



Form 5 (Rule 3-5(3))

No. S08487  
Courtenay Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

UNION BAY IMPROVEMENT DISTRICT

PLAINTIFF

AND:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71 (COMOX VALLEY)

DEFENDANT

AND:

IVES BURGER and PAUL IVES

THIRD PARTIES

**THIRD PARTY NOTICE**

**Filed by:** The Board of Education of School District No. 71 (Comox Valley) (the "claiming party")

To: Ives Burger and Paul Ives

THIS ACTION has been brought by the plaintiff against the defendant for the relief set out in the notice of civil claim filed in this action.

TAKE NOTICE that the claiming party claims against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND TO this claim against you, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to third party notice in Form 6 in the above-named registry of this court within the time for response to third party notice provided for below and SERVE a copy of the filed response to third party notice on the claiming party's address for service.

YOU OR YOUR LAWYER may file the response to third party notice.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to third party notice within the time for response to third party notice described below.

**Time for response to third party notice**

A response to third party notice must be filed and served on the claiming party,

- a. if you were served with the third party notice anywhere in Canada, within 21 days after that service,
- b. if you were served with the third party notice anywhere in the United States of America, within 35 days after that service,
- c. if you were served with the third party notice anywhere else, within 49 days after that service, or
- d. if the time for response to civil claim has been set by order of the court, within that time.

**CLAIM OF THE CLAIMING PARTY**

**Part 1: STATEMENT OF FACTS**

1. The defendant is a corporation governed by the provisions of the *School Act*, R.S.B.C. 1996, c. 412 as amended.
2. Ives Burger is a partnership of lawyers whose place of business is 505 – 5<sup>th</sup> Street, Courtenay, British Columbia.
3. Paul Ives is a barrister and solicitor. At all material times, Paul Ives was a partner in the partnership, Ives Burger.
4. The plaintiff's claims against the defendant are set out in the notice of civil claim in this action.
5. The defendant's response is set out in the response to civil claim in this action.

6. The defendant pleads and relies on and incorporates by reference the facts and definitions set out in its response to civil claim in this action.
7. In or about June 2007, the defendant instructed and retained the third parties to act as solicitors for the defendant in the purchase and sale transaction that is the subject matter of this action.
8. As such, the third parties owed a duty to the defendant to exercise all due professional care, skill and diligence as the defendant's solicitor with respect to the purchase and sale transaction.
9. The third parties did not provide any or adequate advice to the defendant about the Legal Notation or about the effect that the Legal Notation might have on the purchase and sale transaction.

## **Part 2: RELIEF SOUGHT**

10. The defendant claims the following relief against the third parties:
  - a. damages; and
  - b. contribution and indemnity for any judgment in favour of the plaintiff.

## **Part 3: LEGAL BASIS**

11. The third parties' failure to provide advice to the defendant about the Legal Notation and the effect that the Legal Notation might have on the purchase and sale transaction was a breach of the duties that the third parties owed to the defendant.
12. Consequently, the third parties were negligent and/or in breach of their contract with the defendant.
13. As a result, the defendant has incurred loss and damage.

14. If the defendant is found liable to the plaintiff in this action, the defendant will incur further loss and damage that was caused or contributed to by the negligence and/or breach of contract by the third parties.
15. The defendant is entitled to damages caused or contributed to by the third parties' negligence and/or breach of contract.
16. The defendant is entitled to contribution and indemnity from the third parties pursuant to section 4 of the *Negligence Act*, R.S.B.C. 1996, c. 333 for any judgment made in favour of the plaintiff.

Address for service of claiming party:

**KOFFMAN KALEF LLP**  
Business Lawyers  
19th Floor, 885 West Georgia Street  
Vancouver, B.C. V6C 3H4  
Telephone: 604-891-3688  
Attention: Don Pangman

Fax number for service (if any):

604-891-3788

E-mail address for service (if any):

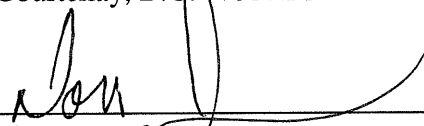
Place of trial:

Courtenay, British Columbia

The address of the registry is:

420 Cumberland Road  
Courtenay, B.C. V9N 2C4

Dated: May 30, 2013

  
\_\_\_\_\_  
Signature of  
[ ] filing party [x] lawyer for claiming party

Print Name: Don Pangman

*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.*