

AMENDED PURSUANT TO RULE X ORIGINAL NOTICE OF CIVIL CLAIM FILED ON
FEBRUARY 15, 2013

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAYMOND CHI-SHING SHUM
IVY LAI-HAR SHUM

PLAINTIFF(S)

AND:

ALFRED AU

DEFENDANT(S)

NOTICE OF CIVIL CLAIM

name and address of each plaintiff:

Raymond Chi-Shing Shum and Ivy Lai-Har Shum

name and address of each defendant

Alfred Au

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-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(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.

Part 1: STATEMENT OF FACTS

1. The Plaintiff Raymond Chi-Shing Shum is retired and resides at 6742 Rupert Street, Vancouver, B.C.
2. The Plaintiff Ivy Lai-Har Shum is retired and resides at 6742 Rupert Street, Vancouver, B.C.
3. The Defendant Alfred Au is a businessman who resides at 5391 Woodward's Road, Richmond, B.C.
4. The Plaintiffs have known the Defendant for a number of years as they attend the same church.
5. In late 1992 and early 1993 the Defendant discussed "investment opportunities" with the Plaintiffs and other church members.
6. The Defendant primarily recommended the Plaintiffs to invest in KAM BIOTECHNOLOGY LTD.
7. The Plaintiffs were humble Chinese Canadians who earned their living performing labour.
8. On or about March 2, 1993, the Plaintiffs, on the recommendation of the Defendant, paid \$35,000.00 to the Defendant to purchase 10,000 class A voting shares of KAM Biotechnology Ltd. (hereafter 'KAM'). The Defendant arranged for shares to be issued and registered in the names of the Plaintiffs.
9. The Plaintiffs invested in KAM because of their relationship with the Defendant. They relied on his apparent acumen and experience in business matters, and on his assurance that he also had invested a considerable sum in this company which representation was critical in the Plaintiffs decision to invest.
10. The Defendant Alfred Au held himself out to be a director, officer and chairman of the Board of Directors of KAM.
11. The Plaintiffs say that when the Defendant Au persuaded them to invest in KAM he had already concluded that the company was not in sound financial position.

12. In December 1995 the Defendant requested a Power of Attorney as he stated it would be easier for him to take care of the Plaintiffs' best interest and to sell the shares at best possible prices.
13. On 31st day of January 2013 the Plaintiff discovered that the Defendant had used the Power of Attorney and discovered that in about July 2000 the Defendant Au sold or redeemed the Plaintiffs' shares of KAM but failed or neglected to inform them of that fact.
14. The Plaintiffs continued to believe they were shareholders of KAM until they discovered otherwise on or about January 31, 2013.
15. The Plaintiffs say the Defendant received proceeds from the sale or redemption of the shares from KAM and held those proceeds in trust for them, and in breach of that trust and in breach of his agreement with the Plaintiffs, converted that money to his own use.
16. The Plaintiffs also say the Defendant Au had a fiduciary duty to them to use his best efforts to obtain the best possible price for their shares of KAM and to pay the Plaintiffs all funds received from those efforts. The Defendant in breach of that duty did not make effort to sell those shares at the best price and has not paid the Plaintiffs for the shares he redeemed or sold.
17. The Plaintiffs say that they are inexperienced and unsophisticated in business matters and relied on the Defendant for advice, and that the Defendant Au knew they were relying on him, and consequently had a fiduciary duty to them to advise them appropriately. The Defendant breached that fiduciary duty by investing their money in a company which has apparent cash flow problems.

Part 2:RELIEF SOUGHT

The Plaintiffs Claim:

- (a) An order that the Defendant produce an account showing value of shares as at the date of sales.
- (b) Judgment in the sum of \$35,000.00 representing return of the monies together with interest
- (c) Damages for the breach of contract, breach of trust, and breach of fiduciary duty.
- (d) Costs

Part 3:LEGAL BASIS

The Plaintiffs says the Defendant:

- a) Breached an agreement with them
- b) Was in breach of trust
- c) Had a fiduciary duty to them which was breached.
- d) The representations made including the representation that the Defendant had invested considerable sums of monies were untrue.
- f) The Defendant owed a duty of care to the Plaintiff as a result of his representation that he himself had invested considerable monies in KAM and in reliance the Plaintiffs lost all their money.
- g) The recommendation to invest was made on the representation that the Defendant had special knowledge in KAM and professional skill in investing.

Plaintiffs(s)' address for service:

Fax number address for service (if any):

E-mail address for service (if any):

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, B.C.

Date: April 19, 2013

Signature of J. Wayne Ryan
Uplaintiff X lawyer for 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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

set out a concise summary of the nature of the claim and the relief required in the action

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

- D maritime law
- D aboriginal law
- D constitutionallaw
- D conflict of laws
- X none of the above
- D do not know

Part 4:

If an enactment is being relied on, specify which one. Do not list more than three enactments.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR
SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff(s) claim(s) to serve this pleading/petition on the defendant(s), name of defendant, outside British Columbia on the ground that list the subsection of Section 10 of the Court Jurisdiction and Proceedings Transfer Act that applies.