



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 APPLICATION

Name of Applicant: The Plaintiffs, Jocelyn Lovitos (“**Lovitos**”) and
Martrade Holdings Ltd. (“**Martrade**”)

This application is brought without notice.

TAKE NOTICE that a without notice application will be made by the Plaintiffs to the presiding judge or associate judge at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia on Friday, the 7th day of June, 2024 at 9:45 a.m. for the orders set out in Part 1 below.

The Plaintiffs estimate that the application will take 20 minutes.

- This matter is within the jurisdiction of an Associate Judge.
- This matter is not within the jurisdiction of an Associate Judge.

Part 1: ORDERS SOUGHT

1. An order substantially in the form attached as **Schedule "A"** for the relief sought in the Notice of Civil Claim herein in respect of which the Defendants have not filed any Response to Civil Claim despite having been served herein.

Part 2: FACTUAL BASIS

1. On January 17, 2024, the Notice of Civil Claim was filed.
2. On or about February 19, 2024, the Notice of Civil Claim was served on the Defendant Pintech Solutions Inc.
3. On or about March 27, 2024, the Notice of Civil Claim was served on each of the Defendants Francisco Cortes, aka Jun Cortes, and Zeala Cortes, both in her personal capacity and as Director on behalf of the Defendant Aubitx Holdings Inc.
4. Where the Defendant does not file a Response to Civil Claim denying the allegations therein, he or she will be deemed to have admitted those facts: *Insurance Corporation of British Columbia v. Husseinian*, 2008 BCSC 241 at ¶20; *Mintie v. Iverson*, 1963 CarswellBC 176 at ¶7.
5. No Response to Civil Claim has been filed by any of the Defendants. Therefore, the facts in the Notice of Civil Claim are deemed to be admitted by all of the Defendants.
6. Pursuant to Rule 3-8(1), the applicant has filed an affidavit setting out the facts that verify the claim and stating that the person swearing the affidavit knows of no fact that would constitute a defence to the claim except as to amount. That affidavit appends exhibits confirming the allegations made in the Notice of Civil Claim.

Part 3 LEGAL BASIS

7. This is an application for judgment in default of any Response to Civil Claim having been filed by any of the Defendants, all of whom have been duly served and the time for filing a Response to Civil Claim having passed.
8. The application relies on Rule 3-8(10) of the *Supreme Court Civil Rules*.
9. The causes of action pled in the Notice of Civil Claim include breach of trust, fraudulent misrepresentation, breach of contract, deceit, conversion, unjust enrichment and the law of restitution more generally.
10. The Plaintiff Lovitos advanced \$350,000 (the “**Deposits**”) to the Defendants for the establishment of a proposed credit union. Those funds were subject to a purpose trust and were to only be used for the agreed upon purpose. That purpose was not achieved and consequently the funds remain the property of the Plaintiff. See paragraph 21-26 of the Notice of Civil Claim herein.
11. An agreement was reached between the Plaintiff and the Defendants whereby if Martrade entered into a lease, the Defendants would pay the lease payments. In breach of that agreement, the Defendants failed to do so and Martrade had to pay \$16,474.50 to the landlord to settle the lease. See paragraph 29-36 of the Notice of Civil Claim herein.
12. The Defendant Francisco was employed as the CFO of Martrade and wrongfully used that authority to cause \$90,000 (the “**Monies**”) to be made the Defendant Pintech, a company he controlled.
13. As pled herein (and admitted as a result of the failure to file a Response to Civil Claim), the Defendants conspired to defraud the Plaintiffs of the aforementioned amounts.
14. The relief sought seeks proprietary relief in respect of the funds wrongfully taken by the Defendants. Specifically, the Plaintiff seeks:
 - (a) An accounting of those monies and all benefits derived therefrom;

- (b) A declaration that the Defendants hold those monies and proceeds in trust for the Plaintiff;
 - (c) An order that the property be delivered up to the Plaintiff
 - (d) An order for all accounts, directions and enquiries to enable the Plaintiff to recover that property.
15. The Plaintiff also seeks an *in personam* judgment against the Defendants on a joint and several basis for the quantum of that property wrongfully taken. The form of that order includes the amount taken, plus pre-judgment interest thereon, and liberty to apply for further quantum following the contemplated accounting, direction or enquiries contemplated above.
16. The legal basis for the proprietary relief is a constructive trust remedy arising from the Defendants' wrongful conduct herein and unjust enrichment as a result thereof: *Solous v. Korkontzila*, [1997] 2 SCR 217 and *Tracy (Guardian ad litem of) v. Instalogs Financial Solution Centres (B.C.) Ltd.*, 2010 BCCA 357.

Part 4: MATERIAL TO BE RELIED ON

17. Notice of Civil Claim filed herein;
18. Affidavit of Personal Service of Liz Price regarding service on Pintech Solutions Inc., sworn April 11, 2024;
19. Affidavit of Personal Service of Liz Price regarding service on Francisco Cortes, aka Jun Cortes, sworn April 11, 2024;
20. Affidavit of Personal Service of Liz Price regarding service on Zeala Cortes, sworn April 11, 2024;
21. Affidavit of Personal Service of Liz Price regarding service on Aubitx Holdings Inc., sworn April 11, 2024;
22. Affidavit #1 of Jocelyn Lovitos, sworn herein and filed;

23. Affidavit #1 of Cindy Curran, sworn herein and filed; and
24. Such further and other material as counsel may advise and this Honourable Court may consider.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application.

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
- (d) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated at the City of Kelowna, in the Province of British Columbia, this 31st day of May, 2024.



Lawson Lundell LLP
Solicitors for the Plaintiffs

This Notice of Application 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, B.C. V1Y 0C2, Telephone No. (604) 631-9220; Email: scott.andersen@lawsonlundell.com.

To be completed by the court only:

Order made

in the terms requested in paragraphs _____
of Part 1 of this Notice of Application

with the following variations and additional terms:

Date:

Signature of Judge Associate Judge

APPENDIX

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

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- none of the above

Schedule "A" – Draft Order

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DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE ASSOCIATE JUDGE

FRIDAY, THE 7TH DAY
OF JUNE, 2024

ON THE APPLICATION of the Plaintiffs, without notice, coming on for hearing at the Courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on this day, AND UPON being satisfied that the Plaintiffs filed and served the Notice of Civil Claim on each of the Defendants, and the Defendants having failed to file and serve a Response to the Civil Claim within the time allowed; AND UPON HEARING

Scott R. Andersen, counsel for the Plaintiffs;

THIS COURT ORDERS AND DECLARES THAT:

1. There be an accounting of all revenue, proceeds, payments, income, funds or any other benefit derived from:
 - (a) \$40,000 paid to Pintech Solutions Inc. ("**Pintech**") from Jocelyn Lovitos ("**Lovitos**") on March 31, 2022;
 - (b) \$35,000 paid to Pintech from Lovitos on May 25, 2022;
 - (c) \$200,000 paid to Aubitx Holdings Inc. ("**Aubitx**") from Lovitos on May 30, 2022
 - (d) \$25,000 paid to Aubitx from Lovitos on May 30, 2022;
 - (e) \$50,000 paid to Pintech from Lovitos on December 9, 2022(collectively, the "**Deposits**").
2. The Defendants hold the Deposits, and all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits or any portion thereof, in trust for Lovitos.
3. The Defendants deliver up to Lovitos the Deposits, or its proceeds and all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits, or any portion thereof.
4. All accounts, directions and enquiries are hereby ordered to enable Lovitos to trace or follow the Deposits and all revenue, proceeds, payments, income, funds or any other benefit derived from the Deposits, or any portion thereof.
5. Judgment be and is hereby granted in favour of Lovitos against the Defendants on a joint and several basis for the sum of \$377,138.37 inclusive of pre-judgment interest, which judgment will be reduced by any amounts delivered up or

recovered pursuant paragraph 1-4 hereof. Interest will continue to accrue on this amount until payment pursuant to the *Court Order Interest Act*.

6. There be an accounting of all revenue, proceeds, payments, income, funds or any other benefit derived from:
 - (a) \$20,000 paid to Pintech from Martrade Holdings Ltd. ("**Martrade**") on February 6, 2023;
 - (b) \$20,000 paid to Pintech from Martrade on February 22, 2023; and
 - (c) \$50,000 paid to Pintech from Matrtrade on March 20, 2023(collectively, the "**Monies**").
7. The Defendants hold the Monies, and all revenue, proceeds, payments, income, funds or any other benefit derived from either the Monies, or any portion thereof, in trust for Martrade.
8. The Defendants deliver up to Matrtrade the Monies, or its proceeds, and all revenue, proceeds, payments, income, funds or any other benefit derived from the Monies, or any portion thereof.
9. All accounts, directions and enquiries are hereby ordered to enable Martrade to trace or follow the Monies and all revenue, proceeds, payments, income, funds or any other benefit derived from the Monies, or any portion thereof.
10. Judgment be and is hereby granted in favour of Martrade against the Defendants on a joint and several basis for the sum of \$112,553.38 inclusive of pre-judgment interest, which judgment will be reduced by any amounts delivered up or recovered pursuant paragraph 6-9 hereof. Interest will continue to accrue on this amount until payment pursuant to the *Court Order Interest Act*.
11. The Plaintiffs are at liberty to apply for an increased quantum of the balance owing on the judgment arising from amounts determined but not recovered pursuant to paragraphs 2-4 and 7-9 hereof.

12. The Defendants will pay the Plaintiffs' costs hereof at scale "B" to be assessed.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Scott R. Andersen
COUNSEL FOR THE PLAINTIFFSBY

THE COURT

REGISTRAR

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Barristers & Solicitors
Suite 403 - 460 Doyle Avenue,
Kelowna, B.C. V1Y 0C2,
Telephone No. (604) 631-9220;
Email: scott.andersen@lawsonlundell.com
Attention: Scott R. Andersen