



Court File No. **VLC-S-S-104826**  
NO.  
VANCOUVER REGISTRY

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

**GLENN WALSH**

PLAINTIFF

AND

**BDO CANADA LLP BDO CANADA SRL and  
JAS BUTALIA**

DEFENDANTS

**STATEMENT OF CLAIM**

1. The Plaintiff is a consultant and Canadian citizen presently resident in Malta with a residential address of #12, Flat 3, Cathedral Street, St. Paul's Bay, Malta, SPB 09. Prior to December 29, 1998, the Plaintiff was resident of Canada residing in Kamloops, British Columbia.
2. The Defendant BDO Canada LLP BDO Canada SRL ("BDO") is a limited liability partnership duly constituted pursuant to the laws of the province of Ontario and extra-provincially registered in the province of British Columbia, with a registered office at 600 - 925 West Georgia Street, Vancouver, British Columbia V6C 3L2. At all material times BDO provided professional accounting and tax planning services to the Plaintiff including from offices in British Columbia, including 300 - 272 Victoria Street in Kamloops, under its former name "BDO Dunwoody LLP".
3. The Defendant, Jas Butalia ("Butalia"), is a chartered accountant and an accredited member of the Institute of Chartered Accountants of British Columbia, with a residential address of 211 Bearspaw Hills Road, Calgary, Alberta T3R 1B3. At all material times Butalia was a partner of BDO providing professional services to the Plaintiff in British Columbia..

4. At all material times, the Defendants were engaged by the Plaintiff as his professional advisors, and were under contract and under independent duties of care to provide advice commensurate with the standard of care of competent chartered accountants specialized and with expertise in taxation matters, tax planning and in Departure Trades as hereinafter described. The Defendants specifically represented to the Plaintiff in British Columbia their expertise as aforesaid.

5. In 1997 and 1998 the Defendants counselled the Plaintiff to engage in a series of transactions ("Departure Trades") which they represented would result in a deductible expense which the Plaintiff would be entitled to use to reduce the Plaintiff's Canadian taxable income to nil for his 1998 taxation year (the "Taxation Plan"). The object of the Taxation Plan was to enable the Plaintiff to depart Canada and cease to be a resident of Canada without having incurred Canadian income tax liability for 1998, and not be subject to further income taxation by Canada.

6. In devising the Taxation Plan, the Defendants undertook to act for and on behalf of the Plaintiff in circumstances which gave rise to a professional relationship including a fiduciary relationship of trust and confidence.

7. The Taxation Plan devised by the Defendants required in part that:

- (a) The Plaintiff borrow in June, 1998, a substantial amount (the "Loan") for a qualified investment prescribed by it on terms which required the Plaintiff:
  - (i) on December 31, 1998 to pay interest accrued to that date, at 8.74% per annum; and
  - (ii) on January 15, 1999 to pay further interest and repay the principal in full.
- (b) The Plaintiff depart Canada and cease to be a resident of Canada on December 29, 1998;

8. The Defendants represented to the Plaintiff that the Loan interest accruing up to and payable on December 31, 1998 would qualify as a deduction from the Plaintiff's income for his Canadian 1998 taxation year to reduce his taxable income to nil.

9. The Plaintiff relied upon the Defendants' representations concerning the efficacy of the Taxation Plan and, upon the advice of the Defendants, on December 29, 1998 departed Canada and then ceased to be a resident of Canada, after which he paid the interest payment above referred to on December 31, 1998 and met and paid the remaining Loan obligations as and when due, all in accordance with the Taxation Plan.

10. The Defendants' advice and representations were erroneous and given and made to the Plaintiff in breach of the Defendants' contract, tort and fiduciary duties to the Plaintiff in breach of the requisite standard of care (the "professional negligence"), with the result that that Taxation Plan failed.

11. In particular, and without limitation, the Defendants failed to take into account section 114 of the *Income Tax Act*, R.S.C. 1985, c.1 (5th Supplement) and the fact that allowable deductions from the Plaintiff's 1998 taxable income were limited to amounts which reasonably related to the partial period during which the Plaintiff was a resident of Canada. The interest expense paid by the Plaintiff on December 31, 1998 was not paid at a time when he was a resident of Canada and, accordingly, was not deductible as it arose in the period of the year in which he was not a resident of Canada.

12. The Defendants' professional negligence above referred to was reiterated after the Plaintiff's tax return in respect of 1998, prepared by the Defendants, was re-assessed by Revenue Canada which disallowed the deduction above referred to. This reiteration never was withdrawn notwithstanding the professional duties of care which the Defendants continued to owe the Plaintiff during their continued retainer including in respect of evaluation of the re-assessment. Nor was the reiteration ever withdrawn.

13. As a direct consequence of the Defendants' professional negligence, the Plaintiff has been damaged.

14. The Defendants' professional negligence took place in British Columbia.

WHEREFORE the Plaintiff claims against the Defendants and each of them:

- (a) general damages;
- (b) special damages;
- (c) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 and amendments thereto;
- (d) costs; and
- (e) such further and other relief as to this Honourable Court may deem just.

PLACE OF TRIAL: Vancouver, British Columbia

DATED: June 30, 2010



Solicitor for the Plaintiff

This STATEMENT OF CLAIM is filed by Brian G. McLean, of the firm of McLean & Armstrong LLP, solicitors for the Plaintiffs, whose place of business and address for delivery is 300 - 1497 Marine Drive, West Vancouver, British Columbia, V7T 1B8. Telephone: 604 925.0672

[G:\FILES\WALSH.6\PLEADINGS\STATEMENT OF CLAIM.REV.FINAL.DOC]