSS, the mission to “*ensure the provision of safe, continuous and accessible quality health or social services which respect the rights and spiritual needs of individuals and which aim at reducing or solving health and welfare problems and responding to the needs of the various population groups. To that end, institutions must manage their human, material, information, technological and financial resources effectively and efficiently and cooperate with other key players, including community organizations, to act on health and social determinants and improve the supply of services to the public. In addition, a local authority must elicit and facilitate such cooperation*”;
7. The residents of CHSLD Vigi Mont-Royal have the right, under LSSSS, to receive, with continuity and in a personalized and safe manner, health services and social services which are scientifically, humanly and socially appropriate;
8. The residents of CHSLD Vigi Mont-Royal also have the right, under the *Charter of Human Rights and Freedoms*, to their life, personal security, inviolability and freedom;
9. Despite the preceding, the residents of CHSLD Vigi Mont-Royal were treated in a faulty, negligent and unsafe manner, as will be further demonstrated in this

Application;

B. THE FACTS

1) Evolution of the COVID-19 pandemic

10. On December 30th, 2019, municipal authorities in the city of Wuhan, China, revealed the existence of pneumonia of unknown origin;
11. On January 2nd, 2020, the virus was isolated in a laboratory and receives the designation 2019-nCov;
12. On January 10th, 2020, DNA sequencing of the virus was publicly shared by a team of Chinese researchers;
13. On January 20th, 2020, the National Health Commission of China confirmed that the new coronavirus is transmissible from human to human;
14. On January 22nd, 2020, the World Health Organization indicated for the first time that preliminary data suggested that older people with co-morbidities are the most vulnerable population to the new coronavirus;
15. On January 23rd, 2020, the city of Wuhan was quarantined;
16. On January 26th, 2020, the first suspected case of the new coronavirus was identified in Canada;
17. On February 4th, 2020, the National Health Commission of China reported that 80% of deaths recorded in China were people 60 years of age or older, suggesting that the elderly are particularly vulnerable to the new coronavirus;
18. On February 11th, 2020, the World Health Organization gave the new coronavirus disease the name COVID-19;
19. On February 28th, 2020, a first suspected case of COVID-19 was announced in Quebec;
20. On March 11th, 2020, the World Health Organization declared that the spread of COVID-19 represents a pandemic;

2) Management of the COVID-19 pandemic in Quebec

21. On March 9th, 2020, the Government of Quebec opened three COVID-19 screening clinics;

22. On March 12th, 2020, the Prime Minister of Quebec, Mr. François Legault, held his first daily press conference in connection with the COVID-19 crisis. On this occasion, he stated: *“Je demande évidemment aux Québécois de porter une attention spéciale aux personnes vulnérables, en particulier nos aînés. Que nos aînés habitent dans leur maison ou dans toutes sortes de centres d'hébergement, si vous revenez de l'étranger ou si vous avez des symptômes comparables aux symptômes de la grippe, n'allez pas visiter les aînés. C'est important, ce sont les personnes qui sont les plus à risque”*;
23. On March 13th, 2020, the Quebec government adopted a first public health emergency decree under section 118 of the *Public Health Act*. This decree was subsequently renewed on eight occasions at the time of this Application;
24. On March 14th, 2020, the Quebec government announced a ban on all visits to CHSLDs, on the basis these facilities were particularly vulnerable to COVID-19 outbreaks due to the fragile health conditions of their elderly residents;
25. On March 16th, 2020, the Minister of Health and Social Services published directives indicating measures to be undertaken in order to prevent the spread of COVID-19 in CHSLDs, filed as **Exhibit P-3**, including:
- a. The interdiction of regular visits except for humanitarian reasons, including end-of-life situations;
 - b. The interdiction for residents to go outside CHSLDs due to the risk they pose of bringing the virus back when they return;
 - c. The installation of hygiene stations at the entrances of CHSLDs, and the entrances of each unit and in common rooms;
 - d. The implementation, as soon as an infection is confirmed, of infection prevention and control measures in accordance with the best practices recommended by the infection prevention and control teams of the CISSS or CIUSSS;
 - e. The observance of basic measures in infection prevention and control by everyone present in CHSLDs;
 - f. The mandatory isolation of employees coming back from abroad for 14 days;

- g. The immediate withdrawal from the working environment of any employee showing symptoms of cough or fever;
- 26.** On March 21st, 2020, the Minister of Health and Social Services updated the directives referenced in the previous paragraph, filed as **Exhibit P-4**, adding specific directives aimed at managing a COVID-19 outbreak in CHSLDs, including:
- a. Keeping patients in CHSLDs during the outbreak and implementing measures aimed at preventing the transmission of the disease to other residents and personnel members;
 - b. Establishing a specific confinement area in each CHSLD and planning a dedicated team trained in the best practices in infection prevention and control, to work exclusively with the clientele transferred in the confinement area, and ensure the availability of personal protective equipment in said areas;
 - c. Allocating an entire floor or unit as a confinement area or, if this is not possible, placing a physical barrier delimiting the confinement area and maintaining spatial separation of at least 2 meters between residents;
- 27.** On March 24th, 2020, the Regional Public Health Director of Montreal, Dr. Mylène Drouin, sent an internal note to health care workers confirming that sustained community transmission in the region of Montreal was now present;
- 28.** On March 25th, 2020, the Minister of Health and Social Services updated the directives referenced in paragraph 26, filed as **Exhibit P-5**, with specific directives concerning the separation of patients with suspected or confirmed cases, including:
- a. Establishing distinct zones:
 - i. Cold zone for patients without COVID-19;
 - ii. Hot zone for patients with suspected cases, under investigation or with confirmed cases;
 - b. Adopting measures to prevent the contamination of personnel members and patients in the cold zone;
 - c. Ensuring the personnel dedicated to the hot zone changes clothes when leaving the hot zone;

- d. Adopting a written procedure regarding the modalities of exit from the hot zone to avoid contaminating the environment of CHSLDs;
 - e. Avoiding placing patients under investigation in the same room as patients confirmed to be COVID-19 positive;
- 29.** On April 3rd, 2020, the *Institut national de santé publique du Québec* (INSPQ) published a document titled *Port du masque de procédure en milieux de soins lors d'une transmission communautaire soutenue*, filed as **Exhibit P-6**, outlining protection measures to implement in regions where sustained community transmission was documented, including: “*That all healthcare workers (hospitals, medical clinics, CHSLDs, home care) who provide health care services and who are less than 2 metres from a patient continuously wear a procedure mask*”;
- 30.** On April 4th, 2020, during his daily press conference, the National Public Health Director of Quebec, Dr. Horacio Arruda, confirmed that there was sustained community transmission in all regions of the province of Quebec;
- 31.** On April 11th, 2020, the Minister of Health and Social Services updated the directives referenced in paragraph 28, filed as **Exhibit P-7**, including:
- a. Ensuring the support of infection prevention and control teams in each CHSLD that has suspected cases, cases under investigation or confirmed cases;
 - b. Systematically monitoring employees’ symptoms before each shift;
 - c. Taking necessary means to ensure that infection prevention and control means are respected at all times by everyone present in the living environment;
 - d. Providing training to all personnel as soon as possible regarding infection prevention and control measures, including handwashing and the use of personal protective equipment;

3) Management of the COVID-19 pandemic at CHSLD Vigi Mont-Royal

- 32.** On April 13th, 2020, the Minister of Health and Social Services published for the first time a list of residences for elderly and vulnerable patients with confirmed COVID-19 cases, filed as **Exhibit P-8**, revealing that CHSLD Vigi Mont-Royal (hereafter “Vigi Mont-Royal”) had an outbreak with 40 confirmed cases, or approximately 18% of its 223 residents;

33. The Petitioner and other family members had not been informed of the situation by the Respondent or its personnel prior to the publication of this list;
34. In the following days, the number of confirmed cases in residents and members of the personnel increased dramatically, creating a situation of crisis and a severe shortage of personnel, and requiring the dispatching of emergency personnel from the CIUSSS du Centre-Ouest-de-l'Île-de-Montréal and other institutions;
35. On April 17th, 2020, Vigi Mont-Royal had 76 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as **Exhibit P-9**;
36. On April 19th, 2020, Vigi Mont-Royal had 91 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as **Exhibit P-10**;
37. On April 20th, 2020, Vigi Mont-Royal had 156 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as **Exhibit P-11**;
38. On April 22nd, 2020, the union representing the personnel of Vigi Santé ltée, the *Professionnel(le)s en soins de santé unis* (PSSU-FIQP), filed a complaint with the *Commission des normes, de l'équité, de la santé et de la sécurité du travail* (CNESST) against Vigi Santé ltée, due to the growing number of employees infected with COVID-19;
39. As a result of the severe infection rate among employees, healthcare workers and doctors from the CIUSSS du Centre-Ouest-de-l'Île-de-Montréal and from the Montreal Heart Institute were dispatched to Vigi Mont-Royal;
40. On April 23rd, 2020, a registered nurse who had been dispatched to Vigi Mont-Royal, Catherine Lévesque, published a video and a comment on Facebook, filed as **Exhibit P-12**, in which she denounced the situation of the residence, which she described as a "*big human carnage*", including:
 - a. Shortage of oxygen for patients in respiratory distress;
 - b. Shortage of basic medication;
 - c. Shortage of intravenous fluids to hydrate patients;
 - d. Multiple patients in end-of-life situations unable to receive comfort medication due to shortages in medication and personnel;

- e. Deaths of multiple patients in inhumane conditions;
 - f. Deceased patients remaining in their bed for over 24 hours;
 - g. Inability to provide basic care including replacing bandages;
 - h. Severe shortage of personnel, leaving her alone to take care of her entire unit and unable to respond to calls for help from patients;
 - i. Severe shortage in testing kits, resulting in significant delays in testing residents and personnel members.
41. In a response to a comment on the video, filed as Exhibit P-12, mentioned in paragraph 39, Ms. Lévesque adds: *“Je n'ai pas filmé mes chambres de patients car il y aurait une révolution ... attendre des pleurs, des cris détresse, des gens qui sont sans défense, gelé comme des balles, de la nourriture à ce vomir dessus et des dirigeants qui n'osent pas parler et aiment mieux mettre la poussière sous le tapis, la dangerosité des soins car tous les patients sont changés de place et les plans soins et médicaments sont pas reclassés et mis à jour plans de traitements, etc.. bref.. je veux bien croire que j'y arrive de peine et misère mais vous avez rien vu...”* (sic);
42. On April 23rd, 2020, the CHSLD had 163 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as **Exhibit P-13**;
43. On April 24th, 2020, the CHSLD had 172 confirmed cases among residents, as appears from the updated list by the Minister of Health and Social Services filed as **Exhibit P-14**;
44. On April 29th, 2020, the CNESST opened an investigation into working conditions at Vigi Mont-Royal as well as three other CHSLDs belonging to Vigi ltée: Vigi Dollard-des-Ormeaux, Vigi Pierrefonds and Vigi Reine-Elisabeth;
45. On May 1st, 2020, members of the Canadian Armed Forces were dispatched to Vigi Mont-Royal, one of 20 CHSLDs in the province to receive such help due to the severity of the outbreak and shortage in personnel;
46. On May 1st, 2020, Ms. Juliana D'Onofrio, personnel management agent for the Respondent, e-mailed the CNESST inspector, Ms. Julie Martel, to answer some questions pertaining to her investigation, as appears from the e-mail filed as **Exhibit P-15**;

47. In this e-mail, Ms. D’Onofrio explained that a ventilation test was conducted by INSPQ, that a “technical problem” was found and that this problem was subsequently corrected;
48. On May 3rd, 2020, a nurse from Vigi Mont-Royal mentioned in a *Journal de Montréal* article that the presence of the military did not solve the severe shortage in equipment and personnel, and that shortages in oxygen were such that the personnel had to choose which residents could receive it, as appears in the article filed as **Exhibit P-16**;
49. On May 5th, 2020, the CNESST filed its intervention report into the situation at Vigi Mont-Royal, filed as **Exhibit P-17**, finding:
- a. Severe shortages in employees making it impossible to have teams dedicated to hot zones, with some shifts having only one nurse for the entire facility;
 - b. Severe shortages in personal protective equipment;
 - c. Employees circulating between hot zones and cold zones without respecting the protocols established by INSPQ and by the Ministry of Health and Social Services;
50. As a result of the situation outlined in the previous paragraph, Ms. Martel granted the employees a derogation under article 51.5 of the *Act Respecting Occupational Health and Safety* on the basis that there was a risk for the health, the safety or the physical integrity of employees;
51. On May 8th, 2020, a memo was sent by the Infection Prevention and Control (IPAC) team of the CIUSSS du Centre-Ouest-de-l’Île-de-Montréal to all the staff working at Vigi Mont-Royal, filed as **Exhibit P-18**;
52. This memo informed the personnel that an onsite investigation by the IPAC was underway under the direction of Dr. Yves Longtin, microbiologist and chief of IPAC at the Jewish General Hospital, “[i]n light of the prevalence of COVID-19 amongst experienced healthcare workers deployed to Vigi Mont-Royal”;
53. The memo indicated that “preliminary results indicate the presence of viran RNA in a location that is not high touch. By extrapolation, this suggests long distance spread of the virus”;
54. The memo implemented a number of measures to mitigate the risk, including:

- a. The implementation of ventilation controls;
 - b. The moving of the “clean zone” outside of the facility;
 - c. The limitation of the time spent by personnel members inside the facility to two hours at a given time;
 - d. Urgent and sustained environmental cleaning of all surfaces;
 - e. Enhanced personal protective equipment including impermeable gowns, gloves, shoe covers, cowls, face shields and N95 masks;
55. On May 8th, 2020, internal data by the Respondent indicated that all 223 residents of Vigi Mont-Royal were infected as well as a total of 145 employees, and that 68 residents had died as a result of the virus, as appears from **Exhibit P-19**;
56. On May 11th, 2020, the Ministry of Health and Social Services published the list of the eight (8) CHSLDs which were granted exemptions to allow significant relatives back in the facilities, four (4) of which belong to the Respondent including Vigi Mont-Royal, as appears from the list filed as **Exhibit P-20**;
57. The reasons outlined for exempting CHSLD Vigi Mont-Royal were that the COVID-19 outbreak in this CHSLD was not under control, putting the wellbeing of significant relatives at risk, and that a ventilation issue had to be solved before significant relatives were allowed back in;
58. On May 14th, 2020, Professor Caroline Duchaine, a researcher who took air samples from Vigi Mont-Royal, indicated in an interview with journalist Anne-Marie Dussault on ICI RDI, filed as **Exhibit P-21**, the following:
- a. In the previous week, following air sampling inside the facility by the IPAC team, it was found that the entire ventilation system of the building was not functional, and that the lack of ventilation had allowed for the virus to accumulate in the environment;
 - b. On May 9th, 2020, the ventilation was repaired and restarted and a thorough disinfection was conducted;
59. At the date of this Application, the final investigation results have not been communicated and the measures mentioned in paragraph 54 remain in place;

4) Situation of the Petitioner

a. *Background*

- 60.** Olga Sarlis was born on February 24th, 1929 and was 91 years old at the time her death;
- 61.** Ms. Sarlis had three children: Petitioner Evangelina Morfonios, Ourania Morfonios Marandola and Athanasia Morfonios;
- 62.** Ms. Sarlis was a resident of Vigi Mont-Royal from March 2016 until April 23rd, 2020;
- 63.** Ms. Sarlis suffered from dementia but was otherwise healthy;
- 64.** Ms. Sarlis was sharing a room with another resident, and these two residents were sharing a bathroom with the two residents of the neighboring room;
- 65.** The Petitioner and her siblings visited Ms. Sarlis on average once to twice a week, and a caregiver was present every day to provide care for Ms. Sarlis;
- 66.** The caregiver was the wife of a resident in the neighboring room with which Ms. Sarlis and her roommate shared a bathroom;
- 67.** Over the years, the family of Ms. Sarlis noticed severe neglect in the care provided to her mother by the Respondent and its employees and in the overall state of the facility, including:
 - a. Systemic neglect in changing her mother's diaper and cleaning her bed;
 - b. Her mother being left in her wheelchair daylong, spending the days in the hallway and falling asleep while crooked in her wheelchair, resulting in severe back problems;
 - c. Neglect in her mother's personal hygiene, including poor nail care and cleaning, broken teeth and only one to two baths a week;
 - d. Neglect in feeding her mother and other residents;
 - e. Significant cleanliness issues in the facility;
 - f. Significant ventilation issues resulting in abnormally warm temperatures in the summer and persistent foul smells of urine and feces;

b. COVID-19 Pandemic

68. On March 14th, 2020, all visitors were forbidden inside the facility, with the exception of visitors for humanitarian reasons including end-of-life situations, due to the new directives in place in the context of the COVID-19 pandemic;
69. On April 6th 2020, the Petitioner and her sister Ourania saw Ms. Sarlis through a videoconference call organized by employees of the Respondent;
70. During this call, the Petitioner noted that her mother looked healthy and happy, and the Respondent and they played Greek music to cheer their mother;
71. However, during this call, the Petitioner was also concerned to see that the employee in charge of the videoconference call had no procedure mask on, in violation of the INSPQ recommendations dated April 3rd, 2020, and she took a photo of the screen with her phone, filed as **Exhibit P-22**;
72. On April 13th, 2020, Ourania was informed by Ms. Sarlis's caregiver that the caregiver's husband, with whom Ms. Sarlis shares a bathroom, had been diagnosed with COVID-19;
73. On that same day, the caregiver's husband was transferred to the Jewish General Hospital;
74. On April 16th, 2020, the caregiver's husband passed away;
75. Between April 7th and April 21st, 2020, Ourania called and e-mailed Ms. Myrna Aoun, the Director of Health Care and Coordinator of Clinical Services, to inquire about her mother, and Ms. Aoun consistently reassured her that her mother was fine;
76. On April 18th, 2020, the employee who had stood next to Ms. Sarlis without a procedure mask on April 6th was confirmed to be COVID-19 positive and pulled from work, as were at least three out of the five members of the videoconference team;
77. On April 21st, 2020, the Petitioner and the Petitioner's sister Ourania saw their mother again in a videoconference call organized by employees of the Respondent;

- 78.** During this call, the Petitioner was shocked to realize that Ms. Sarlis was lying in bed, unresponsive, as appears from a photo of the screen taken during this phone call filed as **Exhibit P-23**;
- 79.** On the same day, the Petitioner learned that her mother had contracted COVID-19 and that she had a high fever;
- 80.** On April 21st, 2020, the Petitioner called her mother's doctor to find out more about her symptoms. The doctor told her that he was not able to take her temperature and that as a result he could not administer any medication to relieve her fever;
- 81.** On April 23rd, 2020, Athanasia, the Petitioner's sister, called the doctor once again for an update. The doctor told her that he was not able to take her temperature and that as a result he could not administer any medication to relieve her fever. The doctor also mentioned that Ms. Sarlis had not been eating and drinking for several days, a fact of which the Petitioner and her sisters had not been informed prior to that conversation;
- 82.** On that same day, the family insisted that Ms. Sarlis be taken to the Jewish General Hospital;
- 83.** On that same day, Ms. Aoun, the Respondent's Director of Health Care and Coordinator of Clinical Services, called Ourania and falsely told her that her mother was fine;
- 84.** On that same day, Ms. Sarlis was transferred to the Jewish General Hospital;
- 85.** On that same day, Ourania attempted to go to the Jewish General Hospital to see her mother, but was denied due to the hospital's COVID-19 visitation policies;
- 86.** As Ourania was driving back from the hospital, she received a phone call from the emergency room doctor informing her that her mother was in very critical condition, dehydrated, unresponsive, with labored breathing and in obvious pain, and probably too far gone for the treating team to be able to help her;
- 87.** Approximately 30 minutes after this first phone call, the emergency room doctor called Ourania again to inform her that he was able to stabilize her mother and that she was now receiving fluids, antibiotics and oxygen;
- 88.** On that same day, the Petitioner and her sister Ourania were allowed to talk to their mother on the phone. Ourania became very emotional and started telling her

mother how much she loves her, that she came to the hospital to see her but that she was not allowed in. She told Ms. Sarlis not to be scared and that they would see each other as soon as she got better;

89. During this phone call, the Petitioner could hear her mother groaning and moaning trying to speak what sounded like a distressed call for help, or a state of utter fear, leaving the Petitioner in emotional distress over the situation and, to this day, traumatized;
90. On April 24th, 2020, the Petitioner attempted to contact their mother once again but was told that she was unresponsive and that she was being kept comfortable with morphine;
91. On April 28th, 2020, the Petitioner attempted to contact their mother and was told to call back in 15 minutes while the nurse suited up;
92. Shortly after this phone call, Evangelina received a phone call from the doctor informing her that her mother had passed away 3 minutes earlier;
93. The Petitioner asked for pictures of her mother's body in order to make sure she could identify her;
94. The nurse sent photos, filed as exhibits **P-24**, which show the Petitioner's mother with her mouth open and her face tense, indicating that she did not pass away peacefully and without pain, plunging the Petitioner and her sisters in a persistent distress which continues to this day;
95. In the subsequent days, the Petitioner was informed that her mother's roommate, as well as her neighbor's roommate who was sharing a bathroom with them, both contracted COVID-19 and subsequently passed away;

C. COMPLAINTS AGAINST THE RESPONDENT

96. In general, the Respondent's liability is sought for the following reasons:
 - a. The Respondent is a private institution under agreement within the meaning of the *Act respecting health services and social services*;
 - b. At all relevant times, the Respondent had the obligation to safeguard the life, health, safety, dignity and the well-being of the residents of CHSLD Vigi Mont-Royal;

- c. At all relevant times, the Respondent had the obligation to provide the residents of CHSLD Vigi Mont-Royal health services and social services which are scientifically, humanly and socially appropriate, with continuity and in a personalized and safe manner;
- d. The Respondent knew or ought to have known the specific risks that COVID-19 presented for the residents of CHSLD Vigi Mont-Royal, which were among the most vulnerable part of the population;
- e. The Respondent knew or ought to have known the directives from the Ministry of Health and Social Services filed as exhibits P-3, P-4, P-5 and P-7, as well as the recommendation by INSPQ filed as exhibit P-6;
- f. The Respondent failed to supply its staff with adequate personal protective equipment, exposing staff and residents to an increased risk of infection, in a context where this equipment nevertheless remained available in sufficient quantity in Quebec;
- g. The Respondent wrongly and negligently omitted to train its staff in wearing protective equipment and in adequate prevention and protection measures in accordance with the norms mentioned at paragraph 96e, exposing staff and residents to an increased risk of infection;
- h. The Respondent's employee wrongly and negligently did not wear a procedure mask despite standing next to the Petitioner's mother and closer than two meters from her for a long period during the April 6th, 2020 videoconference with the Petitioner, in violation of the norms set by INSPQ on April 3rd, 2020 and filed as exhibit P-6;
- i. The Respondent wrongly and negligently omitted to put in place in a timely manner the isolation measures in accordance with the ministerial directives mentioned in paragraph 96e, including establishing a "hot zone" and a "cold zone", as well as wearing adequate protective equipment and adopting the indicated protection and distancing measures;
- j. The Respondent failed to provide the residents and the staff with a sanitary environment and a safe facility;
- k. The Respondent knew or ought to have known that the ventilation system of the building was non-functional for months before the pandemic and before the sampling conducted on May 8th, 2020;

- l.** The Respondent acted recklessly by neglecting to maintain, monitor and repair its ventilation system in accordance with the norms in place, including the *Guide de la qualité de l'air intérieur dans les établissements de santé et de services sociaux*, creating conditions in which the virus spread at an unprecedented pace to the totality of the residents in less than two weeks;
 - m.** The Respondent failed to supply its facility with basic medical equipment including oxygen and hydration solute and with basic medication required to manage pain and ensure the comfort of residents;
 - n.** The Respondent neglected to inform vulnerable residents' families of the presence of COVID-19 in the facility when the outbreak started and provided them with erroneous information and false reassurances about the health condition of their loved ones;
- 97.** The faults by the Respondent outlined in the previous paragraph resulted in the rapid spread of the disease to residents and personnel member, resulting in multiple deaths and a severe shortage of personnel which created an unprecedented situation of systemic maltreatment towards vulnerable residents;

D. DAMAGES

- 98.** The faults of the Respondent as described in paragraph 94 are the direct and probable cause of the massive outbreak of COVID-19 which infected the totality of the 223 residents of CHSLD Vigi Mont-Royal in April and May 2020, resulting in one of the most devastating outbreaks in a Quebec residential facility both in terms of the number of people infected, the number of deaths and the rate of residents affected;
- 99.** The members of the Group are entitled to claim compensation for the physical and moral damages caused by the Respondent's faults;
- 100.** Due to the Respondent's faults, the residents of CHSLD Vigi Mont-Royal who are members of the Group suffered and are still suffering the following damages:
- a.** They have experienced and are still experiencing significant physical distress related to the symptoms of COVID-19, being particularly vulnerable to this disease due to their age and health condition;
 - b.** They have experienced and are still experiencing significant psychological distress associated due to their having to live this ordeal alone, their relatives being prohibited from visiting, and because of their fear of dying;

- c. They have been and continue to be the victims of systemic abuse and neglect, not receiving the basic health care required by their condition and basic hygiene in a timely manner due in particular to the severe shortage of staff caused by the Respondent's faults;
- d. They have experienced and are still experiencing a lot of anxiety, sadness, pain, suffering and inconvenience due to their situation caused by the Respondent's faults;
- e. The Respondent's faults have caused the deaths of at least 68 residents;

101. Due to the Respondent's faults, caregivers, children and grandchildren of the residents of CHSLD Vigi Mont-Royal who are members of the Group have suffered and are still suffering the following damages:

- a. They have experienced and are still experiencing significant psychological distress due to the situation of their loved ones at CHSLD Vigi Mont-Royal;
- b. Being ill-informed of the health and the situation of their loved ones due to the negligence of the Respondent, they experienced and continue to experience a great anguish regarding the situation of their loved ones, constantly wondering about their well-being and comfort;
- c. In the case of deceased residents, they retain a trauma related to the particularly difficult circumstances of their end of life, their not being able to be present at the time of their death and the conditions imposed by public health for the disposal of the body;
- d. They maintain the sincere and unwavering conviction that but for the Respondent's faults, their relatives would not have found themselves in such a situation;

102. The heirs and beneficiaries of deceased persons may claim, in addition to the sums provided for the moral damages suffered by their deceased relatives, additional damages resulting from the death of the person, including, as the case may be, a claim for *solatium doloris*, for the loss financial support if applicable and for funeral costs;

103. Due to the exceptional nature and the gross negligence of Respondent's faults, the Petitioner is entitled to demand a sum in payment for exemplary damages;

E. CRITERIA FOR AUTHORIZING A CLASS ACTION

1) Members' applications raise identical, similar or related questions of law or fact

104.The situation experienced by the Petitioner, both personally and in her quality as heir and liquidator to Ms. Olga Sarlis, was also experienced by all the other members of the Group. The COVID-19 outbreak at CHSLD Vigi Mont-Royal caused, as of May 27th, 2020, at least 223 cases and 68 deaths among residents;

105.Every resident of CHSLD Vigi Mont-Royal who is a member of the Group has contracted COVID-19;

106.Every resident of CHSLD Vigi Mont-Royal who is a member of the Group has experienced the situation of systemic abuse linked to the outbreak of COVID-19 within this facility;

107.Every caregiver, child and grandchild, who is a member of the Group, has experienced and is still experiencing anxiety regarding the diagnosis of COVID-19 by their loved one or the risk that they contracted it;

108.The identical, similar or related questions of law or fact that concern all members of the Group are the following:

- a.** Did the Respondent wrongfully and negligently omit to put in place in timely manner the isolation measures in accordance with the ministerial directives and INSPQ recommendations including establishing a "hot zone" and a "cold zone", as well as wearing adequate protective equipment and adopting the indicated protection and distancing measures?
- b.** Did the Respondent wrongfully and negligently omit to train their staff in wearing protective equipment and in the appropriate preventive and protective measures?
- c.** Did the Respondent wrongfully and negligently fail to supply their staff with adequate protective equipment?
- d.** Did the Respondent wrongfully and negligently fail to maintain the ventilation system of the facility in accordance with the standard of care?
- e.** Do the Respondent's faults constitute gross negligence?

- f. Did the faults committed by the Respondent cause the damages of the members of the Group alleged by the Petitioner?
- g. What are the damages incurred by the members of the Group?

2) The facts alleged justify the conclusions sought

- 109.**The facts alleged in this application justify the conclusions sought;
- 110.**The Respondent had the obligation to preserve the life, health, safety, dignity and well-being of the residents of CHSLD Vigi Mont-Royal and to provide them with adequate health and social services which are scientifically, humanly and socially appropriate, with continuity and in a personalized and safe manner;
- 111.**As more fully described in paragraph 96 thereof and as will be demonstrated at the hearing, the Respondent committed numerous faults in the prevention and management of the COVID-19 outbreak at CHSLD Vigi Mont-Royal;
- 112.**These faults are the direct and probable cause of the scale and severity of the outbreak at CHSLD Vigi Mont-Royal as well as the systemic neglect and abuse endured by the residents as a result of this outbreak;
- 113.**As of the date of this filing, the COVID-19 outbreak at CHSLD Vigi Mont-Royal infected all 223 residents, resulting in at least 68 deaths;

3) The constitution of the Group makes it difficult or impractical to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings

- 114.**The constitution of the Group makes it difficult or impractical to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings in that:
 - a. There are at least 223 people who may possibly be part of the Group as residents of CHSLD Vigi Mont-Royal, as well as an unknown number who may be part of the Group as caregivers, children, grandchildren, heirs or beneficiaries;
 - b. Among these people, some have died and others are very affected by COVID-19, while all of the surviving residents of CHSLD Vigi Mont-Royal currently remain isolated within the facility without visitation rights. The Petitioner has no way of reaching all residents, their caregivers, their children and grandchildren as well as their heirs or beneficiaries;

- c. It is also impossible at the moment to obtain the list of names of all residents of CHSLD Vigi Mont-Royal, due to the confidentiality rules pertaining to medical records;
- d. The Respondent should be able to know the names of all residents of CHSLD Vigi Mont-Royal, as well as their caregivers, their children and grandchildren as well as their heirs or beneficiaries;
- e. It is not desirable for each victim to bring a claim against the Respondent themselves, for reasons of proportionality and the efficient use of the resources of the judicial system;

4) The Petitioner is able to ensure adequate representation of the members

115. The Petitioner, Ms. Ourania Morfonios, is able to ensure adequate representation of the members of the Group for the following reasons:

- a. She has suffered, both personally and as the heir to her late mother, Ms. Olga Sarlis, damages comparable to other members of the Group;
- b. She is available to fulfill the obligations that the Court will impose on her;
- c. She is very familiar with the facts pertaining to this file;
- d. She has taken part in numerous television and newspaper interviews to talk about her story and the COVID-19 outbreak that occurred at CHSLD Vigi Mont-Royal in April and May 2020;
- e. She knows numerous members of the Group;
- f. She is willing to invest the resources and the time necessary to complete all the formalities and tasks necessary for the exercise of this class action and she is committed to cooperate fully with her lawyers;
- g. She is able to provide her undersigned lawyers with information useful for the exercise of this class action;
- h. She is acting in good faith for the sole purpose of obtaining justice for herself and for the other members of the Group;

116. The Petitioner seeks the following conclusions:

GRANT the Class Action against the Respondent;

DECLARE the Respondent responsible for the damages suffered by the Petitioner and the members of the Group;

CONDEMN the Respondent to pay each member of the Group the following amounts in order to compensate the damages they suffered, according to the following parameters:

- **For each resident of CHSLD Vigi Mont-Royal, regardless of their COVID-19 infection:**
 - An amount of \$20,000 to each member to compensate the pain and suffering, stress and inconvenience the member encountered due to the situation prevailing at Vigi Mont-Royal;
 - A sum of \$2,500 to each member's children to compensate the pain and suffering, stress and inconvenience associated with anxiety about their parent's situation and their possible contamination with COVID-19;
 - A sum of \$500 to each member's grandchildren in compensation for the pain and suffering, stress and inconvenience associated with anxiety about the situation of their grandparent's situation and their possible contamination with COVID-19;
- **For residents of CHSLD Vigi Mont-Royal who were infected with COVID-19 and who survived the infection:**
 - An additional amount of \$30,000 to each member to compensate the pain and suffering, stress and inconvenience associated with the COVID-19 contamination which resulted from the Respondent's misconduct;
 - Full reimbursement of expenses incurred or to be incurred as a result of the Respondent's misconduct;
 - An additional amount to be determined for each member who wishes to present proof of a particular and more significant loss on an individual basis during the assessment of the damages, which the member will be entitled to provided that one of the following is put in evidence:
 - The member has undergone a hospital stay in an intensive care unit;
 - The member has undergone a hospital stay;

- The member was not sent to the hospital although the member should have been considering his or her condition and/or his or her level of care required it, whether it was for hospital care or comfort care that the Respondent failed to provide;
 - The member suffered pecuniary losses;
 - A sum of \$10,000 to each member's children in compensation for the pain and suffering, stress and inconvenience associated with their parent's contamination with COVID-19;
 - A sum of \$2,500 to each member's grandchildren in compensation for the pain and suffering, stress and inconvenience associated with the contamination of their grandparents with COVID-19;
 - An additional \$5,000 to each member's caregiver, in addition to the amounts provided above if the caregiver is a child or grandchild of the resident;
- **For spouses, children, grandchildren, heirs and successors of residents of CHSLD Vigi Mont-Royal who died as a result of COVID-19 or the situation of institutional maltreatment caused by the outbreak:**
 - An amount of \$100,000 to each surviving spouse, in their personal quality, to compensate for the pain and suffering, stress and inconvenience suffered, as well as to compensate for the grief caused by the loss of a loved one (*solatium doloris*) which resulted from the Respondent's misconduct;
 - A sum of \$30,000 to each of the heirs and successors of the deceased in compensation for the pain, stress and inconvenience suffered, as well as in compensation for the grief caused by the loss of a loved one (*solatium doloris*) due to the Respondent's misconduct, the whole subject to proof of their status as heir or assign;
 - An amount of \$30,000 to the surviving spouse, in their quality of heir to the deceased, if applicable, or to the estate of the deceased, as the case may be, in compensation for the physical and moral suffering suffered by the deceased before his death (*pretium doloris*) due to of the Respondent's misconduct;
 - Full reimbursement of disbursements and funeral expenses incurred and to be incurred as a result of the Respondent's misconduct;

- An additional amount to be determined for each member who wishes to present proof of a particular and more significant loss on an individual basis during the assessment of the damages, which the member will be entitled to provided that there is evidence that he suffered financial losses due to COVID-19, the whole in connection with the alleged misconduct;

CONDEMN the Respondent to pay the Petitioner and the class action's members the sum of one million dollars (\$ 1,000,000) in punitive damages due to the exceptional nature and the gross negligence of Respondent's faults;

CONDEMN the Respondent to pay the interest at the legal rate, on the said sums, plus the additional indemnity provided by law, to accrue from the date of service of the present *Application*;

THE WHOLE with costs, including expert fees necessary for the drafting of their reports and the tendering of evidence at trial.

117. It is appropriate to authorize the exercise of this class action on behalf of the members of the Group;

118. The Petitioner proposes that the class action be brought before the Superior Court sitting in the district of Montreal because this is where CHSLD Vigi Mont-Royal and the Respondent's head offices are located;

119. The nature of the claim that the Petitioner intends to exercise on behalf of the members of the Group is a claim for damages;

120. The present application is well founded in fact and in law;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT this *Application to authorize the institution of a class action*;

ATTRIBUTE the status of representative to the Petitioner Ourania Morfonios, personally and in her capacity as heir to her late mother, Ms. Olga Sarlis, for the purposes of exercising the present class action on behalf of the Group of individuals described below;

“Every person who resided at CHSLD Vigi Mont-Royal at any time since March 13th, 2020, their spouse, their family caregiver(s), their children and grandchildren, their heirs and successors.”

IDENTIFY the main issues of fact and law to be decided as the following:

- a. Did the Respondent wrongfully and negligently omit to put in place in timely manner the isolation measures in accordance with the ministerial directives and INSPQ recommendations including establishing a "hot zone" and a "cold zone", as well as wearing adequate protective equipment and adopting the indicated protection and distancing measures?
- b. Did the Respondent wrongfully and negligently omit to train their staff in wearing protective equipment and in the appropriate preventive and protective measures?
- c. Did the Respondent wrongfully and negligently fail to supply their staff with adequate protective equipment?
- d. Did the Respondent wrongfully and negligently fail to maintain the ventilation system of the facility in accordance with the standard of care?
- e. Do the Respondent's faults constitute gross negligence?
- f. Did the faults committed by the Respondent cause the damages of the members of the Group alleged by the Petitioner?
- g. What are the damages incurred by the members of the Group?

IDENTIFY the sought-out conclusions as follows:

GRANT the Class Action against the Respondent;

DECLARE the Respondent responsible for the damages suffered by the Petitioner and the members of the Group;

CONDEMN the Respondent to pay each member of the Group compensation for the damages they suffered;

CONDEMN the Respondent to pay the Petitioner and the class action's members the sum of one million dollars (\$1,000,000) in punitive damages due to the exceptional nature and the gross negligence of Respondent's faults;

CONDEMN the Respondent to pay the interest at the legal rate on the said sums, plus the additional indemnity provided by law, to accrue from the date of service of the present *Application*;

THE WHOLE with costs, including expert fees necessary for the drafting of their reports and the tendering of evidence at trial.

ORDER that the present class action be heard in the district of Montreal;

ORDER the collective recovery of all damages suffered, or, alternatively:

DECLARE the Respondent responsible for all the damages suffered and **ORDER** that individual evidence be provided to determine the amount of damages for each member of the Group;

DECLARE that, subject to exclusion, the members of the Group shall be bound by any judgment to intervene in the class action in the manner provided by law;

SET the exclusion period to forty-five (45) days, at the end of which the members of the Group who have not availed themselves of the means of exclusion will be bound by any judgment to intervene;

ORDER the publication of a notice to the members of the Group in the following newspapers:

La Presse
The Gazette;

REFER the file to the Chief Justice of the Superior Court for the assignment of a judge to the present action;

ALL costs to follow, except in the event of a dispute, including all costs of experts as well as costs inherent in the preparation of the various expert reports, costs of technical assistance during the hearing to be submitted for the purposes of the submission of the application.

Montreal, May 28th, 2020



Me Patrick Martin-Ménard

MÉNARD, MARTIN, AVOCATS

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Any email notification should only be sent to:

notification@menardmartinavocats.com

Petitioner's attorney

Our file : 33 291 (PMM)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Action)

NO : 500-06-001071-204

EVANGELINA MORFONIOS, personally and in her quality as heir and liquidator to **THE ESTATE OF THE LATE OLGA SARLIS**, [REDACTED]

Petitioner

v.

VIGI SANTÉ LTÉE, a legal person, duly constituted according to law, with its head office located at 197 Thornhill Street, in the city of Dollard-des-Ormeaux, district of Montreal, province of Quebec, H9B 3H8;

Respondent

ATTESTATION OF ENTRY IN THE NATIONAL CLASS ACTION REGISTER
(Article 55 of the *Regulation of the Superior Court of Quebec in the civil matters Code of Civil Procedure*)

The Petitioner, through its undersigned attorneys, attests that the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative* will be entered in the National Class Action Registry.

Montreal, May 28th, 2020



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Any email notification should only be sent to:
notification@menardmartinavocats.com
Petitioner's attorney
Our file : 33 291 (PMM)

SUMMONS
(articles 145 and following C.C.P.)

Filing of a judicial application

Take notice that the plaintiffs have filed this originating application in the office of the Superior court in the judicial district of Montreal.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montréal situated at 1, Notre-Dame East St, within 15 days of service of the application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the plaintiff's lawyer or, if the plaintiffs are not represented, to the plaintiffs.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the plaintiffs in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating application to the district of your domicile

or residence, or of your elected domicile or the district designated by an agreement with the plaintiffs.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiffs' legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the originating application, the plaintiffs intend to use the following exhibits:

Exhibit P-1: Will and Testament of Olga Farlis;

Exhibit P-2: Extract of the *Registre des entreprises du Québec*;

Exhibit P-3 : Directives to the CHSLDs dated March 16th, 2020 issued by the MHSS;

Exhibit P-4: Updated Directives to the CHSLDs dated March 21st, 2020 issued by the MHSS;

Exhibit P-5: Updated Directives to the CHSLDs dated March 25th, 2020 issued by the MHSS;

Exhibit P-6: Document titled *Port du masque de procédure en milieux de soins lors d'une transmission communautaire soutenue* dated April 3rd, 2020 issued by the INSPQ;

- Exhibit P-7: Updated Directives to the CHSLDs dated April 11th, 2020 issued by the MHSS;**
- Exhibit P-8: List of residences for elderly and vulnerable patients with confirmed COVID-19 cases dated April 13th, 2020 issued by the MHSS;**
- Exhibit P-9: Updated list of CHSLDs with confirmed COVID-19 cases dated April 17th, 2020 issued by the MHSS;**
- Exhibit P-10: Updated list of CHSLDs with confirmed COVID-19 cases dated April 19th, 2020 issued by the MHSS;**
- Exhibit P-11: Updated list dated of CHSLDs with confirmed COVID-19 cases dated April 20th, 2020 issued by the MHSS;**
- Exhibit P-12: Video and comments published on Facebook by Ms. Catherine Lévesque, registered nurse;**
- Exhibit P-13: Updated list of CHSLDs with confirmed COVID-19 cases dated April 23rd, 2020 issued by the MHSS;**
- Exhibit P-14: Updated list of CHSLDs with confirmed COVID-19 cases dated April 24th, 2020 issued by the MHSS;**
- Exhibit P-15: Email from Ms. Juliana D’Onofrio to Ms. Julie Martel dated May 1st, 2020;**
- Exhibit P-16: Article from the newspaper *Journal de Montréal* dated May 3rd, 2020;**
- Exhibit P-17: Intervention Report from the CNESST dated May 5th, 2020;**
- Exhibit P-18: Memo from the Jewish General Hospital’s IPAC team dated May 8th, 2020;**
- Exhibit P-19: Internal data regarding COVID-19 infections in Vigi Ltée’s CHSLDs dated May 8th, 2020;**
- Exhibit P-20: List of the CHSLDs exempted from allowing significant relatives dated May 11th, 2020**
- Exhibit P-21: Interview with Professor Caroline Duchaine broadcast on ICI RDI on May 14th, 2020;**
- Exhibit P-22: Photo of Ms. Olga Sarlis dated April 6th, 2020;**
- Exhibit P-23: Photo of Ms. Olga Sarlis dated April 21st, 2020;**

Exhibit P-24: Photos of the body Ms. Olga Sarlis dated April 28th, 2020.

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

NO :

COUR
DISTRICT DE

Notre dossier :

Code : BM 1315



Ménéard, Martin
Avocats

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