

JUL 10 2020



Form 1 (Rule 3-1 (1))

No. **S-206860**  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JAMES THOMSON AND DEBRA KNIGHT, EXECUTORS  
AND TRUSTEES UNDER THE LAST WILL AND TESTAMENT OF  
ALLAN THOMSON, DECEASED

PLAINTIFFS

AND:

LISA THOMSON

DEFENDANT

**NOTICE OF CIVIL CLAIM**

**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. Allan Thomson was a businessman who passed away on July 1, 2018.
2. James Thomson is a businessman and the son of Allan Thomson. Debra Thomson is a businesswoman and the daughter of Allan Thomson. James Thomson and Debra Thomson are the joint executors of Allan Thomson's estate.
3. The defendant, Lisa Thomson, is the daughter of Allan Thomson.
4. The plaintiff's claim is against the defendant as maker of a promissory note dated June 29, 2010, whereby the defendant promised to pay to the plaintiff the sum of CDN\$265,125 (the "**Promissory Note**").
5. The Promissory Note is a demand note, and bears interest at a rate of 1% per annum from and including June 29, 2010. The defendant waived demand, presentment for payment, notice of non-payment, protest, notice of grace and notice of dishonour in connection with the delivery, acceptance, performance, default or enforcement of or under the Promissory Note.
6. The Promissory Note is an unconditional promise to pay, the full amount of which is due and owing to the plaintiff.
7. The defendant has not repaid the debt evidenced by the Promissory Note.

#### **PART 2: RELIEF SOUGHT**

8. The plaintiff claims the sum of CDN\$265,125.
9. Pre-judgment interest at the rate of 1% per annum from June 29, 2010.
10. Costs.

11. Such other relief as this Honourable Court deems just and appropriate.

**PART 3: LEGAL BASIS**

12. The defendant is indebted to the plaintiff as the maker of the Promissory Note.
13. The amount claimed is the amount owing pursuant to the Promissory Note.

Plaintiff's address for service:

Attention: R. Barry Fraser  
**Fraser Litigation Group**  
 1100 – 570 Granville Street  
 Vancouver, BC V6C 3P1  
 (Direct Number: 604.343.3102)

Fax number address for service (if any):

N/A

E-mail address for service (if any):

bfraser@fraserlitigation.com AND  
apiercy@fraserlitigation.com


Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street, Vancouver, BC

Date: 08/JUL/2020

  
 Signature of Lawyer for the Plaintiff  
 Lawyer: R. Barry Fraser

This NOTICE OF CIVIL CLAIM is prepared by R. Barry Fraser of the firm of **Fraser Litigation Group** whose place of business is 1100-570 Granville Street, Vancouver, British Columbia, V6C 3P1 (Direct #:604.343.3101, Fax #: 604.343.3119, Email: bfraser@fraserlitigation.com).

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:**

This is a debt action.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A dispute concerning:

☒ the provision of goods or services or other general commercial matters

**Part 3: THIS CLAIM INVOLVES:**

☐ a class action

☐ maritime law

☐ aboriginal law

☐ constitutional law

☐ conflict of laws

☒ none of the above

☐ do not know

**Part 4:**

NA





No. S-206860  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

JAMES THOMSON AND DEBRA KNIGHT, EXECUTORS  
AND TRUSTEES UNDER THE LAST WILL AND  
TESTAMENT OF ALLAN THOMSON, DECEASED

PLAINTIFFS

AND:

LISA THOMSON

DEFENDANT

**RESPONSE TO CIVIL CLAIM**

**Filed by:** Lisa Thomson (the "defendant")

**Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

**Division 1 – Defendant's Response to Facts**

1. The facts alleged in paragraphs **1-5** of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs **6 and 7** of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraph(s) *nil* of Part 1 of the notice of civil claim are outside the knowledge of the defendant.

**Division 2 – Defendant's Version of Facts**

1. The defendant ("**Lisa**") specifically denies each and every allegation made in the Notice of Civil Claim, except as specifically admitted herein.
2. This action is statute-barred by the provisions of the *Limitation Act*, RSBC 1996, c. 266 [the Former *Limitation Act*], and the *Limitation Act*, SBC 2012, c.13 [the New *Limitation Act*].

3. Lisa admits that she signed the promissory note which is the subject matter of this Action (the "**Al Promissory Note**"), but did so on the basis of representations and promises made to her by her father, Al Thomson. These representations and promises were conditions precedent to payment of the Al Promissory Note that have not been fulfilled, or were a collateral contract that has not been fulfilled, or estop the plaintiff from claiming under the Al Promissory Note.

#### **The Background to the Promissory Note**

4. The Al Promissory Note relates to a family vacation property at 1793 Edwards Drive, Point Roberts, WA, USA (the "**Property**").
5. The Property was originally owned by the Allan R. Thomson Group ("**ARTG**"), a partnership of corporate entities controlled by members of the Thomson family, including Lisa, her siblings, and their parents, Al Thomson and Patricia Thomson.

#### **ARTG background**

6. Prior to February 2010, Lisa held an indirect interest in ARTG through a company, 550934 BC Ltd. ("**934**"), which was owned by LLT Holdings Inc. ("**LLT**"). LLT was then owned by Lisa and her then-husband, Gordon Taylor. Lisa also held an indirect interest in ARTG through LLT through other companies.
7. In November 2009, ARTG gave 934 notice of its intention to expel 934 from the partnership in relation to alleged competition by Gordon Taylor. Before the expulsion, Al Thomson agreed to reinstate Lisa's indirect partnership interest once Taylor was fully removed from ARTG (the "**Reinstatement Agreement**"). The Reinstatement Agreement was affirmed by ARTG, but it has subsequently denied any binding and enforceable obligation to reinstate Lisa.
8. ARTG expelled 934 from the partnership in February 2010.
9. The failure by ARTG to carry out the Reinstatement Agreement led to litigation between Lisa and ARTG, Supreme Court of BC Action S-158569 (the "**Reinstatement Action**") and between Lisa, 934 and LLT (both of which are now solely owned and controlled by Lisa), and Al Thomson, Supreme Court of BC Action S-178585 (the "**Fraud Action**"). These actions are set for trial in September 2021.

#### **The Al Promissory Note**

10. In or about July 2009, Al Thomson, who was the managing partner of ARTG and the family patriarch, instructed Lisa and her siblings to sign documents to transfer 80% of the Property from ARTG to Lisa and her siblings personally in equal shares.

11. Al Thomson made the following representations to Lisa, which induced her to sign the transfer documents and execute a promissory note payable by her to ARTG in the amount of \$431,000:
  - (a) He advised Lisa that the transfer was required to avoid negative tax consequences for ARTG arising from personal use of the Property.
  - (b) He advised her that the sale price of USD 2.5M was fair market value based on an independent professional appraisal.
12. Al Thomson advised Lisa that, as she did not have the funds to acquire an interest in the Property, she would only have to pay the promissory note out of partnership distributions indirectly made to her from ARTG.
13. Lisa reasonably relied on her father's representations and advice, as set out in paragraphs 11 and 12 herein, and signed the transfer notes and executed the promissory note for \$431,000 in favour of ARTG.
14. The representations in paragraphs 11(a) and 11(b) were not accurate and the representation in paragraph 12 was binding.
15. In or about June 2010, Al Thomson, on behalf of himself, the plaintiff and ARTG, came to the Property while Lisa was vacationing there with her family. Al Thomson presented Lisa with two promissory notes in a total amount equal to \$431,000 – one in favour of Patricia Thomson, in the amount of \$165,875 (the "**Patricia Promissory Note**"), and the other was the Al Promissory Note in the amount of \$265,125.
16. Al Thomson, on behalf of himself, the plaintiff and ARTG, advised Lisa that the promissory note Lisa signed in favour of ARTG would be replaced by the Patricia Promissory Note and the Al Promissory Note and that these new notes would, like the promissory note in favour of ARTG, only have to be repaid by Lisa through partnership distributions made indirectly to her from ARTG following her (or her company's) reinstatement as a partner of ARTG.
17. Lisa relied reasonably upon her father's advice and signed the Al Promissory Note and the Patricia Promissory Note.
18. The plaintiff is bound by the representation described in paragraph 16, which followed from the representation in paragraph 12.
19. Lisa was not reinstated, either directly or indirectly, as a partner of ARTG and no distributions were therefore made to her by ARTG to enable her to repay the Patricia Promissory Note.



### **Division 3 – Additional Facts**

1. This facts alleged and relief sought in this action are closely related to the facts alleged and relief sought in the Reinstatement Action and the Fraud Action.
2. Patricia Thomson has also advanced an action based on the Patricia Promissory Note, Supreme Court of British Columbia Action No. S-206859 (the “**Patricia Promissory Note Action**”). That action was commenced on the same day as this action, and Patricia Thomson is represented by the same counsel as is the plaintiff in this action, who is also counsel for the defendants in the Reinstatement Action and the Fraud Action.
3. This action should be heard together with the Reinstatement Action, the Fraud Action, and the Patricia Promissory Note Action.

### **Part 2: RESPONSE TO RELIEF SOUGHT**

1. The defendant consents to the granting of the relief sought in paragraphs *nil* of Part 2 of the notice of civil claim.
2. The defendant opposes the granting of the relief sought in paragraphs *all* of Part 2 of the notice of civil claim.
3. The defendant takes no position on the granting of the relief sought in paragraphs *nil* of Part 2 of the notice of civil claim.

### **Part 3: LEGAL BASIS**

#### **This action is statute-barred**

4. This claim was discovered when the Patricia Promissory Note, a demand promissory note, was granted. As such, under s. 30 of the current *Limitation Act*, SBC 2012, c. 13, the former *Limitation Act* applies.
5. The limitation period for a demand promissory note began running, under the former *Limitation Act*, upon the grant of the note. The six-year limitation period therefore expired in 2016. The action should therefore be dismissed as statute-barred.

#### **In the alternative, the AI Promissory Note is otherwise not payable**

6. It was a condition for repayment of the Patricia Promissory Note and the AI Promissory Note that Lisa be reinstated directly or indirectly as partner of ARTG and receive partnership distributions. Alternatively, there was a collateral agreement that the plaintiff would not demand payment on those Notes until that condition was satisfied. That condition or collateral contract has not been fulfilled.



7. Alternatively, the plaintiff is estopped from demanding payment under those Notes.
8. In the further alternative, the defendant relies on the law of legal and equitable set-off, and says the amounts owing to her pursuant her claims in the Reinstatement Action and the Fraud Action should be set off against any amount owing pursuant to the AI Promissory Note.
9. In the further alternative, the defendant seeks a declaration that the AI Promissory Note be cancelled upon the transfer of her interest in the Property to the plaintiff and Patricia Thomson, at their cost, conditional upon the same declaration being granted in the Patricia Promissory Note Action.

**This action should be heard together with other, related actions**

10. The facts and legal remedies sought in this action are intertwined with those in the Patricia Promissory Note Action, the Reinstatement Action, and the Fraud Action. As a result, those actions should be heard and decided together to promote judicial efficiency and avoid the risk of inconsistent findings.

Defendant's address for service:

Nathanson, Schachter & Thompson LLP  
750 – 900 Howe Street  
Vancouver, B.C. V6Z 2M4  
Attention: Stephen R. Schachter, Q.C., and Emily L. Hansen

Email address for service: [sschachter@nst.bc.ca](mailto:sschachter@nst.bc.ca) and [ehansen@nst.bc.ca](mailto:ehansen@nst.bc.ca)

Date: 25/August/2020



\_\_\_\_\_  
Signature of counsel for Lisa Thomson  
Stephen R. Schachter, Q.C.

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.

THIS RESPONSE TO CIVIL CLAIM is prepared by Stephen R. Schachter, Q.C., of the firm of Nathanson, Schachter & Thompson LLP, Barristers and Solicitors, whose place of business and address for service is Suite 750 – 900 Howe Street, Vancouver, B.C. V6Z 2M4, telephone (604) 662-8840 and whose email address for service is [sschachter@nst.bc.ca](mailto:sschachter@nst.bc.ca)