



S-158 56g

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

LISA THOMSON

PLAINTIFF

AND:

A.R. THOMSON GROUP

DEFENDANTS

**NOTICE OF CIVIL CLAIM**

Name and address of each Plaintiff:

LISA THOMSON

Name and address of each Defendant:

A.R. THOMSON GROUP  
3420 189 Street,  
Surrey, BC  
Canada, V3W 0H7

**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.

## CLAIM OF THE PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### A Family Business

1. The plaintiff is a writer and businessperson residing at BC.
2. The defendant A.R. Thomson Group ("ARTG") is a partnership, with a business address of 3420 189 Street, Surrey, BC.
3. The business of the defendant is the manufacture and distribution of gaskets, seals, and related products. That business originated in 1967, and in around 1974 Al Thomson bought out his co-owner. The business was subsequently operated through A.R. Thomson Ltd., a BC Company beneficially owned and controlled by Al and Pat.
4. In 1997, Al and Pat Thomson decided to divide the majority ownership of their business evenly among their children, as a form of estate planning and to include their children in ownership of the family business.
5. To accomplish this, Al and Pat Thomson, together with their children, caused a number of corporations to be incorporated, and formally divided ownership of the business among those corporations by way of a partnership agreement. Upon the formation of ARTG, relative partnership interests were held as follows:

A 20% ownership interest was held by:

- a. A.R. Thomson Ltd., a BC Company beneficially owned and controlled by Lisa's father, Al Thomson, and her mother, Pat Thomson. A.R. Thomson Ltd. is the managing partner of ARTG;

15% ownership interests were held by each of:

- b. 550934 B.C. Ltd., a BC Company beneficially owned and controlled by Lisa and her then husband Gordon Taylor ("Taylor"), through a holding company

controlled by them, LLT Holdings Inc. ("LLT"). 934 and LLT were the corporate vessels through which Lisa participated in the management of, and received a share of the profits of ARTG;

- c. 550926 B.C. Ltd., a BC Company beneficially owned and controlled by Lisa's brother James Thomson, through a holding company controlled by him, G.J.T. Holdings Inc.;
- d. 550929 B.C. Ltd., a BC Company beneficially owned and controlled by Lisa's sister Debra Thomson-Knight;
- e. 550931 B.C. Ltd., a BC Company beneficially owned and controlled by Lisa's brother Gordon Thomson, through a holding company controlled by him, G.P.T. Holdings Inc.;
- f. 550936 B.C. Ltd., a BC Company beneficially owned and controlled by Lisa's brother Todd Thomson, through a holding company controlled by him, T.N.R.T. Holdings Inc., and

and

the remaining 5% ownership interest was held by:

- g. 477481 B.C. Ltd., a BC Company owned by 550920 B.C. Ltd., which is jointly owned and controlled by James, Debra, Gordon, Todd, and Lisa, through their respective holding companies.

#### **Termination of 934's partnership interest**

- 6. Following Lisa's separation from Taylor in 2005, Taylor remained a shareholder of LLT and director of 934, although he left work at ARTG and launched a separate business in the same industry.
- 7. At that time, upon the request of Taylor, Al Thomson engaged KPMG to create two separate entities each owning 7 1/2% interest in the Partnership – essentially dividing 934's assets between two companies held separately by Taylor and Lisa. After the

necessary documentation was prepared, Lisa signed the document but Taylor declined to do so.

8. In order to fully remove Taylor from the affairs of ARTG, in around November 2009, the partners of ARTG, with the exception of Lisa, decided to terminate 934's stake in ARTG to the partnership.
9. To enable the expulsion of 934, ARTG relied upon an allegation that Taylor had, as a principal of 934, caused 934 to breach a non-competition clause in the ARTG partnership agreement.
10. About November 20, 2009, the other partners of ARTG notified 934 that it would be expelled from ARTG unless Taylor ceased competing with ARTG or ceased to be a principal of 934.

#### **Reinstatement Agreement**

11. Immediately after notice of ARTG's intention to terminate 934's partnership share was provided, about November 20, 2009, Al Thomson spoke with Lisa on behalf of the partners of ARTG.
12. During that conversation, Al Thomson assured Lisa that the proposed removal of 934 from ARTG would not harm her in the long-term, and urged Lisa not to oppose the termination of 934's partnership share. Al Thomson offered, and Lisa agreed that, if 934's partnership share in ARTG was terminated, following Taylor's final removal from ownership of ARTG:
  - a. ARTG would sell to Lisa a replacement partnership stake in ARTG, to be held either through 934, or a different corporate vessel, to restore her interest in ARTG to the same quantum as if 934's partnership share had not been terminated; and in exchange,
  - b. Lisa would pay through her corporate nominee, as purchase price for that replacement partnership stake, the same price that ARTG paid to terminate 934's corresponding stake.

(the "Reinstatement Agreement").

13. In other words, the Reinstatement Agreement provided that Lisa would give back what ARTG paid and get back what 934 had lost.
14. Al and Lisa entered into the Reinstatement Agreement as a binding agreement, with the express contemplation that Lisa would rely upon the Reinstatement Agreement in respect of the proposed expulsion of 934 from ARTG and the anticipated conflict with Taylor. Reasonably relying upon the Reinstatement Agreement, Lisa:
  - a. Took no steps to avert the expulsion of 934 from ARTG; and
  - b. Took no steps to seek indemnification from Mr. Taylor for the losses that 934 would suffer as a result of that expulsion.
15. On February 18, 2010, ARTG terminated 934's partnership share, relying upon the basis set out in its notice of November 20, 2009. The cost of this termination was that ARTG paid \$1,781,215 to 934, which was significantly less than the fair market value of 934's partnership stake.
16. Taylor subsequently commenced litigation alleging that ARTG did not have the right to expel 934 from the partnership.
17. Throughout the litigation, Lisa assisted ARTG and supported its positions, relying on Al Thomson's assurances and the Reinstatement Agreement. During the litigation, the Reinstatement Agreement was confirmed repeatedly, and the particulars of the Reinstatement Agreement discussed in meetings, discussions, and correspondence between Lisa and the principals of ARTG. Particulars of confirmations of the Reinstatement Agreement and particulars discussed during that time include:
  - a. On October 13, 2010, at a meeting of the partners of ARTG, the attendees (Al, Pat, James, Debra, Todd, and Lisa) unanimously voted to ratify the Reinstatement Agreement, confirmed that Lisa would be reinstated as a 15% partner (the same as the quantum of partnership interest formerly held by 934)

and that the mechanics of the Reinstatement Agreement would be determined based on legal and tax advice;

- b. On November 12, 2010, at a meeting of ARTG, the attendees (Al, Pat, James, Debra, Todd, Gordon and Lisa) discussed the mechanics and timing of Lisa's re-purchase of a partnership interest, reporting on discussions with legal advisors;
- c. On December 16, 2010, at a meeting of ARTG, the attendees (Al, Pat, James, Debra, Gordon and Lisa) reported on discussions with tax advisors and discussed the mechanics and timing of Lisa's re-purchase of a partnership interest;
- d. On December 30, 2010, at a meeting of ARTG, the attendees (Al, Pat, James, Debra, Gordon Todd and Lisa) agreed to postpone the reinstatement of Lisa's partnership stake until the resolution of the litigation with Mr. Taylor, but reaffirmed their commitment to permit Lisa to buy back in to ARTG; and
- e. By email dated September 20, 2012, James wrote to Lisa reassuring her that, despite delays, Lisa should not "worry about reinstatement as [she] would always have an opportunity to be a partner. Terms and funding to be determined but I can say we funded our ownership in the past through earnings of the business", which implied that the purchase price could be financed by a loan from ARTG with repayments deducted from future profit distributions.

### **Settlement of Taylor Litigation**

- 18. The litigation commenced by Mr. Taylor was resolved in around January 2013, but formally continued until being settled by way of an agreement dated for reference May 31, 2013. The settlement documentation impliedly reiterated the Reinstatement Agreement by stating, in the recitals, that 934 was, in the present tense, a partner of ARTG.

## Delay in Fulfillment

19. The settlement of the litigation was structured as a share purchase, 920 buying Taylor's shares of LLT. This resulted in 920 owning half of the shares of LLT.
20. On accounting advice, the reinstatement of 934 as a partner in 934 was postponed until after the repurchase of Taylor's former shares by LLT (giving Lisa sole beneficial ownership of LLT). That repurchase transaction was completed in around December 2013.
21. The net effect of the settlement and repurchase transactions was to cause LLT and 934 to fund the settlement of Taylor's claims against ARTG, without any payment being made by ARTG, notwithstanding that ARTG was the party claimed against by Taylor. Lisa consented to these transactions in reliance on the Reinstatement Agreement.
22. Following the repurchase transaction, ARTG further postponed the reinstatement of 934, notwithstanding Lisa's requests, on the basis that ARTG required the terms and conditions of the reinstatement to be resolved with precision, and a revised partnership agreement prepared accordingly prior to 934's reinstatement to ARTG.
23. In 2013, 2014, and early 2015, ARTG requested that Lisa agree to reinstatement subject to their proposals, which were described in broad terms, including that:
  - a. Lisa receive a non-voting partnership interest instead of the voting interest that 934 had held previously; or
  - b. Lisa agree that her siblings would provide services to the partnership on her behalf, as an opportunity to earn additional wages.
24. ARTG never proposed precise terms of reinstatement, and communications broke down between Lisa and her family in around April 2015.



### **Breach of Reinstatement Agreement**

25. By letter dated August 12, 2015, Lisa, through counsel, wrote to counsel for ARTG on a with prejudice basis, indicating that Lisa would be willing to accept either of the frameworks for reinstatement proposed by ARTG, provided that the particulars of ARTG's proposals were implemented in a way that did not detract from the financial value of the partnership share repurchased by Lisa. A response was requested by August 25, 2015.
26. ARTG did not respond to this letter.
27. BY letter dated September 10, 2015, Lisa, through counsel, wrote again to counsel for ARTG on a with prejudice basis, demanding a response, and stating that a further failure to respond by September 15, 2015 would be understood as confirming that ARTG had renounced the Reinstatement Agreement.
28. ARTG responded by denying any obligation to reinstate Lisa, and by denying the existence of a binding agreement.
29. As the result of ARTG's failure to carry out the Reinstatement Agreement, Lisa has suffered loss and harm, including:
  - a. She has not been able to purchase a partnership stake in ARTG for the agreed-upon price; and
  - b. Lisa has not received partnership distributions, which she would have received if ARTG had honoured the Reinstatement Agreement.

### **Damages would not be adequate**

30. Lisa could not be adequately compensated in damages for ARTG's breach of the Reinstatement Agreement, because the partnership stake in ARTG which is the subject of that agreement is unique. She could not buy a similar asset on the market.

31. ARTG has been built up as a family business of the Thomson family. Lisa, as a member of that family, has a unique relationship with that business as her birthright and inheritance, the loss of which cannot be compensated for in damages.
32. Moreover, Lisa, through LLT, remains an owner of 920, which is a partner of ARTG and which also rents to ARTG real estate for use in ARTG's operations; through LLT and 934, Lisa remains a partner in Thomson Valve & Fitting Partnership ("TVF"), a related business to ARTG.
33. The profitability of 920 and TVF depend upon the terms of their dealings with ARTG, which are set by majority of the ownership of 920 and TVF, who are all (with the exception of LLT and 934) direct or indirect owners of ARTG. The practice of ARTG is to dictate the terms of ARTG's dealing with 920 and TVF to maximize the profitability of ARTG at the expense of 920 and TVF. As the sole owner of 920 and TVF not to receive a share in the profits of ARTG, Lisa will suffer loss and damage that will be impossible to calculate.

#### **Detrimental Reliance**

34. Lisa further relied upon the Reinstatement Agreement to her own detriment, and to the advantage of ARTG by:
  - a. In around June 2010, signing a Promissory Note in the amount of \$431,000 dated for reference June 29, 2010 (the "Promissory Note"), at the request of Al Thomson.

In around June 2009, ownership of real property located at 1793 Edwards Drive, Point Roberts, Washington State, U.S.A. (the "Point Roberts Property") was transferred from ARTG to the individual members of the Thomson family.

A year later, around June 2010, Al Thomson demanded that Lisa sign the Promissory Note in the amount of \$431,000 to pay for the interest in the Point Roberts Property he had previously transferred to her. Lisa objected to signing that she couldn't afford to incur a \$431,000 debt, and was not willing to incur a large debt to retain her interest in the Point Roberts Property.

Al Thomson induced Lisa to sign by assuring Lisa that the Promissory Note would be paid for by Lisa's future income from ARTG after the completion of the Reinstatement Agreement. The fair market value of Lisa's interest in the Point Roberts Property as of her acquisition of that interest, the date of the Promissory Note, was and remains significantly less than \$431,000.

- b. Causing LLT to repurchase its shares formerly held by Taylor in expectation that 934 would be reinstated as a partner of ARTG;
- c. In around July 2013, lending back to ARTG all of the funds belonging to 934 with the agreement that those funds would be paid to ARTG to repurchase a partnership stake, when the Reinstatement Agreement was carried out.

ARTG subsequently refused to return the funds advanced, retaining them for ARTG's own use and benefit, and unilaterally made deductions from that amount, including:

- i. \$180,528 credited to Al Thomson, in respect of legal fees spent in defending the Taylor litigation;
  - ii. \$69,173.83 as expenses to maintain the Point Roberts Property (defined below),
  - iii. \$18,449.32 as "legal and accounting fees" despite Lisa's request that she make her own arrangements for lawyers and accountants; and
  - iv. \$575,127.50 credited to 920;
35. ARTG invited Lisa to rely upon the Reinstatement Agreement, which she did, and are now estopped from renouncing that agreement or taking the position that they did not intend to be bound by the Reinstatement Agreement.

**Part 2: RELIEF SOUGHT**

36. The Plaintiff claims for:

- a. An order that the Defendant specifically perform the agreement transfer to Lisa Thomson, or a corporate nominee solely owned by Lisa Thomson, a 15% partnership interest in the Defendant, subject to terms including that:
  - i. The Defendant deduct, from amounts currently due from ARTG to Lisa Thomson or 550934 B.C. Ltd., or from the share of partnership profits due or that may come due, a total of \$1,781,215;
  - ii. Lisa Thomson be neither entitled nor obliged to provide services to ARTG in any capacity; and
  - iii. such further terms that this Honourable Court considers just;
- b. The Defendants pay to Lisa Thomson, or a corporate nominee payment of a 15% share of ARTG partnership profits accrued since November 7, 2009;
- c. In the alternative, order that the Defendant pay damages for breach of contract to the Plaintiff in lieu of specific performance;
- d. In the further alternative, damages for breach of contract;
- e. Interest pursuant to the *Court Order Interest Act*;
- f. Costs; and
- g. Such further and other relief as this Honourable Court considers just.

**Part 3: LEGAL BASIS****Law of Contract**

37. Where parties offer, and accept the terms of an agreement to exchange valuable

consideration, a contract is formed that is enforceable at law.

38. The Reinstatement Agreement was proposed by Al Thomson, as a transaction where Lisa would pay a specific price to reacquire the partnership stake she had formerly enjoyed the benefit of through her ownership of LLT and 934. Those terms include an exchange of valuable consideration. It was expressly stated, or implicit in the context, that the Reinstatement Agreement was to be carried out following the final removal of Taylor from ownership in ARTG.
39. Al invited Lisa to treat the Reinstatement Agreement as a binding commitment, and to act in reliance upon it. Lisa did so, with the knowledge and encouragement of Al and ARTG.

### **Certainty of Terms**

40. The formation of a binding contract does not require complete legal precision. Sufficient clarity is only required for the Court to be able to assess the intention of the parties as to the essential terms, such as the subject matter of the contract, price, and time of performance.

*Singh v. Nicholson*, 2011 BCSC 449

41. In the present case, the Reinstatement Agreement was unambiguous with respect to its essential terms, and was sufficiently clear to enable the court to ascertain the intentions of the parties.

### **Specific Performance**

42. Where a breach of contract cannot be adequately remedied by an award of damages, equity will make orders as needed to provide the plaintiff with the specific benefit which they were entitled to under the contract. Where that benefit is a unique property, equity has recognized that damages would not be an adequate remedy.

*Semelhago v. Paramadevan*, [1996] 2 SCR 415

43. A partnership share in ARTG is a unique property interest, as ARTG is an intergenerational family business established and managed by Lisa's family.

*0771252 B.C. Ltd. v. 0764735 B.C. Ltd.*, 2012 BCSC 2039

44. As a family member and an owner of related businesses, Lisa is also in a unique

relationship to ARTG, which is a factor mitigating in favour of the availability of specific performance.

*0771252 B.C. Ltd. v. 0764735 B.C. Ltd.*, 2012 BCSC 2039, at para. 35

45. Damages would not adequately compensate Lisa for her exclusion from the ARTG partnership. To protect Lisa from an injustice, equity will require the partners of ARTG to specifically perform the Reinstatement Agreement.

#### **Damages**

46. Where a party to a contract breaches the terms of the agreement, he is liable for damages in the amount necessary to place the counterparty in as good a position as he would have been, had the contract been honoured; these damages may, where the plaintiff is entitled to specific performance, be framed as equitable damages in lieu of specific performance if the plaintiff so elects, or if specific performance is impossible in the circumstances.

*Semelhago v. Paramadevan*, [1996] 2 SCR 415

47. As a result of ARTG's delays and subsequent refusal to perform the Reinstatement Agreement, Lisa has been deprived, not only of the partnership share she was entitled to purchase, but of the partnership profit distributions she would have received had the agreement been implemented promptly, no later than December 2013.

#### **Estoppel**

48. Where a party reasonably relies on the promise of another, to their own detriment, the promisor will then be estopped from resiling from that promise.

*Ryan v. Moore*, 2005 SCC 38

49. ARTG invited Lisa to rely upon the Reinstatement Agreement, and she reasonably did so, to her detriment. Having invited that reliance, ARTG is now estopped from resiling from the Reinstatement Agreement.

Plaintiff's address for service:

Fax number address for service (if any): N/A

E-mail address for service (if any): N/A

Place of trial: Vancouver, British Columbia.

The address of the registry is: 800 Smithe Street, Vancouver B.C.,  
V6Z 2E1

Date: October 16, 2015



Signature of the plaintiff

lawyer for the plaintiff

Lisa Thomson

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.

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**APPENDIX****Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The plaintiff's claim is against the defendant for breach of contract.

**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
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Court Order Interest Act*, RSBC 1996, c. 79