

Victoria

22-Sep-16

REGISTRY

No. 163652
Victoria Registry

In The Supreme Court of British Columbia

Civil Forfeiture Action *in Rem* Against

Funds held at The Toronto-Dominion Bank in Accounts 9313-7200698, 9313-5006595
and 9319-50077362 and the Proceeds thereof

Between:

Director of Civil Forfeiture

Plaintiff

And:

The Owners and all Others Interested in the Bank Accounts
in particular, CNM Communications Inc. and Easy Padala Inc.

Defendants

RESPONSE TO CIVIL CLAIM

Filed by: CNM Communications Inc., Easy Padala Inc., Elan Wellness Group Inc., Francisco
Cortes and Zeala Cortes, the Defendants

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendants' Response to Facts

1. The facts alleged in paragraphs 1 to 3, 7, 8 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 4, 5, 6 and 9 to 39 of Part 1 of the Notice of Civil Claim are denied.

Division 2 — Defendants' Version of Facts

3. The Defendants deny any unlawful activity.

4. Specifically, the Defendants, at all material times, have earned income from legitimate sources.
5. Further, the Defendants have not participated in unlawful activities or permitted their bank accounts to be used for proceeds of crime.
6. To the extent any monies in the Defendants' bank accounts are proceeds of crime, the Defendants are entirely uninvolved innocent parties.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendants oppose the granting of the relief sought in paragraphs 1-5 of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. Under s.5(1) of the *Civil Forfeiture Act*, SBC 2005, c 29 [the "*Act*"], the court must only forfeit the portion of an interest in property that is the proceeds of unlawful activity. As the Defendants' interest in the funds held at The Toronto-Dominion Bank in Accounts 9313-7200698, 9313-5006595 and 9319-50077362 and the proceeds thereof [the "Property"] came from legitimate sources, forfeiture is inappropriate.
2. In addition, pursuant to s.6 of the *Act*, even where a portion of an interest in property is the proceeds of unlawful activity, the court must consider whether relief from forfeiture, in whole or in part, is in the interest of justice. In light of all the circumstances, forfeiture is clearly contrary to the interest of justice.
3. Under s.5(2) of the *Act*, the court must only order forfeiture of property that is an instrument of unlawful activity. The Property is not an instrument of unlawful activity. As such, forfeiture is inappropriate.
4. In addition, pursuant to s.6 of the *Act*, even where a property is an instrument of unlawful activity, the court must consider whether relief from forfeiture, in whole or in part, is in the interests of justice. In light of all the circumstances, full relief from forfeiture is appropriate pursuant to s.6 of the *Act*.

5. Furthermore, pursuant to s.13 & s.14 of the *Act*, where a court finds that a property is an instrument of unlawful activity and a person is an uninvolved interest holder with respect to that property, the court must make an order to protect the uninvolved interest holder's interest. Should any unlawful activity be proven with respect to the Property, the Defendants are uninvolved interest holder and entitled to a protection order with respect to their interests in the property.
6. To the extent that any evidence was obtained by the Royal Canadian Mounted Police, or other investigative agency, which fact is not admitted but specifically denied, such evidence was obtained unlawfully in violation of sections 7, 8, 9, and 10 of the *Charter of Rights and Freedoms*, and as such ought to be excluded from this proceeding pursuant to section 24 of the *Charter of Rights and Freedoms*.
7. The Defendants seeks special costs of the herein proceeding against the Plaintiff.

The Defendant's address for service: c/o Joel Whysall
Mickelson & Whysall
1005 – 128 West Pender Street
Vancouver, BC V6B 1R8

Fax number address for service (if any): (604) 637-1617

E-mail address for service (if any): joel@mwcrimlaw.com

Dated:

Sept 22 / '16


Joel Whysall

Solicitor for the Defendants

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.