

Exhibit 4 (14)
MM

Court File No. CV-08-00353823-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceedings Under the *Class Proceedings Act, 1992*)

BETWEEN:

AMIR MIRSHAHI

Plaintiff

and

MUSA SULEMAN and 1501747 ONTARIO INC.

Defendants

STATEMENT OF DEFENCE

1. The defendants deny all the allegations contained in the Third Fresh as Amended Statement of Claim ("Statement of Claim") except as specifically admitted herein.
2. The defendants admit the allegations contained in paragraph 6 of the Statement of Claim, but for the reference to "Damji's appointed representatives."
3. The defendants have no knowledge in respect of the allegations contained in paragraphs 2, 5, 7, 8, 9, 11, and 12 of the Statement of Claim.

The Parties

4. The defendant, Musa Suleman ("Musa") is 64 years of age and resides in the City of Mississauga.
5. At all material times, Musa was the President of the defendant 1501447 Ontario Inc. ("150").

6. Neither Musa nor 150 had any direct dealings or communication with the plaintiff.

150's Introduction to STS

7. In or about February 2002, one Kassam Juma ("Kassu") requested that Musa assist with administering the receipt of investor funds relating to investment in a company known as STS Inc. ("STS") and owned by one Salim Damji ("Damji").
8. At that time, Musa along with most of the Ismaili community in the Greater Toronto Area was familiar with the STS investment.
- a. By September 2000, there had been several individuals in the Ismaili community who were receiving funds intended for investment in STS and transferring them to Damji or STS.
 - b. By the Fall of 2000, Damji had spread the word that Colgate-Palmolive ("Colgate") had shown an interest in purchasing STS, which, according to Damji, had developed a revolutionary tooth whitening process. According to Damji a deal was in the works between Colgate and STS.
 - c. By the spring of 2001, The STS deal appeared to be the deal of a lifetime. People felt left out if they did not invest.
 - d. There were rumours that investors were selling their rights to STS shares to other investors and making a profit.
 - e. By May 2001, word spread even further as Damji made a \$5 million donation to the Institute of Ismaili Studies. Damji also made a pledge (\$1.5 million) to the Aga Khan Foundation(to be paid over five years).
9. Musa himself had been previously involved with the receipt of investor funds related to STS, but, starting in June 2001, Damji had restricted Musa's

involvement as a result of Musa's cooperation with an investigation by the Ontario Securities Commission ("OSC") into the sale of STS shares.

150's Involvement with STS

10. In February 2002, Kassu was responsible for administering the receipt of STS investor funds. Investor funds received by various collectors were submitted to Kassu or directly to Damji.
11. Kassu sought Musa's assistance in centralizing the receipt of investor funds and streamlining the record keeping process.
12. As a result, 150 became involved in February 2002. It was agreed that the cheques and drafts received by various collectors and submitted to Kassu would, after being endorsed by Damji, be deposited in 150's account until Damji provided further instructions.
13. Any cheques or drafts received by 150 from investors were submitted to Kassu and dealt with in the same manner as other investor funds.
14. Contrary to the allegations set out in the Statement of Claim, Musa was not directing third parties regarding receipt of funds for the STS Investment. Instead, Musa, on behalf of 150, took direction from Kassu, who was in charge of administering the receipt of all investor funds.
15. Starting in February 2002, 150 received a number of cheques or drafts that had been endorsed by Damji. All the funds received by 150 came in the form of cheques or drafts payable to Damji. The proceeds of the cheques or drafts were deposited into 150's account and subsequently paid out at Damji's direction.

16. By the end of March 2002, all of the proceeds received by 150 had been paid out at Damji's direction, except approximately \$283.31, which remained in 150's account as of March 2002.

Damji's Arrest and Revelation of the Fraud

17. In or about March 2002, Damji called Kassu. Damji explained to Kassu that the Colgate deal with was done. His instructions to Kassu were very detailed as to how cheques would be issued to investors; how many cheques would be issued per day; and where this would all take place.
18. Damji advised all individuals who had received investor funds of specific dates and times on which cheques would be handed out to the investors.
19. On April 26, 2002, Musa learned on the evening news that Damji had been arrested on charges of fraud. It was revealed that the STS investment was a fraud perpetrated by Damji.
20. Contrary to the allegations in the Statement of Claim, Musa did not know that the investor funds being forwarded to Damji, or as directed by Damji, were being misused or misappropriated by Damji.
21. Musa and 150 deny assisting Damji in any breach of trust. They were not aware of the fraud being perpetrated by Damji.
22. Musa and 150 deny receiving any benefit.
23. Musa, together with his family members and related companies, lost in excess of \$1.4 million that they had invested in STS.

No Trust

24. The drafts referred to in the Statement of Claim were delivered by the plaintiff to one Karim Ladha, not Musa or 150. The plaintiff did not communicate with Musa or 150.
25. Accordingly, no trust or fiduciary relationship existed between the plaintiff and Musa or 150. Nor was there any breach of fiduciary duty.
26. Further, any cheques or drafts received by 150 directly from investors, payable to Damji, were received on the understanding that the proceeds would be paid to Damji or at Damji's direction.
27. There was never any agreement that any funds would be held in trust by Musa or 150.

No Oppression

28. The plaintiff does not fall within the class of persons entitled to claim oppression remedy relief under the *Ontario Business Corporations Act* ("OBCA").
29. Contrary to the allegations in the Statement of Claim, the plaintiff was not a creditor of 150: 150 never received funds from the plaintiff.
30. Further, the plaintiff and the plaintiff class have no standing to claim oppression remedy relief under the OBCA.
31. In any event, the affairs of 150 were not conducted in a manner that was oppressive, unlawful, unfairly prejudicial to, or that unfairly disregarded the interests of the plaintiff or the proposed plaintiff class; there was no oppressive conduct.

32. Further, there is no basis for the granting of oppression remedy relief against Musa. Musa's actions were not oppressive. Nor did Musa derive any personal benefit from the alleged oppressive acts.

No Conspiracy

33. The defendants deny any agreement to harm the plaintiff or any members of the proposed plaintiff class.
34. The defendants further deny entering into any agreement to engage in wrongful or unlawful conduct of the sort alleged in the Statement of Claim or at all.
35. The defendants further deny any breach of the *Securities Act*.

No Negligence

36. The defendants deny that they owed any duty to the plaintiff or members of the proposed plaintiff class.
37. If it is found that the defendants owed a duty to the plaintiff or members of the proposed plaintiff class, the defendants deny breaching any such duty.

Limitation Period

38. This action is barred as it was not commenced on time. The defendants plead and rely on the provisions of the *Limitations Act*, R.S.O. 1990, c. L.15 and the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B.
39. Damji's arrest was widely publicized and became well known to investors, particularly within the Ismaili community.

40. Failure of the STS deal was also well known by at least April 27, 2002, the cheque distribution date. Accordingly, the majority of the investors, including the plaintiff, knew, at least by April 27, 2002, of Damji's fraud.

Contributory Negligence

41. If 150 or Musa is found liable to the plaintiff, which is denied, the plaintiff caused or contributed to the loss by failing to take adequate care and failing to perform due diligence.
42. If it is found that Musa or 150 ought to have discovered Damji's fraud, the plaintiff and members of the proposed class were equally able to do so.
43. The defendants plead and rely upon the provisions of the *Negligence Act*, R.S.O. 1990, c.N. 1, as amended.

Release and Indemnity

44. A number of STS investors, including members of the proposed plaintiff class, signed a document titled "Acknowledgment and Irrevocable Direction" (the "Acknowledgment and Direction") by which they agreed to fully release and save harmless agents of Damji or STS in connection with their purchase of STS shares.
45. If it is found that Musa or 150 were agents of Damji or STS, then Musa and 150 rely on the terms of the Acknowledgment and Direction and claim contribution and indemnity from the plaintiff and those members of the plaintiff class who signed the Acknowledgment and Direction.

Mitigation

46. The plaintiff is required to mitigate his damages, if any. He has failed to do so. Any losses suffered were subject to a tax deduction, thereby reducing tax otherwise payable. Should the defendants be found liable, the plaintiff is required to account for the tax saving.
47. In May 2002, an action was commenced by Nyaz Jethwani against Damji, STS, and others pursuant to the *Class Proceedings Act, 1992* (the "Damji Class Action"). The receiver appointed pursuant to an order dated May 7, 2002 has collected money for the benefit of the plaintiff class. The defendants plead that the plaintiff is a member of the plaintiff class in the Damji Class Action and is entitled to a portion of the distribution.

Dismissal of Action

48. The defendants deny that the plaintiff is entitled to the interlocutory, declaratory or any of the relief claimed.
49. Musa further denies that he is personally liable to the plaintiff. At all material times, Musa acted solely in his capacity as an officer or director of 150.
50. The defendants ask that the action be dismissed as against them with costs on a substantial indemnity basis given the unsubstantiated allegations of fraud, illegality, and other wrongdoing pleaded against them.

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PROCEEDING COMMENCED AT TORONTO

STATEMENT OF DEFENCE

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