



NO. VLC-S-S-183355
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ALL CANADIAN INVESTMENT CORPORATION

PLAINTIFF

AND:

BDO CANADA LLP

DEFENDANT

AND:

DONALD BERGMAN

THIRD PARTY

RESPONSE TO THIRD PARTY NOTICE

Filed by: Donald Bergman (the "Third Party")

Part 1: RESPONSE TO THIRD PARTY NOTICE FACTS

Division 1 – Response to Facts

1. The facts alleged in paragraphs 1 and 4 of Part 1 of the Third Party Notice are admitted.
2. The facts alleged in paragraphs 2, 3, 5, 6 to 33 of Part 1 of the Third Party Notice are denied wholly or in the manner framed by the Defendant.
3. The facts alleged in paragraphs 12, 13, 16, 21 and 29 of Part 1 of the Third Party Notice are outside the knowledge of the Third Party.

Division 2 – Third Party's Version of Facts

1. The Defendant contracted with the Plaintiff by which the Defendant agreed to act as an independent auditor of the Plaintiff.
2. The Defendant did not enter into any contract with the Third Party.

Division 3 – Additional Facts

1. N/A.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Third Party does not consent to the granting of relief sought in Part 2 of the Third Party Notice.
2. The Third Party opposes the granting of relief sought in Part 2 of the Third Party Notice.
3. The Third Party takes a position on the granting of relief sought in Part 2 of the Third Party Notice and opposes same.

Part 3: LEGAL BASIS

1. The Defendant has no claim against the Third Party, as alleged or at all.
2. The Defendant's Third Party Notice is a nullity.
3. A company cannot act for itself. It can only act through individuals who are conferred authority to represent it. See for example:

Business Development Bank of Canada v. 0792989 B.C. Ltd., 2014 BCSC 611 (CanLII)

Oxford Holdings Ltd. v. People's Trust Co., 2002 BCSC 957 (CanLII)

4. At all material times the Third Party acted for and on the behalf of the Plaintiff.
5. The Defendant has no cause of action against the shareholders of a limited liability company for contracts entered into by the company. See for example:

Salomon v. A. Salomon & Co. Ltd., [1897] AC 22 (H.L.)

6. A third party claim does not lie against a stranger with respect to an obligation belonging to the Plaintiff which the Defendant can raise directly as a defence. See for example:

Adams v. Thompson Berwick, Pratt & Partners, 1987 CanLII 2590 (BCCA)

Laidan Holdings v. Lindt & Sprungli (Canada) Ltd. Inc., 2012 BCCA 22

7. An alleged breach of Section 217 of the ***Business Corporations Act*** creates a statutory offence under the ***Offence Act***. It does not bestow

a private law duty owed by the Third Party to the Defendant, as alleged or at all.

- 8. If the Third Party breached any duty, as alleged or at all, which is denied, then the breach of the duty is a breach of a duty owed by the Third Party to the Plaintiff and the cause of action belongs to the Plaintiff and to no one else. See for example:

Foss v. Harbottle, (1843) 2 Hare 461 (Ch)

- 9. The proper Plaintiff in respect of a wrong alleged to be done to a company is the company itself.
- 10. The Third Party Notice discloses no claim in law and must be struck pursuant to Rule 9-5(1)(a) of the Supreme Court Civil Rules.
- 11. The Third Party is to be awarded costs on a scale or basis as this Honourable Court may allow.

Address for service of third party:

SHIELDS HARNEY
 Litigation Counsel
 Suite 490 – 1177 West Hastings Street
 Vancouver, B.C. V6E 2K3
 Telephone: (604) 891-1316

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

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

Date: June 8, 2018



Alastair Wade
 Counsel for the Third Party, Donald Bergman

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
 - (i) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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This RESPONSE TO THIRD PARTY NOTICE is given by Alastair Wade of the firm of Shields Harney, Solicitors for the Third Party, whose place of business and address for service is 490 - 1177 West Hastings Street, Vancouver, B.C. V6E 2K3 Telephone (604) 682-7770; Fax (604) 682-1822.