



Further Amended Pursuant to Rule 6-1(1)(a) and (b)
Original Filed on September 19, 2016
Amended Filed on February 28, 2017

No. VLC-S-S-168644
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JING LI

PLAINTIFF

AND:

HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA

DEFENDANT

Brought pursuant to the *Class Proceedings Act*, RSBC, 1996 c 50

FURTHER AMENDED 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(s),

- (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, Jing Li, is an individual resident in Burnaby, British Columbia. Ms. Li is a citizen of the People's Republic of China. She moved to Canada in 2013 to complete a master's degree in public administration at the University of Saskatchewan. After completing her degree, Ms. Li moved to Burnaby, British Columbia. Ms. Li never became a permanent resident of Canada or a Canadian citizen.
2. The defendant is Her Majesty the Queen in right of the Province of British Columbia (the "BC Government").

The Foreign Nationals' Property Tax

3. On July 25, 2016, the BC Government introduced *Bill 28, Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016*, amending the *Property Transfer Tax Act*, RSBC 1996, c 378 ("*PTTA*") to impose an additional 15% tax on the purchase of residential properties by foreign entities in a Specified Area in the Greater Vancouver Regional District (the "Foreign Nationals' Property Tax").
4. For the purposes of the *PTTA* and the Foreign Nationals' Property Tax, and this Further Amended Notice of Civil Claim:
 - a. "foreign corporation" means a corporation that is one of the following: (a) a corporation that is not incorporated in Canada; (b) unless the shares of the corporation are listed on a Canadian stock exchange, a corporation that is incorporated in Canada and is controlled by one or more of the following: (i) a foreign national; (ii) a corporation that is not incorporated in Canada; (iii) a corporation that would, if each share of the corporation's capital stock that is owned by a foreign national or by a corporation described in paragraph (a) of this definition were owned by a particular person, be controlled by the particular person;

- b. "foreign entity" means a foreign national or foreign corporation;
 - c. "foreign national" is as defined in s. 2(1) of the *Immigration and Refugee Protection Act (Canada)*, namely, "a person who is not a Canadian citizen or a permanent resident, and includes a stateless person";
 - d. "residential property" means any of the following: (a) land or improvements, or both, as defined in section 1(1) of the *Assessment Act*, that are described as class 1 property in section 1 of the *Prescribed Classes or Property Regulation*, BC Reg 438/81, but does not include prescribed land or improvements; (b) an area of land, not including improvements, that (i) is not larger than 0.5 ha in area, and (ii) is classified as a farm under the *Assessment Act* only because the land is used for (A) an owner's dwelling as defined in section 23(0,1) of the *Assessment Act*, or (B) a farmer's dwelling as defined in section 1(1) of the *Classification of Land as a Farm Regulation*, BC Reg 411/95;
 - e. "specified area" means any of the following: (a) the Greater Vancouver Regional District, other than both of the following: (i) subject to paragraph (b), the treaty lands of the Tsawwassen First Nation; (ii) a prescribed area within the Greater Vancouver Regional District; (b) the treaty lands of the Tsawwassen First Nation, if those treaty lands are prescribed for the purpose of this definition; (c) a prescribed area that is not within the Greater Vancouver Regional District;
 - f. the Greater Vancouver Regional District includes the following municipalities: Anmore, Belcarra, Bowen Island, Burnaby, Coquitlam, Delta, Langley City and Township, Lion's Bay, Maple Ridge, New Westminister, North Vancouver City and District, Pitt Meadows, Port Coquitlam, Port Moody, Richmond, Surrey, Vancouver, West Vancouver, White Rock, and Electoral Area A.
5. *Bill 28, the Miscellaneous Statutes (Housing Priority Initiatives) Amendment Act, 2016* was given third reading by the BC Legislature on July 28, 2016 and was given Royal Assent later that same day.
6. On August 2, 2016, sections 2.01 to 2.04 of the *PTTA* came into force (collectively, the "Impugned Provisions"). These provisions require the payment of the Foreign Nationals' Property Tax on all applicable transfers of property registered with the Land Title Office on or after August 2, 2016, regardless of the date of the corresponding contract of purchase and sale.

The Plaintiff's Payment of the Foreign Nationals' Property Tax

7. On July 13, 2016, Ms. Li entered into a residential contract of purchase and sale (the "Contract"). Under the Contract, Ms. Li agreed to purchase real property in Langley, British Columbia for \$559,000.00 plus GST in the amount of \$27,995.00. The Contract listed the total purchase price payable by Ms. Li in connection with this purchase as \$587,895.
8. Pursuant to the Contract, Ms. Li was required to pay and by July 20, 2016 she did, in fact, pay a non-refundable deposit totaling \$55,990. The remainder of the total purchase price is due by the completion date, which is November 14, 2016.
9. After the Impugned Provisions came into force, Ms. Li became aware that she would be responsible for paying the Foreign Nationals' Property Tax on her purchase under the Contract in the Specified Area. Because of the Impugned Provisions, Ms. Li became obligated to pay an additional \$83,850 in connection with her real estate purchase simply because of her lack of permanent residency or Canadian citizenship.
10. On November 18, 2016, Ms. Li completed her purchase and did in fact pay \$83,850 in Foreign Nationals' Property Tax. Had Ms. Li had a Canadian passport or permanent resident status, she would not have had to pay this additional amount.

The Proposed Class

11. "Class Period" means the period from August 2, 2016 to the date this action is certified.
12. The plaintiff brings this action on her own behalf and on behalf of a class of foreign entities who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax during the Class Period (collectively, the "Class"), with the following subclasses:

Resident Subclasses

- a. All foreign entities who are resident in the province of British Columbia who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax during the Class Period (the "General Resident Subclass");
- b. All foreign entities who are resident in the province of British Columbia and who are nationals of the countries on List A (namely: Argentina, Armenia,

Barbados, Benin, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Ecuador, Egypt, Honduras, Hungary, Korea, Kuwait, Latvia, Lebanon, Mexico, Panama, Peru, Poland, Romania, Russia, Serbia, Slovakia, Tanzania, Thailand, Trinidad and Tobago, Ukraine, United States of America, Uruguay or Venezuela – collectively, the “List A Countries”) who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax during the Class Period (the “List A Resident Subclass”);

- c. All foreign entities who are resident in the province of British Columbia and who are nationals of the countries on List B (namely: Argentina, Armenia, Barbados, Benin, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Croatia, Czech Republic, Ecuador, Egypt, Honduras, Hong Kong, Hungary, Jordan, Korea, Kuwait, Latvia, Lebanon, Mexico, Panama, Peru, Philippines, Poland, Romania, Russia, Serbia, Slovakia, Tanzania, Thailand, Trinidad and Tobago, Ukraine, United States of America, Uruguay or Venezuela – collectively, the “List B Countries”) who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax (i) for nationals of Hong Kong, after September 6, 2016 or (ii) for all others, during the Class Period (the “List B Resident Subclass”);
- d. All foreign entities who are resident in the province of British Columbia and who are nationals of the countries on List C and during the Class Period, paid or will pay the Foreign Nationals' Property Tax in connection with the purchase of a property that was subsequently rented (the “List C Resident Subclass”);

Non-Resident Subclasses

- e. All foreign entities who are not resident in the province of British Columbia who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax during the Class Period (the “General Non-Resident Subclass”);
- f. All foreign entities who are not resident in the province of British Columbia and who are nationals of the List A Countries and who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax during the Class Period (the “List A Non-Resident Subclass”);
- g. All foreign entities who are not resident in the province of British Columbia and who are nationals of the List B Countries who purchased residential property in the Specified Area and paid or will pay the Foreign Nationals' Property Tax (i) for nationals of Hong Kong, after September 6, 2016, or

(ii) for all others, during the Class Period (the "List B Non-Resident Subclass"); and

- h. Foreign entities who are not resident in the province of British Columbia and who are nationals of the countries on List C and during the Class Period, paid or will pay the Foreign Nationals' Property Tax in connection with the purchase of a property that was subsequently rented (the List C Non-Resident Subclass").

Class Member Complaints

13. As a result of the enactment of the Impugned Provisions, foreign entities are, since August 2, 2016 treated less favourably than Canadian citizens or permanent residents when purchasing residential properties in the Specified Area. In particular, foreign entities are required to pay the Foreign Nationals' Property Tax, which increases the total cost of the purchase transaction by an additional 15% of the purchase price while not adding any cost for Canadian citizen purchasers and Canadian entities operating in like circumstances.
14. Many foreign entities entered into residential contracts of purchase and sale before the Foreign Nationals' Property Tax provisions of the *PTTA* were announced or came into force, but their transactions did not close until after August 2, 2016. As the Foreign Nationals' Property Tax applies to all transfers registered in the Land Title Office regardless of when a contract of purchase and sale was entered into, these purchasers had only two options, both of which involved the payment of additional funds:
 - a. they could complete their transactions and pay the Foreign Nationals' Property Tax, which they had not previously contemplated, and which would not have been payable if they were Canadian citizens or permanent residents, or
 - b. they could renege on residential contracts for purchase and sale and forfeit their deposits.
15. Foreign entities who entered into residential contracts of purchase and sale after August 2, 2016 in the Specified Area were, and continue to be, required to pay the Foreign Nationals' Property Tax, which is not payable by Canadian citizens or Canadian permanent residents operating in like circumstances or the investments of Canadian citizens or Canadian permanent residents operating in like circumstances.

Part 2: RELIEF SOUGHT

16. The plaintiff seeks the following remedies, on her own behalf and on behalf of the Class:
- a. an order certifying this action as a class action pursuant to s. 4(1) of the *Class Proceedings Act*;
 - b. a declaration that the Impugned Provisions are *ultra vires* the Provincial Legislature;
 - c. in the alternative, a declaration that the Impugned Provisions are inapplicable to the Plaintiffs and other class members;
 - d. in the further alternative, a declaration that the Impugned Provisions are inoperative to those foreign entities who are residents of countries with whom Canada has entered into Treaties, as defined below;
 - e. further and in the alternative, a declaration that the Impugned Provisions unjustifiably infringes s. 15 of the *Canadian Charter of Rights and Freedom* (the "*Charter*") and are of no force or effect;
 - f. an order for restitution of the amounts collected by the BC Government from the Plaintiff and the other Class Members on account of the Foreign Nationals' Property Tax;
 - g. alternatively, a declaration that the BC Government has been unjustly enriched by the receipt of the Foreign Nationals' Property Tax from the Plaintiff and the other Class Members, and an order for restitution of said amounts to the Plaintiff and the other Class Members;
 - h. in the further alternative, restitution or damages pursuant to section 24(1) of the *Charter*;
 - i. pre- and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and
 - j. such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

The Foreign Nationals' Property Tax is *Ultra Vires* the Provincial Legislature

17. The Impugned Provisions in their purpose or effect interfere with or deter the flow of foreign capital into Greater Vancouver where that capital is to be used for the purchase of residential property. The regulation of foreign capital is exclusively within the constitutional authority of the Government of Canada, under federal powers to regulate trade and commerce pursuant to s. 91(24) of the *Constitution Act, 1867*. The Impugned Provisions are thus *ultra vires* the Provincial Legislature and of no force and effect.
18. The Impugned Provisions in their purpose or effect are laws that relate to ~~immigration status and as such are laws in relation to~~ naturalization and aliens. They are thus *ultra vires* the Provincial Legislature as trenching on Parliament's exclusive power pursuant to s. 91(25) of the *Constitution Act, 1867* and are of no force and effect.

The Foreign Nationals' Property Tax is Inapplicable

19. In the alternative the Impugned Provisions intrude into the core federal power over naturalization and aliens and/or trade and commerce and its prerogative and legislative power to enter into international treaties. The intrusion is serious and significant. As such the Impugned Provisions are inapplicable to the Plaintiff and the other Class Members.

The Foreign Nationals' Property Tax is Inoperative

20. The Government of Canada has entered into the following international treaties with the List A Countries, which provide national treatment-rights to foreign nationals (natural or juridical) who are covered by the Foreign Nationals' Property Tax:
 - a. The North American Free Trade Agreement (NAFTA);
 - b. Canada-Argentina Foreign Investment Promotion and Protection Agreement;
 - c. Canada-Armenia Foreign Investment Promotion and Protection Agreement;
 - d. Canada-Barbados Foreign Investment Promotion and Protection Agreement;
 - e. Canada-Benin Foreign Investment Promotion and Protection Agreement;

- f. Canada-Chile Free Trade Agreement;
- g. Canada-China Foreign Investment Promotion and Protection Agreement;
- h. Canada-Colombia Free Trade Agreement;
- i. Canada-Costa Rica Foreign Investment Promotion and Protection Agreement;
- j. Canada-Côte d'Ivoire Foreign Investment Promotion and Protection Agreement;
- k. Canada-Croatia Foreign Investment Promotion and Protection Agreement;
- l. Canada-Czech Republic Foreign Investment Promotion and Protection Agreement;
- m. Canada-Ecuador Foreign Investment Promotion and Protection Agreement;
- n. Canada-Egypt Foreign Investment Promotion and Protection Agreement;
- o. Canada-Honduras Free Trade Agreement;
- p. Canada-Hungary Foreign Investment Promotion and Protection Agreement;
- q. Canada-Korea Free Trade Agreement;
- r. Canada-Kuwait Foreign Investment Promotion and Protection Agreement;
- s. Canada-Latvia Foreign Investment Promotion and Protection Agreement;
- t. Canada-Lebanon Foreign Investment Promotion and Protection Agreement;
- u. Canada-Panama Foreign Investment Promotion and Protection Agreement;
- v. Canada-Peru Free Trade Agreement;
- w. Canada-Poland Foreign Investment Promotion and Protection Agreement;
- x. Canada-Romania Foreign Investment Promotion and Protection Agreement;

- y. Canada-Russian Federation Foreign Investment Promotion and Protection Agreement;
- z. Canada-Serbia Federation Foreign Investment Promotion and Protection Agreement;
- aa. Canada-Slovak Republic Federation Foreign Investment Promotion and Protection Agreement;
- bb. Canada-Tanzania Foreign Investment Promotion and Protection Agreement;
- cc. Canada-Thailand Foreign Investment Promotion and Protection Agreement;
- dd. Canada-Trinidad and Tobago Foreign Investment Promotion and Protection Agreement;
- ee. Canada-Ukraine Foreign Investment Promotion and Protection Agreement;
- ff. Canada-Uruguay Foreign Investment Promotion and Protection Agreement; and
- gg. Canada-Venezuela Foreign Investment Promotion and Protection Agreement;

(collectively, the "List A Treaties")

21. By entering into the List A Treaties, the Government of Canada has entered into binding international obligations with each and every List A Country to ensure that all governments in Canada provide treatment to investors or investments from List A countries that is no less favourable than that received by Canadians operating in like circumstances.
22. For example, Article 1102 of NAFTA provides that:
 1. Each Party shall accord to investors of another Party treatment no less favourable that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.

2. Each Party shall accord to investments of investors of another Party treatment no less favorable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments.
 3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a state or province, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that state or province to investors, and to investments of investors, of the Party of which it forms a part.
23. NAFTA Article 1139 confirms that the ownership of real estate or other property, both tangible or intangible, constitutes an investment that is protected by the NAFTA. An "investor" is defined as "someone who has made, is making or seeks to make an investment." Thus all persons who seek to make a real estate investment who are nationals of a one of the NAFTA-Contracting Parties are covered by the terms of the NAFTA.
24. The Government of Canada has entered into the following international treaties with a number of countries, as set out in List B (collectively, the "List B Countries") which provide compensation upon expropriation rights to foreign nationals (natural or juridical) who are covered by the Foreign Nationals' Property Tax:
 - a. The North American Free Trade Agreement (NAFTA);
 - b. Canada-Argentina Foreign Investment Promotion and Protection Agreement;
 - c. Canada-Armenia Foreign Investment Promotion and Protection Agreement;
 - d. Canada-Barbados Foreign Investment Promotion and Protection Agreement;
 - e. Canada-Benin Foreign Investment Promotion and Protection Agreement;
 - f. Canada-Chile Free Trade Agreement;
 - g. Canada-China Foreign Investment Promotion and Protection Agreement;
 - h. Canada-Colombia Free Trade Agreement;
 - i. Canada-Costa Rica Foreign Investment Promotion and Protection Agreement;
 - j. Canada-Côte d'Ivoire Foreign Investment Promotion and Protection Agreement;

- k. Canada-Croatia Foreign Investment Promotion and Protection Agreement;
- l. Canada-Czech Republic Foreign Investment Promotion and Protection Agreement;
- m. Canada-Ecuador Foreign Investment Promotion and Protection Agreement;
- n. Canada-Egypt Foreign Investment Promotion and Protection Agreement;
- o. Canada-Honduras Free Trade Agreement;
- p. Agreement Between the Government of Canada and the Government of Hong Kong Special Administrative Region of the People's Republic of China for the Promotion and Protection of Investments;
- q. Canada-Hungary Foreign Investment Promotion and Protection Agreement;
- r. Canada-Jordan Foreign Investment Promotion and Protection Agreement;
- s. Canada-Korea Free Trade Agreement
- t. Canada-Kuwait Foreign Investment Promotion and Protection Agreement;
- u. Canada-Latvia Foreign Investment Promotion and Protection Agreement;
- v. Canada-Lebanon Foreign Investment Promotion and Protection Agreement;
- w. Canada-Panama Foreign Investment Promotion and Protection Agreement;
- x. Canada-Peru Free Trade Agreement;
- y. Canada-Philippines Foreign Investment Promotion and Protection Agreement;
- z. Canada-Poland Foreign Investment Promotion and Protection Agreement;
- aa. Canada-Romania Foreign Investment Promotion and Protection Agreement;
- bb. Canada-Russian Federation Foreign Investment Promotion and Protection Agreement;

- cc. Canada-Serbia Federation Foreign Investment Promotion and Protection Agreement;
- dd. Canada-Slovak Republic Federation Foreign Investment Promotion and Protection Agreement;
- ee. Canada-Tanzania Foreign Investment Promotion and Protection Agreement;
- ff. Canada-Thailand Foreign Investment Promotion and Protection Agreement;
- gg. Canada-Trinidad and Tobago Foreign Investment Promotion and Protection Agreement;
- hh. Canada-Ukraine Foreign Investment Promotion and Protection Agreement;
- ii. Canada-Uruguay Foreign Investment Promotion and Protection Agreement; and
- jj. Canada-Venezuela Foreign Investment Promotion and Protection Agreement.

(collectively, the "List B Treaties")

- 25. By entering into the List B Treaties, the Government of Canada has entered into binding international obligations with each and every List B Country to ensure that all governments in Canada pay monetary compensation upon the taking of property ("expropriation") to foreign investors and the investments of foreign investors from the List B Countries in the event of a taking of the investor's property.
- 26. An example of the compensation provision is set out in paragraphs 1 to 3 of Article 1110 of the NAFTA which provides:

Article 1110: Expropriation and Compensation

- 1. No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ("expropriation"), except:
 - (a) for a public purpose;
 - (b) on a non-discriminatory basis;
 - (c) in accordance with due process of law and Article 1105(1); and

- (d) on payment of compensation in accordance with paragraphs 2 through 6.
2. Compensation shall be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place ("date of expropriation"), and shall not reflect any change in value occurring because the intended expropriation had become known earlier. Valuation criteria shall include going concern value, asset value including declared tax value of tangible property, and other criteria, as appropriate, to determine fair market value.
 3. Compensation shall be paid without delay and be fully realizable.
27. Real estate is a protected type of investment under all List A Treaties and List B Treaties.
28. The Impugned Provisions require foreign investors and investments of investors from the Treaty Countries to pay a tax that is not otherwise payable by Canadian citizens or permanent residents operating in like circumstances. As such, the Impugned Provisions treats the latter less favourably than the former, contrary to the List A Treaties thus constituting discrimination between Canadians and non-citizens entirely on the basis of status as a permanent resident or citizenship.
29. The terms of each treaty in List B identify those types of investments which are "covered investments" under the treaty. Under every treaty, real property constitutes a covered investment. In addition, payments of the additional amount of the Foreign Nationals' Property Tax by a foreign investor (such as a foreign national or foreign entity) to acquire the real property could constitute part of that "covered investment". Payments of the Foreign Nationals' Property Tax which have been colourably, wrongfully or inoperatively taken by the BC Government constitutes an asset protected by the List B Treaties which has been taken in violation of the expropriation provisions of these treaties.
30. Further, the Government of Canada is a Contracting Party of the World Trade Organization (the "WTO"). As a party to the WTO, Canada had entered into binding international obligations with respect to the treatment of goods, investment, services and investment with the other 163 members of the WTO. A list of Canada's partners in the WTO is set out as List C. The members of the WTO all have treaty obligations with Canada, including the General Agreement on Trade in Services ("GATS"), which applies to the purchase of a home. Article XVII of the GATS provides:

Article XVII

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
 2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.
31. The Impugned Provisions conflict with and/or frustrate the purpose or effect of the List A Treaties, List B Treaties and GATS (collectively, the "Treaties") which have been approved, ratified, or implemented into domestic law by Parliament, and which constitute legal obligations of Canada. In doing so the Impugned Provisions also contravene s. 35(3) (b) and (c) of the *Citizenship Act*, R.S.C. 1985, c C-29 in their purpose or effect, and are therefore inoperative to that extent.

Section 15 of the Charter

32. Further and in the alternative, the Impugned Provisions unjustifiably infringe s. 15 of the *Charter*, which states:
- Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.
33. The Foreign Nationals' Property Tax creates a distinction between those who are citizens and permanent residents of Canada and those who are not. This is a distinction based on analogous and enumerated grounds, including but not limited to distinctions on the basis of national origin and country of citizenship.
34. The distinction created by the Impugned Provisions cause the Plaintiff and the other Class Members disadvantage by causing them to pay the Foreign Nationals' Property Tax.
35. The disadvantage is arbitrary and based on stereotypical assumptions. The Foreign Nationals' Property Tax assumes foreign nationals have more wealth and are able to outbid Canadian citizens and permanent residents in the housing

market in the specified area. Nationality and citizenship are not related to wealth. The Foreign Nationals' Property Tax is over inclusive because many persons who are neither Canadian citizens nor permanent residents have no more wealth than Canadian citizens or permanent residents. The Foreign Nationals' Property Tax is also under inclusive because there are many Canadian citizens or permanent residents who have more wealth than some foreign nationals.

36. The Foreign Nationals' Property Tax also erroneously assumes that foreign nationals who purchase real property in the province necessarily have fewer ties to the province or pay fewer taxes than Canadian citizens or permanent residents. In addition the Impugned Provisions mistakenly assume that foreign nationals caused price escalation in the residential real estate markets in the specified area or that, alternatively, imposing the tax on them would increase housing affordability. As such the Impugned Provisions are arbitrary, overbroad and based on stereotypical assumptions.
37. Furthermore, the disadvantage perpetuates prejudice and stereotyping on the basis of national origin. The effects of the Foreign Nationals' Property Tax is-are disproportionately felt by persons whose national origin is from an Asian country, a class of persons that have historically suffered discrimination in British Columbia.

Section 1 of the Charter

38. The infringements of s. 15 cannot be justified pursuant to the criteria of s. 1 of the Charter, the burden of proof of which lies on the BC Government.

Restitution based on Constitutional Principles

39. It is a constitutional principle that governments may not levy taxes without legislative authority. The Impugned Provisions are *ultra vires* the Provincial Legislature, inapplicable, or inoperative and/or unjustifiably infringe s. 15 of the Charter, and are therefore to that extent of no force or effect.
40. Class members have recourse to a restitutionary remedy as a matter of constitutional right where taxes are collected pursuant to legislation that is unconstitutional.
41. The Foreign Nationals' Property Tax is unconstitutional and therefore the collection of funds from class members thereupon was unlawful ~~by collected and thus constitutes a wrongful taking which and those funds~~ must be refunded to class members by the BC Government.

Unjust Enrichment

42. Alternatively, the BC Government has been unjustly enriched by the receipt of the Foreign Nationals' Property Tax from the Plaintiff and the other Class Members. The Plaintiff and the other Class Members have suffered a corresponding deprivation with the payment of the Foreign Nationals' Property Tax to the BC Government. As the Impugned Provisions are *ultra vires* the Provincial Legislature, inapplicable or inoperative and/or unjustifiably infringes s. 15 of the Charter, there is no juridical reason for the BC Government's enrichment. The BC Government must therefore make restitution of those amounts to the Plaintiff and the other Class Members.

Charter Remedies

43. In the further alternative, section 24(1) of the *Charter* provides a just and appropriate remedy against unconstitutional government action.
44. The plaintiff and the Class' s. 15 *Charter* rights have been infringed.
45. Damages and/or restitution of the monies collected in breach of the plaintiff and the Class' s. 15 rights or in the alternative damages this court ~~are appropriate~~ deems appropriate and just in the circumstances.

Plaintiff's address for service:

BRANCH MACMASTER LLP
1410 - 777 Hornby Street
Vancouver, BC V6Z 1S4
Telephone: (604) 654-2999
(File No.: X01-049)

Fax number address for service: (604) 684-3429

E-mail address for service: lbrasil@branmac.com

Place of trial: ↗Vancouver, British Columbia

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

Dated: December 28, 2017



Signature of lawyer for plaintiff

~~Joseph Arvay, Q.C.~~

~~Ward K. Branch, Q.C.~~

~~Craig E. Jones, Q.C.~~

Luciana P. Brasil

Chelsea D. Hermanson

Peter Driscoll

Barry Appleton

Sean Stephenson

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.

SCHEDULE "A"

List A:

Argentina
Armenia
Barbados
Benin
Chile
China
Colombia
Costa Rica
Cote d'Ivoire
Croatia
Czech Republic
Ecuador
Egypt
Honduras
Hungary
Korea
Kuwait
Latvia
Lebanon
Mexico
Panama
Peru
Poland
Romania
Russia
Serbia
Slovakia
Tanzania
Thailand
Trinidad and Tobago
Ukraine
United States of America
Uruguay
Venezuela

List B:

Argentina
Armenia
Barbados
Benin
Chile
China

Colombia
Costa Rica
Cote d'Ivoire
Croatia
Czech Republic
Ecuador
Egypt
Honduras
Hong Kong
Hungary
Jordan
Korea
Kuwait
Latvia
Lebanon
Mexico
Panama
Peru
Philippines
Poland
Romania
Russia
Serbia
Slovakia
Tanzania
Thailand
Trinidad and Tobago
Ukraine
United States of America
Uruguay
Venezuela

List C – Contracting Party States to the World Trade Agreement other than Canada

Afghanistan
Albania
Angola
Antigua and Barbuda
Argentina
Armenia
Australia
Austria (EU)
Bahrain
Bangladesh

Barbados
Belgium (EU)
Belize
Benin
Bolivia
Botswana
Brazil
Brunei Darussalam
Bulgaria (EU since 2007)
Burkina Faso
Burundi
Cambodia
Cameroon
Cape Verde
Central African Republic
Chad
Chile
China
Colombia
Republic of the Congo
Democratic Republic of the Congo
Costa Rica
Côte d'Ivoire
Croatia (EU since 2013)
Cuba
Cyprus (EU since 2004)
Czech Republic (EU since 2004)
Denmark (EU)
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Estonia (EU since 2004)
European Union
Fiji
Finland (EU)
France (EU)
Gabon
Gambia
Georgia
Germany (EU)
Ghana
Greece (EU)
Grenada

Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Honduras
Hong Kong, China
Hungary (EU since 2004)
Iceland
India
Indonesia
Ireland (EU)
Israel
Italy (EU)
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Republic of Korea
Kuwait
Kyrgyzstan
Laos
Latvia (EU since 2004)
Lesotho
Liberia
Liechtenstein
Lithuania (EU since 2004)
Luxembourg (EU)
Macau, China
Republic of Macedonia
Madagascar
Malawi
Malaysia
Maldives
Mali
Malta (EU since 2004)
Mauritania
Mauritius
Mexico
Moldova
Mongolia
Montenegro
Morocco
Mozambique
Myanmar

Namibia
Nepal
Netherlands (EU)
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland (EU since 2004)
Portugal (EU)
Qatar
Romania (EU since 2007)
Russia
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Samoa
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Singapore
Slovakia (EU since 2004)
Slovenia (EU since 2004)
Solomon Islands
South Africa
Spain (EU)
Sri Lanka
Suriname
Swaziland
Sweden (EU)
Switzerland
Taiwan, Penghu, Kinmen and Matsu
Tajikistan
Tanzania
Thailand
Togo
Tonga

Trinidad and Tobago
Tunisia
Turkey
Uganda
Ukraine
United Arab Emirates
United Kingdom (EU)
United States
Uruguay
Venezuela
Vanuatu
Venezuela
Viet Nam
Yemen
Zambia
Zimbabwe

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

This proposed class action claim involves allegations of unconstitutionality of provisions of the *Property Transfer Tax Act*, RSBC 1996 c 378.

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:

1. *Class Proceedings Act*, RSBC, 1996 c 50.
2. *The Constitution Act, 1867*, 30 & 31 Vict, c 3
3. *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11
4. *Citizenship Act*, R.S.C. 1985, c C-29