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August 26, 2020

Via Courier

Li Zheng
107 - 14100 Riverport Way
Richmond BC V6W 1M3

Dear Ms Zheng:

**Re: Li Zheng v. Bank of China (Canada) Vancouver Richmond Branch
BCSC Vancouver Registry File Number: S-207686**

Please find enclosed for service upon you the filed Response to Civil Claim of Bank of China (Canada) Vancouver Richmond Branch in the above noted action.

We trust the foregoing to be in order.

Yours truly,


Alexandra Andrisoi

AA:vf
Enclosures (1)



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LI ZHENG

PLAINTIFF

AND:

BANK OF CHINA (CANADA) VANCOUVER RICHMOND
BRANCH

DEFENDANT

RESPONSE TO CIVIL CLAIM

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

Filed by: the defendant

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendant's Response to Facts

1. The facts alleged in NONE of the paragraphs of Part 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 8, 9, 11, 12 and 13 of Part 1 of the notice of civil claim are denied.
3. The facts alleged in paragraphs 1, 2, 3, 4, 5, 6, 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

4. The Defendant, the Bank of China (Canada) (the "**Bank**" or the "**Defendant**"), is a wholly owned subsidiary of Bank of China Limited, incorporated in Canada as a Schedule II Bank, pursuant to the *Bank Act*, SC 1991, c. 46, as amended. The Bank carries on business in British Columbia and elsewhere across Canada.

5. At the material time, the plaintiff Ms. Li Zheng was the account holder of a bank account with the Bank (the "**Account**").

6. On May 22, 2018, the Plaintiff attended at the Bank's branch located at 8060 Westminster Hwy, Richmond, British Columbia, and spoke to a customer service representative at the branch (the "**Service Representative**"). During this attendance at the Bank,

- (a) the Plaintiff requested that the Bank process a CAD \$69,000.00 international wire transfer (the "**Transfer**") to a beneficiary identified as Mao Chung Kuan (the "**Beneficiary**") to an account held with the Bank of China Hong Kong Limited, China; and
- (b) the Plaintiff executed an Application for Remittance authorizing the Transfer, and provided an authorized signature over the counter.

7. In processing the Transfer, the Service Representative took the following steps and thereby complied with applicable requirements:

- (a) verified the identity of the Plaintiff;
- (b) reviewed the payment details of the Transfer with the Plaintiff (including the Beneficiary's name, address and account number; and name, address and SWIFT code of the receiving bank);
- (c) confirmed that the funds for the Transfer would be processed from the Plaintiff's Account with the Bank; *Play 7:10" history of outgoing wire transfers.*
- (d) confirmed that the Plaintiff's Account contained sufficient funds to process the Transfer;
- (e) confirmed that the Application for Remittance form was properly completed and duly executed by the Plaintiff;
- (f) confirmed that neither the Plaintiff nor the Beneficiary were subject to any sanctions on sending, or receiving, the Transfer; and

- (g) verified that the Plaintiff's signature on the application matched the signature card on the Bank's file in accordance with the internal procedure which requires such verification to be done by two Bank employees.

8. There is no requirement that Bank representatives confirm the purpose of a wire transfer or that customers advise the Bank of the purpose of a wire transfer. At the time of receiving the Plaintiff's instructions for the Transfer, ^{who?} the Service Representative asked the Plaintiff what was her relationship with the Beneficiary and the purpose of the Transfer but the Plaintiff refused to give an answer and insisted that the Bank proceed with the Transfer. (ie

9. The Service Representative had no reasonable cause to suspect that there was any fraudulent activity associated with the Transfer. The Service Representative processed the Transfer in accordance with the Plaintiff's instructions and written authorization.

10. The Application for Remittance (executed by the Plaintiff authorizing the Transfer expressly states that the Bank will effect the Transfer requested by the Plaintiff in the normal course of business without any liability on its part for any delay, failure of performance, damage, penalty, costs, expense or inconvenience resulting to the Plaintiff or any other person that may arise in consequences of, among other things, errors or for the acts or omissions of any of its correspondents or agents, or for any cause beyond its control.) ^{No Explanation, was not answer of it}

11. In addition, pursuant to the Application for Remittance executed by the Plaintiff, the Bank is not liable to the Plaintiff or to any other person for incorrect or improper payment to any person arising out of the processing of the Transfer, unless caused solely by the negligence or willful misconduct of the Bank.

12. On or about June 4, 2018, the Richmond branch of the Bank at which the Plaintiff authorized the Transfer received a business inquiry from its Markham (Ontario) Head Office call center advising the Richmond branch that the Plaintiff reported the Transfer as fraudulent. ^{mistake ?}

13. The same day, on June 4, 2018, the Bank sent an urgent payment cancellation and recall request for the Transfer to the Beneficiary's banking institution in Hong Kong, China. With the Plaintiff's authorization, the Bank made a police report regarding the incident.

14. Furthermore, and in accordance with the Plaintiff's instructions, the Bank froze any further activity relating to the Plaintiff's Account.

15. On June 6, 2018 the Beneficiary's banking institution responded to the Bank's payment cancellation and recall request stating that, among other things, it could only arrange the refund of the Transfer pursuant to an order of the Hong Kong Court binding upon it and sufficient credit balance in the customer's account at the material time. The Bank relayed this information to the Plaintiff without delay. ~~the~~ *wrong* *due*

16. At all material times, the Bank acted in accordance with the Plaintiff's written instructions and authorization to process the Transfer, and with applicable requirements. The Bank denies that it owed the Plaintiff any duty to warn, or duty of care, as alleged in the notice of civil claim or all. Furthermore, the Bank denies any negligence on its part in processing the Transfer.

Division 3 - Additional Facts

17. N/A.

Part 2: RESPONSE TO RELIEF SOUGHT

18. The Bank consents to the granting of the relief sought in NONE of the paragraphs of Part 2 of the notice of civil claim.

19. The Bank opposes the granting of the relief sought in ALL paragraphs of Part 2 of the notice of civil claim.

20. The Bank takes no position on the granting of the relief sought in NONE of the paragraphs of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

No Breach of Duty

21. The Bank processed the Transfer in accordance with the Plaintiff's instructions and written authorization, and in accordance with applicable requirements.

22. The Bank denies that it owed the Plaintiff any common law, or contractual, duty to warn, or duty of care, as alleged in the notice of civil claim, or at all.

23. In the alternative, if the Bank owed the Plaintiff any duty to warn or obligation, which is expressly denied, the Bank denies that it breached any such duty to warn or obligation.

No breach of the BCPCPA

24. The Bank did not breach the *Business Practices and Consumer Protection Act* ("BPCPA"), or commit an offence under Part 13 of the BPCPA, either as alleged in the notice of civil claim or at all in relation to the Transfer and its dealings with the Plaintiff regarding the Transfer.

25. The notice of civil claim does not plead facts to support any claim against the Bank for breach of the BPCPA and accordingly the Plaintiff's claim against the Bank for breach of the BPCPA ought to be struck forthwith with costs awarded to the Bank.

No Damages

26. The Bank denies that the Plaintiff has suffered any losses or damages whatsoever as a result of the Bank's conduct, as alleged or at all, and puts the Plaintiff to the strict proof thereof.

27. In the alternative, if the Plaintiff has suffered any loss or damage, which is expressly denied, those losses or damages are not the result of any action or omission of the Bank.

28. Further, or in the alternative, the losses and damages claimed by the Plaintiff are excessive and too remote.

Contributory Fault

29. In the alternative, the Bank states that any loss or damage suffered by the Plaintiff, which is expressly denied by the Bank, were the result of the Plaintiff's own conduct, including her failure to make reasonable inquiries regarding the legitimacy of the requested Transfer or to report the request to the appropriate authorities.

No cause of action

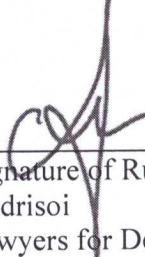
30. Further, or in the alternative, no pleaded facts in the notice of civil claim support any claim against the Bank for breach of duty, damages (including loss of current and future income, or pain and suffering and loss of enjoyment of life), and special costs. The Plaintiff's claim ought to be struck in its entirety forthwith, with costs awarded to the Bank.

Defendant's address for service: Bennett Jones LLP
Barristers and Solicitors
2500 – 666 Burrard Street
Vancouver, B.C. V6C 2X8

Fax number address for service (if any): (604) 891-5100

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

Dated: August 25, 2020



Signature of Ruth Promislow/Alexandra
Andrisoi
Lawyers for Defendant

THIS RESPONSE TO CIVIL CLAIM is prepared and delivered by Ruth Promislow and Alexandra Andrisoi of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Defendant, File No. 086175-00010, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100.

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.