

**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, JOSH GILBERT, 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

**STATEMENT OF DEFENCE OF THE DEFENDANTS MATTHEW SOLTYS,
CAILEY CAMPBELL, JOSH GILBERT, SHABINA LAFLEUR-GANGJI AND
MATTHEW LOWELL-PELLTIER**

1. The Defendants admit the allegations contained in paragraph 2, paragraph 6 except that the defendant Shabina Lafleur-Gangji is not a resident of Ontario and the claim against the former defendants Nicole Freeborn and Rade Kovacevic has been dismissed and these defendants have no knowledge of the place of residence of Jane Doe and John Doe, paragraph 7 to the extent that the defendant Matthew Soltys is associated with LIMITS, the first sentence of paragraph 13 and the first two sentences of paragraph 22 of the Plaintiffs' Amended Statement of Claim.

2. Except as may be specifically admitted, the Defendants deny each of the allegations contained in paragraphs 7, 11, the last sentence of paragraph 13, the last sentence of paragraph 14, 17, 18, 21, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 of the Plaintiffs' Amended Statement of Claim. The Defendants deny the last sentence of paragraph 22 insofar as it implies

that the Defendants or Drexler Construction breached any contract or were contractually liable. The Defendants deny that the Plaintiffs are entitled to the relief claimed in paragraph 50 and subparagraphs 1(e), (f), (g), and (h) of the Plaintiffs' Amended Statement of Claim.

3. With respect to paragraph 29 of the Plaintiffs' Amended Statement of Claim, the Defendants admit that the City indicated that the people occupying the Hanlon Creek Business Park ('the Land') should move to an alternative location. However, it is the understanding of the Defendants that the location referred to in paragraph 29 was a wetland, that moving to this wetland would have been potentially injurious to human health and to the environment, and that when the City attempted to mow this location its tractors sank into the wetland and had to be pulled out. The Defendants furthermore deny that this location was visible to passing motorists.

4. The Defendants have no direct knowledge of the allegations contained in paragraphs 3, 4, 5, 8, 9, 10, 12, the first two sentences of paragraph 14, 15, 16, 19, 20, 23, and 24.

Nature of the Defence

5. The Defendants respond to the Plaintiffs' allegations as follows:
- a. The Defendants entered and in some cases remained from time to time on the Land during the occupation, but because they did so to prevent irreparable harm and/or with lawful authorization, their actions did not constitute a trespass.
 - b. The Defendants did not cause the occupation of the Land.
 - c. The Defendants have caused no harm to the Plaintiffs.

- d. The Defendants did not destroy, remove, or interfere with any construction materials, silt fencing, or water monitoring equipment on the Land.
- e. The Defendants did not erect structures or barricades on the Land.
- f. The Defendants did not dig trenches or holes on the Land.
- g. The Defendants are not responsible for the actions of other people who entered onto the Land.
- h. The Plaintiffs were not liable and will not be liable to Drexler Construction or to any other party due to the actions of the Defendants. Nor did Drexler Construction breach its obligation to the City due to the actions of the Defendants.
- i. The Hanlon Creek Business Park development was and remains an unprofitable venture, and the actions of the Defendants did not result in lost income for the Plaintiffs.
- j. The Defendants were permitted to remain on the Land by an order of the Superior Court of Justice, issued on August 4, 2009, until an injunction was issued by the Superior Court on August 13, 2009, which ordered that the Defendants vacate the Land by August 14, 2009. The Defendants did vacate the Land by August 14, 2009.
- k. The Defendants acted in the public interest and to prevent serious and irreparable damage. Whereas the Defendants acted in accordance with the precautionary principle, the Plaintiffs' behaviour does not appear to comport with this principle.

The Hanlon Creek Business Park Development and the Jefferson Salamander

6. The City proposes to develop approximately 271 hectares of land in the Hanlon Creek watershed, including environmentally significant wetlands, old growth forests, and tributaries of the Speed River, into a corporate/industrial business park. The City has entertained little public consultation respecting the proposed development, and what few consultations have been held revealed overwhelming opposition to the City's proposal.

7. On or about April 8, 2009, the Environmental Advisory Committee requested that the City confirm the presence or absence of the Jefferson salamander on the Land. The Jefferson salamander is protected under the *Endangered Species Act, 2007*. If Jefferson salamanders were located, the City was instructed to adopt additional conservation measures in consultation with the Ministry of Natural Resources. The City retained Natural Resource Solutions Inc. to perform this examination.

8. On or about April 20, 2009, a dead hybrid Jefferson salamander was found on the Land. The hybrid salamander is known to exist with and reproduce with Jefferson salamanders. This discovery was communicated to the City and to the Ministry of Natural Resources.

9. On or about May 25, 2009, the Ministry of Natural Resources sent a letter to the City recommending that the City suspend development of a proposed four-lane access road to go through the Land (Road A), to allow for further investigation into the potential presence of Jefferson salamanders.

10. On or about June 22, 2009, the City awarded Drexler Construction a contract to construct Road A and a culvert across Tributary A of the Hanlon Creek.

11. On or about July 31, 2009, the Ministry of Natural Resources sent the City another letter recommending that the City suspend construction until the Land and the

vicinity have been adequately investigated; the Ministry estimated that adequate studies could not be commenced until March 2010. The City did not make public the Ministry's objections to the development until after this information came to light in the subsequent hearing for an injunction.

The Occupation and the Subsequent Injunctions

12. On July 27, 2009, approximately 60 people ("the Occupiers") moved onto the Land and asked the Drexler Construction workers to leave. The workers agreed to vacate, but their vehicles became stuck in the mud. The workers asked the Occupiers for assistance in dislodging the vehicles and the Occupiers provided this assistance. The Occupiers remained on the Land.

13. The Defendants entered onto the Land and in some cases remained from time to time on the Land during the occupation.

14. On August 4, 2009, Madam Justice Wein of the Superior Court of Justice issued an order permitting the Occupiers to remain on the Land and allowing City workers to access the site to carry out certain work and tests.

15. On August 10, Mr. Justice Gray of the Ontario Superior Court of Justice extended the order of Madam Justice Wein. On August 13, 2009, Mr. Justice Gray issued an injunction against the Occupiers requiring them to vacate the Land by August 14, 2009. The Occupiers vacated the Land by August 14, 2009.

16. On August 13, 2009, Mr. Justice Gray also issued an interlocutory injunction against the Plaintiffs preventing further development of the Land until the Minister of Natural Resources decided whether or not to issue a stop work order under the *Endangered Species Act, 2007*. This injunction would expire in 30 days.

17. On or about August 27, 2009, the Minister of Natural Resources decided to permit the Hanlon Creek development to continue, but only subject to a number of conditions and restrictions. The Minister limited development to the construction of the culvert and water main crossing, required silt fencing to be installed around the entire work area, and restricted the hours of construction so to avoid disturbing Jefferson salamanders during the times that they normally move about. The Minister also ordered the City to monitor the Land for Jefferson salamanders during the spring. If Jefferson salamanders were located, the Ministry would take additional steps to enforce the *Endangered Species Act, 2007*.

18. On or about September 3, 2009, the City announced that it would suspend development of the business park and construction of the culvert until 2010.

The Defendants Did Not Cause Economic Harm to the Plaintiffs

19. The delay to the construction of the Business Park was caused by the Plaintiffs' commencing development prior to establishing an appropriate protocol with the Ministry of Natural Resources regarding the Jefferson salamander, and by subsequent orders and an injunction against the Plaintiffs issued by the Superior Court of Justice.

20. The Plaintiffs did not acquire any tenants for the Business Park for its original planned opening date. The Plaintiffs have not lost any rent or profit due to the delay in construction.

21. The Plaintiffs were not exposed to liability to Drexler Construction or to any other party. One provision of the City's contract with Drexler Construction inserted, as a condition precedent to the contract, the requirement that the Ministry of Natural Resources approve the development. It was specifically noted in the contract that this approval had not yet been received. The Ministry of Natural Resources never granted this approval, and in fact continued to oppose the development. Nor did Drexler Construction breach its obligations to the City in these circumstances.

The Defendants Deny the Claim for Conspiracy

22. The Defendants' conduct does not constitute conspiracy.
23. The Defendants did not act for the purpose of harming the Plaintiffs.
24. Alternatively, the Defendants' conduct was not directed towards the Plaintiffs, the Defendants did not act unlawfully, and the Defendants did not know and ought not to have known that their actions would cause harm to the Plaintiffs.
25. The Defendants did not form any agreement or common design respecting the development.
26. No damage to the Plaintiffs resulted from any alleged agreement or common design between the Defendants or from any conduct of the Defendants.

The Defendants Deny the Claim for Interference with Economic Relations and Inducing Breach of Contract

27. The Defendants did not act for the purpose of harming the Plaintiffs.
28. No contracts or economic relations were breached or interfered with.
29. The Defendants did not act unlawfully or maliciously. Their actions were legally justified.
30. The Plaintiffs suffered no harm due to the actions of the Defendants.

The Defendants Deny the Claim for Intimidation

31. The Defendants did not issue any threats to the Plaintiffs or to their contractors.

32. The Defendants did not intend to harm the Plaintiffs and did nothing for the purpose of harming the Plaintiffs.

33. No one complied with any alleged threats and the Plaintiffs have not suffered harm due to any alleged threats.

The Defendants Deny the Claim for Private Nuisance

34. The Defendants' actions were reasonable.

35. The Plaintiffs' use of the land was unreasonable and illegal.

36. The Defendants' actions did not interfere with the Plaintiffs' use of the land.

37. The Defendant suffered no losses as a result of the Defendants' actions.

The Defendants' Actions Did Not Constitute Trespass

38. The Defendants and Occupiers did not commit, direct, counsel, aid, or join a trespass.

39. The Defendants and Occupiers had lawful justification for being on the Land.

40. The Defendants entered and in some cases remained on the Land from time to time to prevent serious and irreparable harm to the Land, to the environment, to endangered species, to residents of Guelph, to the City's property, and to the City. The actions of the Defendants and the Occupiers were necessary to prevent this harm.

41. The Defendants and the Occupiers were specifically permitted to remain on the Land by the Superior Court of Justice from August 4, 2009 to August 14, 2009. The Defendants and the Occupiers left on August 14, 2009.

42. The Plaintiffs have suffered no harm due to the Defendants' actions.

The Defendants Did Not Damage Property

43. The Defendants did not remove or destroy any water monitoring equipment on the Land. The Defendants were not aware of the existence of water monitoring equipment on the Land until after this equipment was allegedly removed and/or destroyed.

44. The water monitoring equipment was last seen long before the beginning of the occupation of the Land. The Plaintiffs only checked on this equipment a considerable time after the occupation had ended.

45. The Defendants did not destroy, damage, interfere with, or remove construction materials, sandbags, logs, straw bales, silt fencing, or machinery on the Land, and nor was any such property destroyed, damaged, interfered with or removed. The Defendants did not construct structures or blockades and did not dig trenches or holes on the Land.

DATED: March 24, 2010

TO:

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