



No. L043175
Vancouver Registry

In the Supreme Court of British Columbia

Between

PRO-SYS CONSULTANTS LTD. and NEIL GODFREY

Plaintiffs

and

**MICROSOFT CORPORATION and MICROSOFT CANADA
CO./MICROSOFT CANADA CIE**

Defendants

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

REPLY

Filed by: The plaintiffs, Pro-sys Consultants Ltd. and Neil Godfrey

In reply to: The defendants, Microsoft Corporation and Microsoft Canada Co./Microsoft Canada CIE, Statement of Defence filed November 19, 2014.

1. The plaintiffs deny each and every allegation in the Statement of Defence except as expressly admitted herein.
2. The facts alleged in paragraphs 1 and 2 of the Statement of Defence are admitted.
3. In answer to the portions of the Statement of Defence that allege that the plaintiffs' causes of action are barred through the passage of time through the application of the *Limitation Act*, R.S.B.C. 1996 c. 266, the *Limitation Act*, S.B.C. 2012, c. 13, the *Competition Act*, R.S.C. 1985, c. C-34, and the doctrine of laches, the plaintiffs deny that the claims are barred by statute or equity.

4. The plaintiffs say that the defendants' wrongful conduct including breaches of Part VI of the *Competition Act*, took place throughout the Class Period and is continuing to the present, and that the Defendants, and each of them deliberately and intentionally:

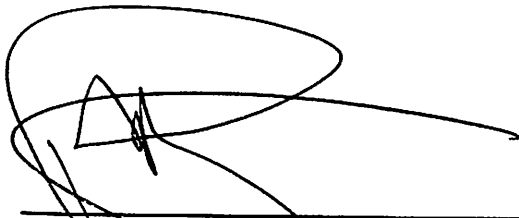
- (a) concealed their wrongful acts;
- (b) destroyed documents and other evidence for the purpose of avoiding detection by, among other, the plaintiffs;
- (c) met secretly with, their co-conspirators for the purpose of avoiding detection by, among others, the plaintiffs;
- (d) instructed members of the conspiracy not to divulge the existence of the conspiracy, or the substance of their unlawful acts, for the purpose of avoiding detection by, among others, the plaintiffs.

5. Taken by itself, the defendants' conduct set out in the Amended Statement of Claim and this Reply constitutes equitable fraud and the defendants, and each of them, is estopped from asserting that the claims are barred because of the passage of time.

6. The plaintiffs and other class members rely on s. 6 of the *Limitation Act*, R.S.B.C., 1996 c. 266. This action falls under s. 6(3)(d) and (e) of the *Limitation Act* and is therefore governed by s. 6(4) of the *Limitation Act*.

7. The plaintiffs and other class members say that the facts within their means of knowledge were not such that a reasonable person who had taken the appropriate advice in light of those facts would have concluded that they could bring an action until after December 23, 1998.

Date: 02/Dec/2014



Reidar M. Mogerman
Signature of lawyer for filing parties

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
 - (i) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.