



AFFIDAVIT #1 OF GLENN WALSH
SWORN JULY 3, 2012

NO. VLC-S-S-104826
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GLENN WALSH

PLAINTIFF

AND:

BDO DUNWOODY LLP BDO CANADA SRL and
JAS BUTALIA

DEFENDANTS

AFFIDAVIT

I, GLENN WALSH, P.Eng., Businessman, of #12, Cathedral Street, St. Paul's Bay,
Malta, SPB 09 MAKE OATH AND SAY AS FOLLOWS:

1. I am Plaintiff in this action and I have personal knowledge of the facts and matters set out hereafter save and except where stated to be on information and belief in which case I verily believe the same to be true.
2. Jas Butalia advised me on August 17, 1998 to depart Canada on a date prior to December 31, 1998. In reliance upon this advice, I departed Canada on December 29, 1998. I attached as Exhibit 1 hereto a copy of my notes made during the conversation. This advice was confirmed on subsequent occasions.
3. I did not receive, nor until these proceedings, review, the CRA letter dated may 6 2002 made exhibit 2 hereto.
4. I did not receive, nor until these proceedings, review, the CRA letter dated July 8, 2002 made Exhibit 3 hereto.

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5. I did not receive, nor until these proceedings, review, the CRA letter dated September 5, 2002 made Exhibit 4 hereto.

6. Jas Butalia did not explain to me then or at any time before then or afterwards that because of my departure on December 29, 1998 I was not entitled, or stood at significant risk of not being entitled, to deduct the interest paid to CIBC December 31, 1998 in calculating my net income for 1998.

7. I did not receive, nor until these proceedings, review, the letter dated September 17, 2002 made Exhibit 5 hereto sent by the defendant Jas Butalia to me at my Malta address.

8. I did not receive, nor until these proceedings, review, the CRA letter dated September 20, 2002 made Exhibit 6 hereto.

9. I was relying upon Jas Butalia to deal with these matters and to advise me as required to keep me informed on points that were material. My relationship with him as a professional was such that he was, and bore the professional responsibility as, the master of my and the corporations' tax and tax planning affairs. This included being responsible for and being in charge of dealing with the reassessments CRA made against me and the corporations.

10. I received the memorandum dated September 23, 2002 from Jas Butalia made Exhibit 7 hereto. Meanwhile, Dave Horne sent an e-mail to Jas Butalia to which he responded on September 26, 2002. A copy of the e-mail and response by e-mail is made Exhibit 8 hereto.

11. Attached as Exhibit 9 hereto is a copy of my hand written memo to Jas Butalia made October 29, 2002. I attach as Exhibit 10 hereto is a copy of an e-mail from Jas Butalia responding thereto.

12. I believe I became aware on December 3, 2002 in a conversation with Jas Butalia (of which I made a note) CRA was not accepting my 1998 and 1999 tax returns as filed and it would be necessary to dispute this in a formal process. This was not unexpected because it was anticipated from the beginning that CRA would pay attention to the tax returns filed on my behalf for those years and investigate the departure trade (as it has been referred to in these proceedings) and the Employee Profit Sharing Plan distributions to me by certain corporations, namely, Conex Services Inc., Tercon Contractors Ltd. and Elbee Development Corp. I understood these

transactions likely would be challenged by CRA based upon GAAR and that there was a risk that CRA would be successful in its challenge.

13. Jas Butalia advised me to see Joel Nitikman as a lawyer was required to file the objection. I did so. I saw him for the first time on January 14, 2003 by which time, apparently, he had, on January 6, 2003 filed a Notice of Objection a copy of which is made Exhibit 11 hereto. I understand that he sent an e-mail to Dave Horne after our meeting stating that he had provided me with a copy and requesting certain documents and information. That e-mail is made Exhibit 12 hereto. For that reason, I admitted it was given to me, although I have no recollection of that or of reading it.

14. What stands out to me about my meeting with Joel Nitikman was that about the first thing he said was to the effect, "Do you think any judge in Canada will believe this?" which surprised me and which I interpreted to mean he felt CRA had a strong position on GAAR. I am certain he did not explain to me that the date of my departure from Canada on December 29, 1998 jeopardized my position with CRA. Had he done so it is certain I immediately would have sought answers, particularly because I had taken every precaution to act upon Jas Butalia's advice on the date of my departure from Canada. I have reviewed the hand written notes made by Joel Nitikman contained in his file (which is in the possession of my counsel) a copy of which is made Exhibit 13 hereto. They are almost entirely focused on the issue of the loans made to Erwin Braich and whether or not I was entitled to claim losses as a result of nonpayment thereof. They disclose no advice or explanation concerning the departure date. Nor does his email to Dave Horne above referred to (Exhibit 12).

15. Following this time, in the spring of 2003, I sought advice from Bennett Jones LLP in Calgary and particularly from Chris Simard. He previously had provided advice in connection with the corporations and the implications for them and for the directors and officers resulting from the execution of the tax plan.

16. As I understood it at the time, my potential tax liability in the event CRA were successful was approximately \$25 million including interest. I was concerned about what CRA could do to me as a nonresident and asked whether CRA would petition me as a non-resident into bankruptcy. I was given to understand that CRA could not collect a tax debt from a non-resident and that such debts were not enforceable in other jurisdictions. Because of the circumstances at