



NO. 13 2677  
VICTORIA REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

GRIZZLY BEAR HOLDINGS INCORPORATED  
and LESLIE ALLEN BJOLA

PLAINTIFFS

AND:

COLWOOD CITY CENTRE LIMITED PARTNERSHIP  
COLWOOD CITY CENTRE GP INC.  
ADAM GANT

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

Form 1 (Rule 3-1 (1))

**This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-name registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the Plaintiffs.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

30 JUL 13 1309427 RISS  
2014 513-2677  
200.00

- (b) serve a copy of the filed response to civil claim and counterclaim on the Plaintiffs and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

**Time for response to civil claim**

A response to civil claim must be filed and served on the Plaintiff(s),

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE PLAINTIFF(S)**

**Part 1: STATEMENT OF FACTS**

[Using numbered paragraphs, set out a concise statement of the material facts giving rise to the Plaintiff's(s') claim.]

1. The corporate Plaintiff is a land developer operating in the greater Victoria area with an office at 202-3179 Jacklin Road, Victoria, B.C.
2. The individual Plaintiff is an officer and director of the corporate Plaintiff and resides in Victoria, B.C.
3. The Defendants are land developers operating in Western Canada with an office at 200 - 710 Redbrick Street, Victoria, B.C.
4. In or about spring of 2007, the parties entered into an agreement whereby the

Defendants agreed to purchase and the Plaintiffs agreed to sell certain development properties located in the City of Colwood in Greater Victoria's Western Communities, more particularly described as:

PID Number	Legal Description
006-342-094	That part of Lot 7, Section 1, Esquimalt District, Plan 2749 lying to the South of a straight boundary extending from a point on the north easterly boundary of Belmont Avenue, distant 185 feet from the most westerly corner of said lot, to a point on the easterly boundary of said lot, distant 300 feet measured south along the curve of the said easterly boundary, from the most northerly corner of said lot.

(the "Property")

5. The agreement was reduced to writing as a Transfer of Ownership Agreement effective as of April 27, 2007 (the "Agreement"), and amended and modified from time to time thereafter by the parties.
6. By the said Agreement, the corporate Plaintiff transferred all of its beneficial right, title and interest in and to the Property to the Defendant Cityzen Properties Limited Partnership ("CPLP"), (the "Transfer").
7. By the April 27, 2007 Agreement the Defendant CPLP as buyer covenanted and agreed that it would pay to the corporate Plaintiff as seller:

**"2.6 GOODS AND SERVICES AND SOCIAL SERVICES TAXES**

The Purchase Price does not include GST. On the Effective Date, the Buyer will pay to the Seller, as agent for Her Majesty the Queen in right of Canada, in addition to the Purchase Price, the amount of GST eligible (sic) in respect of the transactions contemplated in this Agreement or, if the Buyer is registered for GST purposes on the Effective Date, the Buyer may self-assess the GST and account directly to the Canada Revenue Agency therefor, if the Buyer provides the Seller with a certificate signed by an officer of the Buyer confirming the Buyer's registration number and the Buyer's registered status. The Buyer will pay all social services taxes, if any, payable in connection with the acquisition of any of the Transferred Properties by the Buyer."

8. The Defendants did not pay the GST to the Plaintiffs, but instead represented to the Plaintiffs that CPLP was a GST Registrant and would account directly to the Canada Revenue Agency for the GST effective the date of the Transfer.
9. In addition, the Defendants provided to the Plaintiffs a Certificate pursuant to s. 221(1)(b) and (c) of the *Excise Tax Act* that CPLP was by January 20, 2007 a GST Registrant with registration number 842313611 RT0001.
10. The representations and the Certificate were false: CPLP was not a Registrant for GST purposes and never held the registration number aforesaid.
11. The Defendants made the representations and completed the Certificate in order to induce the Plaintiffs not to collect the GST owing on the transfer of the Property.
12. In making the representations and completing the Certificate, the Defendants knew the representations and the Certificate were false and untrue.
13. In the alternative, the Defendants made the misrepresentations and completed the Certificate recklessly, not caring if they were true or false.
14. In the further alternative, the Defendants should have known that the representations and the Certificate were false.
15. The Plaintiffs relied upon the representations and the Certificate. The Defendants intended and in fact acknowledged that the Plaintiffs would rely upon the Certificate pursuant to its terms.
16. The Plaintiffs first learned that the representations and the Certificate were false on or about March 30, 2012 when the Canada Revenue Agency threatened to assess the corporate Plaintiff for the GST, interest and penalties owing as a result of the transfer.
17. On April 13, 2012 the Defendants by their servant and agent Patrick Miniutti acknowledged in writing that the representations and the Certificate were false.
18. The Plaintiffs demanded that the Defendants pay the GST to the Plaintiffs, or alternatively to the Canada Revenue Agency, but the Defendants neglected or refused to do either.

19. In the result, on February 21, 2013, the Canada Revenue Agency assessed the corporate Plaintiff with \$397,000.00 in GST plus penalties exceeding \$105,720.00 plus interest of \$198,169.00, for a total exceeding \$700,889.00 with interest continuing to accrue at a daily compounded rate (the "Tax Debt").
20. Les Bjola is and was at all material times a Director of the corporate Plaintiff.
21. As a Director, Mr. Bjola is jointly liable for all GST, interest and penalties owed and unpaid by the corporate Plaintiff. Canada Revenue Agency has threatened to assess him with director's liability assessments for the full tax, interest and penalties.
22. Particulars of misrepresentations include:
  - a. Adam Gant orally represented to the Plaintiffs on various occasions leading up to the transfer of the Properties that CPLP was a GST Registrant and that the purchase and sale would be GST "neutral" meaning the Plaintiffs would not be required to collect GST;
  - b. On or about January 20, 2007, Adam Gant on behalf of the Defendant Cityzen Properties GP Inc., the general partner of CPLP, represented to the Plaintiffs and provided a Certificate that CPLP was a GST Registrant under account number 842313611 RT0001;
  - c. On or about April 30, 2007, Adam Gant on behalf of the Defendant Cityzen Properties GP Inc., the general partner of CPLP, represented to the Plaintiffs and provided a Certificate that CPLP was a GST Registrant under account number 842313611 RT0001;
  - d. Richard John Lord, the Defendants' solicitor at Reed Pope and Associates, orally represented to Les Bjola on behalf of the Plaintiffs, that the Defendant CPLP was a GST Registrant, during discussions leading up to the transfer;
  - e. Such further and other particulars as shall be particularized by the Plaintiffs prior to trial.

23. As a result of the Defendants' breach of contract and misrepresentations, the Plaintiffs have suffered loss and damages including:
- a. Incurring a debt to CRA for the GST, penalties and interest owing as a result of the transfer of the Property;
  - b. The in-house costs of dealing with CRA's audit and collections officials, which are ongoing;
  - c. The legal and accounting costs of dealing with CRA's audit and collection officials, which are ongoing;
  - d. Loss of opportunities concomitant with impairment of financial resources and borrowing abilities occasioned by the CRA assessments;
  - e. Ongoing statutory interest charged by CRA on the outstanding balance;
  - f. Loss of reputation in the business community.
24. The Defendants have been unjustly enriched by the amount of this claim, having enjoyed the use of the monies which should have been paid by them for the Tax Debt.
25. On November 30, 2009, Cityzen Properties Limited Partnership changed its name to Colwood City Centre Limited Partnership.
26. On September 3, 2008, Cityzen Properties GP Inc. changed its name to Colwood City Centre GP Inc.

**Part 2: RELIEF SOUGHT**

[Using numbered paragraphs, set out the relief sought and indicate against which Defendant(s) that relief is sought. Relief may be sought in the alternative.]

1. Damages for misrepresentation and breach of contract;
2. Alternatively an Order that the Defendants pay to the Plaintiffs the full amount of the Tax Debt of which they were unjustly enriched;
3. Special damages;

4. Aggravated or punitive damages;
5. Interest indemnity at the Canada Revenue Agency's statutory rate;
6. Interest;
7. Costs;
8. Such further and other relief as to this Honourable Court seems meet.

### **Part 3: LEGAL BASIS**

[Using numbered paragraphs, set out a concise summary of the legal bases on which the Plaintiff(s) intend(s) to rely in support of the relief sought and specify the rule or other enactment relied on. The legal bases for the relief sought may be set out in the alternative.]

#### **Breach of Contract**

1. By failing to pay the Plaintiffs the GST and failing to account for the GST to CRA, the Defendant CPLP breached the Agreement of April 27, 2007.

#### **Misrepresentation**

2. By making the false representations and completing and providing to the Plaintiffs the false Certificate, the Defendants committed the tort of fraudulent or alternatively negligent misrepresentation.

Plaintiff's(s') address for service: D. Laurence Armstrong  
Armstrong Wellman  
Barristers & Solicitors  
#301-754 Broughton Street  
Victoria, BC V8W 1E1

Fax number address for service (if any): (250) 384-5656

E-mail address for service (if any): N/A

Place of Trial: Victoria, British Columbia

The address of the registry is: MINISTRY OF ATTORNEY GENERAL  
COURT REGISTRY

2nd Floor, 850 Burdett Avenue  
P.O. Box 9248, Stn. Prov. Govt.  
Victoria, B.C. V8W 9J2

Date: July 25, 2013

ARMSTRONG WELLMAN

Per. 

Signature of D. Laurence Armstrong  
 Lawyers for the Plaintiff(s)

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.



**APPENDIX**

[The following information is provided for data collection purposes only and is of not legal effect.]

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

Damages for breach of Contract and misrepresentation.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES**

[check all boxes below that apply to this case]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflicts of law
- none of the above
- do not know

**Part 4:**

[If an enactment is being relied on, specify. Do not list more than 3 enactments]

\*