



No. **S-184335**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

DARREN ARCHER

PLAINTIFF

and

FULL CIRCLE DEBT SOLUTIONS INC., MATTHEW BOULTON,
AND KURT HARVEY WIPP

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

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 plaintiffs 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,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, 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

The Parties

1. The Defendant Full Circle Debt Solutions Inc. dba Full Circle Total Debt Solutions is a company incorporated under the laws of British Columbia, with an address for service at #1500-13450 – 102nd Avenue, Surrey BC V3T 5X3 (“Full Circle”).
2. Full Circle is in the business of offering debt restructuring services to consumers in British Columbia and across Canada, under the name “Full Circle Total Debt Solutions”. Full Circle carries on business from an office at 10524 King George Boulevard, Surrey, BC V3T 2X2 and provides its services across British Columbia and Canada over the internet and by phone and e-mail.
3. The Defendant Matthew Boulton is a director of Full Circle. He has an address for service at 7083 – 177A Street, Surrey BC V3S 7S4.
4. The Defendant Kurt Harvey Wipp was a director of Full Circle until April 20, 2017 and has an address at 325 – 3rd Street, New Westminster BC V3L 2R8. Kurt Harvey Wipp is also a managing director of Amur Financial Group Inc., which operates from the same location in Surrey as Full Circle. Full Circle is one of the Amur Financial group of companies and Kurt Harvey Wipp, as a managing director of the Amur Financial Group Inc., provides management services and direction to Full Circle.
5. The representative Plaintiff, Darren Archer, is a resident of Chilliwack, British Columbia. He works as a pipe layer.

6. The Plaintiff brings this claim on behalf of himself and on behalf of all persons who paid fees to Full Circle for debt restructuring services (the “Class”).

The Regulation of Debt Restructuring Services

7. Debt restructuring services are services which assist debtors to compromise their overall debt through an arrangement with their creditors. Debt restructuring services are governed and regulated in British Columbia by Part III, Division II of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “*BIA*”), dealing with “consumer proposals”, and, since April 1, 2016, by Part 7, Division 2 of the *Business Practices and Consumer Protection Act*, SBC 2004, c. 2 (the “*BPCPA*”) dealing with “collection agents and debt repayment agents”.

8. Under the *BIA*, a “consumer debtor”, defined as a debtor who is insolvent and whose aggregate debts (excluding debts secured by the individual’s principal residence) do not exceed \$250,000, may commence proceedings to make a consumer proposal under the *BIA* by obtaining the assistance of an administrator under the *BIA* to prepare the consumer proposal. An administrator under the *BIA* is either a trustee licensed under the *BIA* or a person appointed or designated by the Superintendent of Bankruptcy to administer consumer proposals. No persons other than licensed trustees has been designated in British Columbia to administer consumer proposals.

9. The licensed trustee who agrees to assist the consumer debtor is required by the *BIA* to:

- a. investigate, or cause to be investigated, the consumer debtor’s property and financial affairs so as to be able to assess with reasonable accuracy the consumer debtor’s financial situation;
- b. provide, or provide for, counselling to the consumer debtor in accordance with directions issued by the Superintendent;
- c. prepare a consumer proposal in the prescribed form; and
- d. unless the licensed trustee concludes the debtor is not eligible to make a consumer proposal, file the consumer proposal and the prescribed statement of affairs with the official receiver.

10. Once the consumer proposal and prescribed statement of affairs are filed and distributed by the licensed trustee to the creditors, the consumer proposal may be accepted or deemed to be accepted by the debtor's creditors, in which case the consumer proposal is either accepted or deemed to be accepted by the Court, or the consumer proposal may be rejected by the debtor's creditors, all in accordance with the procedures set out in the *BIA*.

11. The *BIA* in s. 156, and the *Bankruptcy and Insolvency General Rules*, CRC c. 368 (the "*Bankruptcy Rules*") in s. 129(1), prescribe the fees that can be charged for a consumer proposal. A consumer debtor is charged \$750 to file a consumer proposal. If, and only if, the consumer proposal is accepted by the creditors, the licensed trustee may charge another \$750, payable upon approval or deemed approval by the Court of the proposal, and a fee equal to 20% of the monies distributed to creditors under the proposal, payable on the distribution of the monies. In addition, under s. 131(1) of the *Bankruptcy Rules*, a licensed trustee may charge a fee of \$85 per hour for individual counselling, or \$25 for group counselling, that must be provided to a consumer debtor.

12. Since April 1, 2016, persons who provide services to assist debtors in making arrangements with their creditors to compromise their debt are required to be licensed under the *BPCPA* as debt repayment agents. Certain classes of persons are exempted from this licensing requirement, such as lawyers in the ordinary course of their practice and trustees licensed under the *BIA*.

13. Under s. 127 of the *BPCPA*, a debt repayment agent must enter in a written contract with the debtor which must contain certain prescribed terms, information and disclosure statements. In addition, a debtor repayment agent must not:

- a. charge fees or disbursements in the excess of the prescribed amount;
- b. charge, require, or accept any amount from a debtor before a repayment proposal is accepted by one or more of the debtor's creditors;
- c. assist or offer to assist the debtor to obtain a loan or credit from a lender; or
- d. require, request or accept any amount for agreeing to assist the debtor to obtain loan or credit from a lender.

14. Under the *Debt Collection Industry Regulation*, B.C. Reg. 400/2008 as amended (the “*Regulation*”), a debt repayment agent must not charge a debtor fees or disbursements in excess of 10% of the gross amount to be paid to the creditors if that the amount is to be paid to the creditors over a term lasting less than 90 days, or 15% of the gross amount to be paid to the creditors if that amount is to be distributed to the creditors over a term lasting 90 days or more. In the latter instance, the debt repayment agent may also charge a one-time charge of no more than the average monthly distribution made to the creditors.

15. The overall effect of this legislative scheme is to prevent debtors from being exploited by paying for debt restructuring services which do not result in any compromise of their debt. Under the scheme created by the *BIA* and *BPCPA*, a debtor cannot be charged for debt restructuring services until a debt restructuring is achieved, except for the \$750 payable to a license trustee under the *BIA* for filing a consumer proposal. When a debt restructuring does occur, the fees charged to the debtor can be no greater than 20% of the amount to be paid to the creditors under the compromise, except for the \$750 payable to a licensed trustee upon approval of a consumer proposal under the *BIA* and the one-time fee permitted by the *Regulation* under the *BCPCA* for compromises which have a payment period of longer than 90 days.

Full Circle’s Debt Restructuring Business

16. The Full Circle debt restructuring business is carried on by Full Circle contrary to the scheme created by the *BIA* and *BPCPA*. Neither Full Circle nor any its officers, directors or employees are licensed trustees under the *BIA*. Although Full Circle, Matthew Boulton, and two of Full Circle’s employees are currently licensed as debt repayment agents under the *BPCPA*, they carry on the Full Circle business contrary to the scheme and intent of the *BPCPA*.

17. The main, if not the only, debt restructuring service provided in the operation of the Full Circle business is to prepare and arrange for consumer proposals to be filed by a licensed trustee under the *BIA*. Full Circle also represents that Full Circle may negotiate debt settlements directly with a debtor’s creditors but that service is rarely, if ever, provided in the operation of the Full Circle business.

18. Under the standard operating procedures of the Full Circle business, a debtor is required, after an initial consultation, to enter in a standard form of contract for debt restructuring services, the printed terms of which are not negotiable. The standard form agreement used in the operation of the Full Circle business provides that a debtor will pay a retainer fee upon execution of the agreement in a set amount, which has varied from time to time but which has been at least \$1,000, and that minimum amount of \$1,000 of the retainer fee is non-refundable in all cases.

19. Under the standard operating procedures of the Full Circle business, once the standard form agreement is executed by the debtor and the retainer fee is collected:

- a. Full Circle instructs the debtor to cease making any payments to its creditors; and
- b. Full Circle then collects information from the debtor, prepares a consumer proposal to present to a licensed trustee, and arranges for the debtor to meet with the licensed trustee concerning the consumer proposal.

20. If the debtor is eligible to make a consumer proposal, the debtor then pays the licensed trustee the \$750 fee payable under the *BIA* to file the consumer proposal and the consumer proposal process then proceeds under the *BIA*. If the consumer proposal is accepted by the debtor's creditors, then the debtor pays the additional \$750 fee and the percentage fee which the licensed trustee is permitted to charge under the *BIA*.

21. The fees charged by Full Circle are payable by the debtor in addition to the fees charged by the licensed trustee for the consumer proposal, and are collected before the consumer proposal is even presented to the creditors and irrespective of whether the consumer proposal is accepted by the creditors. Further, if the consumer proposal is accepted, the collection by Full Circle of its fees from the debtor will result in payment by the debtor of an amount in excess of the percentage amounts that may be charged to a debtor for an accepted compromise under either the *BIA* or the *BPCPA*, and Full Circle knows that will be the case when it collects its fees from the debtor.

22. The standard operating procedures of the Full Circle business, as set out in paragraphs 17 through 21 above, are designed to delay the filing of a consumer proposal by the debtor so that the additional income now available to the debtor, as a result of the debtor ceasing to make payments

to the debtor's creditors as instructed by Full Circle, may be used to pay fees to Full Circle for the preparation of the consumer proposal. These operating procedures have the effect of:

- a. increasing the amount of debt that must be compromised under the eventual consumer proposal submitted by the licensed trustee; and
 - b. increasing the fees payable by the debtor for the consumer proposal in the amount far beyond that permitted the *BIA* or the *BPCPA*.
23. Full Circle, in operating the Full Circle business, has:
- a. provided debt restructuring services to the Class members in accordance with the standard operating procedures of the Full Circle business set out in paragraphs 17 through 21 above; and
 - b. collected fees from the Class members for those debt restructuring services, as set out in paragraphs 18 through 21 above.

The Directing Minds of Full Circle

24. At all material times, Full Circle carried on business under the direction and control of the Defendants Matthew Boulton and Kurt Harvey Wipp and each of these individual Defendants was a directing mind of Full Circle.

25. At all material times, the Defendants Matthew Boulton and Kurt Harvey Wipp directed Full Circle to carry on its business in a manner that was, and to collect and receive fees in the operation of the Full Circle business that were, contrary to the *BIA* and *BPCPA*, and each of them did so knowing that, or in willful or reckless disregard as to whether, the business of Full Circle was operated in a manner that was, and the fees collected in the operation Full Circle business were, contrary to the *BIA* and *BPCPA*.

The Plaintiff's Contract for Debt Restructuring Services

26. In early January 2018, the Plaintiff contacted Alpine Credits to ask about a home equity loan for debt restructuring. Alpine Credits is another member of the Amur Financial group of companies, and referred the Plaintiff to Full Circle.

27. On about January 12, 2018, following an initial consultation with Full Circle online and by e-mail, the Plaintiff entered into a standard form of contract for debt restructuring services with Full Circle. The contract was styled "Full Circle Debt Solutions Consulting Agreement" and attached a document entitled "Full Circle Debt Solutions Memorandum of Understanding".

28. On about January 15, 2018, the Plaintiff made an initial payment of \$400 to Full Circle. The Plaintiff then made the following instalment payments to Full Circle by pre-authorised payment on about the dates indicated:

- a. February 15, 2018 - \$400; and
- b. March 15, 2018 - \$400.

29. In accordance with the standard operating procedures of the Full Circle business, Full Circle gathered information from the Plaintiff to prepare materials to make a consumer proposal, and corresponded with the Plaintiff by e-mail concerning that information. At no time did Full Circle take steps to negotiate directly with the Plaintiff's creditors. Full Circle did advise the Plaintiff to stop paying the Plaintiff's creditors.

30. After the final instalment payment, on about March 15, 2018, Full Circle arranged for the Plaintiff to meet with a licensed trustee, at the firm of MNP. Upon reviewing the materials prepared with the assistance of Full Circle, the licensed trustee informed the Plaintiff that he did not need to make a consumer proposal as he could afford to repay his debts, and the Plaintiff was referred by the trustee to the Credit Counselling Society.

Part 2: RELIEF SOUGHT

31. A declaration pursuant to s. 172(1)(a) of the *BPCPA* that:
 - a. the fees charged by Full Circle for debt restructuring services constitute an unconscionable act or practice, contrary to ss. 8(1) and 9(1) of the *BPCPA*; and
 - b. the fees charged by Full Circle for debt restructuring services are contrary to s. 127(3) and (4) of the *BPCPA*.

32. A declaration that the debt restructuring services provided in the operation of the Full Circle business are contrary to ss. 66.11 and 202(1)(f) of the *BIA* and s. 129(1) of the *Bankruptcy Rules*.

33. An Order pursuant to s. 172(3)(a) of the *BPCPA* that Full Circle restore to the Class all fees that the Defendants collected from the Class in contravention of the *BPCPA*.

34. An accounting and restitution of all fees collected by Full Circle in the operation of the Full Circle business in contravention of the *BIA* and the *BPCPA*, on the ground of unjust enrichment.

35. Damages under s. 171 of the *BPCPA*.

36. A declaration that the Defendants, Michael Boulton and Kurt Harvey Whipp, are jointly and severally liable to the Class members for any liability of Full Circle arising out of the collection of fees from the Class members in the operation of the Full Circle business.

37. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

Part 3: LEGAL BASIS

Violation of the *BPCPA*

38. The debt restructuring services provided in the operation of the Full Circle business to the Plaintiff and the Class members, in respect of their personal debt, were “consumer transactions” within the meaning of s. 1 of the *BPCPA*, and Full Circle was a supplier of those consumer transactions, with the meaning of s. 1 of the *BPCPA*.

39. The fees charged for debt restructuring services provided in the operation of the Full Circle business constitute an unconscionable act and practice, within the meaning of s. 8 of the *BPCPA*, because those fees grossly exceeded the total price at which the same or similar services were available from licensed trustees under the *BIA*, or licensed debt repayment agents under the *BPCPA* acting lawfully within the limits imposed by the *BPCPA*, and the fees charged to the Plaintiff and the Class members were contrary to, and collected in violation of, s. 9(1) of the *BPCPA*.

40. The debt restructuring services offered and provided in the operation of the Full Circle business, as set out in paragraphs 17 through 21 above, fall within the definition of the business and occupation of a “debt repayment agent” in s. 125 of the *BPCPA*. Full Circle and Matthew Boulton are debt repayment agents under the *BPCPA*.

41. The debt restructuring services provided in the operation of Full Circle business were offered and provided in violation of the provisions of the *BPCPA* dealing with debt repayment agents, as:

- a. the standard form agreements for the debt restructuring services used in the operation of the Full Circle business, and used to provide the debt restructuring services to the Plaintiff and Class members, did not contain the terms, information and disclosure statements prescribed by the *Regulation*, contrary to s. 127(2)(c) of the *BPCPA*; and
- b. the fees charged for restructuring services in the operation of the Full Circle business, and collected from the Plaintiffs and the Class members, were charged

and collected before any repayment proposal was accepted by their creditors, contrary to s. 127(4) of the *BPCPA*, and the collection of those fees results in the payment by Class members of fees for an accepted compromise in excess of the prescribed amount under s. 15 of the *Regulation*, contrary to s. 127(3) of the *BPCPA*.

42. The Plaintiff and Class members are entitled to restoration of all fees charged to them by Full Circle in violation of the *BPCPA*, or alternatively are entitled to damages under s. 171 for those fees.

Violation of the *BIA*

43. The debt restructuring services provided in the operation of the Full Circle business were contrary to the *BIA* in that:

- a. none of Full Circle, Matthew Boulton, Kurt Harvey Wipp or any of the employees of Full Circle were licensed trustees under the *BIA*, in breach of *BIA*, ss. 2, 66.11, 66.12, 66.13 and Directive 13R6;
- b. the services provided in the operation of the Full Circle business concerning consumer proposals are services that the *BIA* requires a licensed trustee to provide, in breach of *BIA*, ss. 2, 66.11, 66.12, 66.13 and 202; and
- c. the fees charged by Full Circle in relation to the consumer proposal exceed the fees permitted to be charged for filing a consumer proposal under the *BIA*, s. 66.12 and *Bankruptcy Rules*, ss. 129, 131.

44. In addition, s. 202(1)(f) of the *BIA* prohibits a person from directly or indirectly soliciting or canvassing any person to make a consumer proposal. The debt restructuring services offered and provided in the operation of the Full Circle business constitute the direct solicitation or canvassing of the Plaintiff and Class members to make a consumer proposal under the *BIA*, and are contrary to and prohibited by s. 202(1)(f) of the *BIA*.

Unjust Enrichment

45. Full Circle has been enriched by the receipt of fees collected from the Plaintiff and Class members in the operation of the Full Circle business.

46. The Plaintiff and the Class members have been deprived through the payment of those same fees collected from the Plaintiff and Class members in the operation of the Full Circle business.

47. There is no juristic reason why Full Circle should have received or should retain the benefit of fees collected from the Plaintiff and Class members in violation of the *BPCPA* and *BIA*. In particular, the breaches of the *BPCPA* and *BIA*, as set out in paragraphs 41 through 44 above, void the contracts between the Plaintiffs and Class members as a juristic reason for the enrichment of Full Circle.

48. As a result, Full Circle has been unjustly enriched from the fees collected from the Plaintiffs and the Class members in violation of the *BPCPA* and the *BIA*, and the Plaintiff and Class members are entitled to restitution of those fees.

Joint and Several Liability of the Directing Minds

49. Matthew Boulton and Kurt Harvey Whipp are jointly and severally liable for the acts of the Full Circle in collecting fees in the operation of the Full Circle business from the Plaintiff and Class members that are contrary to the *BIA* and *BPCPA*, as those acts were committed by Full Circle at the direction and under the control of Matthew Boulton and Kurt Harvey Whipp, and each of them knew, or were willfully blind to whether, the fees collected in the operation of the Full Circle business were contrary to the *BIA* and *BPCPA*.

50. The Plaintiff pleads and relies on the *Limitation Act*, SBC 2012, c 13, s 30.

Plaintiff's address for service:

Bennett Mounteer LLP
#400 - 856 Homer Street
Vancouver, British Columbia, V6B 2W5
pb@hbmlaw.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC
V6Z 2E1

Date: April 4, 2018



Signature of lawyer for the Plaintiff

Mathew P. Good

Paul R. Bennett
Mark W. Mounteer

Co-Counsel for the
Plaintiff
Good Barristers

Co-Counsel for the
Plaintiff
Bennett Mounteer LLP

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.

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 is a claim for damages arising out of the Defendants' provision of debt consulting services in breach of the provincial Business Practices and Consumer Protection Act and the federal Bankruptcy and Insolvency Act.

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:

Bankruptcy and Insolvency Act, RSC 1985, c B-3

Business Practices and Consumer Protection Act, SBC 2004, c 2

Class Proceeding Act, RSBC 1996, c 50

Court Order Interest Act, RSBC 1996, c 79