

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE CORPORATION OF THE CITY OF GUELPH and
BELMONT EQUITY (HCBP) HOLDINGS LTD.

Plaintiffs

- and -

MATTHEW SOLTYS, CAILEY CAMPBELL,
~~NICOLE FREEBORN~~, JOSH GILBERT, ~~RADE KOVACEVIC~~,
SHABINA LAFLEUR-GANGJI, MATTHEW LOWELL-PELLTIER,
Members of LAND IS MORE IMPORTANT THAN SPRAWL (LIMITS)
or any agent or person acting under their instructions,
JOHN DOE, JANE DOE and other persons unknown

Defendants

AMENDED STATEMENT OF CLAIM
(Notice of Action issued on July 30, 2009)

1. The Plaintiffs claim:

- a) An interim, interlocutory and permanent injunction restraining the Defendants:
- i) from entering by any means upon the lands identified and described as:
- a. Part of Lots 16, 17, and 18 Concession 5 (Formerly Township of Puslinch), designated as Parts 1, 2, 3 and 4, 61R9655, City of Guelph; and
- b. Part of Lots 17, 18 and 19 Concession 5 (Formerly Township of Puslinch), designated as Part 5, 61R9655, City of Guelph (“the Property”);
- ii) from obstructing or interfering by any means with the use of the roadways known municipally as McWilliams Road, Downey Road, Laird Road and

Amended this, Modified ce 24 Feb 2010
Pursuant to Rule/Conformément à La Règle 26.02 (a)

Matthew Lowell
Local Registrar, Superior Court of Justice
Greffier Local, Cour supérieure de Justice

the Hanlon Parkway (being part of Highway #6) in the City of Guelph (collectively, the "Access Roads");

- iii) from obstructing the Access Roads or other roadways or access points leading into the Property;
 - iv) from preventing the Plaintiffs or their officers, directors, employees, servants or agents, or the Plaintiffs' contractors or subcontractors, or their employees, servants or agents (collectively "the Plaintiffs and their Contractors") from using the Access Roads or other roadways or access points to enter and exit the Property; and
 - v) from hindering, interfering with, intimidating, physically obstructing or otherwise impeding the operations of the Plaintiffs and their Contractors in the performance of work relating to the construction of the Hanlon Creek Business Park within the area encompassed by the Property;
- b) An Order that the Plaintiffs and their Contractors may use reasonable force to remove any barricade, vehicle or any other personal property from the Property, and to remove any barricade, vehicle or any other property from the points of entry and egress onto or from the Property on the Access Roads or other roadways, or other access points, so long as the Plaintiffs and their Contractors use no more force than is necessary in the circumstances;
- c) An Order that the Plaintiffs and their Contractors shall not be held liable for any damage to property arising from any use of reasonable force to remove property pursuant to an Order made by this Court;
- d) An Order for substituted service of the Notice of Action and Statement of Claim;

- e) Damages in the amount of ~~\$150,000.00~~ \$5,000,000.00 for conspiracy, interference with economic relations, inducing breach of contract, trespass, nuisance, and intimidation;
- f) pre judgment and post judgment interest pursuant to the provisions of the Courts of Justice Act, R.S.O. 1990, c. C43;
- g) costs on a substantial indemnity scale; and
- h) such further and other relief as this Honourable Court deems just.

The Parties

2. The Plaintiff, the Corporation of The City of Guelph (the “City”), is a City in the Province of Ontario.

3. The Plaintiff, Belmont Equity (HCBP) Holdings Ltd. (“Belmont”) is a Corporation incorporated pursuant to the laws of Ontario and carries on business as an owner and developer of land, with its head office in Ontario.

4. The City owns lands which are described as Part of Lots 16, 17 and 18 Concession 5 (Formerly Township of Puslinch), designated as Parts 1, 2, 3 and 4, 61R9655, City of Guelph and Belmont owns lands which are described as Part of Lots 17, 18 and 19 Concession 5 (Formerly Township of Puslinch), designated as Part 5, 61R9655, City of Guelph (both parts collectively are the “Property”).

5. The Property is subject to an approved Draft Plan of Subdivision for a corporate and industrial business park in the City of Guelph known as the Hanlon Creek Business Park (the “Business Park”).

6. The Defendants Matthew Soltys, Cailey Campbell, Nicole Freeborn, Josh Gilbert, Rade Kovacevic, Shabina Lafleur-Gangji, Matthew Lowell-Peltier, Jane Doe and John Doe are individuals who reside in the Province of Ontario.

7. The Defendant Land Is More Important Than Sprawl (“LIMITS”) is a group of individuals based in the City of Guelph who purport to educate people about the Business Park by taking people to the Property. Some, or all, of the individual defendants are members of, associated with, or working in co-operation with, LIMITS.

Ownership of the Business Park

8. The Business Park consists of approximately 271 hectares of land and is subject to Reference Plan 61R9655. The City purchased Parts 1, 2, 3 and 4 on Reference Plan 61R9655 in the year 2000. Belmont purchased Part 5 on Reference Plan 61R9655 in or about January, 2007.

9. The Business Park is within the boundaries of the City and is part of lands which were designated for Industrial and Corporate Business Park Development in the City’s Official Plan in 1998. The Business Park consists of former agricultural fields, meadows, wooded areas and wetlands, and it is bordered by an expressway, an industrial park, rural residential lands and agricultural lands.

10. The Property is owned by the Plaintiffs and is not, and has never been, a public place.

Approval to Build the Business Park

11. Since 2000, the City has engaged in extensive studies with respect to the Property including the environmental, cultural, aquatic and terrestrial aspects of the Property. There have been numerous public consultations.

12. The Draft Plan of Subdivision and related zoning approvals required by the Business Park were approved by the Ontario Municipal Board (OMB). The existing planning documents were approved by Order of the OMB.

13. The process of seeking approval for the Business Park has required the approval and oversight of various bodies including the Grand River Conservation Authority (the "Conservation Authority") and the Ontario Ministry of the Environment. The Plaintiffs have co-operated with these bodies.

14. The process of public consultation has included open public meetings of the City's Environmental Advisory Committee (the "Committee"). The Committee reports, and makes recommendations, to the City. The Committee remains an active and open public forum in the development process.

15. As part of the planning and consultation process, the City has, among other things, completed a lengthy Environmental Impact Study and a comprehensive Environmental Implementation Report with the assistance of numerous Terrestrial/Wetland Biologists, Certified Arborists and Aquatic Biologists. These studies and reports were available to the public.

16. As part of the Business Park development, a large area of woods and wetland will be left in the central area of the Property. Furthermore, an existing Road known as Laird Road which currently bisects and interferes with this central woodland/wetland area will be removed to restore the environment of the central woodland/wetland.

17. Important streams and tributaries will also be preserved by the Business Park development plan. Tributary A in particular will be restored to a cold water habitat, as it is to be managed by the Conservation Authority.

18. The Plaintiffs have complied with all requirements to obtain the necessary approvals to construct the Business Park and have acted as responsible stewards of the Property.

Work Begins at the Property

19. The first stage of construction of the Business Park development plan includes the construction of a culvert over Tributary A (the "Work").

20. Before beginning construction of the Work, the City prepared a detailed report describing the Work and of the aquatic resources that might be affected and provided this report to the Conservation Authority. After receipt of this report, the Conservation Authority advised that the Work would not likely result in the harmful alteration, disruption or destruction of fish habitat and provided a permit for the Work.

21. All in-water construction associated with the Work must occur between July 1 and September 30 of any year. If the Work is not completed during that time, it must be stopped and cannot resume until July 1 of the following year.

22. The City tendered the contract for the construction of the culvert over Tributary A. The Tender for the Work was awarded to Drexler Construction ("Drexler"). The City is contractually bound by the Tender for the Work.

23. During the week of July 20, 2007, Drexler attended at the Property and prepared the area for the Work, which included the installation of a silt fence to protect the environment of Tributary A during construction.

24. Drexler attended at the Property to continue construction of the Work on or about July 27, 2009, pursuant to the terms of the Tender.

Unlawful Occupation of the Property by the Defendants

25. Also on or about July 27, 2009, the Defendants entered upon the Property and interfered with, and prevented, the Work from being performed by placing themselves between construction machinery and the Work and by forcing Drexler into a situation of confrontation and demanding that Drexler cease the Work. Drexler Construction was forced to leave without completing the Work.

26. Also on or about July 27, 2009, representatives of the City attended at the Property and advised the Defendants that the Property was owned by the City and that the Defendants were trespassing on the Property. The Defendants were asked to leave the Property. The Defendants did not leave.

27. On July 29, 2009, the Plaintiffs served Trespass Notices to all unauthorized occupiers of the Property, including the Defendants. The Notices required the Defendants to leave the Property by 4 pm on July 30, 2009.

28. The Defendants did not leave the Property. Instead, as of July 31, 2009, the Defendants had erected makeshift shelters, tents, and a makeshift log tower.

29. The City has, in its sole discretion, established an area on the Property for the Defendants to assemble in a peaceful and lawful manner. The location would not impede construction, but would allow the Defendants or any other person to lawfully express their views in an area where they would probably be seen by passing motorists.

30. The Defendants unlawfully remained on the Property until August 13, 2009. During the time the Defendants remained on the Property they caused harm to the Plaintiff's Property, particulars of which include:

- a) Removal and destruction of silt fencing required to protect the natural environment during the construction of the Work;
- b) Digging various trenches and holes;

- c) Destruction of various construction materials, including straw bales, sandbags and logs;
- d) Erecting hazardous blockades across points of entry to the Property;
- e) Erecting hazardous makeshift structures; and
- f) Such other particulars as may become known.

In addition, the Defendants removed and/or destroyed water monitoring equipment present on the property and the Defendants are responsible for that loss.

31. The Defendants demanded, among other things, that the City immediately end the Business Park development and terminate the contract with Drexler and the Defendants and their supporters would not leave the Property until the Defendants' demands were met.

32. The Defendants took efforts to conceal their identity with bandanas, sunglasses and other facial coverings. Furthermore, the Defendants provided false names to the media.

Defendants Conspire to Harm the Plaintiffs

33. The Defendants agreed and conspired together during the material time to blockade entrance to, and to trespass upon, the Property with the intention of interfering with the Plaintiff's lawful rights and to prevent the Plaintiffs and their contractors from entering upon the Property to complete construction of the Business Park, and more particularly to prevent the Plaintiff from completing the Work unless the Defendants' demands were met.

34. The actions of the Defendants are in furtherance of the agreement between them to cause the Plaintiffs to breach the Tender and the contract with Drexler.

35. The actions of the Defendants were undertaken for the purpose of harming, and have in fact caused harm to, the Plaintiffs. Alternatively, the Defendants knew or

ought to have known that their actions would cause harm to the Plaintiffs and were directed towards the Plaintiffs.

The Defendants Interfere with the City's Economic Relations and Induce Breach of Contract

36. The Defendants are aware, or ought to have been aware, that the Corporation has entered into contracts for the construction of the Work and for the construction of the Business Park at the Property.

37. The Defendants trespassed onto the Property to prevent the construction of the Work and to prevent the development of the Business Park unless their demands were met.

38. If the Plaintiffs and their contractors cannot access or attend at the Property to construct the Work or the Business Park, the Business Park will not be completed in accordance with established timelines, or at all, resulting in a breach of contract with Drexler and other contractors and consultants – resulting in substantial losses to the Plaintiff.

39. The Defendants' conduct has interfered with the Plaintiffs' means of business by unlawful means. The Defendants' conduct was intended to injure the Plaintiffs.

40. As a result of the Defendants' conduct, the Plaintiffs have suffered and will suffer damages.

Defendants Intimidate the Plaintiff into Stopping Construction of the Work

41. The Defendants trespassed on the Property, interfered with machinery and interfered with construction. The Defendants threatened to continue these actions to prevent the Work and the Business Park development and demanded that the Plaintiffs immediately end the Business Park development and terminate the contract with Drexler.

42. The Defendants wrongfully trespassed and threatened the Plaintiffs and their contractors for the purpose of compelling the Plaintiffs from continuing the construction of the Work and the Business Park, which the Plaintiffs have the lawful right to do. As a result of the Defendants' actions, the Plaintiffs halted construction on July 27, 2009. Construction has been stopped since July 27, 2009.

43. The Defendants' conduct constitutes intimidation and the Plaintiffs have suffered damages as a result of the Defendants' conduct.

Defendants Trespass onto the Property

44. The Defendants were told to remove themselves from the Property and are aware that they are not authorized to enter, or remain upon, the Property.

45. The Defendants have entered upon, and remained upon, the Property without lawful justification and for the purpose of interfering with the Plaintiffs' economic relations and to intimidate the Plaintiffs.

46. As a result of the Defendants' conduct, the Plaintiffs have suffered damages.

Defendants' Conduction is a Private Nuisance

47. The willful entering upon the Property by the Defendants interferes with the Plaintiffs rights to, and enjoyment of, the Property. As a result of this conduct by the Defendants, the Plaintiffs have suffered damages. The Plaintiffs state that they are entitled to sue for and seek a permanent injunction to prevent the nuisance.

Costs Incurred by the Plaintiffs

48. To date, the Plaintiffs have invested approximately \$20,000,000.00 with respect to the development of the Business Park. These costs include:

- a) The purchase price of the Property;
- b) Development costs associated with obtaining the required approvals;

- c) Development costs associated with developing and implementing the necessary environmental plans and safeguards; and
- d) Building costs incurred to date.

49. As a result of the actions of the Defendants, the Plaintiffs have incurred and will continue to incur significant damages, including but not limited to:

- a) Costs to repair the damage done to the Property by the Defendants;
- b) Costs to replace the missing water monitoring equipment; and
- c) Such other damages as may become known.

Particulars of all damages will be provided in advance of trial.

50. As a result of the Defendants' actions, the Plaintiffs may not be able to complete the Work within the required timeframe and the Plaintiffs are exposed to legal action from Drexler and other contractors. The Plaintiffs claim that all associated costs are damages caused by the Defendants.

DATED: August 28, 2009

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Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at
Guelph, Ontario

AMENDED STATEMENT OF CLAIM

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