



Amended pursuant to Rule 24-1(10),
Pursuant to the demand dated July 30, 2010
of the Defendants Silau Holdings Ltd. and Ed Sylvan
Original Writ of Summons and Statement of Claim filed April 7, 2010

NO. S102316
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

VANCOUVER ORGANIZING COMMITTEE
OF THE 2010 OLYMPIC AND PARALYMPIC GAMES

PLAINTIFF

AND:

CANADA SINCERE INDUSTRY CO., LTD., SILAU HOLDINGS LTD.,
ED SYLVAN and TIE JUN YUAN

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff 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-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 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 Plaintiff,

- (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 PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff is a corporation incorporated pursuant to Part II of the Canada Corporations Act and is registered as an extra-provincial society under the laws of British Columbia. The Plaintiff has an address for service at 900 - 808 Nelson Street, Vancouver, British Columbia.
2. The Defendant Canada Sincere Industry Co. Ltd. ("CSI") is a company incorporated under the laws of British Columbia and has its registered office at 1029 - 4710 Kingsway, Burnaby, British Columbia.
3. The Defendant Silau Holdings Ltd. ("Silau") is a company incorporated under the laws of British Columbia and has its registered office at 1201 - 933 Seymour Street, Vancouver, British Columbia.
4. The Defendant Ed Sylvan ("Sylvan") is a businessman with a residential address at 1406 - 1199 Seymour Street, Vancouver, British Columbia and at all material times was a director of Silau. At certain times Sylvan acted as manager of the Garibaldi Budget Inn (the "Inn")

located at 38012 Third Avenue in Squamish, British Columbia.

5. The Defendant Tie Jun Yuan (“Yuan”) is a businessman with an address for delivery at 270 - 10711 Cambie Road, Richmond, British Columbia and at all material times was a director and officer of CSI. At certain times Yuan acted as manager of the Inn.
6. On or about December 23, 2003, the Plaintiff entered into a lodging agreement with Yuan doing business as Garibaldi Budget Inn (the “GBI Agreement”).
7. In the alternative, on or about December 23, 2003, the Plaintiff entered into the GBI Agreement with CSI doing business as Garibaldi Budget Inn.
8. Hereinafter, the term “GBI” refers to Yuan doing business as Garibaldi Budget Inn or, alternatively, to CSI doing business as Garibaldi Budget Inn.
9. The terms of the GBI Agreement include, *inter alia*, the following:
 - (a) during the period between January 28 and March 28, 2010 (the “Games Period”), GBI will reserve and provide accommodations to the Plaintiff and its guests in a specified number of rooms (the “GBI Guest Rooms”) at the Inn;
 - (b) the Plaintiff will pay GBI one-half of the rental amount for the GBI Guest Rooms on August 1, 2009 and the remaining one-half on November 30, 2009;
 - (c) GBI shall not accept reservations for GBI Guest Rooms from any source other than that authorized by the Plaintiff;
 - (d) in the event that GBI, after making all reasonable efforts, is unable to honour a reservation at the Inn, GBI will immediately advise the Plaintiff as to the particulars of the circumstances giving rise to its inability to provide GBI Guest Room accommodations and will provide, *inter alia*, the following:
 - (i) complimentary accommodation at a comparable lodging facility;
 - (ii) transportation to and from the comparable lodging facility; and

- (iii) two long distance phone calls per guest at GBI's expense.
 - (e) GBI shall make every reasonable effort to keep the Plaintiff fully informed as to the progress of its plans as they relate to the performance of the GBI Agreement, any particular difficulties encountered by them, and any changes in plans, and without restricting the foregoing, any information that might affect the obligations of the Plaintiff;
 - (f) GBI may not assign the benefit of the GBI Agreement or delegate or transfer its obligations to another party. Subject to the foregoing, GBI shall require and shall cause any successor to the management, ownership or occupancy of the Inn, by written agreement in form and substance satisfactory to the Plaintiff, expressly to assume and agree to perform this GBI Agreement in the same manner and to the same extent that GBI would be required to perform it; and
 - (g) the parties to the GBI Agreement may not amend, modify or cancel the GBI Agreement except as provided in the GBI Agreement or by written agreement.
10. In or about May 2007, Silau purchased the Inn from CSI. At no time did GBI advise the Plaintiff of the sale of the Inn to Silau, and the Plaintiff remained unaware of the transfer of the ownership of the Inn until in or about February 2008.
 11. In or about May 2007, Silau granted a mortgage (the "Conconi Mortgage") against the lands comprising the Inn.
 12. In or about June 2007, Silau granted a second mortgage (the "CSI Mortgage") to CSI against the lands comprising the Inn.
 13. From or about February 2008, Sylvan began to communicate with the Plaintiff with respect to the GBI Agreement and advised the Plaintiff that Silau had purchased the Inn and would provide accommodations to the Plaintiff and its guests in a specified number of rooms during the Games Period. In or about Spring 2008, Silau entered into an agreement with the Plaintiff (the "Silau Agreement") to provide accommodations, the terms of which included:

- (a) during the Games Period, Silau will reserve and provide accommodations to the Plaintiff and its guests in a specified number of rooms (the "Silau Guest Rooms") at the Inn;
- (b) Silau shall maintain the Inn in an acceptable physical condition throughout the Games Period;
- (c) the Plaintiff will pay Silau one-half of the rental amount for the Silau Guest Rooms on August 1, 2009 and the remaining one-half on November 30, 2009;
- (d) Silau shall not accept reservations for the Silau Guest Rooms from any source other than that authorized by the Plaintiff;
- (e) in the event that Silau, after making all reasonable efforts, is unable to honour a reservation at the Inn, Silau will immediately advise the Plaintiff as to the particulars of the circumstances giving rise to its inability to provide Silau Guest Room accommodations and will provide, *inter alia*, the following:
 - (i) complimentary accommodation at a comparable lodging facility;
 - (ii) transportation to and from the comparable lodging facility; and
 - (iii) two long distance phone calls per guest at Silau's expense.
- (f) Silau shall make every reasonable effort to keep the Plaintiff fully informed as to the progress of its plans as they relate to the performance of the Silau Agreement, any particular difficulties encountered by Silau, and any changes in plans, and without restricting the foregoing, any information that might affect the obligations of the Plaintiff;
- (g) Silau may not assign the benefit of the Silau Agreement or delegate or transfer its obligations to another party. Subject to the foregoing, Silau shall require and shall cause any successor to the management, ownership or occupancy of the Inn, by written agreement in form and substance satisfactory to the Plaintiff, expressly to assume and agree to perform this Silau Agreement in the same manner and to the

same extent that Silau would be required to perform it;

- (h) the parties to the Silau Agreement may not amend, modify or cancel the Silau Agreement except as provided in the Silau Agreement or by written agreement.
14. On or about January 7, 2009, foreclosure proceedings (the "Foreclosure Proceedings") were commenced by the mortgagee in the Supreme Court of British Columbia in relation to the Conconi Mortgage.
 15. CSI was named as a party to the Foreclosure Proceedings as the holder of the CSI Mortgage and GBI became aware of the Foreclosure Proceedings as a result.
 16. Unaware of the Foreclosure Proceedings, on or about February 26, 2009, the Plaintiff sent a proposed amendment to the Silau Agreement (the "Rate Amendment") to the attention of Sylvan which confirmed that the Silau Agreement remained in full force and effect but altered the formula for determining the rent-out rates for the Silau Guest Rooms.
 17. On or about May 26, 2009, Sylvan executed the Rate Amendment and returned a copy of the same to the Plaintiff.
 18. On or about April 27, 2009, the mortgagee obtained an order *nisi* in the Foreclosure Proceedings providing that:
 - (a) there had been a default under the Conconi Mortgage;
 - (b) the last day of redemption for the Conconi Mortgage would be May 27, 2009; and
 - (c) as of May 27, 2009, the mortgagee would have conduct of the sale of the Inn.
 19. On or about July 17, 2009, the mortgagee obtained judgment in the Foreclosure Proceedings against, *inter alia*, Silau and Sylvan in the amount of \$1,698,835 plus costs.
 20. On or about July 23, 2009, Sylvan executed an Addendum A to the Silau Agreement (the "July Addendum") that confirmed the Plaintiff's reservations for and the availability of the Silau Guest Rooms for the Games Period.

21. In or about July 2009, the Plaintiff issued a cheque payable to "Garibaldi Budget Inn" in the amount of \$71,370.00 (the "First Cheque") and sent the First Cheque to the attention of Sylvan.
22. On or about July 31, 2009, Sylvan deposited the First Cheque.
23. In or about October or November 2009, Sylvan executed a further Addendum A to the Silau Agreement (the "Fall Addendum") that confirmed the Plaintiff's reservation for and the availability of the Silau Guest Rooms for the Games Period.
24. In or about November 2009, the Plaintiff issued a cheque payable to "Garibaldi Budget Inn" in the amount of \$81,689.40 (the "Second Cheque").
25. Sylvan subsequently picked up the Second Cheque. In or about November 2009, Sylvan deposited the Second Cheque.
26. On or about November 25, 2009, Sylvan advised the Plaintiff in writing (the "November Communication") of various upgrades that were being made to the Inn in preparation for the Games Period and advised the Plaintiff that all work would be complete by December 15, 2009.
27. As a result of the Foreclosure Proceedings, on or about December 9, 2009, pursuant to an Order of the British Columbia Supreme Court, the Inn was sold to Squamish Budget Inn Ltd. ("SBI").
28. Between or about January and December 2009, Sylvan had a number of communications with the Plaintiff through, *inter alia*, email, telephone and letter.
29. At no time did any of the Defendants ever advise the Plaintiff that the Inn was subject to Foreclosure Proceedings or the court-ordered sale of the Inn to SBI.
30. In or about December 2009, SBI advised the Plaintiff that as it had been unaware of the Silau Agreement, it would not be honouring the reservations for the Silau Guest Rooms made pursuant to the Silau Agreement.

31. The Plaintiff only became aware of the Foreclosure Proceedings in or about December 2009 as a result of SBI's communication.
32. Due to the lack of availability of the GBI Guest Rooms and the Silau Guest Rooms, the Plaintiff was required to obtain alternate lodging for the Games Period at increased cost, and incurred additional costs and losses associated with such displacement.

Part 2: RELIEF SOUGHT

33. The Plaintiff claims against Yuan and CSI:
 - (a) General damages for breach of contract;
 - (b) Special damages;
 - (c) Interest in accordance with the *Court Order Interest Act*;
 - (d) Costs; and
 - (e) Such further and other relief as to this Court seems just.
34. The Plaintiff claims against Silau:
 - (a) General damages for breach of contract;
 - (b) Special damages;
 - (c) An order for the return of the Funds to the Plaintiff;
 - (d) Interest in accordance with the *Court Order Interest Act*;
 - (e) Costs; and
 - (f) Such further and other relief as to this Court seems just.
35. In the alternative, the Plaintiff claims against Silau:
 - (a) Judgment against Silau in the amount of \$153,059.40 on account of unjust

enrichment;

- (b) A declaration that the Plaintiff is entitled to a constructive trust over any amounts received by Silau as a result of the unjust enrichment;
- (c) A declaration that the Plaintiff is entitled to a constructive trust over any amounts received by Silau as a result of fraudulent misrepresentation;
- (d) An accounting of all amounts received by Silau from the Plaintiff directly or indirectly and of the disposition of all such amounts;
- (e) An order that the Plaintiff has the right to trace those funds received by Silau that are impressed with a constructive trust;
- (f) Interest in accordance with the *Court Order Interest Act*;
- (g) Costs; and
- (h) Such further and other relief as to this Court seems just.

36. The Plaintiff claims against Sylvan:

- (a) Damages for fraudulent or negligent misrepresentation;
- (b) An order for delivery of the Funds to the Plaintiff or, alternatively, an order for payment in the amount of \$153,059.40;
- (c) A declaration that the Plaintiff is entitled to a constructive trust over any amounts received by Sylvan as a result of fraudulent misrepresentation;
- (d) An accounting of all amounts received by Sylvan from the Plaintiff directly or indirectly and of the disposition of all such amounts;
- (e) An order that the Plaintiff has the right to trace those funds received by Sylvan that are impressed with a constructive trust;

- (f) Interest in accordance with the *Court Order Interest Act*;
- (g) Costs; and
- (h) Such further and other relief as to this Court seems just.

37. In the alternative, the Plaintiff claims against Sylvan:

- (a) For judgment against Sylvan in the amount of \$153,059.40 on account of unjust enrichment;
- (b) A declaration that the Plaintiff is entitled to a constructive trust over any amounts received by Sylvan as a result of the unjust enrichment;
- (c) A declaration that the Plaintiff is entitled to a constructive trust over any amounts received by Sylvan as a result of fraudulent misrepresentation;
- (d) An accounting of all amounts received by Sylvan from the Plaintiff directly or indirectly and of the disposition of all such amounts;
- (e) An order that the Plaintiff has the right to trace those funds received by Sylvan that are impressed with a constructive trust;
- (f) Interest in accordance with the *Court Order Interest Act*;
- (g) Costs; and
- (h) Such further and other relief as to this Court seems just.

Part 3: LEGAL BASIS

Breach of Contract - GBI

38. In breach of the GBI Agreement, GBI:

- (a) failed to make reasonable or any efforts to keep the Plaintiff fully informed as to the

progress of its plans as they relate to the performance of the GBI Agreement, and in particular failed to advise the Plaintiff of:

- (i) GBI's sale of the Inn to Silau; and
 - (ii) the Foreclosure Proceedings and subsequent court ordered sale of the Inn to SBI;
- (b) failed to honour the Plaintiff's reservations for the GBI Guest Rooms;
 - (c) failed to advise the Plaintiff as to the particulars of the circumstances giving rise to its inability to provide GBI Guest Room accommodations in a timely manner or at all;
 - (d) failed to arrange for and offer complimentary accommodations to the Plaintiff and its guests at a comparable lodging facility for each paid night's accommodation;
 - (e) sold the Inn and had no further intention to honour its obligations under the GBI Agreement; and
 - (f) failed to cause Sylvan, Silau or SBI to expressly assume and agree to perform the GBI Agreement by written agreement in form and substance satisfactory to the Plaintiff
- (collectively, the "Breaches").

39. The Breaches constitute fundamental breaches of the GBI Agreement, and the GBI Agreement has been terminated by the Plaintiff.

40. The Plaintiff has suffered loss and damage as a result of the Breaches, including but not limited to:

- (a) payments made by way of the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40; and
- (b) costs related to finding and renting alternative lodging for the Games Period in lieu of the GBI Guest Rooms, and in particular but without limitation the cost of the alternate lodging facilities, and the costs of printing, mailing, signs, transportation, storage, telephone and other costs associated with the displacement.

Misrepresentation - Sylvan

41. At all material times, Sylvan represented to the Plaintiff that Silau intended to and could provide the Silau Guest Rooms to the Plaintiff and its guests in accordance with the Silau Agreement (the "Representations").
42. The Representations were made through telephone discussions with Sylvan, by omissions and by his conduct, including the following:
 - (a) Sylvan executed and provided to the Plaintiff the Rate Amendment, the July Addendum and the Fall Addendum;
 - (b) Sylvan sent the November Communication to the Plaintiff; and
 - (c) Sylvan failed to advise the Plaintiff of the Foreclosure Proceedings through all of Sylvan's communications with Plaintiff occurring between or about January and December 2009.
43. The Representations were intended to induce the Plaintiff to provide to Sylvan the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40.
44. The Plaintiff relied on the Representations and was induced by them to provide to Sylvan the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40.
45. The Representations were false in that Silau could not provide the Silau Guest Room accommodations to the Plaintiff and its guests during the Games Period.
46. Sylvan made the Representations to the Plaintiff fraudulently in that Sylvan made them knowing them to be false or made them without belief in their truth or made them recklessly, not caring whether they were true or false. In the alternative, the Representations were made negligently.
47. By reason of Sylvan's actions, the Plaintiff has suffered loss and damage, the particulars of which include:

- (a) the payments made by the Plaintiff by way of the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40; and
- (b) the increased costs and expenses incurred by the Plaintiff in obtaining alternate guest room accommodations in December 2009 instead of in late 2007 when the Plaintiff would have sought out such accommodations had the Representations not been made.

48. As a result of the Representations, the funds paid by the Plaintiff to Sylvan are impressed with a constructive trust in the Plaintiff's favour.

Unjust Enrichment - Sylvan

49. Alternatively, Sylvan received payments from the Plaintiff made by way of the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40, which constituted a benefit to Sylvan. The Plaintiff has suffered a corresponding deprivation in the amount of \$153,059.40 and there exists no juristic reason for Sylvan's enrichment.

Breach of Contract – Silau

50. In breach of the Silau Agreement, Silau:

- (a) failed to make reasonable or any efforts to keep the Plaintiff fully informed as to the progress of its plans as they relate to the performance of the Silau Agreement, and in particular of the Inn's foreclosure;
- (b) failed to keep the Inn in an acceptable physical condition;
- (c) failed to honour the reservations for the Silau Guest Rooms;
- (d) failed to advise the Plaintiff as to the particulars of the circumstances giving rise to its inability to provide Silau Guest Room accommodations in a timely manner or at all;
- (e) failed to offer complimentary accommodations to the Plaintiff and its guests at a comparable lodging facility for each paid night's accommodation; and

- (f) failed to cause the successors to the management and ownership of the Inn to expressly assume and agree to perform the Silau Agreement by written agreement in form and substance satisfactory to the Plaintiff.

51. The Plaintiff has suffered loss and damage as a result of the aforementioned breaches of contract by Silau, including but not limited to:

- (a) payments made to Silau by way of the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40; and
- (b) the costs related to finding and renting alternative lodging for the Games Period in lieu of the Silau Guest Rooms, and in particular but without limitation the cost of the alternate lodging facilities, and the costs of printing, mailing, signs, transportation, storage, telephone and other costs associated with the displacement.

Unjust Enrichment - Silau

52. Alternatively, Silau received payments from the Plaintiff made by way of the First Cheque and the Second Cheque in the aggregate amount of \$153,059.40, which constituted a benefit to Sylvan. The Plaintiff has suffered a corresponding deprivation in the amount of \$153,059.40 and there exists no juristic reason for Sylvan's enrichment.

Plaintiff's address for service:

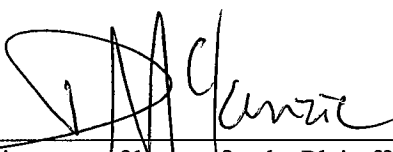
Jenkins Marzban Logan LLP
Suite 900, 808 Nelson Street
Vancouver BC V6Z 2H2
Attention: David T. Mckenzie

Fax number address for service (if any): 604 681.0766

Place of trial: Vancouver BC

The address of the registry is: The Law Courts, 800 Smithe Street, Vancouver BC V6Z 2E1

DATED: August 13, 2010



 Signature of lawyer for the Plaintiff
 David T. McKenzie

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim for breach of contract, misrepresentation and unjust enrichment relating to failure of defendants to provide accommodation during period before, during and after 2010 Olympic Games.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- 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:

Court Order Interest Act