

8 DAY OF December/14
26.02(a)
[Signature]

Court File No. 1399/10CP

200 ONTARIO
SUPERIOR COURT OF JUSTICE

Between: [Name]

KIRK BRANT

Plaintiff

- and -

DE BEERS CANADA INC., DB INVESTMENTS, INC.,
DE BEERS S.A., DE BEERS CONSOLIDATED MINES, LTD.,
DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING
COMPANY LIMITED), CSO VALUATIONS A.G., and
DE BEERS CENTENARY A.G.

Defendants

(Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c. C.6)

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

Date June 1, 2010

Issued by "P.Allott"
Local registrar

Address of court office London Court House
Civil, Landlord/Tenant Section
Group Floor, Unit "A"
80 Dundas Street
London, ON N6A 6A3

TO: DE BEERS CANADA INC.
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AND TO: DB INVESTMENTS, INC.
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Luxembourg

AND TO: DE BEERS S.A.
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AND TO: DE BEERS CONSOLIDATED MINES, LTD.
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Kimberley, South Africa

AND TO: DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING COMPANY LIMITED)
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London, EC 1N 6RA
United Kingdom

AND TO: CSO VALUATIONS A.G.
17 Charterhouse Street
London, EC 1N 6RA
United Kingdom

AND TO: DE BEERS CENTENARY A.G.
Lagensandstrasse 27
CH-6000 Lucerne
Switzerland

CLAIM

1. The Plaintiff claims on behalf of himself and other persons in Canada, excluding British Columbia, who are similarly situated:
 - (a) a declaration that the Defendants conspired each with the other to raise, maintain, fix and stabilize the price of natural diamonds for use as gemstones in jewellery or for investment ("Gem Grade Diamonds") during the period beginning at least February 1, 1994 to December 31, 2011 ("Conspiracy Period");
 - (b) general damages for conspiracy in the amount of \$100,000,000.00;
 - (c) general damages for conduct that is contrary to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 in the amount of \$100,000,000.00;
 - (d) a declaration that the Defendants have been unjustly enriched at the expense of the Plaintiff and other persons in Canada who are similarly situated by their receipt of the illegal overcharge;
 - (e) an order directing the Defendants to disgorge their ill-gotten overcharge;
 - (f) punitive and exemplary damages in the amount of \$10,000,000.00;
 - (g) costs of investigation pursuant to Part VI of the *Competition Act*, R.S.C. 1985, Chap. C-34 s. 36;
 - (h) pre-judgment interest at the rate of 10% compounded annually or as otherwise ordered by the Honourable Court;
 - (i) costs of this action on a substantial indemnity basis; and

- (j) such further and other relief as this Honourable Court awards.

The Plaintiff

2. The Plaintiff is a resident of London, Ontario. During the Conspiracy Period, the Plaintiff purchased a Gem Grade Diamond in Ontario.

The Defendants

3. DB Investments, Inc. ("DB Investments") is a Luxembourg corporation with an office and place of business in Luxembourg. DB Investments owns 100% of De Beers S.A. During the Conspiracy Period, DB Investments manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
4. De Beers S.A. is a Luxembourg corporation with an office and place of business in Luxembourg. De Beers S.A. owns 74% of De Beers Consolidated Mines, Ltd., 100% of De Beers Canada Corporation, and all or part of De Beers Centenary A.G. During the Conspiracy Period, De Beers S.A. manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
5. De Beers Consolidated Mines, Ltd. ("DB Consolidated") is a Republic of South Africa corporation with an office and place of business in London, England. During the Conspiracy Period, DB Consolidated manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
6. De Beers Centenary A.G. ("DB Centenary") is a Swiss corporation with an office and place of business in Lucerne, Switzerland. During the Conspiracy Period, DB

Centenary manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

7. De Beers Canada Inc. ("DB Canada") is a federally incorporated company with an office and place of business at Toronto, Ontario. During the Conspiracy Period, DB Canada manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
8. The Defendants DB Investments, De Beers S.A., DB Consolidated, DB Centenary, and DB Canada are referred to collectively herein as the "De Beers Group".
9. De Beers UK Limited (f/k/a The Diamond Trading Company Limited) ("De Beers UK"), the marketing arm of the De Beers Group, is incorporated in the United Kingdom with an office and place of business at London, England. During the Conspiracy Period, De Beers UK manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.
10. CSO Valuations A.G. is a Swiss corporation with an office and place of business at London, England. During the Conspiracy Period, CSO Valuations A.G. manufactured, marketed, sold and/or distributed Gem Grade Diamonds to customers throughout Canada, either directly or indirectly through the control of its predecessors, affiliates and/or subsidiaries.

11. Before 2000, the De Beers Group distributed Gem Grade Diamonds through an entity called the "Central Selling Organization". The Plaintiff believes that CSO Valuations A.G. might be that entity. In 2000, De Beers UK replaced CSO Valuations A.G. as the Gem Grade Diamond marketing arm of the De Beers Group.
12. The business of each of the Defendants is inextricably interwoven with that of the other and each is the agent of the other for the purposes of the manufacture, sale and/or distribution of Gem Grade Diamonds in Canada and for the purposes of the conspiracy described hereinafter.
13. The acts alleged in this claim that have been done by each Defendant were authorized, ordered and done by its officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.
14. Various persons and/or firms involved in the manufacturing, marketing, selling and/or distribution of Gem Grade Diamonds to customers throughout Canada, not named as Defendants herein, including but not limited to the sightholders described in paragraph 22 below and other diamond producers such as the Russian company ALROSA Co., Ltd. (collectively the "Unnamed Co-Conspirators"), may have participated as co-conspirators in the violation alleged herein and may have performed acts and made agreements in furtherance thereof.
15. The Defendants named herein are jointly and severally liable for the actions of, and damages allocable to, the Unnamed Co-Conspirators.

THE GEM GRADE DIAMOND INDUSTRY

16. A diamond is carbon in a crystalline form. The diamond market is conventionally divided into two segments:
 - (a) industrial diamonds - natural and synthetic diamonds that are used in a wide range of manufacturing processes; and
 - (b) Gem Grade Diamonds - natural diamonds for use as gemstones in jewellery or for investment.
17. Gem Grade Diamonds are mined from the earth and, after cutting, polishing and other finishing, are valued based upon their beauty, color, cut, clarity, and other characteristics. Gem Grade Diamonds are sold in their polished form to purchasers who incorporate the diamonds into jewelry and other products for resale.
18. During the Conspiracy Period, the Defendants were the source of most Gem Grade Diamonds sold in the world. Through direct ownership, or agreements and combinations with others, the Defendants controlled about two-thirds of the world's supply of Gem Grade Diamonds, particularly diamonds in larger sizes. The rest of the Gem Grade Diamond industry is highly fragmented.
19. During the Conspiracy Period, the Defendants routinely acknowledged that their control over the Gem Grade Diamond industry constituted an illegal cartel that violates antitrust laws. For example, in 1999, Nicholas Oppenheimer, chairman of the De Beers Group, explained that the De Beers Group likes to think of itself as the world's best known and longest running monopoly. He declared publicly that, as a matter of policy, the De Beers Group violated antitrust law by managing the Gem Grade Diamond market,

controlling supply, managing prices and acting collusively with other firms in the Gem Grade Diamond industry.

20. The Defendants' control over the Gem Grade Diamond industry began through agreements with other producers more than a century ago. In 1890, De Beers Consolidated signed a sales contract with the newly formed London Diamond Syndicate, which agreed to purchase the entire production from all its mines, thereby foreclosing the market to others. In 1930, the London Diamond Syndicate became the Diamond Corporation which, in turn, formed the basis for CSO Valuations A.G., which functioned as the marketing arm for the De Beers Group until 2000.
21. During the Conspiracy Period, the Defendants obtained Gem Grade Diamonds from their mines and the mines of unrelated mining companies under contract to them. The Gem Grade Diamonds were sorted by the Central Selling Organization (CSO Valuations A.G. until 2000 and De Beers UK after 2000). The Defendants created a price book that valued Gem Grade Diamonds according to certain physical characteristics, including weight, shape, and quality (i.e., the absence or presence of cracks and occlusions). Once the Gem Grade Diamonds were sorted and graded, they were priced according to the price book.
22. During the Conspiracy Period, Gem Grade Diamonds of various grades were placed into boxes for distribution at a "sight." The Defendants controlled the distribution of Gem Grade Diamonds by the use of "sightholders." A sightholder is an individual selected by and operating under Defendants' direction who takes delivery, generally in London, of a box of rough Gem Grade Diamonds at a "sight" during a "sight week" held approximately ten times per year. The sightholder re-sells the Gem Grade Diamonds,

either as rough diamonds, or after cutting, polishing and other finishing, for distribution through manufacturers, wholesalers and jewelers to consumers and other end users.

THE CONSPIRACY TO FIX PRICES OF GEM GRADE DIAMONDS

23. The Plaintiff alleges that during the Conspiracy Period, the Defendants and Unnamed Co-Conspirators conspired and/or agreed with each other to enhance unreasonably the prices of Gem Grade Diamonds and to lessen unduly competition in the production, manufacture, sale and/or supply of Gem Grade Diamonds in Canada and elsewhere.
24. During the Conspiracy Period, senior executives and employees of the Defendants and Unnamed Co-Conspirators, acting in their capacities as agents for the Defendants and Unnamed Co-Conspirators, engaged in communications, conversations and attended meetings with each other at times and places, some of which are unknown to the Plaintiff, and as a result of the communications and meetings the Defendants and Unnamed Co-Conspirators unlawfully conspired and/or agreed to:
- (a) to suppress and eliminate competition in the sale of Gem Grade Diamonds in Canada and elsewhere by fixing the price of Gem Grade Diamonds at artificially high levels and allocating the market share and volume of Gem Grade Diamonds;
 - (b) to prevent or lessen, unduly, competition in the manufacture, sale and distribution of Gem Grade Diamonds in Canada and elsewhere by reducing the supply of Gem Grade Diamonds;
 - (c) to allocate among themselves the customers for Gem Grade Diamonds in Canada and elsewhere;

- (d) to allocate among themselves and others market shares of Gem Grade Diamonds in Canada and elsewhere; and
 - (e) to allocate among themselves and others all or part of certain contracts to supply Gem Grade Diamonds in Canada and elsewhere.
25. In furtherance of the conspiracy, during the Conspiracy Period, the following acts were done by the Defendants, the Unnamed Co-Conspirators and their servants and agents:
- (a) they enhanced unreasonably the prices of Gem Grade Diamonds in Canada and elsewhere;
 - (b) they allocated the volumes of sales of, and customers and markets for Gem Grade Diamonds among themselves;
 - (c) they reduced the supply of Gem Grade Diamonds;
 - (d) they communicated secretly, in person and by telephone, to discuss and fix prices and volumes of sales of Gem Grade Diamonds;
 - (e) they exchanged information regarding the prices and volumes of sales of Gem Grade Diamonds for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
 - (f) they refrained from submitting truly competitive bids for Gem Grade Diamonds in Canada and elsewhere;
 - (g) they submitted collusive, non-competitive and rigged bids for Gem Grade Diamonds in Canada and elsewhere;

- (h) they took active steps to, and did, conceal the unlawful conspiracy from their customers; and
 - (i) they disciplined any corporation which failed to comply with the conspiracy.
26. In addition, the Defendants used threats and promises and entered into agreements with sightholders and other resellers of Gem Grade Diamonds to fix the resale price of Gem Grade Diamonds at artificially high levels. The Defendants refused to supply Gem Grade Diamonds and/or supplied inferior quality Gem Grade Diamonds to sightholders who had low pricing policies.
27. The Defendants and Unnamed Co-Conspirators were motivated to conspire and their predominant purposes and predominant concerns were to:
- (a) harm the Plaintiff and other persons similarly situated by requiring them to pay artificially high prices for Gem Grade Diamonds; and
 - (b) illegally increase their profits on the sale of Gem Grade Diamonds.
28. The Canadian subsidiaries of the foreign Defendants and Unnamed Co-Conspirators participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.
29. The acts particularized in paragraphs 23 to 28 were unlawful acts directed towards the Plaintiff and other purchasers of Gem Grade Diamonds, which unlawful acts the Defendants knew in the circumstances would likely cause injury to the Plaintiff and other

purchasers of Gem Grade Diamonds and, as such, the Defendants are liable for the tort of civil conspiracy.

30. Further, or alternatively, the acts particularized in paragraphs 23 to 28 are in breach of s. 45 of the *Competition Act* and render the Defendants liable to pay damages pursuant to s. 36 of the *Competition Act*. Further, or alternatively, the Canadian subsidiaries of the foreign Defendants are liable to the Plaintiff and the other persons similarly situated pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.
31. Further, the acts particularized in paragraphs 23 to 28 were unlawful acts intended to cause the Plaintiff and the other Class Members economic loss and constituted tortious interference with the economic interests of the Plaintiff and the other Class Members and render the Defendants liable to pay the resulting damages.
32. The acts alleged in this claim to have been done by each corporate Defendant were authorized, ordered and done by each corporate Defendant's officers, directors, agents, employees or representatives while engaged in the management, direction, control or transaction of its business affairs.

UNLAWFUL RESTRAINT OF TRADE

33. The acts particularized in paragraphs 23 to 28 in combination with the Defendants' unilateral steps to create and abuse their dominant and controlling market share in the Gem Quality Diamond markets were calculated to produce, and have produced, harmful monopolies that virtually eliminated competition such that the Defendants were able to, and did, charge and receive artificially inflated and unreasonable prices. In particular, the Defendants used their dominant and controlling market share to, among other things:

- (a) control the rate of production and supply of Gem Grade Diamonds;
- (b) control distribution of Gem Grade Diamonds;
- (c) manage prices of Gem Grade Diamonds;
- (d) fix, raise, maintain and stabilize the prices of Gem Grade Diamonds at non-competitive levels;
- (e) arbitrarily exclude and discriminate against purchasers of Gem Grade Diamonds;
and
- (f) tie low-carat, lower quality diamonds to high quality, high carat diamonds and use their monopoly power to force purchasers to either accept or reject the tied purchase or be completely cut off as a purchaser.

UNJUST ENRICHMENT AND WAIVER OF TORT

34. In the alternative, the Plaintiff waives the tort and pleads that he and the other persons in Canada who are similarly situated are entitled to recover under restitutionary principles.
35. The Defendants have each been enriched by the receipt of the artificially induced overcharge on the sale of Gem Grade Diamonds. The Plaintiff and other persons similarly situated have suffered a corresponding deprivation. There is no juristic reason for the enrichment – the Defendants’ receipt of the overcharge is the result of wrongful or unlawful acts. As such, there is and can be no juridical reason justifying the Defendants’ retention of the overcharge and, in particular, any contracts upon which the Defendants purport to rely to receive the overcharge are void and illegal.

DAMAGES

36. The Plaintiff suffered the following damages:
- (a) the price of Gem Grade Diamonds has been enhanced unreasonably at artificially high and non-competitive levels; and
 - (b) competition in the sale of Gem Grade Diamonds has been unduly restrained.
37. During the period covered by this claim, the Plaintiff purchased Gem Grade Diamonds. By reason of the alleged violations of the *Competition Act* and the common law, the Plaintiff paid more for Gem Grade Diamonds than he would have paid in the absence of the illegal conspiracy and, as a result, he has been injured in his property and has suffered damages in an amount presently undetermined.
38. The Plaintiff asserts that the Defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the Plaintiff's rights and the rights of others who are similarly situated, and as such renders the Defendants liable to pay aggravated, exemplary and punitive damages.
39. The Plaintiff's damages and those of other persons who are similarly situated have been suffered in the Province of Ontario and elsewhere in Canada.
40. The Plaintiff pleads and relies on the *Competition Act*, R.S. 1985, c. 19 (2nd Supp), ss. 36, 45 and 46.
41. The Plaintiff pleads and relies on section 17 (g), (h), (o) and (p) of the *Rules of Civil Procedure*, allowing for service ex juris of the foreign Defendants. Specifically, this

originating process may be served without court order outside Ontario on the basis that the claim is:

- (a) in respect of a tort committed in Ontario (rule 17.02(g));
- (b) in respect of damages sustained in Ontario arising from a tort or breach of contract wherever committed (rule 17.02(h));
- (c) against a person outside Ontario who is a necessary and proper party to this proceeding properly brought against another person served in Ontario (rule 17.02(o)); and
- (d) against a person carrying on business in Ontario (rule 17.02(p)).

42. The Plaintiff pleads and relies on the *Class Proceedings Act, 1992*.

43. The Plaintiff states that they are representative of persons in Canada who purchased Gem Grade Diamonds in Canada during the Conspiracy Period.

44. The Plaintiff proposes that this action be tried at London, Ontario.

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at London

**FRESH AS AMENDED
STATEMENT OF CLAIM**

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