



Court File No. **VLC-S-S-183355**

NO. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALL CANADIAN INVESTMENT CORPORATION

PLAINTIFF

AND:

BDO CANADA LLP

DEFENDANT

NOTICE OF CIVIL CLAIM

All Canadian Investment Corporation
c/o 490 – 1177 West Hastings Street
Vancouver, British Columbia V6E 2K3

BDO Canada LLP
Suite 201, 571 6th Street NE
Salmon Arm, British Columbia V1E 1R6

This action has been started by the plaintiff 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-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 on the plaintiff.

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
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff 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,
- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
 - (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
 - (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, 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

Part 1: STATEMENT OF FACTS

1. The Plaintiff is a company incorporated under the laws of British Columbia and has an address for service for this action only care of suite 490 - 1177 West Hastings Street, Vancouver, British Columbia.
2. The Defendant is a limited liability partnership and operates both nationally and internationally. It is a firm of chartered professional accountants and auditors and has a place of business within British Columbia of Suite 201 - 571 6th Street NE, Salmon Arm, British Columbia, V1E 1R6.
3. The Defendant prides itself on its professionalism and commitment to clients. In its website, the Defendant promises, and the Plaintiff expected same of the Defendant:

Quality in all that we do

- Strong sense of professionalism, urgency, commitment and loyalty
- An enthusiastic devotion to service

Honesty and Integrity

- Honesty means being open and transparent
- Integrity means we do what we say

Accountability for our actions and results

- We take ownership at both an individual and collective level

Respect for ourselves, each other, our clients and our communities

- Understanding that we are all different and that we all have great things to offer

and the Defendant promises it will:

- **Communicate** effectively and collaboratively
- **Lead** towards a common goal – no matter your role
- **Collaborate** to accomplish common goals and objectives
- **Solve Problems** and recommend/implement solutions
- **Act with Professionalism** by working in a respectful, ethical, confidential, and independent manner
- **Complete Quality Work** in an effective and timely manner
- **Serve Clients**, internally and externally, by providing excellent service and fulfilling client expectations

and:

With local, national, and global teams, our accounting professionals help clients address important matters in their financial statements. Utilizing our extensive global resources, we help clients in Canada and abroad navigate financial reporting and accounting standards that differ across industries and countries.

BDO is committed to professionalism, collaboration, and providing exceptional client service, and this is evident by the thorough involvement from our partners in the work we do. No matter the assignment, we always rely on our deep industry knowledge and insight from our partners to find solutions to our clients' biggest challenges. Our services include:

- Financial statement audits ...

and:

Tax compliance has become increasingly difficult to manage amid changing laws and regulations. BDO tax professionals have the resources and experience necessary to ensure that our clients not only remain compliant, but stay on track with new developments. Our partners are deeply involved in the work we do, and they bring deep industry experience to help our teams solve our clients' biggest issues.

BDO serves a wide range of companies, from small businesses to large enterprises. Each client is unique, and as such, we tailor our strategies to specifically meet their needs. Many of our professionals have experience in more than one area of domestic tax, allowing us to provide fully integrated, multidisciplinary tax services, and address multiple client issues simultaneously. As a result, we are able to provide rapid turnaround, even for especially complicated issues.

and:

Ultimately, the best reason to choose BDO comes down to the relationships we build with our clients and communities. Because at the end of the day, ours is a business of people working with, for, and in the service of others. And when you think about it that way, client service becomes more than just client service; it becomes a firm-wide dedication to helping the people we serve succeed – whatever they need, wherever they are, however we can.

4. The Plaintiff is a mortgage investment corporation pursuant to the provisions of section 130.1 of the ***Income Tax Act***. It raises from time to time funds from members of the investment public and issues preferred shares.
5. The preferred shares issued by the Plaintiff are an eligible investment for a Registered Retirement Savings Plan ("RRSP") or Registered Retirement Investment Fund ("RRIF").

6. Pursuant to Part 7 of the ***Business Corporations Act***, SBC 2002, c. 57, the Plaintiff is required to have an auditor for its financial statements.
7. Audited financial statements are critical to the Plaintiff maintaining its preferred shares as eligible investments under a RRSP or RRIF and to raise additional capital under an Offering Memorandum.
8. Audited financial statements must be presented to the shareholders at the Plaintiff's annual general meeting.
9. On December 1, 2009, the Plaintiff and the Defendant entered into a contract by which the Defendant agreed to act as an independent auditor of the Plaintiff.
10. The Defendant, in addition to conducting the audit agreed, amongst other things:
 - i. to conduct the audit in accordance with generally accepted auditing standards;
 - ii. to communicate in writing any significant deficiencies in internal control relevant to the audit;
 - iii. to communicate to the Board of Directors on any matter regarding:
 - misstatements;
 - fraud;
 - illegal acts;
 - significant weaknesses in internal control.
 - iv. to communicate on any matter that it feels should be brought to the attention of the Board of Directors;

- v. to provide letters to Trustees regarding RRSP eligibility of investments in the Plaintiff;
 - vi. to prepare the Plaintiff's federal and provincial income tax returns, as required;
 - vii. to discuss with the Plaintiff any filing positions which, if taken, have the potential to give rise to a material adverse assessment or reassessment by the taxing authorities.
11. The Defendant performed audits of the financial statements of the Plaintiff for the year ending September 30 for 2009, 2010, 2011, 2012, 2013 and 2014.
 12. In its report addressed to the Plaintiff's shareholders in each of its audits for the years 2009, 2010, 2011, 2012, 2013 and 2014, the Defendant provided an audit opinion that the financial statements presented fairly, in all material respects, the financial position of the Plaintiff.
 13. No qualification to this opinion was ever expressed.
 14. The Defendant was engaged to perform the independent audit for the 2015 financial statements.
 15. The Chartered Professional Accountants Code of Professional Conduct requires that an auditor may not cease to act after commencement of an audit engagement, except for good and sufficient reason.
 16. In such a circumstance, the auditor has a duty to inform the shareholders of the reasons for the resignation.
 17. The Defendant was to deliver its independent audit report on or before March 30, 2016.
 18. On March 29, 2016, without notice and without warning, the Defendant wrongfully resigned from its role as auditor effectively immediately and

advised the Plaintiff it would not fulfill its obligation to complete the audit for the 2015 financial statements.

19. The Defendant refused the Plaintiff's request to meet with the directors or management of the Plaintiff to provide an explanation for its resignation.
20. By its wrongful act of resignation, the Defendant:
 - i. breached its contractual duties owed to the Plaintiff; and
 - ii. breached its professional and ethical duties under the Chartered Professional Accountants Code of Professional Conduct which are an implied obligation of the Defendant to the Plaintiff.
21. The lack of audited financial statements caused shareholders and security holders in the Plaintiff to lose faith in the viability of the Plaintiff and to request the redemption of their investments. In the period between July 2015 and December 2017, investors sought to withdraw some \$19,367,000 from the Plaintiff.
22. The Defendant was the only accounting firm in Salmon Arm that performed audits.
23. Immediately following the wrongful resignation by the Defendant the Plaintiff attempted to engage a successor auditor in the cities of Vernon, Kamloops and Kelowna, but was unable to do so.
24. It was not until November 10, 2016, that the Plaintiff was able to engage a new auditor. However, the successor auditor was unable to perform an audit for the 2015 fiscal year.
25. The Defendant breached its duties of good faith and honest performance it owed to the Plaintiff by its unjustified refusal to perform and complete the audit it was engaged to do and agreed to perform.

26. The Defendant knew at the time it resigned as auditor on March 29, 2016, that the Plaintiff was required to file its 2015 tax return with Canada Revenue Agency by March 31, 2015, only two days later.
27. The Plaintiff was unable to file its 2015 tax return in time as it could not file audited financial statements.
28. The Defendant knew that, by reason of its resignation, the Plaintiff could no longer raise capital as audited financial statements were essential to that ability.
29. All capital raising activities by the Plaintiff had to be halted.
30. The Defendant knew that by resigning without explanation and an acceptable reason that the shareholders, the regulatory authorities, the security holders, and the investing public would lose confidence in the financial viability and stability of the Plaintiff.
31. The absence of 2015 audited financial statements meant:
 - i. the Plaintiff was unable to raise additional capital;
 - ii. the Plaintiff had to resort to borrowing funds at high rates of interest to meet funding commitments;
 - iii. the Plaintiff had to lower its dividend payments to shareholders; and
 - iv. unprecedented redemption requests by investors.
32. Due to the Plaintiff's inability to raise additional capital or pay dividends, some 65% of the Plaintiff's preferred shareholders submitted redemption notices.
33. As a result the Plaintiff applied for creditor protection pursuant to the ***Companies' Creditor Arrangement Act.***

34. The Plaintiff has also suffered:
 - i. loss of profits;
 - ii. loss of opportunities;
 - iii. a loss of value; and
 - iv. loss of reputation.
35. All of these impacts were reasonably foreseeable by the Defendant when it wrongfully terminated its engagement as auditor.
36. The Defendant had an ethical and contractual duty to explain the reasons for its resignation to the Plaintiff and its shareholders. The Defendant failed to do so and breached this duty.
37. The Defendant had an ethical duty to explain to a successor auditor the reasons for its resignation. The Defendant failed to do so, and breached this duty.
38. The action of the Defendant in resigning, without notice or explanation, on the eve of the deadline for filing the Plaintiff's tax return with Canada Revenue Agency warrants an award of exemplary and punitive damages.

Part 2: RELIEF SOUGHT

1. Damages for breach of contract.
2. General damages.
3. Damages for loss of reputation.
4. Punitive damages.

5. Exemplary damages.
6. Special damages, including the costs of the Monitor.
7. Interest pursuant to the ***Court Order Interest Act***.
8. Costs on a basis or scale as this Honourable Court may deem just.

Part 3: LEGAL BASIS

1. The Defendant wrongfully terminated its contract with the Plaintiff.
2. The Defendant breached the fiduciary duty it owes to the Plaintiff and its shareholders to report on the financial statements of the company.
3. The Defendant breached its ethical duties as an auditor according to general accepted auditing principles.
4. The Defendant breached its fiduciary duty owed to the Plaintiff.
5. The Defendant breached its ethical duty to disclose an acceptable reason for its resignation.
6. The Plaintiff will rely, in part, on the judgment of the Supreme Court of Canada in the following cases:
 - i. ***Bhasin v. Hrynew***, 2014 SCC 71; and
 - ii. ***Deloitte & Touche v. Livent Inc.***, 2017 SCC 63.

Plaintiff's address for service:

SHIELDS HARNEY
Litigation Counsel
Suite 490 - 1177 West Hastings Street
Vancouver, B.C. V6E 2K3
Telephone: (604) 682-7770

Fax number address for service: (604) 682-1822

E-mail address for service: awade@shieldsharney.com

Place of trial: Vancouver, British Columbia

The address of the registry is:

800 Smithe Street
Vancouver, B.C.

Date: March 1, 2018



Alastair Wade and
John Douglas Shields
Counsel for Plaintiff

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Damages for breach of contract to perform and complete an independent audit of financial statements.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

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:

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