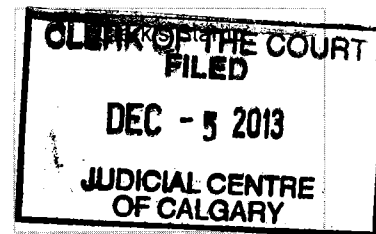


COURT FILE NUMBER 1301-14384
COURT COURT OF QUEEN'S BENCH
OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFF TIM TAM, as Representative
Plaintiff
DEFENDANTS MING J. FONG, GERMAN FONG
ALBUS, SANDRA ALBUS and
SANDRA F. ALBUS
PROFESSIONAL CORPORATION
DOCUMENT Brought under the *Class
Proceedings Act*, S.A. 2003, c. C-
16.5



STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT CUMING & GILLESPIE
Barristers and Solicitors
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NOTICE TO DEFENDANT

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

STATEMENT OF FACTS RELIED ON:

The Parties

1. The representative Plaintiff, Tim Tam ("Tam"), is a resident of the City of Calgary, in the Province of Alberta, and brings this action on his own behalf and on behalf of all other persons, other than the Defendants, who have invested money with the Defendants and/or provided money to the Defendants or any of them, on the pretext of the Fong Scheme, as described at para. 2, and have suffered loss as a result.
2. Tam and approximately 50 other investors, primarily resident in Alberta, are victims of a scheme wherein they provided monies to the Defendants, on the basis that the Defendants promised to return the investment plus interest (the "Fong Scheme"). The Fong Scheme was characterized by systemic negligent misrepresentations and, or in the alternative, fraudulent conduct. Further particulars of the Fong Scheme are detailed at paragraphs 18 - 31. Tam and the other investors are hereinafter collectively referred to as the "Plaintiff Investors". The Defendants had no legitimate purpose for the investments and the object of the Fong Scheme was to take the Plaintiff Investor funds and convert them for the Defendants' own use, benefit, and enrichment.
3. The Defendant, Ming J. Fong ("Fong"), was a member of the Law Society of Alberta at all material times, until June 25, 2012 when he was disbarred. At all material times, Fong carried on practice as a barrister and solicitor in the City of Calgary and elsewhere in the Province of Alberta.
4. The Defendant, Sandra Albus, was, at all material times, a member of the Law Society of Alberta. At all material times, Sandra Albus carried on a practice as a barrister and solicitor in the City of Calgary and elsewhere in the Province of Alberta.

5. The Defendant, Sandra F. Albus Professional Corporation (“Albus P.C.”) was, at all material times, a registered corporation authorized to carry on business in the Province of Alberta. It was, at all material times, through Albus P.C. that Sandra Albus carried on her law practice. Sandra Albus is the sole director and shareholder of Albus P.C. Sandra Albus and Albus P.C. are hereinafter collectively referred to from time-to-time as “Albus”.
6. The Defendant, German Fong Albus (“GFA”), was, at all material times, a law firm carrying on business for the primary purpose of conducting legal practice in the City of Calgary and elsewhere in the Province of Alberta, and was governed by the *Legal Profession Act*, RSA 2000, c. L-8, as amended.
7. At all material times, Fong and Albus were both partners of GFA, or held themselves out as such, within the meaning of the *Partnership Act*, RSA 2000, c. P-3 as amended, and practiced law through GFA.
8. At all material times, both Fong and Albus were, in their own respective rights and on behalf of GFA, knowingly involved in the Fong Scheme.
9. Hereinafter, GFA, Sandra Albus, Albus P.C. and Fong are at times hereinafter collectively referred as the “GFA Defendants”.

The Solicitor-Client Relationship

10. At material times, the Plaintiff Investors were clients of the GFA Defendants, with the GFA Defendants having provided legal services to each of the Plaintiff Investors.
11. Through the solicitor-client relationships with the Plaintiff Investors, the GFA Defendants gained knowledge of the Plaintiff Investors’ respective financial affairs.

12. The Plaintiff Investors trusted the GFA Defendants, were particularly vulnerable to the exercise of power by the GFA Defendants, and relied on them to protect their interests.

The Law Society of Alberta Investigation into Fong's Conduct

13. On November 17, 2010, following complaints and an investigation, a Law Society of Alberta Hearing Committee found the conduct of Fong to be deserving of sanction and ordered his suspension.
14. Fong's suspension was stayed pending his appeal of that sanction to the Benchers of the Law Society of Alberta. The Benchers dismissed Fong's appeal on October 25, 2011. Fong's suspension was then further stayed pending his appeal of the Bencher's dismissal to the Alberta Court of Appeal. That stay expired on about December 6, 2011 and the suspension then became effective.
15. At all material times, the GFA Defendants had knowledge of the Law Society's investigation into Fong, his disciplinary history, and his subsequent suspension by the Law Society, stayed or otherwise.
16. At no material time did any of the GFA Defendants make the Plaintiff Investors aware of the Law Society's investigation into Fong, or make the Plaintiff Investors aware that Fong was subject to any suspensions from the Law Society of Alberta, stayed or otherwise, or that any other sanctions against Fong were stayed or pending, or that Fong had a disciplinary history with the Law Society of Alberta.
17. In addition to citations alleging that Fong breached trust conditions and undertakings, and failed to serve his clients and respond to opposing counsel, Fong was also the subject of further reviews of his conduct. The further reviews included his assistance to a client seeking to secure her supposed interest in an alleged inheritance, in what was referred to as the "Spanish Estate", by soliciting

funds from other clients for the Spanish Estate client without full disclosure and without conducting any due diligence into the legitimacy of the Spanish Estate client's claim.

The Fong Scheme

18. In the fall of 2010, Fong approached Tam and solicited funds with respect to an estate matter for another client, for which he required funds in order to finalize (the "Spanish Estate Matter"). Fong also approached approximately 50 others (the other Plaintiff Investors) with requests of the same or a similar nature.
19. Among other things, Fong made a set of standard representations and promises, which he repeated to each of the Plaintiff Investors, namely that:
 - a) The funds requested would be used by Fong and/or GFA in connection with the Spanish Estate Matter or a similar matter, and were in respect of Fong's and GFA's practice of law;
 - b) The contributions would be temporary in nature;
 - c) Fong and/or GFA would return the contribution plus interest within a reasonable period of time; and
 - d) Further and other representations as may be proven at trial.(The "Representations").
20. The Plaintiff Investors reasonably relied on the Representations made by Fong and subsequently agreed to provide funds to Fong and GFA.
21. On or about October 19, 2010, Tam, reasonably relying on the Representations made by Fong, agreed to provide funds in the amount of \$320,000 to Fong and GFA, which amount was agreed by the GFA Defendants to be repaid, together with interest of \$30,000 thereon no later than October 31, 2011.

22. The Plaintiff Investors were induced to provide funds to Fong and GFA based upon Fong's standing as an established and respected member of the legal profession, as a partner with GFA, and based upon the previous dealings the Plaintiff Investors had with the GFA Defendants within their solicitor-client relationships.
23. On or about November 3, 2011, in response to demands by Tam for the agreed upon repayment of the funds, the GFA Defendants, or any of them, prepared a demand promissory note, which provided that Fong would pay to Tam the sum of \$320,000 plus interest of \$30,000, due December 20, 2011 (the "Note"). At no time did the GFA Defendants, or any of them, recommend that Tam seek independent legal advice in connection with the Note.
24. As security for the money provided by Tam and not yet repaid, the Note was signed by Fong and witnessed by an individual whose identity is not currently known to Tam.
25. Similar circumstances took place with the other Plaintiff Investors, in that the GFA Defendants, or any combination of them, agreed to repay the funds contributed by the Plaintiff Investors plus interest. The GFA Defendants also, in some, if not all, cases, provided the Plaintiff Investors with demand promissory notes setting out the return of the Plaintiff Investors' funds, which were prepared and executed by the GFA Defendants, or any combination of them. At no time did the GFA Defendants, or any of them, recommend to any of the Plaintiff Investors that they seek independent legal advice in connection with the contributions or in regard to the demand promissory notes.
26. The funds provided to the GFA Defendants by the Plaintiff Investors, so far as is currently known, totals approximately \$20,000,000 (the "Contributions").
27. The Plaintiff Investors' Contributions were in many cases deposited into the GFA trust account or, alternatively, into other trust accounts controlled by Fong.

28. There is due and owing to Tam from the GFA Defendants the sum of \$320,000 plus interest, arising from his contribution. Similarly, the funds provided by the other Plaintiff Investors are due and owing, as is the interest that was agreed upon in each individual case (collectively, the “Indebtedness”).
29. The Plaintiff Investors have demanded payment of the outstanding Indebtedness owed by the GFA Defendants.
30. The GFA Defendants have failed, refused and/or neglected to pay any or all amounts owing to the Plaintiff Investors under the Contributions.
31. The Plaintiff Investors state that the Indebtedness owed is a *bona fide* debt, unjustly withheld by the GFA Defendants.
32. In the alternative, the Plaintiff Investors state that the GFA Defendants, or any of them, have been unjustly enriched by the Contributions to the corresponding deprivation of the Plaintiff Investors, in the absence of a juristic reason for such enrichment.
33. In the further alternative, the Plaintiff Investors claim payment from the GFA Defendants, or any combination of them, on a *quantum meruit* basis, for the Contributions.

The GFA Defendants’ Actionable Wrongdoing

34. At all material times:
 - a) The Plaintiff Investors were clients of the GFA Defendants. The GFA Defendants were acting as legal counsel for the Plaintiff Investors and providing legal advice in the capacity of barristers and solicitors with respect to the Contributions and other legal matters;
 - b) Fong was acting in the ordinary course of business of GFA and/or with the authority of his partners;

- c) The GFA Defendants owed a duty of care to the Plaintiff Investors to act in a manner consistent with the standards of a reasonably prudent barrister and solicitor;
 - d) The GFA Defendants owed fiduciary obligations to the Plaintiff Investors, including to act in good faith, to provide truthful and accurate disclosure of the use of the Contributions of the Plaintiff Investors, to protect the Plaintiff Investors' interests and inform the Plaintiff Investors of any potential or actual conflicts of interest;
 - e) Albus and GFA are vicariously liable for the acts and omissions of Fong; and
 - f) Albus and GFA are directly liable for the acts and omissions of Fong, and for their own acts and omissions, as set out below.
35. The Plaintiff Investors state that the GFA Defendants owed them contractual obligations, a duty of care, and/or fiduciary duties, including *inter alia*:
- a) To comply with the Representations made to the Plaintiff Investors;
 - b) To cease participating in, providing assistance, or being willfully blind or reckless with respect to the Fong Scheme, when they knew or ought to have known that the Representations made to the Plaintiff Investors were untrue;
 - c) To advise the Plaintiff Investors that they were not acting on behalf of the Plaintiff Investors and were not providing solicitor/client services to or for the benefit of the Plaintiff Investors;
 - d) To avoid placing their personal interests in a position where they would conflict with those of the Plaintiff Investors;
 - e) To take reasonable care to ensure that the Plaintiff Investors' Contributions were not being handled in a manner that was unlawful, likely to result in a total loss of the Contributions, and/or likely to result in non-repayment of the Indebtedness owed to the Plaintiff Investors; and

- f) Such further and other duties and obligations as may be proven at the trial of this action.
36. The GFA Defendants, by their conduct and negligence, were in breach of their contractual obligations, express or implied, to provide competent legal services to the Plaintiff Investors and/or were in breach of their duties of care and professional and fiduciary obligations owed to the Plaintiff Investors, particulars of which include:
- a) Failing to exercise the standard of care of a reasonably prudent barrister and solicitor;
 - b) Failing to comply with the provisions of the *Legal Profession Act*, the *Law Society of Alberta Rules* and the *Law Society of Alberta Code of Conduct* in respect of the Spanish Estate Matter and the Contributions, and in relation to Fong's practice with GFA more generally;
 - c) Acting in a conflict of interest;
 - d) Failing to advise the Plaintiff Investors to seek independent legal advice in relation to the Contributions;
 - e) Failing to perform any due diligence in favour of the Plaintiff Investors;
 - f) Failing to fully advise the Plaintiff Investors of the circumstances, including the true purpose of the Contributions and of the Spanish Estate Matter;
 - g) Failing to advise the Plaintiff Investors that they had solicited funds from other clients based on similar representations and had failed to make payments on those other obligations;
 - h) Failing to monitor the trust accounts of GFA to ensure that the Contributions were properly obtained and put to proper use, including through compliance with the *Law Society of Alberta Rules* and the *Law Society of Alberta Code of Conduct*;

- i) Failing to have in place procedures to ensure that GFA's facilities, including its trust account(s) and ledgers, office space, employees, client files, and firm name, were not used improperly by any of its partners or employees, and to ensure compliance with the *Law Society of Alberta Rules* and the *Law Society of Alberta Code of Conduct*;
- j) Failing to monitor or place safeguards on Fong and his involvement with clients, in circumstances in which the GFA Defendants, or any of them, knew, had reasonable cause to suspect, or were wilfully blind or reckless, to the fact that Fong was in challenged financial circumstances, and/or in light of his prior disciplinary history with the Law Society, in breach of the *Law Society of Alberta Rules* and the *Law Society of Alberta Code of Conduct*;
- k) Failing to ensure that the Spanish Estate Matter was a legitimate legal matter;
- l) Failing to repay the Contributions plus the interest owed to the Plaintiff Investors;
- m) Keeping or converting the funds from the Contributions for their own benefit;
- n) Improperly using Fong's position and influence as a barrister and solicitor and established solicitor-client relationships to secure the Contributions;
- o) Misusing information obtained through the solicitor-client relationships for their own benefit;
- p) Knowingly misrepresenting to the Plaintiff Investors:
 - (i) That the Contributions were secure and were in the Plaintiff Investors' best interests;
 - (ii) The purpose for which the Contributions were solicited;
 - (iii) That the Contributions were temporary and would be repaid in full;

- (iv) That Fong was acting in his capacity as a lawyer of GFA; and
- (v) That Fong was a member in good standing with the Law Society of Alberta;

which misrepresentations the GFA Defendants knew or ought to have known were false, misleading or inaccurate, and would be reasonably relied upon by the Plaintiff Investors to their detriment;

- q) Failing to report Fong's misconduct to the Law Society, when they became aware of it, ought to have become aware of it or were reckless or wilfully blind to it, in breach of the *Law Society of Alberta Code of Conduct*; and
- r) Such further and other breaches, the particulars of which are not yet known to the Plaintiff Investors, and which may be proven at trial.

(Collectively, the "Breaches").

- 37. The Breaches, or any combination of them, caused the Plaintiff Investors loss and damages.
- 38. Further, or in the alternative to the above, the GFA Defendants participated in a conspiracy designed to implement and carry out the Fong Scheme as described above. The object and purpose of the conspiracy was to cause harm or loss to the Plaintiff Investors for the benefit of the GFA Defendants.
- 39. The GFA Defendants knew or ought to have known that as a result of the Breaches, the GFA Defendants' activities and inability and/or failure to repay the Indebtedness would cause or contribute to the risk of significant damage to the Plaintiff Investors. As a result of the acts and omissions of the GFA Defendants, or any of them, the Plaintiff Investors have suffered loss and damage, including the loss of their initial Contributions and interest. Accordingly, the Plaintiff Investors claim damages from the GFA Defendants, jointly and severally.

40. Further or in the alternative, the Representations made by Fong were false. The Contributions were not used in connection with the Spanish Estate Matter, were not temporary in nature, and full repayment of the Contributions was not made. Fong purposefully defrauded the Plaintiff Investors of money with no intent of making repayment.
41. The Plaintiff Investors submit that Fong made the Representations fraudulently, knowing that the Representations were false, or was reckless, not caring whether the Representations were true or false. Alternatively, Fong made the Representations negligently or withheld information which he knew may affect the Plaintiff Investors' decisions to provide the Contributions.
42. The Plaintiff Investors further submit that they relied on and were induced to provide the Contributions due to the fraudulent or negligent misrepresentations made or the withholding of information by the GFA Defendants. The Plaintiff Investors state that it was reasonable for them to rely on the Representations.
43. The Plaintiff Investors further submit that they have suffered losses due to the fraudulent or negligent misrepresentations of the GFA Defendants.

Legislation Relied Upon:

44. The Plaintiff Investors plead and rely upon the provisions of the following, as amended: *Bills of Exchange Act*, RSC 1985, c. B-4; *Civil Enforcement Act*, R.S.A. 2000, c. C-15; *Judgment Interest Act*, RSA 2000, c. J-1; *Legal Professions Act*, RSA 2000, c. L-8, and related enactments, including the *Rules of the Law Society of Alberta* (pursuant to ss. 1(l) and 7 of the Act), and the *Law Society of Alberta Code of Conduct* (pursuant to s. 6 of the Act); *Partnership Act*, RSA 2000, c. P-3; and the *Class Proceedings Act*, S.A. 2003, c. C-16.5.

Trial Venue Proposed:

45. Tam and the Class Members (the Plaintiff Investors) propose that the trial of the common issues take place at the Court House in the City of Calgary, in the Province of Alberta, and further estimate that the trial of the common issues will take no more than 25 days.

Remedy Sought:

46. The Plaintiff Investors claim against the GFA Defendants, jointly and severally, or alternatively, as against each of them, as follows:
- a) A declaration that there is due and owing to the Plaintiff Investors from the GFA Defendants, or any of them, the total amount of the Contributions provided by the Plaintiff Investors, in the amount of not less than \$20,000,000.00;
 - b) Interest from the GFA Defendants, or any of them, on the Contributions, calculated in accordance with the Plaintiff Investors' costs of borrowing, or in the alternative, pre-judgment interest pursuant to the *Judgment Interest Act*;
 - c) In the alternative, judgment in the total amount of the Contributions, in the amount of not less than \$20,000,000.00 plus interest, for the unjust enrichment of the GFA Defendants, or any of them, or on a *quantum meruit* basis, or on such further or other equitable basis as this Honourable Court deems just in the circumstances;
 - d) Damages for breach of contract and negligence by the GFA Defendants, or any of them;

- e) In the alternative, damages for fraud from the GFA Defendants, or any of them;
- f) An accounting of the GFA Defendants' financial activities in relation to the Contributions and the Spanish Estate Matter, and specifically, in relation to the use of the monies provided to the GFA Defendants by the Plaintiff Investors by way of the Contributions;
- g) A declaration that any judgment obtained against the GFA Defendants arises due to a fraud committed by one, any, or all of them, or a combination of them and others and, as such, judgment shall survive any discharge from bankruptcy of any of the GFA Defendants;
- h) A declaration that the Plaintiff Investors are entitled to relief pursuant to Alberta's *Civil Enforcement Act*, including, but not limited to attachment orders, orders enjoining the GFA Defendants from disposing of assets, and any other relief the Court may see fit to grant;
- i) An order that any monies or negotiable instrument held by the GFA Defendants, or any of them, and that can be traced back to the Contributions, are held pursuant to a constructive or resulting trust in favour of the Plaintiff Investors;
- j) Interest pursuant to the *Judgment Interest Act*;
- k) Costs, including costs on a solicitor and client basis; and
- l) Such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

NOTICE TO DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiff's address for service.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.