

I hereby certify this to be a true copy of
the original Order

Dated this 28 day of Feb /17

CL
for Clerk of the Court

Form 3
[Rule 2.28]



COURT FILE NUMBER 1301-14384

COURT COURT OF QUEEN'S BENCH
OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF TIM TAM, as Representative
Plaintiff

DEFENDANTS MING J. FONG, GERMAN FONG
ALBUS, SANDRA ALBUS and
SANDRA F. ALBUS
PROFESSIONAL CORPORATION

DOCUMENT Brought under the *Class
Proceedings Act*, S.A. 2003, c. C-
16.5

DOCUMENT ORDER

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
DOCUMENT CUMING & GILLESPIE
Barristers and Solicitors
4050, 525 8th Avenue SW.
Calgary, Alberta T2P 1G1
Lawyer: Craig G. Gillespie
Email: craig@cglaw.ca
Telephone: (403) 571-0555
Facsimile: (403) 232-8818
Solicitor's File No. 13010 CGG

DATE ON WHICH ORDER WAS PRONOUNCED: January 23, 2017

NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice R. J. Hall

PLACE ORDER WAS PRONOUNCED: Calgary, Alberta

UPON THE APPLICATION of the Representative Plaintiff for the proposed
Class, brought under section 5 of the *Class Proceedings Act*, SA 2003 c C-16.5; **AND**
UPON HEARING from Counsel for the proposed Class, Counsel for the Defendants,

German Fong Albus, Sandra Albus and Sandra F. Albus Professional Corporation and Ming J. Fong who is self-represented; **IT IS HEREBY ORDERED THAT:**

1. This action is certified as a class proceeding against the Defendants.
2. The Class is comprised of all individuals, entities or corporations, other than the Defendants, who remitted funds to the Defendants, or any of them, to invest in the "Spanish Estate Matter" at the request of the Defendants, or any of them (the "Fong Scheme") and suffered losses (the "Class").
3. The Class includes the following subclasses:
 - a. All individuals, entities or corporations of the Class who met with Fong at the GFA offices to invest in the Spanish Estate Matter and/or remitted funds to the GFA account ("Subclass 1"); and
 - b. All individuals, entities or corporations of the Class who met with Fong outside the GFA offices to invest in the Spanish Estate Matter and remitted funds to Fong personally ("Subclass 2").
4. Tim Tam is appointed as the representative Plaintiff on behalf of the Class.
5. The nature of the claims asserted on behalf of the Class against the Defendants is for breach of trust and fiduciary duty, knowing assistance or participation in breach of trust and fiduciary duty, negligent supervision, breach of contract, unjust enrichment, conversion, negligent misrepresentation and in addition or in the alternative, fraudulent misrepresentation.
6. The relief sought on behalf of the Class is:
 - a. A declaration that there is due and owing to the Plaintiff Investors from the GFA Defendants, or any of them, the total amount of the Contributions provided by the Plaintiff Investors, in the amount of not less than \$20,000,000;

- b. Interest from the GFA Defendants, or any of them, on the Contributions, calculated in accordance with the Plaintiff Investors' costs of borrowing, or in the alternative, pre-judgment interest pursuant to the Judgment Interest Act;
- c. In the alternative, judgment in the total amount of the Contributions, in the amount of not less than \$20,000,000.00 plus interest, for the unjust enrichment of the GFA Defendants, or any of them; or on a quantum meruit basis, or on such further or other equitable basis as this Honourable Court deems just in the circumstances;
- d. Damages for breach of contract and negligence by the GFA Defendants, or any of them;
- e. In the alternative, damages for fraud from the GFA Defendants, or any of them;
- f. An accounting of the GFA Defendants' financial activities in relation to the Contributions and the Spanish Estate Matter, and specifically, in relation to the use of the monies provided to the GFA Defendants by the Plaintiff Investors by way of the Contributions;
- g. A declaration that any judgment obtained against the GFA Defendants arises due to a fraud committed by one, any, or all of them, or a combination of them and others and, as such, judgment shall survive any discharge from bankruptcy of any of the GFA Defendants;
- h. A declaration that the Plaintiff Investors are entitled to relief pursuant to Alberta's Civil Enforcement Act, including, but not limited to attachment orders, orders enjoining the GFA Defendants from disposing of assets, and any other relief the Court may see fit to grant;
- i. An order that any monies or negotiable instrument held by the GFA Defendants, or any of them, and that can be traced back to the

Contributions, are held pursuant to a constructive or resulting trust in favour of the Plaintiff Investors;

- j. Interest pursuant to the Judgment Interest Act;
- k. Costs, including costs on a solicitor and client basis; and
- l. Such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

7. The common issues to be determined in this class proceeding are:

- a. Was there a contractual relationship between the Defendants, or any of them, and the Class Members by virtue of a Loan Agreement and/or Promissory Note with respect to the Spanish Estate Matter? If so, did the Defendants, or any of them, breach the agreement(s)?
- b. Did the Defendants, or any of them, owe a duty of care, fiduciary duty or contractual duty to the Class Members? If so, what were the duties? Were any of the duties breached?
- c. Did the Defendants, or any of them, negligently or fraudulently make misrepresentations to the Class Members? If so, can reliance on the misrepresentations be inferred by the Class as a whole?
- d. Were the Defendants, or any of them, unjustly enriched?
- e. Are Sandra Albus, Sandra F. Albus Professional Corporation and German Fong Albus, or any of them, vicariously liable for the acts or omissions of Fong?
- f. Did the Defendants, or any of them, conspire?
- g. Did the Defendants, or any of them, commit a breach of trust?
- h. Are the Class Members contributorily negligent for their damages? If so, how much is attributable to contributory negligence?

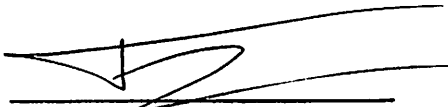
- i. Are any of the claims of the Class Members barred by the provisions of the Limitations Act?
 - j. Are any of the Class Members barred from recovering against the Defendants, or any of them, by virtue of the doctrine of merger?
 - k. Are the Class Members entitled to restitution or repayment of monies from the Defendants or alternatively, are the Class Members entitled to a constructive trust?
 - l. Are the Class Members entitled to damages against the Defendants as more fully particularized in the Statement of Claim?
 - m. Are the Class Members entitled to an accounting and/or tracing of all monies received by the Defendants pursuant to the Fong Scheme?
 - n. Should interest be assessed on amounts found to be owing by the Defendants in accordance with the Class' costs of borrowing, or alternatively, pursuant to the Judgment Interest Act?
 - o. Are costs payable?
8. The Notice of Class Action in the form attached as Schedule "A" to this Order is hereby approved.
9. The Litigation Plan in the form attached as Schedule "B" to this Order is hereby approved.
10. Class members may opt out of the Class proceeding by notifying Cuming & Gillespie, solicitors for the Plaintiff, either:
- a. By mail postmarked no later than April 15, 2017 in the form attached as Schedule "C";
 - b. By fax sent no later than April 15, 2017 in the form attached as Schedule "C";

c. By email sent no later than April 15, 2017 in the form attached as Schedule "C".

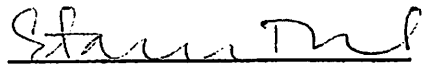
11. Costs for this application shall be costs in the cause.
12. Costs of \$1,000.00 specifically for today's attendance is awarded to the Plaintiff against the Defendant, Ming J. Fong, payable forthwith.

"R.J. Hall"
The Honourable Mr. Justice R. J. Hall

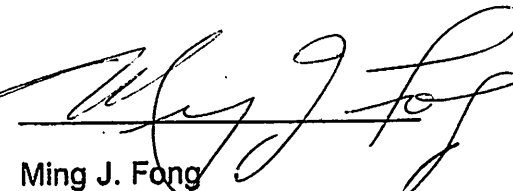
Consented to as to form and content
this 24th day of February, 2017.

Per: 
Craig G. Gillespie
Cuming & Gillespie
Solicitor for the Representative
Plaintiff, Tim Tam

Consented to as to form ^{50%} and content ^{of order granted}
this 22 day of Feb., 2017.

Per: 
Stacy Petriuk
JSS Barristers
Solicitor for the Defendants,
German Fong Albus, Sandra
Albus and Sandra F. Albus P.C.

Consented to as to form and content
this 24 day of FEBRUARY, 2017.

Per: 
Ming J. Fong

SCHEDULE "A"

Email and Letter Form Notice

NOTICE OF CLASS ACTION

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS

PLEASE READ CAREFULLY

Please read this notice carefully in its entirety. This notice relates to the certification of a Class Action. A class action has been certified by the Honourable Mr. Justice R.J. Hall in *Tam v. Ming J. Fong et al*, Court Action No. 1301 – 14384). The action was certified on January 23, 2017. The Representative Plaintiff approved by the Court to represent the Class is Tim Tam. The Defendants in the Class Action comprise of Ming J. Fong and Sandra Albus as partners in the law firm of German Fong Albus, with Sandra Albus conducting her legal practice through her professional corporation, Sandra F. Albus Professional Corporation. The Representative Plaintiff seeks to recover monetary damages on behalf of the entire Class for the losses allegedly suffered by investors in the "Spanish Estate Matter" promoted by the Defendants. The Spanish Estate Matter refers to funds solicited by the Defendants to assist in the finalizing of a legal inheritance matter.

This notice is being provided to all potential Class Members, including all individuals, entities or corporations, other than the Defendants, who remitted funds to the Defendants, or any of them, to invest in the "Spanish Estate Matter" at the request of the Defendants, or any of them (the "Fong Scheme") and suffered losses.

If you are a Class Member, this notice contains important information about your rights described below.

If you are a Member of the Class and you do not opt-out, you will be bound by the determination of the common issues as decided by the Court.

If you opt-out, you will not be able to participate in any monetary recovery, whether by way of judgement or settlement.

This notice has been sent to you in accordance with the Order of the Alberta Court of Queen's Bench.

Purpose of this Notice

This Notice is being provided because you may be a Member of a Class of persons whose rights may be affected by this lawsuit. The purpose of this notice is to inform you that the Alberta Court of Queen's Bench has determined that this lawsuit may proceed as a Class Action

on behalf of all persons who invested monies in the Spanish Estate Matter with the Defendants, except the Defendants, as noted above.

This notice is not intended to be, and should not be construed as, an expression of any opinion by the Court as to the truth of the allegations in the lawsuit or the merits of the claims or defences asserted in the lawsuit.

Class Definition

Class Members are all individuals, entities or corporations, other than the Defendants, who remitted funds to the Defendants, or any of them, to invest in the "Spanish Estate Matter" at the request of the Defendants, or any of them (the "Fong Scheme") and suffered losses.

SubClasses

Subclass 1: All individuals, entities or corporations of the Class who met with Fong at the GFA offices to invest in the Spanish Estate Matter and/or remitted funds to the GFA account.

Subclass 2: All individuals, entities or corporations of the Class who met with Fong outside the GFA offices to invest in the Spanish Estate Matter and remitted funds to Fong personally.

Rights of the Class Members

If you are a Class Member, you may receive the benefit of and will be bound by the terms of any order of the Court with respect to the common issues.

If you are a Class Member, you have the following options:

1. You may await the outcome of the proceedings, following which you may be entitled to the benefit of any settlement or judgment. If you choose this option, you will remain a Class Member and, subject to proving your loss, you will share in the proceeds of any settlement or judgment.
2. You may elect to opt-out of the Class. If you opt-out of the Class, you will not participate in any settlement or judgment and you will not receive the benefits of any settlement or judgment. However, you will also not be bound by any settlement with or judgment against the Defendants and your claim, if any, will remain unaffected. If you wish to opt-out of the Class, you must mail or deliver a written request for exclusion in the appropriate Opt- Out Form by no later than April 15, 2017. Opt-Out Forms may be completed in the form at the end of this document, downloaded from the website www.cglaw.ca or obtained by phoning 1-800-682-2480.

Time to Opt-Out

Class Members who want to be excluded from the class action must mail or deliver a signed Opt-Out Form in the form provided to Class Counsel at the address indicated on or before April 15, 2017. Class Members who do not complete and mail or deliver an Opt-Out Form to Class Counsel on or before April 15, 2017, will automatically be part of the Class Action.

Legal Fees and Disbursements

Pursuant to the fee agreement entered into with the Representative Plaintiff at the commencement of the litigation, Class Counsel will seek approval of a fee of 30% of any amount recovered, plus disbursements, which will be funded by Class counsel, and interest thereon plus applicable GST.

Description of the Proceeding

On December 5, 2013 an action was commenced against the Defendants, Ming J. Fong, German Fong Albus, Sandra Albus and Sandra F. Albus Professional Corporation (collectively, the "GFA Defendants").

The Representative Plaintiff alleges that he suffered losses as a result of investments in a matter promoted as an investment to assist a client of Fong to secure an inheritance, in what was referred to as the 'Spanish Estate'. The proceedings seek the following relief:

- (a) A declaration that there is due and owing to the Plaintiff Investors from the GFA Defendants, or any of them, the total amount of the Contributions provided by the Plaintiff Investors, in the amount of not less than \$20,000,000;
- (b) Interest from the GFA Defendants, or any of them, on the Contributions, calculated in accordance with the Plaintiff Investors' costs of borrowing, or in the alternative, pre-judgment interest pursuant to the *Judgment Interest Act*;
- (c) In the alternative, judgment in the total amount of the Contributions, in the amount of not less than \$20,000,000.00 plus interest, for the unjust enrichment of the GFA Defendants, or any of them, or on a *quantum meruit* basis, or on such further or other equitable basis as this Honourable Court deems just in the circumstances;
- (d) Damages for breach of contract and negligence by the GFA Defendants, or any of them;
- (e) In the alternative, damages for fraud from the GFA Defendants, or any of them;
- (f) An accounting of the GFA Defendants' financial activities in relation to the Contributions and the Spanish Estate Matter, and specifically, in relation to the use of the monies provided to the GFA Defendants by the Plaintiff Investors by way of the Contributions;
- (g) A declaration that any judgment obtained against the GFA Defendants arises due to a fraud committed by one, any, or all of them, or a combination of them and others and, as such, judgment shall survive any discharge from bankruptcy of any of the GFA Defendants;

- (h) A declaration that the Plaintiff Investors are entitled to relief pursuant to Alberta's *Civil Enforcement Act*, including, but not limited to attachment orders, orders enjoining the GFA Defendants from disposing of assets, and any other relief the Court may see fit to grant;
- (i) An order that any monies or negotiable instrument held by the GFA Defendants, or any of them, and that can be traced back to the Contributions, are held pursuant to a constructive or resulting trust in favour of the Plaintiff Investors;
- (j) Interest pursuant to the *Judgment Interest Act*;
- (k) Costs, including costs on a solicitor and client basis; and
- (l) Such further and other relief as this Honourable Court deems just and appropriate in the circumstances.

Financial Consequences of the Class Proceeding

Class Members will be entitled to the benefit of a successful judgment of the Court or settlement on the common issues. Class Members who opt-out of the Class will not benefit from any successful judgment or settlement.

The Representative Plaintiff has entered into a fee agreement with Class Counsel that provides for the Plaintiff Class Counsel to be paid, for legal services rendered, 30% of the settlement or favourable judgment, and to be reimbursed for disbursements incurred in the litigation with interest. The fees and disbursements will form a first charge on any recovery, in favour of Plaintiff Class Counsel, if the settlement is approved or a favourable judgment is obtained. Plaintiff Class Counsel will apply for Court approval of their fees and disbursements.

No Class Member will be responsible for Plaintiff Class Counsel's legal fees or disbursements unless money is by way of settlement or judgment.

If the claims of the Class are dismissed against some or all of the Defendants, then those Defendants may seek to recover their legal costs for defending the claims against the Representative Plaintiff, but not against Class Members.

Common Issues

The following were determined to be common issues:

- a) Was there a contractual relationship between the Defendants, or any of them, and the Class Members by virtue of a Loan Agreement and/or Promissory Note with respect to the Spanish Estate Matter? If so, did the Defendants, or any of them, breach the agreement(s)?
- b) Did the Defendants, or any of them, owe a duty of care, fiduciary duty or contractual duty to the Class Members? If so, what were the duties? Were any of the duties breached?

- c) Did the Defendants, or any of them, negligently or fraudulently make misrepresentations to the Class Members? If so, can reliance on the misrepresentations be inferred by the Class as a whole?
- d) Were the Defendants, or any of them, unjustly enriched?
- e) Are Sandra Albus, Sandra F. Albus Professional Corporation and German Fong Albus, or any of them, vicariously liable for the acts or omissions of Fong?
- f) Did the Defendants, or any of them, conspire?
- g) Did the Defendants, or any of them, commit a breach of trust?
- h) Are the Class Members contributorily negligent for their damages? If so, how much is attributable to contributory negligence?
- i) Are any of the claims of the Class Members barred by the provisions of the *Limitations Act*?
- j) Are any of the Class Members barred from recovering against the Defendants, or any of them, by virtue of the doctrine of merger?
- k) Are the Class Members entitled to restitution or repayment of monies from the Defendants or alternatively, are the Class Members entitled to a constructive trust?
- l) Are the Class Members entitled to damages against the Defendants as more fully particularized in the Statement of Claim?
- m) Are the Class Members entitled to an accounting and/or tracing of all monies received by the Defendants pursuant to the Fong Scheme?
- n) Should interest be assessed on amounts found to be owing by the Defendants in accordance with the Class' costs of borrowing, or alternatively, pursuant to the *Judgment Interest Act*?
- o) Are costs payable?

Disclosure Consequences of the Class Proceeding

Class Members will be deemed to have consented to the disclosure by Plaintiff Class Counsel to Defendants' Counsel of all information relating to their respective claims. The information will go to the Defendants' Counsel for use in the litigation or settlement, but cannot by law be used outside the litigation.

Further Information

Class Counsel in this matter is:

**Cuming & Gillespie
Barristers & Solicitors
4050, 525 8th Avenue SW.
Calgary, Alberta, T2P 1G1**

**Phone: (403) 571-0555
Toll Free: 1-800-682-2480
Fax: (403) 232-8818**

**Website: www.cglaw.ca
E-mail: craig@cglaw.ca**

Class Members who wish to obtain more information about the Class Action should contact Dee-Anne Kuyten (deeanne@cglaw.ca) at Cuming & Gillespie.

SCHEDULE "B"

LITIGATION PLAN

CLASS PROCEEDING AGAINST THE MING J. FONG. ET. AL. DEFENDANTS:

This plan is filed pursuant to s. 5(1)(e)(ii) of the *Class Proceedings Act*

A. Communication with Members of the Class

Communication

Upon publication of the Notice of the Class Action, Cuming & Gillespie ("Class Counsel") will respond to all requests for Opt-Out Forms and maintain a link on the website of Cuming & Gillespie showing any public filings and Court orders as well as a brief description of the proceeding. If and when settlement or judgment is obtained, Class Counsel will propose a Claims Administration Process for the benefit of Class Members so that claims can be dealt with in an efficient manner.

Notification of Certification and the Right to Opt-Out

Notice of Certification and the right to opt-out shall be given to the Class in the manner directed by the Court by Order dated January 23, 2017, namely, by direct mail-out, or e-mail. The form of notice, time of opt-out, and method of obtaining an Opt- Out Form will be as directed by the Court.

The Notice of Certification and an Opt-Out Form shall be published on the web page maintained by Class Counsel under an appropriate link from Class Counsel's website www.cglaw.ca.

Post-Certification Status Reports

Class Counsel will continue to update their web page dedicated to this proposed class proceeding. The toll free phone number and an e-mail contact provided on the web page will remain in effect until the class action is finally resolved.

Identification of Class Members

Class Counsel will rely on the records obtained in identifying Class members.

B. Conduct of Proceedings

Questioning of Representative Plaintiff and Defendants

The Defendants shall be entitled to question only the Representative Plaintiff as of right. More Class Members may be questioned if agreed to among counsel, or upon application by one or more of the Defendants. Class Counsel will question the Defendants as required, in accordance with the Alberta *Rules of Court*.

In addition to regular Case Management Meetings, there will be a Case Management Meeting scheduled to take place within 15 days of the conclusion of Questioning to deal with or schedule any Applications that may arise from any objections taken by any party.

Witness Interviews and Experts

At present, it is anticipated that Plaintiff Class Counsel will call the Representative Plaintiff and/or one or more experts as witnesses at the trial of the common issues, if necessary.

The Parties shall arrange a schedule for exchange of expert reports, if required, and in sequence as per Rule 5.35.

Document Management

All non-privileged, relevant and material documents will be exchanged in electronic format, to the extent possible, and in a manner agreed to by the parties, or failing agreement, in a manner directed by the Court within 60 days of certification. The parties will confer and agree on document coding protocols to facilitate an orderly exchange of documents, taking into account the direction provided in Civil Practice Note 4, with any issues arising to be addressed in Case Management.

Damages and Distribution of Amounts Recovered

In the event that the Representative Plaintiff is successful at the common issues stage, it is proposed that a Case Management Meeting occur to determine the most efficient and practical means of determining any individual issue which may remain to be resolved.

Once the resolution of any individual issues remaining has been determined, each Class Member will receive by mail or email a summary of the calculation of his/her respective entitlement to damages based on a review of the database(s) of the Defendants by an

appropriate Claims' Administrator and a cheque for any amount determined to be owing. Further details of the Claims' Administration Process will be discussed with the Defendants or dealt with by further direction of the Court.

Settlement

Should it appear appropriate, Plaintiff Class Counsel will conduct settlement negotiations with the Defendants from time to time.

NEWSPAPER NOTICE

WERE YOU AN INVESTOR IN THE "SPANISH ESTATE MATTER"?

THIS NOTICE AFFECTS YOUR LEGAL RIGHTS

A Class Action has been certified by the Honourable Mr. Justice R.J. Hall in *Tam v. Ming J. Fong et al* (Alberta Court of Queen's Bench Action No. 1301 – 14384). The Action was certified on January 23, 2017. The Defendants of the Class Action are Ming J. Fong, German Fong Albus, Sandra Albus and Sandra F. Albus Professional Corporation.

The Class Action has been certified on behalf of all individuals, entities or corporations, other than the Defendants, who remitted funds to the Defendants, or any of them, to invest in the "Spanish Estate Matter" at the request of the Defendants, or any of them (the "Fong Scheme") and suffered losses. The Spanish Estate Matter refers to funds solicited by the Defendants to assist in the finalizing of an estate matter. The Class Action was brought to recover the losses allegedly suffered by the Class members as a result of investments in the Spanish Estate Matter.

Note that individuals who do not want to participate in the Class Action must act quickly to opt-out of the Class Action. The deadline for opting out of the Class is April 15, 2017.

Visit the website of Plaintiff Class Counsel, Cuming & Gillespie at www.cglaw.ca for more information or call 1-800-682-2480.

SCHEDULE "C"

MING FONG CLASS ACTION LAWSUIT "OPT OUT" FORM

Name: _____

Address: _____

Telephone: _____

Email: _____

I _____ am a resident of _____, _____ and I am providing Class Counsel with notice that I wish to **opt out** of the Ming Fong Class Action. **I understand that by opting out of the Ming Fong Class Action, I will not be bound by the terms of the Ming Fong Class Action nor will I receive any of the benefit of the Ming Fong Class Action.**

Signed: _____

Dated: _____

Please use one of the following options and return this "Opt Out" Form no later than April 15, 2017 to:

Mail

Cuming & Gillespie
4050, 525 – 8 Ave. S.W.
Calgary, Alberta
T2P 1G1

Fax

Cuming & Gillespie
403-232-8818

Email

deeanne@cglaw.ca