

FEB 15 2016

No.
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

Between

15FEB16 1603319 RISS
71477 5161497

200.00

VANCOUVER AQUARIUM MARINE SCIENCE CENTRE

Plaintiffs

and

**GARY CHARBONNEAU, EVOTION FILMS INC. also known
as EVOTION INC., JOHN DOE, AND JANE DOE**

Defendants

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,

- 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 Vancouver Aquarium Marine Science Centre is a not for profit society registered in British Columbia, and has an address for service in this matter at 2900 – 595 Burrard Street, Vancouver, British Columbia.
2. The defendant, Gary Charbonneau, is an individual residing in British Columbia, whose occupation is unknown to the plaintiff, but who has an address of 160-170 W. 1st, North Vancouver, BC, V7M 3P2, and an email address at evotioninc@gmail.com.
3. The defendant, Evotion Films Inc. also known as Evotion Inc. (“Evotion”), is a company registered in British Columbia with a registered and records office at 304-1200 Lonsdale Avenue, North Vancouver, British Columbia, V7M 3H6. The defendant Charbonneau is the sole director and officer of Evotion.
4. The defendant, Jane Doe has assisted Charbonneau and/or Evotion in committing the causes of action described herein, but her true identity is not known to the plaintiff.
5. The defendant, John Doe has assisted Charbonneau and/or Evotion in committing the causes of action described herein, but his true identity is not known to the plaintiff.
6. The Aquarium operates the Vancouver Aquarium, and is the creator, operator and owner of all images, video, audio, text and other works contained in:
 - a) the website www.vanaqua.org (the “Aquarium Website”);
 - b) www.aquablog.ca/ (the “Aquarium Blog”);

- c) a Youtube channel of Aquarium works (the “Aquarium Youtube”);
 - d) an audiovisual work entitled “Vancouver Aquarium: Cetaceans in Our Care” (the “Cetaceans Video”) , which appears on the Aquarium website and on the Aquarium Youtube channel; and
 - e) the physical site of the Aquarium, located in Vancouver, British Columbia (the “Aquarium Site”).
7. The Aquarium Website contains the following terms, accepted by anyone using the said website. The defendants accessed and used the Aquarium Website. As such, the terms below are contractual terms as between the plaintiff and defendants:

TERMS AND CONDITIONS OF USE

Materials on this web site were produced by the Vancouver Aquarium Marine Science Centre (the Aquarium) to provide information about the Aquarium's facility, programs and services and to further the Aquarium's goal of effecting the conservation of aquatic life.

Unless otherwise stated, all or any information, text, video, audio, animation or image files on this web site are provided for private or educational use only. All other uses are prohibited without authorization from the Aquarium, including: reproduction; redistribution in any manner; storage in any medium; extraction; and alteration in any respect.

Need Permission?

Anyone wishing to use the materials from this web site for these or other purposes must obtain prior written approval from the Aquarium. Please contact:

Meighan Makarchuk
Web Content Manager
Vancouver Aquarium
webmaster@vanaqua.org

8. Further contractual terms as between the plaintiff and the defendant Evotion and/or the defendant Charbonneau are set forth in a written contract signed by Charbonneau, purportedly on behalf of Evotion, including the following terms:
- 1. **DETAILS OF USE OF PROPERTY:** Commencing on April 28, 2015, Producer [defined as Evotion Inc.] shall have access to the Property [defined as 834 Avison Way, Greater Vancouver, B.C. V6G 3E2] as is determined by Vancouver Aquarium, and such use may continue for a period of 1 hour.

2. GRANT OF ACCESS: Producer shall have access to the Property as determined by Vancouver Aquarium. Said permission shall include the right of Producer to bring in a camera and all filming and recordings shall be produced on the day of the granted interview. Previous or future recordings taken at the Property shall not be permitted or use by the Producer.

...

7. RIGHTS TO RECORDING: Producer shall have the rights to images and sounds recorded on the Property on the day of April 28, 2015, for use in making, distributing, or exhibiting Film [as defined in the document]. Producer may not resell, remarket or transfer any parts of the recordings to a third-party for use at any time other than as part of the film. The publication by the defendants of the Offending Video on Vimeo is currently located at <https://vimeo.com/148035941>
9. The defendants have produced a video entitled Vancouver Aquarium Uncovered (the "Offending Video"), and have published the said video in screenings within British Columbia as well as to the world on www.youtube.com, www.vimeo.com, and on a website registered by Charbonneau and operated by the defendants, www.vancouveraquariumuncovered.com. (the "Defendants' Website")
10. The publication by the defendants of the Offending Video on Youtube is currently located at www.youtube.com/watch?v=pmG2S0goqKI
11. In the Offending Video, the defendants used, included and re-published, without authorization from the plaintiff, the plaintiff's copyrighted works in violation of the *Copyright Act*. These violations were aggravated by the defendants' publishing of the Offending Video to the world on the defendants' website, and by the defendants transferring and/or remarketing the video to Vimeo and Youtube for further publication to the world. The particulars of the plaintiff's copyrighted works which were illegally used in the Offending Video include but are not limited to the particulars set forth in Schedule "A" to this Notice of Civil Claim.
12. The defendants' violations of the plaintiff's copyright continue as of the date of this Notice of Civil Claim, and will continue unless restrained and enjoined by this Court.
13. The defendants Charbonneau and/or Evotion have violated the contractual terms described herein by publishing images taken on the plaintiff's property for commercial purposes, including but not limited to all compensation received for screenings and other

publication of the Offending Video, and money raised by Charbonneau through advertising on the Defendants' Website, fundraising requests on the Defendants' Website and elsewhere, including an Indiegogo monetary campaign at <https://www.indiegogo.com/projects/vancouver-aquarium-uncovered#/>, and in further breach by transferring and/or remarketing the video, including the images covered by the contract to third parties for re-publication, namely Youtube and Vimeo.

Damages and Injunctive Relief

14. The breaches of contract described herein have caused and continue to cause damages to the plaintiff, and as such the plaintiff claims general damages and special damages.
15. The violations of copyright described herein are numerous and ongoing, in respect of which the plaintiff has suffered special, general and statutory damages.
16. The defendants have each been guilty of reprehensible, insulting, high-handed, spiteful, malicious and oppressive conduct, and such conduct by the defendants justifies the court in imposing a substantial penalty of exemplary damages on the defendants, imposing an award of aggravated damages.
17. There is a serious risk that the defendants will renew or continue its violations described herein unless the defendants are restrained from doing so by an Order of this Honourable Court.

Part 2: RELIEF SOUGHT

1. General and special damages.
2. Aggravated and punitive damages.
3. Special damages.
4. An interlocutory and permanent injunction restraining the publication of the Offending Video on Vimeo and Youtube including the locations described herein, at www.vancouveraquariumuncovered.com and any other publication of the Offending

Video, and requiring the removal of the Offending Video from Youtube, Vimeo, www.vancouveraquariumuncovered.com and any other public location.

5. Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.
6. Such further and other relief as this Honourable Court may deem just.
7. Costs.

Part 3: LEGAL BASIS

1. Common law of contract; and
2. *Copyright Act of Canada* and jurisprudence.

Plaintiff's address for service: Owen Bird Law Corporation
P.O. Box 49130
Three Bentall Centre
2900-595 Burrard Street
Vancouver, BC V7X 1J5
(Attention: Daniel W. Burnett, Q.C.)

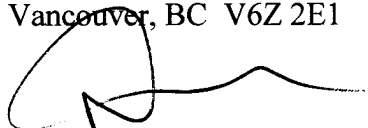
Fax number address for service (if any): (604) 632-4433

E-mail address for service (if any): dburnett@owenbird.com

Place of trial: Vancouver, BC

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

Date: February 15, 2016



Signature of lawyer for plaintiffs
Daniel W. Burnett, Q.C.

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

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of copyright and breach of contract.

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:

Copyright Act, R.S.C. 1985, c. C-42.

SCHEDULE "A"

"Vancouver Aquarium Uncovered" – unauthorized and illegal uses by Defendants of Plaintiff's copyrighted images and video

Time Stamp	Aquarium Images or Footage Used	Source
0:21	Photo of whale at Aquarium	Aquarium Website and Aquarium Blog
0:28	Photo of Chester	Aquarium Blog
1:01	Cetaceans in our Care audio/video footage	Cetaceans Video, Aquarium Website and Aquarium Youtube
3:32	Cetaceans in our Care audio/video footage	Cetaceans Video , Aquarium Website and Aquarium Youtube
3:42	Photos of rescued animals	Aquarium Website and Aquarium Blog
24:38	Belugas swimming in habitat	Aquarium Property
26:35	Students interviews near beluga habitat	Aquarium Site
33:02	Audio/video footage of dolphin show	Aquarium Site
36:55	Photo of dolphin	Aquarium Website
49:35	Audio/video footage of children at beluga habitat	Aquarium Site
50:39	Audio/video footage of Qila swimming for two minutes	Aquarium Site
57:48	Photo of rescue centre	Aquarium Blog
57:55	Photo of beluga whale with staff	Aquarium Website
57:56	Photo of dolphin	Aquarium Website
1:00	Photo of Helen swimming in habitat	Aquarium Site