



No. S08488

Courtenay Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

UNION BAY IMPROVEMENT DISTRICT

Plaintiff

And:

MARGOT R. RUTHERFORD, OPERATING AS  
MARGOT R. RUTHERFORD NOTARY CORPORATION

Defendant

### **RESPONSE TO CIVIL CLAIM**

Filed by: The Defendant Margot R. Rutherford, operating as Margot R. Rutherford Notary Corporation ("Rutherford")

#### **Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS**

##### **Division 1—Defendant's(s') Response to Facts**

1. The facts alleged in paragraphs 2, 3, 15, 16, and 29 to 31 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 17, 20, 21, 27, and 32 to 36 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1, 4 to 13, 22 to 26, and 28 of Part 1 of the Notice of Civil Claim are outside the knowledge of Rutherford.
4. Rutherford adopts the defined terms used in the Notice of Civil Claim unless noted otherwise herein.
5. In response to paragraph 14 of Part 1 of the Notice of Civil Claim, Rutherford says that the relevant provision of the Agreement states as follows:

3.01 The Lands and Improvements shall, on or before the Completion Date, be free of all encumbrances, claims, charges, liens and chattel mortgages save and except for the reservations and exceptions in the original grant from the Crown AND the encumbrances (if any) set forth in Schedule "B" attached hereto and forming part hereof.

6. Schedule "B" of the Agreement attached a title search for the Property, dated May 24, 2007 which disclosed the Notation.

7. In response to paragraph 18 of Part 1 of the Notice of Civil Claim, Rutherford documented the previous removal of the Conditions, which removal occurred prior to her retainer, and forwarded the same to the Plaintiff.

8. In response to paragraph 19 of Part 1 of the Notice of Civil Claim, Rutherford admits that the sale of the Property completed on or about October 24, 2007 and title to the Property was transferred to the Plaintiff. Rutherford says that the Plaintiff knew that title of the Property remained encumbered by the Notation.

#### **Division 2—Defendant's(s') Version of Facts**

1. On or about August 21, 2007, Rutherford was retained in her capacity as a notary public by the Plaintiff in connection with the conveyance of the Property from the Board of School Trustees of School District No. 71 (Comox Valley) to the Plaintiff. Rutherford provided no other services to the Plaintiff nor was she retained to.

2. Prior to retaining Rutherford, the Plaintiff had already entered into the Agreement for the purchase of the Property for the price of \$675,000.00.

3. The Agreement contained Article 3.01 which is set out at paragraph 5 of Division 1 of Part 1 of this Response to Civil Claim. Schedule "B" of the Agreement attached a title search for the Property dated May 24, 2007 which disclosed the Notation.

4. At all material times the Plaintiff knew of the existence of the Notation on title of the Property.
5. As part of its due diligence prior to entering into the Agreement, the Plaintiff conducted its own investigation of the Property which included obtaining an appraisal of the value of the Property and reviewing title of the Property.
6. The Plaintiff entered into the Agreement only after it had satisfied itself as to the value of the Property and the title of the Property.
7. On or about August 7, 2007, the Plaintiff removed the Conditions set out in Article 4.12 of the Agreement, including legal review of the title.
8. On or about August 20, 2007, the Plaintiff removed the conditions set out in Article 4.13 of the Agreement which provided that the Agreement was "subject to the Purchaser arranging satisfactory financing conditions and obtaining landowners' approval for borrowing by August 30, 2007".
9. The Plaintiff had removed all subjects to the Agreement thereby making the Agreement unconditional and binding on the Plaintiff prior to retaining Rutherford.
10. At all material times the Plaintiff relied on its own investigations, the representations of the School District, and/or the advice of its own advisors in relation to its purchase of the Property, the Property's history and permitted uses.
11. Rutherford specifically denies that she was retained to investigate or provide any advice in respect of the Notation.

12. At all material times Rutherford acted in accordance with the terms of the Agreement and the instructions of the Plaintiff, which instructions were given by the Plaintiff after being properly informed and advised of the nature of the transaction it was entering into.
13. Rutherford rendered her services to the Plaintiff to the standard of a reasonably competent notary public in British Columbia, and she fully performed any duties of care that she owed.

### **Division 3—Additional Facts**

1. At all material times, the School District and its solicitors believed that the School District had the requisite authority to sell or dispose of the Property to the Plaintiff and/or did not need the consent of the Crown in Right of British Columbia.
2. In or around December 2007, out of goodwill to the Plaintiff, Rutherford attempted to remove the Notation from title but was advised by the Land Title Office that a release by the Crown in Right of British Columbia was required to remove the Notation.
3. The facts alleged in the Notice of Civil Claim in this proceeding are virtually identical to the facts alleged in a separate action initiated by the Plaintiff against the School District. The action herein and the Plaintiff's action against the School District should be tried together.

### **Part 2: RESPONSE TO RELIEF SOUGHT**

1. Rutherford opposes the granting of the relief sought in all paragraphs of Part 2 of the Notice of Civil Claim.

**Part 3:      LEGAL BASIS**

1.     At all material times and where applicable Rutherford rendered services to the standard of a reasonably competent notary public in British Columbia, and she fully performed any duties of care that she owed. Rutherford specifically denies that she was guilty of any act or omission constituting negligence or breach of contract, fiduciary or professional duty as alleged in the Notice of Civil Claim or at all.
2.     The Plaintiff did not rely on Rutherford for any advice regarding the Notation nor did it request that Rutherford make any investigations in that regard.
3.     In the alternative, if Rutherford breached a contractual, fiduciary, or professional duty owed to the Plaintiff, all of which is not admitted but specifically denied, then Rutherford denies that the Plaintiff suffered any loss, damage or expense as a result of such breach.
4.     In the further alternative, if the Plaintiff suffered any loss, damage or expense, all of which is not admitted but specifically denied, then Rutherford says that the loss, damage or expense was caused or contributed to by acts or omissions on the part of the Plaintiff, the School District and/or others. Rutherford pleads and relies on the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333, as amended.
5.     In the further alternative, if the Plaintiff suffered any loss, damage or expense, all of which is not admitted but specifically denied, then Rutherford says that such damages are excessive, remote, and entirely due to the Plaintiff's failure or refusal to take any reasonable steps to mitigate the loss, damage or expense.

Defendant's(s') address for service:

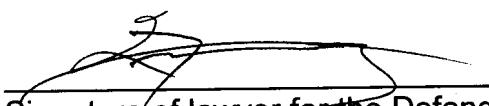
MacKenzie Fujisawa LLP  
Barristers & Solicitors  
1600 – 1095 West Pender Street  
Vancouver, BC V6E 2M6

Attention: Todd A. McKendrick

Fax number address for service (if any): (604) 685-6494

E-mail address for service (if any): N/A

Dated: March 26, 2013.



Signature of lawyer for the Defendant  
Margot R. Rutherford, operating as  
Margot R. Rutherford Notary  
Corporation

Todd A. McKendrick

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.