

MAR 02 2012

S-12 1627

No. \_\_\_\_\_  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LAWRENCE BRIAN JER AND JUN JER

PLAINTIFFS

AND:

RASHIDA SAMJI, RASHIDA SAMJI NOTARY CORPORATION, SAMJI & ASSOC.  
HOLDINGS INC., ARVINDBHAI BAKORBHAI PATEL aka ARVIN PATEL, COAST  
CAPITAL SAVINGS CREDIT UNION, AND COAST CAPITAL INSURANCE SERVICES  
LTD.

DEFENDANTS

*Brought under the Class Proceedings Act, R.S.B.C. 1996, c. 50*

**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 plaintiffs.

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-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 and counterclaim on the plaintiffs 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 reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

## CLAIM OF THE PLAINTIFFS

### Part 1: STATEMENT OF FACTS

#### The Parties

1. The representative Plaintiffs, Lawrence Brian Jer and Jun Jer (the "Jers"), are residents of Delta, British Columbia. Mr. Jer is employed as a letter carrier; Ms. Jer is a piano teacher.
2. The Defendant Rashida Samji is a member of the Society of Notaries Public of British Columbia. She has been a member of the Society of Notaries Public of British Columbia since June 9, 1988. Ms. Samji practices through her notary corporation, "Rashida Samji, Notary Corporation", a company incorporated under the laws of British Columbia, with an office located at 1525 West 75<sup>th</sup> Avenue, Vancouver, B.C. V6P 6Z7, and carries on business as "Samji and Associates" (collectively, "Samji").
3. The Defendant Samji & Assoc. Holdings Inc. ("Samji Holdings") is a company incorporated under the laws of British Columbia, with a registered and records address at 1525 West 75<sup>th</sup> Avenue, Vancouver, B.C. V6P 6Z7. Ms. Samji is the sole officer and director of Samji Holdings.
4. The Defendant Coast Capital Savings Credit Union is a credit union incorporated under the laws of British Columbia, with a registered and records office at 1900 – 1040 West Georgia Street, Vancouver, B.C. V6E 4H3.
5. The Defendant Coast Capital Insurance Services Ltd. is company incorporated under the laws of Canada, and registered as an extra-provincial corporation in British Columbia, with a registered office at 1700 – 666 Burrard Street, Vancouver, B.C. V6C 2X8. Coast Capital Insurance Services Ltd. is a wholly-owned subsidiary of Coast Capital Savings Credit Union. Coast Capital Insurance Services operates as part of, and provides financial services on behalf of, Coast Capital Savings Credit Union (collectively, "Coast Capital").

6. The Defendant Arvindbhai Patel aka Arvin Patel ("Patel") is a financial planner and mutual fund salesperson employed by Coast Capital Insurance Services Ltd. until early 2012 and who provided professional investment advice through Coast Capital.
7. The representative Plaintiffs brings this action on their own behalf and on behalf of all persons resident in British Columbia, other than the Defendants, who have provided funds to invest in the "Mark Anthony Investment" scheme promoted by Samji (the "Class").

#### The "Mark Anthony Investment" Scheme

8. Samji promoted an investment opportunity referred to as the "Mark Anthony Investment". The money received by Samji was purportedly to be invested in a real estate and import-export business involving the Mark Anthony Group, a reputable firm in the beverage distribution industry, which owns the Mission Hill Winery in Kelowna. It was a private investment, described as involving subsidiaries of the Mark Anthony Group in Chile and South Africa.
9. In reality, the "Mark Anthony Investment" scheme had no affiliation with the actual Mark Anthony Group. In fact, Samji perpetrated a "Ponzi scheme" using her status as a Notary Public, as described in paragraphs 10 to 16 below.
10. Class members would place funds with Samji on the basis that the funds would be held by Samji in her trust account in her capacity as a Notary Public and would not be moved without specific direction from the Class member. Samji would then allegedly provide a "letter of comfort" to alleged lenders on behalf of the alleged subsidiaries of the Mark Anthony Group that the money was in her Notary's trust account, and the subsidiaries could then supposedly borrow against that money, while the funds would never leave the account. For this service, the "Mark Anthony Investment" fund would receive compensation in an amount sufficient to provide Class members with a guaranteed annual return of 12%. The minimum investment was \$50,000.



11. Class members placed their money in trust with Samji in her capacity as a Notary Public by signing a "Letter of Direction". The "Letters of Direction" authorized and directed Samji to place the money in trust, to be returned to the Class member on a date six months from the date of signing. The standard terms of the "Letter of Direction" indicated that the funds were to remain "in trust", and were "not to be paid out to any party without specific direction" from the Class member.
12. Approximately three or four weeks after signing a "Letter of Direction" and placing funds in trust with Samji, the Class member would receive a cheque for 6% of the principal amount invested (the "Interest Payments").
13. At the end of the six-month period, the Class member would have to either sign a new "Letter of Direction", and leave the principal amount in trust with Samji, or withdraw the funds from trust.
14. In reality, there was no legitimate investment opportunity. Samji never deposited the funds placed in trust with her into any trust account. Instead, the Class members' funds were deposited by Samji to her general or personal account, or to the account of Samji Holdings, and were used for the general benefit of Samji and Samji Holdings, without any authorization from and in breach of the specific direction provided by the Class members.
15. The Interest Payments that Class members received were not paid from revenue received by Samji from the alleged "Mark Anthony Investment" scheme, but were paid from other sources.
16. Samji intentionally promoted the "Mark Anthony Investment" opportunity, knowing it was false, and with the intention of deceiving Class members and inducing them to invest in the scheme.
17. As a result of investing in the "Mark Anthony Investment" scheme, the Class members have suffered loss and damage, including:

- (a) the principal amounts of the funds provided by them to Samji which have not been returned to them; and
- (b) the return that could reasonably have been earned on those funds in a legitimate investment with the conservative risk level that the “Mark Anthony Investment” scheme was purported to have.

Patel’s Investment Advice Related to the “Mark Anthony Investment” Scheme

- 18. Patel is a financial planner who has been employed by Coast Capital for many years. He provides professional investment advice to clients and members of the credit union. In that capacity, he is responsible for reviewing clients’ investments, providing clients with information about investment opportunities, exploring, investigating and evaluating investment opportunities, advising clients about suitable investments, and coordinating the sale of third-party investment vehicles to clients.
- 19. In the course of providing professional investment advice to clients as part of his employment with Coast Capital, Patel presented existing clients with the “Mark Anthony Investment” as an investment opportunity that he recommended to them. In addition, Patel recommended the “Mark Anthony Investment” to other employees of Coast Capital.
- 20. If the client or employee of Coast Capital was interested in pursuing the investment opportunity, Patel took all necessary steps to facilitate the investment by those Class members. In particular:
  - (a) Patel introduced the Class members to Samji and would meet together with them and Samji;
  - (b) the “Letter of Direction” required by Samji to invest in the “Mark Anthony Investment” were signed by Class members in Patel’s office at Coast Capital;
  - (c) Class members renewed their investment in the “Mark Anthony Investment” by signing a new “Letter of Direction” in Patel’s office at Coast Capital;

- (d) Patel accepted cheques from Class members with funds to be placed in trust with Samji for the purpose of the "Mark Anthony Investment" from his office at Coast Capital;
  - (e) Patel provided to Class members Interest Payments produced from the ostensible "Mark Anthony Investment" from Samji from his office at Coast Capital; and
  - (f) Patel communicated with Class members regarding the "Mark Anthony Investment" through his Coast Capital email account.
21. Patel never took any reasonable or proper steps to evaluate or investigate the merit or legitimacy of the "Mark Anthony Investment" scheme being promoted by Samji.

The Plaintiffs' Investments in the "Mark Anthony Investment" Scheme

22. The Jers are long-time members and clients of Coast Capital. They have accounts with that credit union, and rely on Coast Capital to help them manage their money. The Jers invest and purchase mutual funds, RSPs and other financial products offered by third parties through Coast Capital.
23. Patel has been the financial planner for the Jers for about 17 years, first at the Sunshine Hills Branch and later at the Newton Branch of Coast Capital. The Jers would meet with Patel several times a year to review the Jers' existing investments and to get investment and financial advice. Patel would make arrangements for the Jers to invest their money in the vehicles chosen by the Jers on Patel's advice.
24. The Jers learned of the opportunity to invest with Samji during a meeting with Patel at Coast Capital during October 2007. Patel raised the opportunity to invest their money with Samji as a safe investment vehicle, because the money was held in trust and could not be moved without authorization. The Jers agreed to accompany Patel to meet Samji to discuss the opportunity.

25. On October 29, 2007, the Jers accompanied Patel to a meeting with Samji at her office. At the meeting, the Jers agreed to make an investment with Samji and take part in the "Mark Anthony Investment".
26. In October 2007, the Jers signed a "Letter of Direction" investing \$210,000 in the "Mark Anthony Investment" scheme by placing the funds in trust with Samji.
27. The "Letter of Direction" contained the following terms:

**LETTER OF DIRECTION**

I, LAWRENCE BRIAN JER, Letter Carrier, and JUN JER, Piano Teacher, both of 11569 83A Avenue, Delta, B.C. V4C 2J7

Hereby AUTHORISE and DIRECT Samji & Associates as follows:

To place "In Trust", Canadian \$210,000 (TWO-HUNDRED AND TEN THOUSAND DOLLARS) on October 29, 2007 and to be returned to the undersigned, unless specifically directed on April 29, 2008[.]

These funds are to remain "In Trust" and not to be paid out to any party without specific direction from the undersigned.

...

28. The money used to fund the Jers' investment in the "Mark Anthony Investment" scheme came from a Coast Capital line of credit.
29. The cheques drawn by the Jers in favour of Samji were made out to "Samji & Associates".
30. At the end of the first six-month term and about every six months thereafter, the Jers signed a new "Letter of Direction", with materially the same terms, renewing the direction to leave the principal amount of the investment in trust with Samji for a further six-month period.



31. In April 2008, the Jers invested an additional \$40,000 by placing the funds in trust with Samji.
32. In April 2009, the Jers invested an additional \$50,000 by placing the funds in trust with Samji.
33. In January 2011, the Jers invested an additional \$50,000 by placing the funds in trust with Samji.
34. In total, the Jers invested \$350,000 in the "Mark Anthony Investment" scheme by placing the funds in trust with Samji.
35. Over the course of their involvement with Samji and Patel, the Jers received Interest Payments from Samji of about \$156,000. The Interest Payments were received in the form of bank drafts to conceal the identity of the accounts that were the source of the Interest Payments.
36. Over the course of the Jers' investment in the "Mark Anthony Investment" scheme, Patel would meet regularly with the Jers in his office at Coast Capital and communicated with the Jers through his Coast Capital email account. Upon the expiry of each "Letter of Direction", from his office at Coast Capital, Patel would provide the Jers with a new "Letter of Direction", which the Jers would sign to renew their participation in the "Mark Anthony Investment". From his office at Coast Capital, Patel accepted cheques from the Jers to be placed in trust with Samji to enable participation in the "Mark Anthony Investment", and Patel delivered Interest Payments from Samji to the Jers.

## **Part 2: RELIEF SOUGHT**

1. A declaration that the Defendant Samji received the funds invested by the Plaintiffs and Class members in the "Mark Anthony Investment" scheme as a trustee, and had an obligation to deposit those funds into a trust account and not to pay those funds out without a specific direction from the Plaintiffs or the affected Class member, under the

terms of each “Letter of Direction” issued as part of the “Mark Anthony Investment” scheme, and under ss. 23 and 54(1) of the *Notaries Act*, R.S.B.C. 1996, c. 334.

2. A declaration that the Defendant Samji breached her duties as trustee by failing to deposit the funds invested by the Plaintiffs and Class members in the “Mark Anthony Investment” scheme into a trust account, and by paying those funds out without a specific direction from the Plaintiffs or the affected Class member, in breach of the terms of each “Letter of Direction” issued as part of the “Mark Anthony Investment” scheme and in violation of ss. 23 and 54(1) of the *Notaries Act*.
3. A declaration that the Defendant Samji Holdings acted in knowing assistance of breach of trust by facilitating the disbursement of funds invested by the Plaintiffs and Class members and which were intended to be held in trust by Samji under the terms of each “Letter of Direction” issued as part of the “Mark Anthony Investment” scheme, and in her capacity as a Notary Public under ss. 23 and 54(1) of the *Notaries Act*.
4. An accounting and restitution to the Plaintiffs and Class members of all funds received by the Defendants Samji and Samji Holdings from investments made by the Plaintiffs and Class members in the “Mark Anthony Investment” scheme, and a constructive trust and tracing order over any funds that have been paid out by Samji and Samji Holdings.
5. A declaration that the Defendant Samji obtained the Plaintiffs’ and Class members’ funds through fraud by perpetrating the “Mark Anthony Investment” scheme.
6. A declaration that the Defendant Patel owed a duty of care to the Plaintiffs, and other Class members who were introduced to the “Mark Anthony Investment” scheme by Patel, to exercise reasonable care, skill and due diligence in providing professional investment services to them to evaluate and screen out investment products that had little or no investment merit and, accordingly, not to make those investment products available to the Plaintiffs and those other Class members.
7. A declaration that the Defendant Patel breached his duty of care when he made available the “Mark Anthony Investment” to the Plaintiffs and those other Class members without

taking reasonable or proper steps to investigate or evaluate the “Mark Anthony Investment” opportunity.

8. A declaration that the Defendant Coast Capital is vicariously liable for the acts of Patel.
9. Damages for negligence from the Defendants Coast Capital and Patel.
10. Damages for fraud from the Defendants Samji and Samji Holdings.
11. Interest.
12. Such further and other relief as this Honourable Court may allow.

### **Part 3: LEGAL BASIS**

#### **Breach of Trust**

1. In her capacity as a Notary Public, under ss. 23 and 54(1) of the *Notaries Act*, and according to the standard terms of the “Letter of Direction”, Samji is a trustee and the Plaintiffs and the Class members are beneficiaries with respect to the funds invested with Samji on the pretext of the “Mark Anthony Investment” scheme. As trustee, Samji owed a fiduciary duty of loyalty to the Plaintiffs and Class members to act solely in their best interest with respect to the funds invested with Samji and to avoid any self-dealing with those funds.
2. Samji breached her duty of trust and fiduciary duty to the Plaintiffs and the Class members when she failed to deposit the funds invested with her on the pretext of the “Mark Anthony Investment” scheme into a trust account. Samji breached her duty of trust and fiduciary duty to the Plaintiffs and the Class members when she paid out money from the funds invested with her on the pretext of the “Mark Anthony Investment” scheme without specific direction from the Plaintiffs or the affected Class member, whether to make Interest Payments or for any other purpose.

### Knowing Assistance in Breach of Trust

3. Samji Holdings was aware of and actively participated in the breaches of trust by Samji. Accordingly, Samji Holdings is liable as a constructive trustee for the breaches of trust by Samji.

### Constructive Trust and Accounting

4. The Defendants Samji and Samji Holdings received funds from the Plaintiffs and Class members who invested in the "Mark Anthony Investment" scheme in trust for the Plaintiffs and the Class members. The Plaintiffs and the Class members are entitled to an accounting of the funds invested in the "Mark Anthony Investment" scheme that were received in trust, and a tracing order and declaration of constructive trust over any funds that have been paid out by Samji and Samji Holdings.

### Notaries Act

5. The Plaintiffs and the Class members plead and rely on ss. 23, 47, 54(1), 59 and 61 of the *Notaries Act*.

### Fraud

6. The Defendant Samji made false statements to the Plaintiffs and the Class members regarding the "Mark Anthony Investment" scheme, knowing those statements were false, and provided the Plaintiffs and the Class members with the "Letters of Direction", knowing that the terms of that letter would not be followed, with the intention to deceive the Plaintiffs and the Class members.
7. The false statements made by Samji concerning the "Mark Anthony Investment" scheme, and the false pretense of the "Letters of Direction", materially induced the Plaintiffs and the Class members to provide Samji with funds to invest in the "Mark Anthony

Investment” scheme, and Samji and Samji Holdings knowingly received those funds from the Plaintiffs and the Class members under false pretenses.

8. The fraudulent conduct of Samji and Samji Holdings has resulted in loss and damage to the Class members as set out in paragraph 1.17 above.

#### Negligence

9. The Defendant Patel held himself out to the general public as a financial advisor providing professional investment services. In that capacity, he owed a duty to exercise reasonable care, skill and due diligence in rendering those services to the Plaintiffs and other Class members who were introduced to the “Mark Anthony Investment” scheme by Patel.
10. In order to fulfill his duty of care to the Plaintiffs and those other Class members, Patel had to evaluate and screen out investment products that had little or no investment merit and, accordingly, not to make those investment products available to the Plaintiffs and those other Class members.
11. Patel failed to take any reasonable or proper steps to evaluate or investigate the “Mark Anthony Investment” scheme that he was required to take by his duty. Had Patel taken the proper steps, he would never have offered the “Mark Anthony Investment” as an investment opportunity to the Plaintiffs or any other Class members.
12. Patel breached his duty of care to the Plaintiffs, and those other Class members who were introduced to the “Mark Anthony Investment” scheme by Patel, when he made available the “Mark Anthony Investment” opportunity to them. But for the negligence of Patel, the Plaintiffs and those other Class members would not have entrusted their funds to Samji in order to take part in the “Mark Anthony Investment” scheme, and would not have suffered the loss and damage set out in paragraph 1.17 above.

Vicarious Liability

13. The breach of the duty of care owed by Patel to the Plaintiffs and other Class members, in failing to exercise reasonable care, skill and due diligence with respect to the investment merit of the "Mark Anthony Investment" scheme, was done within the scope and in the course of his ordinary employment as a professional financial and investment advisor for Coast Capital in providing advice to its clients and members. Accordingly, Coast Capital is vicariously liable for the effects of Patel's negligence.

Plaintiffs address for service:

**Hordo Bennett Mounteer LLP**  
Barristers and Solicitors  
1400 – 128 West Pender Street  
Vancouver, B.C. V6B 1R8  
Fax: (604) 639-3681  
Email: mg@hbmlaw.com

Place of trial:

Vancouver, British Columbia


The address of the registry is:

800 Smithe Street  
Vancouver, B.C.

Date: 2 March 2012

Per:

HORDO BENNETT MOUNTEER LLP

  
\_\_\_\_\_  
Signature of Lawyer for the Plaintiff  
Paul R. Bennett

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.

THIS NOTICE OF CIVIL CLAIM was prepared by the law firm of Hordo Bennett Munteer LLP, whose place of business and address for service is 1400 – 128 West Pender Street, Sun Tower Building, Vancouver, British Columbia, V6B 1R8. Telephone: (604) 639-3680. Fax: (604) 639-3681. Counsel Reference: Paul R. Bennett, Mark W. Munteer, and Mathew P. Good.

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## APPENDIX

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiffs seek recovery for losses caused by the Defendants' breach of trust and negligence in connection with a misleading investment scheme.

### 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 laws
- ☐ none of the above
- ☐ do not know

**Part 4:**

*Class Proceedings Act*, R.S.B.C. 1996, c. 50

*Notaries Act*, R.S.B.C. 1996, c. 334