



NO. S-073021
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DENNIS HALL

PLAINTIFF

AND:

HENRY ALEXANDER MCCANDLESS AND
DOUGLAS WELDER

DEFENDANTS

BROUGHT UNDER THE CLASS PROCEEDINGS ACT, R.S.B.C. 1996, C. 50

STATEMENT OF DEFENCE OF
HENRY ALEXANDER MCCANDLESS

1. Except where expressly admitted in this Statement of Defence, the Defendant, Henry Alexander McCandless ("this Defendant") denies every allegation of fact in the Statement of Claim.

2. This Defendant admits that he is a Barrister and Solicitor and a member of the Law Society of British Columbia.

CLAIM OF DENNIS HALL

3. This Defendant admits that he entered into a retainer agreement with the Plaintiff and another person dated July 18, 2006 relating to an Asset Growth Program (the "Retainer") but says that the Retainer was limited by its terms and expressly provided that this Defendant would not provide accounting, tax, investment, or other business advice to the Plaintiff and the other person.

4. This Defendant says that the Plaintiff decided to participate in an Asset Growth Program managed by International Fiduciary Corp., S.A. prior to the retainer of, and without seeking any advice from, this Defendant.

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5. This Defendant says that, at all times, he acted in accordance with the Retainer, the instructions of the Plaintiff, and the standard of care required of barristers and solicitors in the circumstances.

6. In the alternative, if there was a Ponzi scheme, dishonest appropriation, fraud, or fraudulent breach of trust (collectively "the Alleged Dishonest Scheme") as alleged in the Statement of Claim, or at all, which is denied, this Defendant had no knowledge of the Alleged Dishonest Scheme and was not a participant in it. Further, there was nothing in the circumstances which should have alerted this Defendant to the Alleged Dishonest Scheme.

7. In the further alternative, if the Plaintiff suffered any loss or damage as alleged, or at all, which is denied, then such loss or damage did not result from any act, omission, negligence, fault, fraud, dishonest act, breach of trust, breach of contract, or breach of duty on the part of this Defendant nor were any acts or omissions of this Defendant the direct or proximate cause or contributory to the cause of the loss or damage alleged in the Statement of Claim.

8. In the further alternative, if the Plaintiff suffered any loss or damage as alleged, or at all, which is denied, then such loss or damage was caused or contributed to by the fault of the Plaintiff, certain of the proposed class members, and others. This Defendant pleads and relies upon the provisions of the *Negligence Act*, R.S.B.C. 1996, c.333 as amended.

9. Particulars of the fault of the Plaintiff include but are not limited to:

- a. Failing to adequately investigate the Asset Growth Program and its principals;
- b. Failing to obtain independent accounting, tax, investment, or other business advice from professional advisors, or alternatively, failing to follow such advice;
- c. Failing to monitor the Asset Growth Program to ensure that it was managed in accordance with his instructions.

10. In the further alternative, if the Plaintiff suffered any loss or damage as alleged, or at all, which is denied, the Plaintiff has failed to mitigate that loss or damage. This Defendant says the Plaintiff has had numerous opportunities to recover the amount deposited by him in the Asset Growth Program and has failed to do so.

CLASS PROCEEDINGS

11. This Defendant says that none of his other clients have, to his knowledge, waived solicitor/client privilege. This Defendant says that the Plaintiff has no authority to pursue proceedings on behalf of this Defendant's other clients and neither the Plaintiff nor this Defendant are authorized to waive, or take steps that would have the effect of waiving, the solicitor/client privilege of those other clients.

12. Further, this Defendant says that without an express waiver of solicitor/client privilege from all class members, evidence relative to certification cannot be placed before the Court.

13. Further, this Defendant says that it would be inappropriate to certify this action as a class action under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 (the "Act") because:

- a. The proposed members of the class do not form an identifiable class;
- b. Alternatively, to the extent the proposed class members form an identifiable class, inclusion of the proposed class members in the class would result in an involuntary waiver of solicitor/client privilege of proposed class members contrary to law;
- c. The proposed class members do not share a commonality of any, or any significant, issues;
- d. The Plaintiff does not fairly or adequately represent the interests of the proposed class;
- e. The proposed class is inappropriate because there are inherent conflicts between its members;
- f. The claims are independent and unique to each proposed member of the class and there are no, or no significant, common issues of fact or law that predominate over issues affecting individual members of the proposed class;
- g. Proceedings under the Act would not be practical and would not result in a fair and efficient resolution of the dispute; and

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h. Administration of a class proceeding in these circumstances would create greater difficulties than would individual actions.

14. As against the proposed class members, this Defendant denies every allegation in the Statement of Claim. In view of those matters set out in paragraph 13 above, this Defendant says it would be premature to plead anything, other than this general denial, as against the proposed class members at this time.

15. This Defendant has no knowledge of the Defendant Welder's involvement, if any, in the matters alleged in the Statement of Claim.

WHEREFORE this Defendant submits that this action should be dismissed with special costs.

DATED at the City of Vancouver, Province of British Columbia, this 24th day of August, 2007.


Solicitor for the Defendant, Henry Alexander
McCandless

This STATEMENT OF DEFENCE is filed by James Killam, Q.C., of the law firm of KILLAM CORDELL MURRAY, Solicitors for the above-named Defendant, whose place of business and address for delivery is 2000 - 401 West Georgia Street, Vancouver, B.C. V6B 5A1, Telephone: 604.622.5252 Facsimile: 604.622.5244 /1532