



S-071269

No.
Vancouver Registry

In the Supreme Court of British Columbia

Between:

MICHELLE FAIRHURST

Plaintiff

and:

ANGLO AMERICAN PLC, CENTRAL HOLDINGS
LIMITED, S.A., DE BEERS CANADA INC.,
DB INVESTMENTS, INC., DE BEERS S.A., DE BEERS
CONSOLIDATED MINES, LTD., THE DIAMOND TRADING
COMPANY LIMITED, CSO VALUATIONS A.G., and
DE BEERS CENTENARY A.G.

Defendants

WRIT OF SUMMONS

(Name and address of each plaintiff):

Michelle Fairhurst
c/o Camp Fiorante Matthews
4th Floor, 555 West Georgia St.
Vancouver, BC
V6B 1Z6

(Name and address of each defendant):

Anglo American PLC
20 Carlton House Terrace
London, SW1Y 5AN
United Kingdom

Central Holdings Limited, S.A.
9 rue Sainte Zithe
L-2763 Luxembourg
Luxembourg

DB Investments, Inc.
9 rue Sainte Zithe
L-2763 Luxembourg
Luxembourg

De Beers S.A.
9 rue Sainte Zithe
L-2763 Luxembourg
Luxembourg

De Beers Consolidated Mines, Ltd.
17 Charterhouse Street
London, EC 1N 6RA
United Kingdom

De Beers Centenary A.G.
Lagensandstrasse 27
CH-6000 Lucerne
Switzerland

De Beers Canada Inc.
66 Wellington Street
Suite 3600
Toronto, Ontario

The Diamond Trading Company Limited
17 Charterhouse Street
London, EC 1N 6RA
United Kingdom

CSO Valuations A.G.
17 Charterhouse Street
London, EC 1N 6RA
United Kingdom

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s):

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

(a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and

(b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

(a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or

(b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or if the time for appearance has been set by order of the court, within that time]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of:

(a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and

(b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

800 Smithe Street, Vancouver, BC, V6Z 2E1
Begbie Square, New Westminster, BC, V3M 1C9

(2) The plaintiff's address for delivery is:

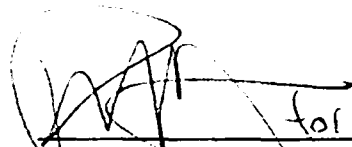
Camp Fiorante Matthews
4th Floor, 555 West Georgia Street
Vancouver, BC V6B 1Z6

(3) The name and office address of the plaintiff's solicitor is:

J.J. Camp, Q.C.
Camp Fiorante Matthews
4th Floor, 555 West Georgia Street
Vancouver, BC V6B 1Z6

The plaintiff's claim is set out in the attached Statement of Claim.

Dated: 21 Feb 2007



J.J. Camp, Q.C.
Camp Fiorante Matthews

Endorsement on Originating Process for Service Outside British Columbia

The plaintiff claims the right to serve this writ on the defendants, Anglo American PLC., Central Holdings Limited, S.A., De Beers Canada Inc., DB Investments, Inc., De Beers S.A., De Beers Consolidated Mines, Ltd., The Diamond Trading Company Limited, CSO Valuations A.G., and De Beers Centenary A.G. outside British Columbia on the ground that:

(a) this matter concerns a tort committed in British Columbia, pursuant to section 10(g) of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28.

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Plaintiff

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DB INVESTMENTS, INC., DE BEERS S.A., DE BEERS
CONSOLIDATED MINES, LTD., THE DIAMOND TRADING
COMPANY LIMITED, CSO VALUATIONS A.G., and
DE BEERS CENTENARY A.G.

Defendants

STATEMENT OF CLAIM

THE REPRESENTATIVE PLAINTIFF

1. The plaintiff is a British Columbia resident with an address for delivery C/O Camp Fiorante Matthews, 4th Floor, 555 West Georgia Street, Vancouver, British Columbia. During the Class Period as defined below, the plaintiff purchased a Gem Grade Diamond as defined below, in British Columbia.

THE CLASS AND CLASS PERIOD

2. This action is brought on behalf of the plaintiff and all persons resident in British Columbia who purchased Gem Grade Diamonds as defined below (collectively the "Class Members"), from February 22, 1997 to the present (the "Class Period") or such other class definition or class period as the court may ultimately decide on the motion for certification.

DEFENDANTS

3. Anglo American PLC ("Anglo American") is a British corporation with an office and place of business at 20 Carlton House Terrace, London . Anglo American owns 45% of DB Investments, Inc.

4. Central Holdings Limited, S.A. is a Luxembourg corporation with an office and place of business at 9 rue Sainte Zithe, L-2763, Luxembourg. Central Holdings Limited, S.A. owns 40% of DB Investments, Inc.

5. DB Investments, Inc. ("DB Investments") is a Luxembourg corporation with an office and place of business at 9 rue Sainte Zithe, L-2763, Luxembourg. DB Investments owns of De Beers S.A.

6. De Beers S.A. ("DBSA") is a Luxembourg corporation with an office and place of business at 9 rue Sainte Zithe, L-2763, Luxembourg. DBSA owns De Beers Consolidated Mines, Ltd., De Beers Centenary A.G. and De Beers Canada Corporation.

7. De Beers Consolidated Mines, Ltd. ("DB Consolidated") is a Republic of South Africa corporation with an office and place of business at 17 Charterhouse Street, London EC 1N 6RA, United Kingdom.

8. De Beers Centenary A.G. ("DB Centenary") is a Swiss corporation with an office and place of business at Lagensandstrasse, 27 CH-6000, Lucerne, Switzerland.

9. De Beers Canada Inc. is a federally incorporated company with an office and place of business at 66 Wellington Street West, Suite 3600, Toronto, Ontario.

10. The Diamond Trading Company Limited ("DTC"), the marketing arm of the De Beers Group, is incorporated in the United Kingdom with an office and place of business at 17 Charterhouse Street, London EC1N 6RA, United Kingdom.

11. CSO Valuations A.G. ("CSOV") is a Swiss corporation with an office and place of business at 17 Charterhouse Street, London EC1N ERA, United Kingdom.

12. The defendants DB Investments, DBSA, DB Consolidated, DB Centenary, and De Beers Canada Inc. are referred to collectively herein as the "De Beers Group".

13. Before 2000, the De Beers Group distributed Gem Grade Diamonds through an entity called the "Central Selling Organization" ("CSO"). Plaintiffs believe that CSOV may be that entity. In 2000, DTC replaced CSO as the Gem Grade Diamond-marketing arm of the De Beers Group.

14. The acts in this complaint, alleged herein to have been done by each defendant, were, upon information and belief, authorized, ordered or done by officers, agents, employees, or representatives of each while actively engaged in the management, direction, control or transaction of its business affairs.

CO-CONSPIRATORS

15. Various other corporations, organizations, firms and individuals in the Gem Grade Diamond industry who are not defendants in this action, including the sightholders discussed in paragraph 22 below and other diamond producers such as the Russian company ALROSA Co., Ltd., participated as co-conspirators in the violations alleged herein, and performed acts and made statements in furtherance thereof. The names and details of these co-conspirators are within the knowledge of the defendants and not the plaintiff.

THE GEM GRADE DIAMOND INDUSTRY

16. A diamond is carbon in a crystalline form. The diamond market is conventionally divided into two segments:

- a. natural and synthetic diamonds that are used in a wide range of manufacturing processes ("Industrial Diamonds"); and
- b. natural diamonds for use as gemstones in jewellery or for investment ("Gem Grade Diamonds").

17. Gem Grade Diamonds are mined from the earth and, after cutting, polishing and other finishing, are valued based upon their beauty, color, cut, clarity, and other characteristics.

Gem Grade Diamonds are sold in their polished form to purchasers who incorporate the diamonds into jewelry and other products for resale.

18. During the Class Period, the defendants were the source of most Gem Grade Diamonds sold in the world. Through direct ownership, or agreements and combinations with others, the defendants controlled about two-thirds of the world's supply of Gem Grade Diamonds, particularly diamonds in larger sizes. The rest of the Gem Grade Diamond industry is highly fragmented.

19. During the Class Period, the defendants routinely acknowledged that their control over the Gem Grade Diamond industry constituted an illegal cartel that violates antitrust laws. For example, in 1999, the defendants' Chairman, Nicholas Oppenheimer explained that the De Beers Group likes to think of itself as the world's best known and longest running monopoly. He declared publicly that, as a matter of policy, the De Beers Group violated antitrust law by managing the Gem Grade Diamond market, controlling supply, managing prices and acting collusively with other firms in the Gem Grade Diamond industry.

20. The defendants' control over the Gem Grade Diamond industry began through agreements with other producers more than a century ago. In 1890, De Beers Consolidated signed a sales contract with the newly formed London Diamond Syndicate, which agreed to purchase the entire production from all its mines, thereby foreclosing the market to others. In 1930, the London Diamond Syndicate became the Diamond Corporation which, in turn, formed the basis for the CSO that functioned as defendants' marketing arm until DTC was substituted for the same role in 2000.

21. During the Class Period, the defendants obtained Gem Grade Diamonds from mines they owned and from the mines of other mining companies under contract to them, including mines in Canada. The Gem Grade Diamonds were sorted by the CSO, and now by the DTC. The defendants created a price book that valued Gem Grade Diamonds according to certain physical characteristics, according to its weight, shape, quality (i.e. the absence or presence of cracks and occlusions). Once the Gem Grade Diamonds were sorted and graded, they were priced according to the price book.

22. During the Class Period, Gem Grade Diamonds of various grades were placed into boxes for distribution at a "sight." The defendants controlled the distribution of Gem Grade Diamonds by the use of "sightholders." A sightholder is an individual selected by and operating under defendants' direction who takes delivery, generally in London, of a box of rough Gem Grade Diamonds at a "sight" during a "sight week" held approximately ten times per year. The sightholder re-sells the Gem Grade Diamonds, either as rough diamonds, or after cutting, polishing and other finishing, for distribution through manufacturers, wholesalers and jewelers to consumers and other end users.

THE CONSPIRACY AND UNLAWFUL INTERFERENCE WITH ECONOMIC INTERESTS

23. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants, conspired with each other, the sightholders and others to illegally fix the prices of Gem Grade Diamonds sold in Canada including in British Columbia and supplied to manufacturers, wholesalers, and jewellers, for inclusion in products sold in Canada including in British Columbia. In furtherance of the conspiracy, such persons engaged in communications, conversations and attended meetings with each other in which these persons unlawfully agreed to:

- (a) fix, increase and maintain at artificially high levels the prices at which the defendants would sell Gem Grade Diamonds in Canada including in British Columbia and to manufacturers, wholesalers, and jewellers, for inclusion in products sold in Canada including in British Columbia;
- (b) exchange information in order to monitor and enforce adherence to the agreed-upon prices for Gem Grade Diamonds; and
- (c) allocate the market share or to set specific volumes of Gem Grade Diamonds that the defendants would manufacture and supply in Canada including in British Columbia and elsewhere.

24. The Canadian subsidiaries of the foreign Defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies and thereby acted as agents in carrying out the conspiracy and are liable for such acts.

25. During the Class Period, at times and places some of which are unknown to the plaintiff, the defendants wrongfully, unlawfully, maliciously and lacking *bona fides* conspired and agreed together, the one with the other or others of them and with their servants and agents:

- (a) to suppress and eliminate competition in the sale of Gem Grade Diamonds in British Columbia, Canada and elsewhere, by fixing the price of Gem Grade Diamonds at artificially high levels and allocating the market share and volume of Gem Grade Diamonds;
- (b) to prevent or lessen, unduly, competition in the manufacture, sale and distribution of Gem Grade Diamonds in British Columbia, Canada, and elsewhere by reducing the supply of Gem Grade Diamonds;
- (c) to allocate among themselves the customers for Gem Grade Diamonds in British Columbia, Canada, and elsewhere;
- (d) to allocate among themselves and others market shares of Gem Grade Diamonds in British Columbia, Canada, and elsewhere; and
- (e) to allocate among themselves and others all or part of certain contracts to supply Gem Grade Diamonds in British Columbia, Canada, and elsewhere.

26. The defendants were motivated to conspire and their predominant purposes and predominant concerns were:

- (a) to harm the plaintiff and other Class Members by requiring them to pay artificially high prices for Gem Grade Diamonds and for products containing Gem Grade Diamonds; and
- (b) to illegally increase their profits on the sale of Gem Grade Diamonds.

27. In furtherance of the conspiracy, during the Class Period, the following acts were done by the defendants, their servants, agents and co-conspirators:

- (a) they agreed to fix, increase and maintain at artificially high levels the price of Gem Grade Diamonds and to coordinate price increases for the sale of Gem Grade Diamonds;
- (b) they agreed to allocate the volumes of sales of, and customers and markets for Gem Grade Diamonds among themselves;
- (c) they agreed to reduce the supply of Gem Grade Diamonds;
- (d) they met secretly to discuss prices and volumes of sales of Gem Grade Diamonds;

- (e) they exchanged information regarding the prices and volumes of sales of Gem Grade Diamonds for the purposes of monitoring and enforcing adherence to the agreed-upon prices, volumes of sales and markets;
- (f) they instructed members of the conspiracy at meetings not to divulge the existence of the conspiracy; and
- (g) they disciplined any party which failed to comply with the conspiracy.

28. In addition, the defendants used threats and promises and entered into agreements with sightholders and other resellers of Gem Grade Diamonds to fix the resale price of Gem Grade Diamonds at artificially high levels. The defendants also refused to supply Gem Grade Diamonds and/or supplied inferior quality Gem Grade Diamonds to sightholders who had low pricing policies.

29. The acts particularized in paragraphs 23 to 28 were also in breach of Part VI of the *Competition Act* RS 1985 c. C-34 and render the defendants liable to pay damages pursuant to s. 36 of the *Competition Act*. In particular, the defendants combined with each other, and all of the defendants combined or agreed with others, including the sightholders, to prevent or lessen, unduly, competition and to otherwise restrain or injure competition unduly. The defendants dictated the terms of these combinations and agreements, and were aware or ought to have been aware that the effect of the agreements would be to prevent or lessen competition unduly contrary to section 45 of the *Competition Act*. Further, the defendants participated in bid rigging contrary to section 47 of the *Competition Act* and price maintenance and price discrimination contrary to section 61 of the *Competition Act*.

30. Further, the acts particularized in paragraphs 23 to 28 were unlawful acts directed towards the plaintiff and other purchasers of Gem Grade Diamonds or products containing Gem Grade Diamonds in British Columbia and in Canada which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and the other purchasers of Gem Grade Diamonds or products containing Gem Grade Diamonds, and the defendants are liable for the tort of civil conspiracy.

31. Further, the acts particularized in paragraphs 23 to 28 were unlawful acts intended to cause the plaintiff and the other Class Members economic loss and constituted

tortious interference with the economic interests of the plaintiff and the other Class Members and render the defendants liable to pay the resulting damages.

32. In addition, or in the alternative, to directly participating in the acts set out in this statement of claim, De Beers Canada Inc. is liable to the plaintiff pursuant to s.46(1) of the *Competition Act* because it wholly or partially implemented the foreign directives, instructions, policies, and other communications of its parent or affiliate companies who were in a position to direct or influence its policies and those communications would have been in contravention of section 45 of the *Competition Act* if they had been committed in Canada.

UNLAWFUL RESTRAINT OF TRADE

33. The acts particularized in paragraphs 23 to 28 in combination with the defendants' unilateral steps to create and abuse its dominant and controlling market share in the Gem Quality Diamond markets were calculated to produce, and have produced pernicious monopolies that virtually annihilated competition such that the defendants have been able to and did charge and receive artificially inflated and unreasonable prices. In particular the defendants used their dominant and controlling market share to, among other things:

- a. control the rate of production and supply of Gem Grade Diamonds;
- b. control distribution of Gem Grade Diamonds;
- c. manage prices of Gem Grade Diamonds;
- d. fix, raise, maintain and stabilize the prices of Gem Grade Diamonds at non-competitive levels;
- e. arbitrarily exclude and discriminate against purchasers of Gem Grade Diamonds; and
- f. tying low-carat, lower quality diamonds to high quality, high carat diamonds and using its monopoly power to force purchasers to either accept or reject the tied purchase or be completely cut off as a purchaser;

UNJUST ENRICHMENT, WAIVER OF TORT AND CONSTRUCTIVE TRUST

34. In the alternative, the plaintiff waives the tort and pleads that it and the other Class Members are entitled to recover under restitutionary principles.

35. The defendants have each been unjustly enriched by the receipt of the artificially induced overcharge on the sale of Gem Grade Diamonds. The plaintiff and other Class Members have suffered a deprivation in the amount of such overcharge attributable to the sale of Gem Grade Diamonds and products containing Gem Grade Diamonds in British Columbia.

36. Since the artificially induced overcharge received by the defendants from the plaintiff and each Class Member resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants' retaining any part of such overcharge and in particular, any contracts upon which the defendants purport to rely to receive the illegal overcharge are void and illegal.

37. The defendants are constituted as constructive trustees in favour of the Class Members for all of the artificially induced overcharge from the sale of Gem Grade Diamonds because, among other reasons:

- (a) the defendants were unjustly enriched by the artificially induced overcharge;
- (b) the Class Members suffered a deprivation because of the artificially induced overcharge;
- (c) the defendants engaged in inappropriate conduct and committed a wrongful act in conspiring to fix the price of Gem Grade Diamonds and allocate market share and volume of Gem Grade Diamonds;
- (d) the artificially induced overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
- (e) justice and good conscience require the imposition of a constructive trust;
- (f) the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
- (g) there are no factors that would, in respect of the artificially induced overcharge, render the imposition of a constructive trust unjust.

38. The plaintiff pleads that equity and good conscience requires the defendants to hold in trust for the plaintiff and the other Class Members all of the artificially induced overcharge from the sale of Gem Grade Diamonds and to disgorge this overcharge to the plaintiff and the other Class Members.

THE RESULTING DAMAGES OF THE PLAINTIFF AND THE OTHER CLASS MEMBERS

39. The plaintiff and other Class Members have suffered damages as a result of the foregoing conspiracy, which had the effect of raising, maintaining and stabilizing prices of Gem Grade Diamonds and products containing Gem Grade Diamonds at artificial and non-competitive levels.

40. During the Class Period, the plaintiff and other Class Members have directly or indirectly purchased hundreds of millions of dollars of Gem Grade Diamonds and products containing Gem Grade Diamonds manufactured and distributed by the defendants. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other Class Members paid more for Gem Grade Diamonds or products containing Gem Grade Diamonds than they would have paid in the absence of the illegal combination and conspiracy. As a result, they have been injured in their business and property and have suffered damages in an amount presently undetermined.

41. The plaintiff asserts that the combined damages of itself and of the other Class Members are capable of being quantified on an aggregate basis as the difference between the prices actually obtained by the defendants for Gem Grade Diamonds and the prices which would have been obtained in the absence of the illegal agreements.

PUNITIVE DAMAGES

42. The plaintiff pleads that the defendants' conduct as particularized in paragraphs 23 to 28 was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of each Class Member, indifferent to the consequences and as such renders the defendants liable to pay punitive damages.

THE RELEVANT STATUTES

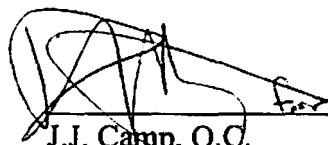
43. The plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C., 1996 c. 50, and the *Competition Act*, R.S. 1985, c. 19, (2nd Supp.) and all amendments thereto.

WHEREFORE the plaintiff, on its own behalf, and on behalf of the Class Members, claims against the defendants:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff;
- (b) general damages and costs for conspiracy, tortious interference with economic interests, and conduct that is contrary to Part VI of the *Competition Act*, R.S. 1985, c. 19 (2nd Suppl.);
- (c) a declaration that the defendants have been unjustly enriched at the expense of the plaintiff and the other Class Members by their receipt of the illegal overcharge;
- (d) a declaration that the defendants hold the illegal overcharge in a constructive trust for the benefit of the plaintiff and the other Class Members;
- (e) an order directing the defendants to disgorge their illegal overcharge;
- (f) punitive damages;
- (g) prejudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and
- (h) such further and other relief as to this Honourable Court may seem just.

DATED at Vancouver, British Columbia this 21st day of Feb, 2007.

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA



J.J. Camp, Q.C.
Camp Fiorante Matthews
Counsel for the Plaintiff

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DE BEERS CENTENARY A.G.

Defendants

WRIT OF SUMMONS AND STATEMENT OF CLAIM

CAMP FIORANTE MATTHEWS
Barristers & Solicitors
4th Floor, 555 West Georgia Street
Vancouver, BC
V6B 1Z6

Attention: J.J. Camp, Q.C.