



No. S205300
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LI ZHENG

PLAINTIFF

AND:

RBC ROYAL BANK AT 1025 W GEORGIA ST. VANCOUVER,
BC

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: ROYAL BANK OF CANADA (the "Defendant")

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendant's Response to Facts

1. The facts alleged in paragraph 9 of Part 1 of the Notice of Civil Claim are admitted.
2. The facts alleged in paragraphs 8 and 11 of Part 1 of the Notice of Civil Claim are denied.
3. The facts alleged in paragraphs 1-7, and 10 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 - Defendant's Version of Facts

1. The named Defendant "RBC Royal Bank at 1025 W Georgia St. Vancouver BC" is not a legal entity.
2. The Royal Bank of Canada ("RBC") is a Schedule 1 bank pursuant to the *Bank Act*, R.S.C. 1985, c. B-2.

3. In answer to paragraph 8 of the Notice of Civil Claim, on or about May 16, 2018, the Plaintiff instructed RBC to send a wire transfer for \$60,000 from funds held in the Plaintiff's RBC account to an account in Hong Kong (the "**Wire Transfer**").
4. Although not obligated to do so, RBC delayed carrying out the Plaintiff's instructions and flagged the Wire Transfer for further investigation.
5. Although not obligated to do so, RBC contacted the Plaintiff to enquire about the beneficiary of the Wire Transfer, the purpose of the Wire Transfer and the source of instructions for the Wire Transfer.
6. On or about May 16, 2018, the Plaintiff instructed RBC to proceed with the Wire Transfer and expressly represented to RBC that:
 - (a) the beneficiary of the Wire Transfer was her uncle in Hong Kong;
 - (b) the Plaintiff's uncle provided her wire instructions by email and;
 - (c) that she trusted the source of the wire instructions;

(collectively the "Plaintiff's Representations").
7. RBC reasonably relied on the Plaintiff's Representations with respect to the *bona fides* of the transaction at issue and the party receiving the Wire Transfer.
8. Following the Plaintiff's Representations and confirmation of the instructions to proceed with the Wire Transfer, RBC executed the Wire Transfer on or about May 16, 2018.
9. In answer to paragraph 11 of the Notice of Civil Claim, the Ombudsman process is carried out on a confidential, "without prejudice" and privileged basis, and the parties to the process agree not to disclose information about the process in subsequent proceedings.
10. Paragraph 11 of the Notice of Civil Claim contains privileged information that should be struck out and removed from the Notice of Civil Claim.

Division 3 - Additional Facts

1. The Plaintiff and RBC were parties to a written Personal Deposit Account Agreement (the "Agreement") pursuant to which RBC provided banking services to the Plaintiff.
2. The terms of the Agreement included that:
 - (a) RBC would not be responsible for the actions or omissions of third parties sending, receiving or processing Instruments in connection with RBC's services, or for any incidents or losses arising out of, or incident to, any of the foregoing.
 - (b) RBC would not be responsible for any losses resulting from disputes between the Plaintiff and the payee of an instrument, including the Wire Transfer.

- (c) The Plaintiff agreed to settle any dispute directly with the payee of an instrument, including the Wire Transfer.
 - (d) The Plaintiff was responsible at all times for ensuring that all payee information (including account numbers, payee names or email addresses) required by RBC to complete payment instructions to a payee was accurate.
 - (e) The Plaintiff was responsible for confirming that each Instrument, including the Wire Transfer, was accessed, sent, received, accepted and processed as intended.
 - (f) RBC would not be liable under any circumstances, even if RBC was negligent, for any indirect, consequential, special, aggravated, punitive or exemplary damages whatsoever caused to the Plaintiff, regardless of the cause of action.
 - (g) RBC would not be liable under any circumstances for any damages, even if RBC was negligent, for the conduct of any third party, or other circumstances beyond RBC's control.
3. The relationship between the Plaintiff and RBC is entirely commercial, and the rights and duties of the parties are defined exclusively by the Agreement.
 4. RBC conducted itself at all times in accordance with the Agreement.
 5. RBC did not owe any duty to warn or duty of care to the Plaintiff.
 6. If the Wire Transfer was not received by the Plaintiff's uncle, then the Plaintiff misrepresented to RBC the identity of the payee for the Wire Transfer.
 7. Further and in the alternative, if the Plaintiff was not received by the Plaintiff's uncle, then the Plaintiff breached the Agreement in:
 - (a) failing to ensure the payee information was accurate; and
 - (b) failing to confirm that the Wire Transfer was received, accepted and processed as intended.
 8. RBC pleads a set-off for the Plaintiff's misrepresentations to RBC and breaches of the Agreement.
 9. RBC denies the Plaintiff has suffered damage or loss as pleaded, or at all.
 10. If the Plaintiff was defrauded, and if the Plaintiff suffered damage or loss as a result of the fraud, which is denied, such damage or loss was not caused by the conduct of RBC, but rather was caused by the conduct of the third party who perpetrated the fraud, or alternatively, by the Plaintiff's own conduct including providing RBC with the instructions and making the Plaintiff's Representations to RBC.
 11. RBC denies any breaches of the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 (the "*BPCPA*"), as alleged, or at all.

12. RBC denies that it engaged in any unconscionable practices within the meaning of the *BPCPA*, or at all.
13. In specific response to the Plaintiff's claim for health care costs pursuant to the *Health Care Costs Recovery Act*, [SBC 2008] c. 27 (the "*HCCRA*"):
 - (a) RBC is not a "wrongdoer" for the purpose of the *HCCRA* and are therefore not liable for any past or future health care costs of the Plaintiff.
 - (b) the alternative, any health care costs being claimed pursuant to the *HCCRA* did not arise by reason of, nor were they incurred by reason of, the conduct of RBC and RBC is therefore not liable for said costs.
 - (c) in the further alternative, any health care costs being claimed in this matter pursuant to the *HCCRA* (whether for costs incurred in the past or to be incurred in the future) are costs that would have arisen in any event, and RBC is therefore not liable for said costs.
14. Further and in the alternative, RBC is subject to federal jurisdiction, and neither the provincial *BPCPA* nor the *HCCRA* statutes apply to RBC.
15. The Wire Transfer was processed and sent on May 16, 2018. This action was filed on June 5, 2020, more than two years after RBC's alleged "failure to warn" the Plaintiff of the fraud.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The Defendant consents to the granting of the relief sought in none of the paragraphs of Part 2 of the Notice of Civil Claim.
2. The Defendant opposes the granting of the relief sought in all the paragraphs of Part 2 of the Notice of Civil Claim.
3. The Defendant takes no position on the granting of the relief sought in none of the paragraphs in of Part 2 of the Notice of Civil Claim.

Part 3: LEGAL BASIS

1. The claim is brought against a party that is not a legal entity. As a result, the claim discloses no cause of action and should be struck out and dismissed. RBC pleads and relies on Rule 9-5(1)(a).
2. Further and in the alternative, the Notice of Civil Claim is incomprehensible, prolix and confusing, and therefore, is deficient and should be struck out. RBC pleads and relies on Rule 9-5(1)(b) to (d).
3. Further and in the alternative, the Plaintiff made the Plaintiff's Representations to RBC that the Wire Transfer was *bona fide* and that the intended payee was the Plaintiff's uncle whom the Plaintiff trusted, which representations were reasonably relied on by RBC in

executing the Wire Transaction. The Plaintiff is estopped and precluded from now claiming against RBC that the transaction was fraudulent.

4. Further and in the alternative, if the Plaintiff's Representations were not true, the Plaintiff made misrepresentations to RBC, which RBC reasonably relied on in executing the Wire Transfer.
5. Further and in the alternative, if the Wire Transfer was not received by the Plaintiff's uncle, the Plaintiff breached the Agreement in:
 - (a) failing to ensure the payee information was accurate; and
 - (b) failing to confirm that the Wire Transfer was received, accepted and processed as intended.
6. RBC pleads a set-off for the Plaintiff's misrepresentations to RBC and the Plaintiff's breaches of the Agreement.
7. Further in the alternative, RBC denies the applicability to it and any breaches by it of the *BPCPA*, as alleged, or at all.
8. RBC denies that it engaged in any unconscionable practices within the meaning of the *BPCPA*, or at all.
9. Further and in the alternative, RBC owes no duty to warn or duty of care to the Plaintiff, as alleged or at all.
10. Further and in the alternative, if RBC owed a duty to warn or a duty of care to the Plaintiff, which is denied, RBC did not fall below the applicable standard of care for a Canadian bank.
11. Rather, RBC made reasonable inquiries of the Plaintiff and was assured by the Plaintiff through the Plaintiff's Representations that the transaction at issue was legitimate and *bona fide*.
12. Further and in the alternative, RBC denies the applicability to it and denies that it committed a wrongful act pursuant to the HCCRA involving converting property owned by the Plaintiff as pleaded or at all.
13. The Plaintiff's purported claims for an administrative penalty, an inspection of RBC and criminal negligence disclose no cause of action and should be struck. RBC pleads and relies on Rule 9-5(1)(a).
14. RBC denies the Plaintiff has suffered loss, injury and damage as pleaded or at all.
15. RBC denies that the Plaintiff has incurred damage or loss for mental distress, past and future medical care, past and future income loss, loss of competitive advantage, and non-pecuniary damages as alleged or at all.

16. Further and in the alternative, the Plaintiff is estopped and precluded by the terms of the Agreement for claiming for damages caused by the conduct of a third party, or for conduct beyond RBC's control.
17. Further and in the alternative, the Plaintiff is estopped and precluded by the terms of the Agreement from claiming for indirect, consequential, special, aggravated, punitive or exemplary damages.
18. Further and in the alternative, if the Plaintiff has suffered consequential financial loss arising from the fraud alleged in the Notice of Civil Claim, all of which is denied, such loss, injury and damage is pure economic loss which the Plaintiff is not entitled to recover from RBC.
19. Further and in the alternative, if the Plaintiff has suffered loss or damage, which is denied, the loss, or damage was not caused by any act or omission of RBC.
20. Rather, if the Plaintiff suffered loss or damage, which is denied, such loss or damage was caused by the acts or omissions of the Plaintiff, including but not limited to making the Plaintiff's Representations and in instructing RBC to execute Wire Transfer without the Plaintiff engaging in reasonable or any investigations of the payee. RBC pleads and relies on s. 1 and the entirety of the *Negligence Act*, R.S.B.C. 1996, c. 333.
21. Further and in the alternative, if the Plaintiff has incurred loss or damage, which is denied, the Plaintiff has failed to mitigate the loss or damage.
22. Further and in the alternative, if the Plaintiff suffered any loss or damage as a result of fraud, all of which is denied, such loss or damage was caused by the third party who perpetrated the fraud and whose conduct was outside of RBC's control. The Plaintiff is estopped and precluded by the terms of the Agreement from claiming for loss or damage caused by a third party, or which was outside of RBC's control.
23. Further and in the alternative, if the Plaintiff suffered any loss or damage, which is denied, such loss or damage was indirect or consequential and the Plaintiff is estopped and precluded by the terms of the Agreement from claiming such indirect or consequential loss or damage.
24. The Plaintiff commenced this action more than two years after the conduct of complained of against RBC. The Plaintiff's claims statute barred, and RBC pleads and relies on the provisions of the *Limitation Act*, S.B.C. 2012, c. 13.

25. The claims against RBC should be dismissed with costs to RBC.

Defendant's address for service: Fasken Martineau DuMoulin LLP
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Attention: Brook Greenberg

Fax number address for service (if any): n/a

E-mail address for service (if any): n/a

Dated: July 9, 2020



Signature of
 Defendant Lawyer for Defendant

Brook Greenberg

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 part 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.

The Solicitors for the Defendant are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: Brook Greenberg/253729.14784)