

NO. S-088873

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AMACON MORGAN HEIGHTS DEVELOPMENT
PARTNERSHIP

PLAINTIFF

AND:

DANIEL MCGARVIE
JASBANT MCGARVIE

DEFENDANTS

WRIT OF SUMMONS

Name and Address of each Plaintiff:

Amacon Morgan Heights Development Partnership
c/o McCarthy Tétrault LLP
1300 - 777 Dunsmuir Street
Vancouver, British Columbia V7Y 1K2

Name and Address of each Defendants:

*Names omitted
by CBC*

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ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendants: DANIEL MCGARVIE and JASBANT MCGARVIE

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery, which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of "Appearance" at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF:

- (b) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (c) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of:

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

	The Law Courts 800 Smithe Street Vancouver, BC V6Z 2E1
(2)	The ADDRESS FOR DELIVERY is: Suite 1300, 777 Dunsmuir Street Vancouver, BC V7Y 1K2 Fax Number for Delivery: (604) 643-7900
(3)	The name and office address of the plaintiff's solicitor is: Scott Griffin McCarthy Tétrault LLP Barristers & Solicitors P.O. Box 10424, Pacific Centre Suite 1300, 777 Dunsmuir Street Vancouver, British Columbia V7Y 1K2

The Plaintiff's claim is set out a Statement of Claim in Form 13.

DATED: December 18, 2008


Solicitor for the Plaintiff

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

AMACON MORGAN HEIGHTS DEVELOPMENT
PARTNERSHIP

PLAINTIFF

AND:

DEFENDANTS

STATEMENT OF CLAIM

1. The Plaintiff Amacon Morgan Heights Development Partnership was formed and organized pursuant to the laws of British Columbia.
2. The Defendants Daniel McGarvie and Jasbant McGarvie have an address of 107-188 West 29th Street, North Vancouver.
3. By contract of purchase and sale dated December 6, 2007 between the Plaintiff as vendor and the Defendants as purchaser (the "Contract"), the Defendants agreed to purchase a certain strata lot in Surrey, British Columbia as described in the Contract on certain terms and conditions.
4. The terms of the Contract included a price of \$444,900, a deposit of \$22,245 (the "Deposit") and provision for setting the completion date. Time was stated to be of the essence in the Contract.

5. The Contract also contained the following term:
 6. **Time of the Essence.** Time will be of the essence hereof and unless all payments on account of the Purchase Price, together with adjustments thereto as provided herein and all other amounts payable hereunder are paid when due, then the Vendor may, at its option:
 - (a) terminate this Agreement by written notice to the Purchaser and, in such event, the Deposit and all accrued interest thereon will be absolutely forfeited to the Vendor without prejudice to the Vendor's other remedies and the Vendor's Solicitors are hereby authorized by the Purchaser to pay the amount held by them and such interest as may have accrued thereon to the Vendor upon written demand therefor by the Vendor; ...
6. Pursuant to the terms of the Contract, the Defendants paid a deposit in the sum of \$22,245 (the "Deposit").
7. The Completion Date under the Contract was December 12, 2008 and the Purchase Price was due on that date.
8. In default of the Contract, the Defendants failed to complete the Contract and failed to pay the Purchase Price on December 12, 2008.
9. By written notice to the Defendants dated December 16, 2008, the Plaintiff terminated the Contract pursuant to Section 6 of the Contract, such that the Deposit and any interest was immediately forfeited to the Plaintiff without prejudice to the Plaintiff's other remedies.
10. By reason of the Defendants' breach of the Contract, the Plaintiff has suffered loss and damage.

The Plaintiff claims as follows:

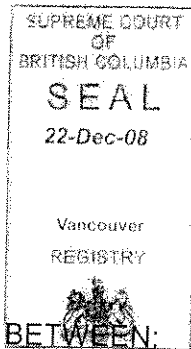
- (a) A declaration that the Contract was terminated in accordance with its terms on December 16, 2008 pursuant to Section 6 of the Contract;
- (b) A declaration that the Plaintiff is entitled to the Deposit and accrued interest;
- (c) Damages;
- (d) costs.

PLACE OF TRIAL: Vancouver, British Columbia

DATED: December 18, 2008


Solicitor for the Plaintiff

THIS WRIT OF SUMMONS AND STATEMENT OF CLAIM is filed by Scott Griffin, of the firm of McCarthy Tétrault LLP, Barristers and Solicitors, whose place of business and address for service is Suite 1300, 777 Dunsmuir Street, Vancouver, British Columbia, V7Y 1K2, (604) 643-7100.



No. S088873
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

AMACON MORGAN HEIGHTS DEVELOPMENT PARTNERSHIP

PLAINTIFF

AND:

Names omitted
by CBC

DEFENDANTS

STATEMENT OF DEFENCE

1. Except as expressly admitted herein, the Defendants deny each and every allegation of fact alleged herein, and put the Plaintiff to the strict proof thereof.
2. The Defendants admit the allegations of fact alleged in paragraphs 2, 3, 4 and 5 of the Statement of Claim herein.
3. In further answer to paragraph 6 of the Statement of Claim herein, the Defendants paid a total deposit to the Plaintiff pursuant to the contract as described in paragraph 3 of the Statement of Claim herein (the "Contract") of \$28,326.75 (the "Deposit"), consisting of:
 - a. \$22,245.00 against the purchase price under the Contract, to be held by the Plaintiff's solicitors in accordance with the *Real Estate Development Marketing Act*, SBC 2004 c. 41 (the "Act"); and

b. \$6,081.75 for a hardwood floor upgrade, to be held by the Plaintiff.

4. The Act also provides that:

a. Pursuant to s. 15(1)(a), the Plaintiff was required to deliver to the Defendants and the Defendants were entitled to received from the Plaintiff a disclosure statement as defined under the Act;

b. Pursuant to s. 16(1)(b), the Plaintiff was required to deliver to the Defendants and the Defendants were entitled to received from the Plaintiff any amendment to the disclosure statement; and

c. Pursuant to s. 21(3), if the Defendants did not receive the disclosure statement, including any amendment to the disclosure statement, the Defendants could rescind the Contract at any time by serving a written notice of rescission on the Plaintiff.

5. At all material times:

a. The Plaintiff was a developer under the Act, and

b. The strata lot which was the subject of the Contract (the "Strata Lot") was a development unit under the Act.

6. In answer to the whole of the Statement of Claim herein, the Defendants say and the facts are that:

a. On or about April 17, 2007, the Plaintiff prepared a disclosure statement for the development in which the Strata Lot is located (the "Disclosure Statement").

- b. On or about October 29, 2007, the Plaintiff prepared an Amendment to the Disclosure Statement for the development in which the Strata Lot is located (the "Amendment to the Disclosure Statement").
 - c. The Plaintiff filed the Amendment to the Disclosure Statement with the Financial Institutions Commission on October 31, 2007.
 - d. On or about December 6, 2007, the Plaintiff delivered the Disclosure Statement to the Defendants.
 - e. In breach of the provisions of the *Act*, the Plaintiff failed to deliver to the Defendants, at any material time, the Amendment to the Disclosure Statement.
7. The Defendants have elected to rescind the Contract pursuant to s. 21(3) of the *Act*.
 8. On December 17, 2008, the Defendants served the Plaintiff with a notice of rescission of the Contract by delivering a signed copy of it to the Plaintiff's address shown in the Disclosure Statement.
 9. By operation of the *Act*, the Contract is rescinded, and the Defendants are under no further obligation to the Plaintiff thereby.

10. The Defendants plead the provisions of the *Act* and the *Real Estate Development Marketing Regulation*, B.C. Reg. 505/2004.

WHEREFORE the Defendants submit that the within action be dismissed, with costs.

Dated **December 19, 2008**

John D. Whyte

JOHN D. WHYTE

Solicitor for the Defendants

COUNTERCLAIM

1. The Defendants repeat the allegations contained in paragraphs **2, 3, 4, 5, 6, 7, 8, 9 and 10** of the Statement of Defence herein.
2. Despite the provisions of s. 21(5) and (6) of the *Act* and despite demand, the Plaintiff has neglected or refused to return or to direct the return of the Deposit to the Defendants.

The Defendants claim as follows:

- a. Return of the Deposit to the Defendants;
- b. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- c. Costs; and
- d. Such further and other relief as to this honourable Court may seem just.

Dated **December 19, 2008**

John D. Whyte

JOHN D. WHYTE

Solicitor for the Defendants

This STATEMENT OF DEFENCE and COUNTERCLAIM is prepared by John D. Whyte of the firm Lakes Straith & Whyte LLP, #301 - 145 West 15th Street, North Vancouver, BC V7M 1R9. Tel: 604-984-3646. Fax: 604-984-8573