

S-156622

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DUANE MCGAW

PLAINTIFF

AND:

DAVID MARCHANT and KYC NEWS, INC., carrying on business as
OFFSHOREALERT

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the Plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim 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 PLAINTIFF

Part 1: STATEMENT OF FACTS

1. The Plaintiff, Duane McGaw, is a businessman who lives in British Columbia and has an address for service at 2900-550 Burrard Street, Vancouver, British Columbia.
2. Mr. McGaw was the founder and principal shareholder of the Argentum Group ["Argentum"], which included a publicly listed professional fund that specialized in providing third party litigation financing to assist with class action proceedings in the UK, Australia, and international arbitration. As CEO, Mr. McGaw was responsible for the investment strategy of the fund and the overall operations of the group of companies.
3. Mr. McGaw sold his shares in Argentum in about July 2013. As of July 2013, Mr. McGaw resigned as CEO of Argentum and is no longer involved in its operations.
4. The Defendant, David Marchant, is a blogger for an online website titled OffshoreAlert.com [the Website], with an address at 123 S.E. 1st Avenue, #173 Miami, FL 33131 U.S.A.
5. The Defendant, KYC News, Inc., doing business as OffshoreAlert, is a company incorporated in Florida, U.S.A with an address at 123 S.E. 1st Avenue, #173 Miami, FL 33131 U.S.A.
6. On or about July 14, 2015, the Defendants falsely and maliciously published, or caused to be published, an article on the Website titled "Argentum Fraudster Duane McGaw Resurfaces As Vancouver Restaurant Owner", which is publically viewable at <http://www.offshorealert.com/BlogPost.aspx?id=52707> (the "Article"). The Article included the following statements of and concerning Mr. McGaw:
 - (a) "[Mr. McGaw is] one of the principal perpetrators of an investment fraud totaling £98 million."
 - (b) "[Mr. McGaw is a] litigation funding fraudster."

- (c) "I've already tipped them off about McGaw's shiny new toy which, hopefully, will be seized and sold, with the proceeds used for the benefit of his many victims."
- (d) "It's a common misconception that fraudsters are bright. In my experience, they're dumber than a box of rocks, hence having to rely on simple dishonesty to make a living. Canadian conman McGaw is Exhibit A."
- (e) "McGaw's public re-emergence is all the more baffling given his decision to flee the scene of the crime..."
- (f) "Is [Mr. McGaw] dopey enough to think that asset recovery specialists have given up looking for his assets after such a relatively short time? Apparently so."

Collectively, the "Defamatory Statements".

- 7. The Defamatory Statements, in their natural and ordinary meaning, are defamatory of Mr. McGaw.
- 8. The Defamatory Statements published by the Defendants are false and were maliciously published by the Defendants with the intention of causing harm to Mr. McGaw.
- 9. As a result of the publication of the Defamatory Statements, Mr. McGaw has suffered and will continue to suffer serious damage to his reputation and business prospects.
- 10. The Defendants have aggravated the harm caused to Mr. McGaw by publishing the Defamatory Statements maliciously, in that:
 - (a) the Defamatory Statements were published with the express intention of causing harm to Mr. McGaw;
 - (b) the Defendants published the Defamatory Statements with knowledge that their defamation of Mr. McGaw was false, or with reckless disregard as to its truth or falsity; and
 - (c) the Defendant published the Defamatory Statements for a collateral purpose of harming the reputation of Mr. McGaw and damaging his future business prospects, rather than for the purpose of providing fair and accurate information to the public regarding Mr. McGaw.
- 11. By letter dated August 10, 2015, Mr. McGaw, through his counsel, requested a retraction and apology from the Defendants. The Defendants refused, with Mr. Marchant stating "[t]he information complained of will not be removed from our site and no apology will be forthcoming." Mr. Marchant went on to say:
 - (a) "I forgot to mention something that I put to all crooks who threaten to sue for defamation, to wit: If [Mr. McGaw] files a defamation action against me and/or my company anywhere in the world, we will promptly set up a dedicated page on our web-site where we will publish and make freely available all of our evidence

of fraud against him, both past and present. We will then monitor his business activities, adding new information as and when we find it.”

- (b) “Your threat to sue in Canada is without teeth and betrays an ignorance of international defamation laws. In 2010, the United States passed the SPEECH Act, which renders foreign libel judgments unenforceable in this country. Given that you claim to specialize in ‘Defamation & Media’ law, you should have known this before accepting your client’s retainer.”
- (c) “If your client is embarrassed by visitors to OffshoreAlert’s web-site knowing that he received millions of dollars by helping to swindle the elderly and others in a crude investment fraud, then he shouldn’t have participated in it. Clearly, the truth hurts.”

12. To date, the Defendants have not published any retraction or apology, and the Article remains on the Website.

Part 2: RELIEF SOUGHT

1. The Plaintiff claims:

- (a) a permanent injunction restraining the Defendant, his agents, servants, or otherwise, from further writing, printing, broadcasting, or causing to be written, printed, broadcast, or otherwise publishing of the Plaintiff, the Defamatory Statements or words of like or similar effect;
- (b) general damages;
- (c) aggravated damages;
- (d) punitive damages;
- (e) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (f) costs; and
- (g) such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. The Defendant committed the tort of defamation.

Plaintiff’s address for service: Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3

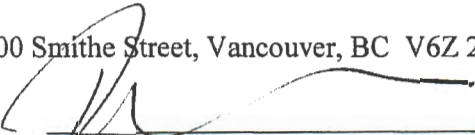
Fax number address for service (if any): n/a

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

Place of trial: Vancouver

The address of the registry is: 800 Smith Street, Vancouver, BC V6Z 2E1

Dated: 12-Aug-2015


Signature of Lawyer for Plaintiff

David Wotherspoon

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.

Form 11 Rule 4-5(2))

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION
FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The Plaintiff, Duane McGaw, claims the right to serve this pleading on the Defendants, David Marchant and KYC News, Inc., carrying on business as OffshoreAlert, outside British Columbia on the ground that:

the pleading concerns a tort committed in British Columbia, in accordance with s. 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28. :

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff's claim is against the Defendant for damages for defamation.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4:

The *Court Order Interest Act*, RSBC 1996 c 79.

The Solicitors for the Plaintiff are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 2900 - 550 Burrard Street, Vancouver, BC V6C 0A3 Telephone: +1 604 631 3131 Facsimile: +1 604 631 3232. (Reference: David Wotherspoon/304035.00001)