

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

DEC 02 2019



Form 1 (Rule 3-1(1))

S1913657

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NAIOP RESEARCH FOUNDATION, INC., SUING ON ITS
OWN BEHALF AND ON BEHALF OF ALL OTHER
PERSONS WHO PURCHASED THE HONG KONG-JAPAN
TOUR FROM AUGUST 16 TO 24, 2019 FROM THE
DEFENDANTS

PLAINTIFFS

AND:

ACCESS ASIA TOURS LLC AND ACCESS CHINA TOURS,
INC. DOING BUSINESS AS ACCESS ASIA TOURS, AND
THE SAID ACCESS CHINA TOURS, INC.

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs 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.

02DEC19 1930174 RISS
21422 S1913657

200.00

1
KIR

Time for response to civil claim

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

- (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 Plaintiffs

PART 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, NAIOP Research Foundation, Inc. (the "**Foundation**") is a not-for-profit corporation incorporated under the laws of the State of Delaware, USA.
2. The Foundation's purpose is to conduct research and provide education for the purpose of supporting commercial real estate ownership and development. In furtherance of the Foundation's purpose, the Foundation, from time to time, organizes trips to observe commercial real estate around the world for its members and non-members alike.
3. The Foundation brings this action on its own behalf and on behalf of all other persons (including the Foundation, referred to collectively as the "**Representative Group**") who provided money to the Foundation for the purpose of receiving the Tour Service (as defined below) from the Defendants.
4. NAIOP Inc. ("**NAIOP**") is a corporation incorporated under the laws of the State of Delaware, USA. NAIOP Inc. provides advocacy, education and business opportunities by connecting its members in the North American commercial real estate development and investment industry.
5. The Representative Group consists of members of NAIOP, members of organizations affiliated with NAIOP, and their respective spouses and/or travel companions, totalling 17 persons.
6. The Defendant, Access Asia Tours LLC ("**AAT LLC**"), is a limited liability company existing under the laws of the State of Colorado, USA, with a principal office address at 2055 S. Oneida Street, Suite 250, Denver, CO, USA, 80224.

7. The Defendant, Access China Tours, Inc. ("**ACT Inc.**"), is a corporation incorporated under the laws of British Columbia with a registered and records office address at 500 – 6th Avenue, Unit 110, New Westminster, BC V3L 1V3. ACT Inc. is the proprietor of the British Columbia registered sole proprietorship, Access Asia Tours, which has a business address at 345-555 6th Street, New Westminster, BC V3L 5H1.

8. To the best of the Plaintiffs' knowledge, one or more of the named Defendants carried on business under the name "Access Asia Tours" and none of the named Defendants distinguished themselves as separate entities in their dealings with the Plaintiffs. The Plaintiffs state that any agreements made by the Defendants were effectively made by each of them with the Plaintiffs.

The Claim

9. In or about February 11, 2019, the Foundation on behalf of itself and each member of the Representative Group, entered into an agreement (the "**Tour Agreement**") with the Defendants whereby the Defendants agreed to provide overseas tour services to Hong Kong and Japan commencing August 16, 2019 and ending August 24, 2019 (the "**Tour Service**").

10. The Tour Agreement included the following material terms:

- (a) in consideration for providing the Tour Service, the Foundation, on behalf of itself and the Representative Group, agreed to pay to the Defendants the total amount of USD\$166,030 (the "**Tour Cost**");
- (b) the Tour was to commence in Hong Kong on August 16, 2019 and end in Tokyo on August 24, 2019;
- (c) if a tour was forced to be cancelled due to government's travel warnings, declared or undeclared wars, hostilities, civil disturbances, strike, riot, epidemics, and quarantines, the Defendants would refund all participants' payments less any irretrievable expenses and loss; and
- (d) the exclusive venue for all claims, actions or proceedings against the Defendants of whatsoever nature arising out of the Tour Agreement was to be the Province of British Columbia, Canada and such claims, actions or proceedings would be determined according to the laws and jurisdiction of the Province of British Columbia.

11. On or about January 29, 2019, and pursuant to the Tour Agreement, the Foundation, on behalf of the Representative Group paid a deposit of USD\$28,360 to the Defendants.

12. On or about May 20, 2019, and pursuant to the Tour Agreement, the Foundation, on behalf of the Representative Group paid the balance of the Tour Cost, being USD\$137,670 to the Defendants.

13. Commencing in or about June, 2019, and continuing through the date of this Notice of Civil Claim, Hong Kong has experienced widespread civil unrest, including large scale political demonstrations and the closure of the Hong Kong airport.

14. On or about August 12, 2019, the Foundation, on behalf of the Representative Group, and the Defendants, mutually agreed to cancel the Tour due to the civil unrest situation in Hong Kong described above.

15. None of the Plaintiffs received the benefit of the Tour Services as the Tour did not occur.

16. In or about mid-August, 2019, the Defendants refunded USD\$23,220 of the Tour Cost to the Foundation.

17. On or about August 28, 2019 and September 17, 2019, the Foundation, on behalf of the Representative Group, demanded the return of the balance of the Tour Cost.

18. To date, the Defendants have ignored or refused the Foundation's demands.

19. The balance of the Tour Cost owing to the Foundation, on behalf of the Representative Group, is USD\$142,810.

PART 2: RELIEF SOUGHT

1. The Foundation claims on its own behalf and on behalf of the Representative Group against the Defendants for:

- (a) general damages arising from the Defendants' breach of contract;
- (b) a debt owing in the amount of USD\$142,810;
- (c) restitution for unjust enrichment;
- (d) interest in accordance with the *Court Order Interest Act*, R.S.B.C. 1996 c. 79; and
- (e) costs.

PART 3: LEGAL BASIS

1. The Defendants breached a contract with the members of the Representative Group.

2. In the alternative, the Defendants have been unjustly enriched by the receipt and refusal to return the balance of the Tour Cost, and to the detriment of the Representative Group, without any juristic reason for same.

3. In the alternative, the Defendants breached a contract with the Foundation.

4. In the alternative, the Defendants have been unjustly enriched by the receipt and refusal to return the balance of the Tour cost, and to the detriment of the Foundation, without any juristic reason for same.

5. The Plaintiffs plead and rely on the *Foreign Money Claims Act*, R.S.B.C. 1996 C. 155.

Plaintiffs' address for service:

Anna Sekunova
Clark Wilson LLP
900 – 885 West Georgia Street
Vancouver, BC V6C 3H1
(Direct Number: 604.891.7790)

Fax number address for service (if any):

604.687.6314

E-mail address for service (if any):

N/A

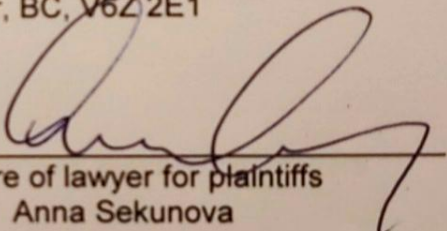
Place of trial:

VANCOUVER, British Columbia

The address of the registry is:

800 Smithe Street
Vancouver, BC, V6Z 2E1

Date: 29/NOV/2019



Signature of lawyer for plaintiffs
Lawyer: Anna Sekunova

This NOTICE OF CIVIL CLAIM is prepared by Anna Sekunova of the firm of **Clark Wilson LLP** whose place of business and address for delivery is 900 – 885 West Georgia Street, Vancouver, British Columbia, V6C 3H1 (Direct #: 604.687.6314, Fax #: 604.687.6314, Email: ASekunova@cwilson.com) (File #: 49360-0001).

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.