



NO. *Court File No. VLC-S-S-240082*
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JOCELYN LOVITOS and
MARTRADE HOLDINGS LTD.

PLAINTIFFS

AND:

FRANCISCO CORTES, aka JUN CORTES
ZEALA CORTES
PINTECH SOLUTION INC.
AUBITX HOLDINGS INC.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs 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-noted 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 Plaintiffs,

- (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, with 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.

Part 1: STATEMENT OF FACTS

1. The plaintiff, Jocelyn Lovitos ("**Lovitos**"), is a businessperson with an address for service at Suite 403 - 460 Doyle Avenue, Kelowna, B.C.
2. The plaintiff, Martrade Holdings Ltd. ("**Martrade**"), is a company incorporated pursuant to the laws of British Columbia and has an address for service at Suite 403 - 460 Doyle Avenue, Kelowna, B.C. Martrade is a holding company. The sole shareholder and director of Matrade is Lovitos.
3. The defendant, Francisco Cortes, also known as Jun Cortes ("**Francisco**"), is a businessperson with a last known address of 1343 Kenny Street, Coquitlam, B.C.
4. The defendant, Zeala Cortes ("**Zeala**") is Francisco's wife and is a businessperson with a last known address of 1343 Kenny Street, Coquitlam, B.C.
5. The defendant, Aubitx Holdings Inc. ("**Aubitx**"), is a company incorporated pursuant to the laws of British Columbia with a registered office at 1343 Kenney Street, Coquitlam, B.C.
6. The defendant, Pintech Solutions Inc. ("**Pintech**"), is a company incorporated pursuant to the laws of British Columbia with a registered office at 10328 243A Street, Maple Ridge, B.C.

7. Francisco and Zeala, or alternative one of them, are the directing mind of each of the Defendants Aubitx and Pintech and as such have the authority to direct how the monies received by the either of Aubitx and Pintech are disbursed.
8. Lovitos moved from the Philippines in or about 1998 and is an active member of the Pilipino community.

Overview and Chronology

9. The Plaintiffs have been deceived and defrauded by the Defendants herein. The main architects of this deceit were Francisco and his wife Zeala. They used the corporate defendants to facilitate their deceit.
10. Francisco held himself out to Lovitos to be experienced and knowledgeable in the areas of financial organization, investing, and tax planning. He indicated that he could reorganize Martrade thereby reducing its annual taxes payable by several hundred thousand dollars.
11. Francisco and Zeala also discussed their plans with Lovitos to establish the first Pilipino credit union in British Columbia, which was to be called the "Aubergine Credit Union" and that they were seeking deposits from individual and companies, who would become the founding credit union members, and which deposit base was required to establish the credit union.
12. Starting in March of 2022, Lovitos advanced monies to stand as part of the initial deposit base and to thereby assist the establishment of the proposed credit union. She made several deposits through 2022, the details of which are set out later herein.
13. Starting in or about May of 2022, Martrade hired Francisco to acts as its Chief Financial Officer ("**CFO**") and to implement his recommended corporate structure and tax planning. After being so hired, Francisco then asked Lovitos to contribute monies for the initial deposit base for the credit union he was in the process of establishing. She did so, the details of which are set out later herein.

14. In June of 2022, Francisco asked Martrade and Lovitos to help lease a space for the proposed credit union, which Martrade and Lovitos agreed to on the terms set out later herein.
15. In December 2022, a further advanced was paid in respect of the proposed credit union.
16. On or about January 10, 2023, the BC Financial Service Authority (“**BCFSA**”) issued a warning about the Aubergine Credit Union and more specifically indicated that:

BCFSA is actively investigating the alleged creation and development of a proposed credit union that has publicly promoted itself as both Aubergine Credit Union and First Filipino Credit Union. BCFSA has not authorized either Aubergine Credit Union or First Filipino Credit Union to operate in British Columbia.

BCFSA warns that consumers should only use the services of authorized B.C. credit union in order to avoid organizations that are engaging in unlawful business Any credit union that claims be in the process of applying for authorization in B.C. is also not an authorized credit union and consumers should not use their services until they have been approved by the BCFSA ...

17. In February 2023 and March 2023, Francisco caused Martrade to make several unauthorized transfers of money. These transfers were discovered in May of 2023 and inquiries were made in that regard. The details regarding these transfers are set out later herein.
18. In April 2023, Martrade terminated Francisco’s employment.
19. In July 2023, the payment for the lease referred to above in paragraph 14 was returned “NSF” due to the account on which the cheque was drawn not having sufficient funds.

20. In September 2023, demand for payment was made and these proceedings subsequently commenced. The details of the aforementioned facts are provided in the paragraphs that follow.

Establishment of the Aubergine Credit Union

21. Lovitos was introduced to Francisco and Zeala by a family friend Montanya Anonuevo. Francisco and Zeala invited Lovitos to attend a meeting in Metrotown at which they spoke about their plans. Francisco and Zeala then attended at Lovitos' church and spoke to members of her church congregation (the Christ Miracles Ministries International Church in Vancouver), including Lovitos, following a church service. Through those two meetings, Lovitos learned that Francisco and Zeala were working to establish the first Filipino credit union in British Columbia, which was to be known as the "Aubergine Credit Union".
22. In order to establish the proposed credit union, the applicant needed to demonstrate an initial deposit base of \$1,000,000 and Francisco asked Lovitos and other members of the congregation to contribute the funds to form part of that initial deposit base as a founding or initial credit union member.
23. When he asked Lovitos to contribute to the initial deposit base for the Aubergine Credit Union, Francisco covenanted and represented to Lovitos that:
- (a) The funds she provided would be deposited at Central One Credit Union;
 - (b) Lovitos could withdraw the funds at any time;
 - (c) The funds would not be used for any other purpose other than to stand as the initial deposits for the proposed credit union.

24. Lovitos relied reasonably on the above representations and advanced the monies to stand as part of the initial deposit base for the Aubergine Credit Union. Francisco instructed Lovitos how to advance the funds, and in accordance with those instructions. Lovitos advanced \$225,000 to Aubitx and \$125,000 to Pintech (collectively, the “**Deposits**”), the particulars of which are as follows:
- (a) On March 31, 2022, Lovitos advanced \$40,000 to Pintech by way of TD bank draft no. 3599656;
 - (b) On May 25, 2022, Lovitos advanced \$35,000 to Pintech by way of TD bank draft no. 98765;
 - (c) On May 30, 2022, Lovitos advanced \$200,000 by way of Vancity bank draft to Aubitx;
 - (d) On May 30, 2022, Lovitos advanced \$25,000 by way of Vancity bank draft to Aubitx;
 - (e) On December 9, 2022, Lovitos advanced \$50,000 to Pintech by way of Lovitos personal cheque no. 081 drawn on her Vancity account.
25. The Deposits were advanced for the sole purpose of standing as the deposit base required to establish the Aubergine Credit Union and for no other purpose.
26. The Deposits were to be held in trust and not used for the payment of any expense or expenditure and were to be available to be returned within a reasonable period of time following a request that the funds be so returned.
27. Other members of the congregation also provided similar deposits. When those members, or alternatively one or more of them, called for their deposits to be returned, the funds were so returned.
28. In addition to providing the Deposits, Francisco also asked Lovitos to assist in renting the first business premises for the Aubergine Credit Union.

29. Francisco represented to Lovitos that he had found a suitable business premises to lease but that the credit union could not lease it directly because it did not yet have the “proper documents”. He asked if Martrade would lease the subject property as tenant on the condition that the Defendants would pay all amounts owing under the lease until such time as the Aubergine Credit Union was established and could assume those obligations. To further assist Francisco to establish the Aubergine Credit Union, Lovitos agreed.
30. Francisco identified units 1008, 1010 and 1012b (the “**Premises**”) in Henderson Place Mall located at 1163 Pinetree Way, in Coquitlam, BC.
31. In or about July of 2022, Martrade entered into a one year lease of the Premises (the “**Lease**”) in respect of which Lovitos was a covenanter.
32. The Plaintiffs entered into an oral contract with each of the Defendants whereby in exchange for the Plaintiff entering the Lease as Tenant, the Defendants covenanted and agreed to pay all payments and obligations arising under the lease, until such time as the Aubergine Credit Union was established and could take an assignment of the lease (the “**Henderson Place Agreement**”).
33. From June 2022 to June 2023, the Defendants performed their obligations under the Henderson Place Agreement and paid all payments owing pursuant to the Lease, which payments were made directly to the landlord under the Lease.
34. The rent cheque provided by the Defendants for the month of July 2023 was returned “NSF”. In breach of their obligations under the Henderson Place Agreement, the Defendants failed, neglected or refused to make any further payments owing under the Lease from June 2023 onwards.
35. The Lease was terminated effective September 25, 2023. The landlord has asserted that as of September 24, 2023, the arrears owing to the landlord in respect of the Lease was \$15,118.94 and that interest on that sum would accrue at the rate of 24% per annum. The Landlord agreed to have the balance owing paid in three installments, provided the total amount paid inclusive of interest was

\$16,474.50. Martrade paid the landlord that amount as follows: \$5,000 was paid on October 11, 2023, \$5,737.00 was paid on November 3, 2023, and \$5,737.50 was paid from the security deposit.

36. The Defendants are indebted to Martrade for the amount paid to the landlord under the Lease in the amount of \$16,474.50.

Unauthorized Payments from Martrade to Pintech

37. From May 1, 2022 to April 15, 2023, Francisco was employed as the CFO of Martrade. It was a term of his employment agreement that:

- (a) Francisco would discharge his duties honestly.
- (b) Francisco would avoid conflicts of interest.
- (c) Francisco would have a duty of loyalty to Martrade and would act in the best interest of Martrade in relation to his duties and role as CFO.
- (d) Francisco would perform his duties with the care and skill of a reasonably prudent CFO.

38. In his capacity as the Chief Financial Officer of Martrade, Francisco had access to Martrade's bank account for the purpose of discharging valid business expenses and obligations of Martrade.

39. In breach of his contractual duties and fiduciary obligations owed to Martrade, Francisco caused Martrade to transfer the aggregate sum of \$90,000.00 (the "**Monies**") to companies he owned or controlled, the particulars of which are set out below.

- (a) On or about February 6, 2023, Francisco paid \$22,057.50 to Monopoly Realty for an alleged expense repayment. The actual amount of the expense was only \$2,047.50. The payment of the additional \$20,000.00 was not authorized and was not in repayment of any valid expense incurred.

- (b) On or about February 22, 2023, Francisco transferred \$20,000.00 from Martrade's account to an account in the name of the Defendant Pintech. The payment of \$20,000.00 to Pintech was not authorized.
 - (c) On or about March 20, 2023, Francisco caused \$50,000.00 to be transferred from Martrade's account to an account in the name of Pintech. The payment of \$50,000.00 to Pintech was not authorized.
40. Lovitos and Martrade discovered the above breaches upon receipt and review of Martrade's bank statements.
41. On September 18, 2023, Lovitos made demand to the Defendants for the Deposits and Monies to be returned. The Defendants have failed, neglected or refused to return the Deposits, or any part thereof, to the Plaintiff which amounts remain due and owing in full.

Part 2: RELIEF SOUGHT

42. An order for an accounting of all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits, or the Monies, or any part thereof.
43. A declaration that the Defendants holds the Deposits, the Monies, and all revenue, proceeds, payments, income, funds or any other benefit derived from either the Deposits or the Monies, or any portion thereof, in trust for the Plaintiff.
44. An order that the Defendants deliver up to the Plaintiff:
- (a) the Deposits, or its proceeds;
 - (b) the Monies, or its proceeds; and
 - (c) all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits, or any portion thereof;
 - (d) all revenue, proceeds, payments, income, funds or any other benefit derived from the Monies, or any portion thereof;

45. An order for all accounts, directions and enquiries to enable the Plaintiff to trace or follow:
 - (a) the Deposits and all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits, or any portion thereof;
 - (b) the Monies and all revenue, proceeds, payments, income, funds or any other benefit derived from the Monies, or any portion thereof;
46. Judgment against the Defendants on a joint and several basis for the amounts identified in paragraph 44 herein plus the sum of \$16,474.50, representing the amount owing in respect of the Henderson Place Agreement.
47. An order for interest pursuant to the *Court Order Interest Act*.
48. An order that the Defendants pay the Plaintiff costs on a solicitor and own client basis, or alternatively on a party and party scale.
49. Such further and other relief as this Honourable Court may deem just.

Part 3: LEGAL BASIS

50. The plaintiffs plead and rely upon the common law, in particular the law of contract, the law of trusts, the law of restitution and unjust enrichment, civil conspiracy, misrepresentation, conversion and deceit.

The Deposits

51. The plaintiffs plead and rely upon the law of trusts. The Deposits were paid by Lovitos to Pintech and Aubitx (as instructed by Francisco) on the express condition that the Deposits would be only used for a specific purpose. The Deposits were to be held in trust and not used for any other purpose other than as agreed upon and as represented by Francisco. The circumstances and terms upon which those monies were paid gave rise to a purpose trust. The defendant recipients held the funds as trustees and had trust obligations in regard thereto.

52. Francisco and Zeala were aware of the aforementioned trust terms. To the extent that either of them caused Pintech or Aubitx to disburse or use the Deposits for any purpose other than to stand as the initial deposit base for Aubergine Credit Union, then they did so in knowing assistance of breach of trust. To the extent that either of them received trust funds, then did so in knowing receipt of funds in breach of trust.
53. At all material times, the Defendants knew that the Deposits belonged to Lovitos. The Defendants, or alternatively, one or more of them, wrongfully converted the Deposits to their own personal use causing loss and damage to the Plaintiff.
54. The plaintiff pleads and relies upon the law of restitution. The Defendants, or alternatively one or more of them, were unjustly enriched by the receipt of the Deposits (or a portion thereof). The plaintiff suffered a corresponding deprivation. There was no juristic reasons for such enrichment.

The Lease Arrears

55. The Henderson Place Agreement is a valid and enforceable contract.
56. The Defendants breached the Henderson Place Agreement by failing to pay the rent owing on the Lease for the months of July 2023, August 2023 and September 2020 until the Lease was terminated.
57. Martrade paid the aforementioned amounts and has suffered loss and damages as a result of the Defendants' breaches as set out herein.

Theft of Martrade's Monies

58. Francisco owed fiduciary and contractual duties to Martrade that he breached when he transferred the Monies.
59. Francisco sought to conceal the transfers of the Monies as legitimate business expenses to hide his deceit from Lovitos and Martrade.

60. The recipient Defendants knew that the monies were being transferred in breach of Francisco's duties and that they remained the property of Martrade at all times.
61. Martrade has been deprived of its property and has suffered loss and damage as result of the Francisco's breaches of his duties and obligations as set out herein.

Fraud & Deceit

62. Francisco and Zeala embarked on a scheme to defraud Lovitos and her company Martrade of its property. All of their dealings with Lovitos were in furtherance of that improper purpose. Contrary to Francisco's statements, he did not have the skill or expertise to offer advice as to how to structure Matrade or reduce its annual tax payable. Contrary to statements made by each of Francisco and Zeala, they were not seeking to establish a credit union. All of their dealing were to deceive Lovitos and obtain her or her company's property.

Conspiracy

63. The plaintiffs plead and rely upon the law of civil conspiracy. The Defendants entered into an agreement with the predominant purpose to cause injury to the plaintiffs.
64. Further, or in the alternative, the Defendants agreed to carry out by unlawful means a common design directed at the plaintiffs, and either knew or should have known that injury to the plaintiffs was likely to result form the agreed-upon means being implemented. The unlawful means include, but are not limited to:
 - (a) Negligently, or alternatively fraudulently, making false statements about the intention, plans and progress towards the establishment of a new credit union;
 - (b) Negligently, or alternatively fraudulently, making false statements about the ability to restructure Martrade to reduce its taxes payable with a view to gaining employment and authority to convert and steal Martrade's property.

- (c) Using the Deposits and Monies for their own personal use and benefit in breach of trust, duties and obligations they owed to Lovitos and Matrade
- (d) Such further and other legal basis as counsel may advise this Honourable Court may consider

Equitable and Trust Remedies

65. As a result of the foregoing fraud, breach of trust and breaches of fiduciary duty, which personally benefited Francisco and Zeala, or alternatively one of them, it is appropriate that the Court grant equitable and trust remedies to rectify the matters complained of, including, without limitation, a tracing remedy; a declaration of constructive trust over the Deposits and Monies and over any assets or property for which the Deposits or Monies have been used in acquisition, improvement or increase in equity; and an accounting and disgorgement of all profits and gains from the use and distribution of the Deposits or Monies.

Plaintiff's address for service is c/o the law firm of Lawson Lundell LLP, whose place of business and address for service is Suite 403, 460 Doyle Avenue, Kelowna, British Columbia V1Y 0C2 (Attention: Scott R. Andersen).

Fax number address for service is: (604) 641-2801

Email address for service is: scott.andersen@lawsonlundell.com

Place of Trial: Vancouver, B.C.

The address of the Registry is: 800 Smithe Street, Vancouver,
British Columbia V6Z 2E1

Dated at the City of Kelowna, in the Province of British Columbia, this 17th day of January, 2024.



Lawson Lundell LLP
Solicitors for the Plaintiffs

This Notice of Civil Claim is filed by Scott R. Andersen, of the law firm of Lawson Lundell LLP, whose place of business and address for delivery is Suite 403, 460 Doyle Avenue, Kelowna, British Columbia V1Y 0C2.

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

The following information is provided for data collection purposes only and is of no legal effect.

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

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:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4:

NO.
VANCOUVER REGISTRY

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PLAINTIFFS

AND:

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NOTICE OF CIVIL CLAIM



Barristers & Solicitors
Suite 403 - 460 Doyle Avenue
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Email: scott.andersen@lawsonlundell.com
Attention: Scott R. Andersen

File No. 11 1629-171598