

NO. 13 2675
VICTORIA REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NOBHILL DEVELOPMENT CORP.
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

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above-named registry of this court within the time for response to civil claim described below, and

- (b) serve a copy of the filed response to civil claim and counterclaim on the 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
000-448-923	Amended Lot B (DD 115310I) Section 1, Esquimalt District, Plan 4646, Except parts in Plans 13301 and 41107
000-495-689	Lot 1, Section 1, Esquimalt District, Plan 41107
001-154-184	Lot B, Section 1, Esquimalt District, Plan 31551
023-747-285	Lot A, Section 1, Esquimalt District, Plan VIP65224
023-797-576	Strata Lot 1, Section 1, Esquimalt District, Strata Plan VIS4320
023-797-614	Strata Lot 2, Section 1, Esquimalt District, Strata Plan VIS4320

(the "Properties")

5. The agreement was modified from time to time with consent of the parties, and reduced to writing as a Transfer of Beneficial Ownership Agreement effective as of April 30, 2007 (the "Agreement").
6. By the said Agreement, the corporate Plaintiff transferred all of its beneficial right, title and interest in and to the Properties to the Defendant Cityzen Properties Limited Partnership ("CPLP"), (the "Transfer").
7. The corporate Plaintiff continued to hold the bare legal title in trust for the Defendant CPLP until October 8, 2008 when the Plaintiffs, at the request of the Defendants, transferred legal title to the nominee/trustee of CPLP, 0830123 B.C. Ltd. by Transfer registered in the Victoria Land Title Office.
8. By the April 30, 2007 Agreement the Defendant CPLP as buyer covenanted and agreed that it would pay to the corporate Plaintiff as seller:
- "4.4 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 the Beneficial Interest."

9. 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.
10. 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 on April 30, 2007 a GST Registrant with registration number 842313611 RT0001.
11. The representations and the Certificate were false: CPLP was not a Registrant for GST purposes and never held the registration number aforesaid.
12. 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 Properties.
13. In making the representations and completing the Certificate, the Defendants knew the representations and the Certificate were false and untrue.
14. In the alternative, the Defendants made the misrepresentations and completed the Certificate recklessly, not caring if they were true or false.
15. In the further alternative, the Defendants should have known that the representations and the Certificate were false.
16. 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.
17. 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.

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 30, 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]

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