



No. S073021
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
THE DEFENDANT DOUGLAS WELDER**

1. This Defendant ("Welder") denies each and every allegation of fact contained in the Statement of Claim except as expressly admitted by the Statement of Defence.
2. The Defendant Welder admits that at all material times he was qualified and authorized to practice law as a Barrister and Solicitor in British Columbia.
3. For convenience only and not as any admission, the Defendant Welder adopts the defined terms used in the Statement of Claim.
4. In answer to the whole of the Statement of Claim, the Defendant Welder entered into no Contract of retainer with any of the Class Members, was not in a solicitor-client relationship with any of the Class Members, and at no time owed any of the Class Members any duties as alleged or at all.

5. The Defendant Welder did not act for or have any dealings whatsoever with any of the Class Members who invested prior to November 6, 2006 and none of those Class Members could have relied, reasonably or at all, upon the Defendant Welder.
6. Those Class Members who invested after November 6, 2006, and with whom the Defendant Welder had some dealings did not in fact rely, reasonably or at all, upon the Defendant Welder.
7. The Defendant Welder denies any knowledge of or participation, either as principal or accessory, in the Ponzi Scheme alleged in paragraphs 5 through 14 whether for the fraudulent purposes alleged or at all. If there was a fraud or Ponzi Scheme as alleged or at all, then the Defendant Welder was at all material times duped by the Non-Party Fraudsters.
8. If the Defendant Welder owed duties to the Class Members as alleged or at all, the Defendant Welder disputes the standard of care alleged to be applicable in the circumstances and says that he was not obliged to offer business advice or to uncover or detect fraud either generally or as alleged for the benefit of the Class Members.
9. In answer to the allegation of breach of trust, the Defendant Welder specifically denies any such breach of trust or misappropriation as alleged or at all.
10. In answer to the whole of the Statement of Claim, the Defendant Welder says that if he was in breach of duty and/or a breach of the applicable standard of care and/or complicit as alleged or at all, which is not admitted but specifically denied, then:
 - (a) as he was not involved in any respect or capacity as alleged or at all until November 5, 2006 and as such could not, in fact or as a matter of law, cause or contribute to any damages incurred before that date by any of the Class Members;
 - (b) he did not, in fact and law, cause or contribute to any damages allegedly incurred after that date by any of the Class Members.

11. In answer to the whole of the Statement of Claim, the Defendant Welder says that if there was a Ponzi Scheme, as alleged or at all, then some or all of the Class Members were complicit in or otherwise participated in the Ponzi Scheme alleged and thereby defrauded others, including the other Class Members, by, *inter alia*:

- (a) inducing through misrepresentation and other devices other Class Members to invest in the Ponzi Scheme; and/or,
- (b) by receiving financial and other proceeds of the Ponzi Scheme including receipt of funds advanced by later innocent participants and victims of the fraud.

12. In the alternative, if the Class Members were not complicit in or did not participate in the alleged Ponzi Scheme, then some or all of the Class Members knowingly assisted and knowingly received proceeds of the alleged fraud and Ponzi Scheme, and must account for and/or disgorge any benefit or funds received for the benefit of the other Class Members or investors.

13. In further answer to the whole of the Statement of Claim, the Defendant Welder says that some or all of the Class Members acted illegally and that such illegality is inextricably intertwined with the juridical position of the Class Members. Particulars of the Class Members' illegality are:

- (a) they have transferred funds for the purposes of evading income and other taxes properly payable on the expected gains; and,
- (b) they have in fact evaded income and other taxes properly payable on funds received.

14. By reason of the actions of some or all of the Class Members as alleged in paragraphs 8 through 10 herein, the Defendant Welder pleads and relies on the maxim: *ex turpi causa non oritur actio*.

15. In further answer to the whole of the Statement of Claim, the Defendant Welder says that some or all of the Class Members failed to take reasonable care in advancing funds to the Non-Party Fraudsters for investment and thereby exclusively caused or, alternately, contributed to the loss alleged. The Class Members were negligent in:

- (a) failing to investigate adequately or at all the merits of the investment in IFC proffered by the Non-Party Fraudsters in light of the financial return offered;
- (b) failing to adequately or at all investigate the business backgrounds of the Non-Party Fraudsters; and,
- (c) failing to adequately or at all consult with accountants, business or, investment advisors and other professional consultants about the merits of the investment in general and in particular the investment in IFC proffered by the Non-Party Fraudsters,

before committing to investment in IFC and advancing money. The Defendant Welder pleads and relies on the *Negligence Act*, R.S.B.C. 1996, c. 333.

16. In further answer to the allegations of breach of duty against the Defendant Welder, the Defendant Welder says that the Class Members voluntarily assumed the risks of loss associated with investment in IFC in exchange for the possibility of reward when advancing funds to the Non-Party Fraudsters, all without reliance, either reasonably or at all, on the Defendant Welder. The Defendant Welder pleads and relies on the maxim: *volenti non fit injuria*.

17. In answer to the whole of the Statement of Claim, the Defendant Welder says that the facts are that if there was a fraud or Ponzi Scheme as alleged or at all then such damages incurred, as alleged, which are not admitted but specifically denied, were caused entirely by or alternatively contributed to by the actions of the Non-Party Fraudsters.

18. In further answer to the whole of the Statement of Claim as to damages, the Defendant Welder says that:

- (a) a Receiver of IFC was appointed by Court Order of the U.S. District Court for the Eastern District of the State of Virginia (Alexandria Division) in the matter of *U.S. Securities and Exchange Commission v. International Fiduciary Corp., S.A. et al.*, Civil Action No. 1:06-cv1354 (the “IFC Action”);
- (b) the Receiver has seized in excess of \$10M US to date from the Non-Party Fraudsters for eventual distribution to IFC investors;
- (c) there is a claims process in place to which the Class Members are entitled to apply to obtain redress for the same wrongs alleged in the Statement of Claim herein.

19. The IFC Action has proceeded to judgment against the Non-Party Fraudsters and collection efforts are now underway along with voluntary disgorgement of funds by some of the Non-Party Fraudsters. To the extent that some or all of the Class Members fail to have recourse to that process, they are acting unreasonably in mitigation of their alleged loss and the damages awarded should be reduced proportionately as against the Defendant Welder.

20. Alternately, if some or all of the Class Members do make such claims, the amount so received to the extent they relate to allegations against the Defendant Welder must be taken into account and deducted from any award of damages or relief in this proceeding as against the Defendant Welder.

Class Proceedings

21. In answer to the allegation that this matter is suitable or appropriate for a class action, the Defendant Welder says that:

- (a) There is no cause of action alleged against the Defendant Welder. The Defendant Welder had no dealings whatsoever with respect to the subject

matter of the claim pleaded with anyone until November 6, 2006 and, in any event, no dealings whatsoever with the Plaintiff Hall at any time. The Plaintiff Hall was clearly not a client of the Defendant Welder. In the absence of material facts pleaded between the Plaintiff and the Defendant Welder there cannot be common issues appropriate for class determination;

- (b) The issues as to fraud, breach of duty, standard of care, reliance and contributory negligence, *ex turpi causa, volenti*, and breach of trust are inherently fact and relationship specific, thus individual in nature, and thus inappropriate for class determination; and,
- (c) Individual issues of existence of duty, standard of the duty, causation, reliance and contributory negligence and individual net damages predominate and are essential to the determination of the matter and so Class Proceedings are not appropriate in light of the magnitude of each claim made and the necessity of individual determination of those issues for each Class Member.

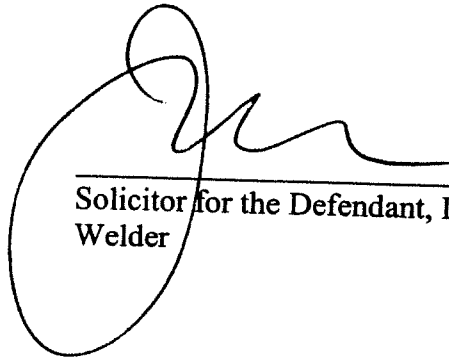
22. A Class Proceeding is not the just, efficient, preferable or appropriate method of determining potential claims against the Defendant Welder. In particular:

- (a) individual actions are quick, convenient, effective and appropriate, especially with respect to those relatively few Class Members who dealt with the Defendant Welder in that none of them entered into the alleged written retainer agreement;
- (b) the IFC Action against the Non-Party Fraudsters is well advanced, has the benefit of a collective claims procedure benefiting the Plaintiff Hall and Class Members, and until completion thereof, this proceeding should at least be stayed.

WHEREFORE the Defendant Welder asks that:

- A. Certification of these proceedings as Class Proceedings be denied; and,
- B. The action be dismissed as against the Defendant Welder.

DATED at the City of Vancouver, British Columbia this 13th day of September, 2007.



Solicitor for the Defendant, Douglas
Welder

TO: The Plaintiff
 AND TO: The Defendant McCandless
 AND TO: Their Respective Solicitors

This STATEMENT OF DEFENCE is filed by Jack Webster, Q.C. of the firm of Webster Hudson & Akerly LLP, Barristers and Solicitors, solicitors for the Defendant Douglas Welder, whose place of business and address for service is 510-1040 West Georgia Street, Vancouver, British Columbia, V6E 4H1 (682-3488