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FROM:	Lori Rebelo Judicial Secretary	
DATE:	June 2, 2008	

NO. OF PAGES (INCLUDING THIS SHEET) Eight

COMMENTS: Court File No: CV-08-334
City of Brantford v. Montour et al
Endorsement
The Honourable Mr. Justice G.E. Taylor

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SUPERIOR COURT OF JUSTICE - ONTARIO

RE: The Corporation of the City of Brantford v. Ruby Montour, Floyd Montour, Clive Garlow, Charlie Green, Mary Green, David Martin, Hazel Hill, Aaron Detlor, the Haudenosaunee Development Institute, Jane Doe, John Doe and Persons Unknown

BEFORE: The Honourable Mr. Justice G. E. Taylor

COUNSEL: N. Smitheman and T. Pratt, for the plaintiff

S. Halwani, for the defendants Ruby and Floyd Montour
Clive Garlow in person
Charlie Green in person
Mary Green not appearing
David Martin in person
K. Hensel, for Hazel Hill
M. Edwardh and J. Orkin, for Aaron Detlor
L. Strezos, for the Haudenosaunee Development Institute
D. Brown and L. Marsello, for the Attorney General of Ontario
B. Jetten, for the Six Nations Council, and the Six Nations Confederacy Council

ENDORSEMENT

Introduction

[1] The City of Brantford has commenced this action seeking damages and injunctive relief against the defendants. The Notice of Action was issued on May 20, 2008. On May 23, 2008, the plaintiff's motion for an interim interlocutory injunction came before me. At that time, at the request of the defendants, I adjourned the motion to May 30, 2008 for the purpose of allowing the defendants to retain counsel and file responding material. Some defendants have retained counsel and filed material, some defendants have retained counsel but did not file material and some defendants have done neither.

[2] The parties are agreed that the motion for an interlocutory injunction be adjourned. They are not agreed on whether that adjournment should be on terms.

[3] The plaintiff seeks terms for the period of the adjournment prohibiting the defendants from interfering with development and construction at five specific locations in the City of Brantford as identified in Schedule A to the Notice of Motion. The defendants all say that the adjournment should be without terms.

[4] Mr. Strezos, counsel for the Haudenosaunee Development Institute, sent a letter dated May 26, 2008 to Chief Justice Smith of the Ontario Superior Court requesting that she appoint a judge to hear all the motions in this proceeding pursuant to Rule 37.15 of the Rules of Civil Procedure. The Chief Justice has delegated to me her authority to appoint a judge pursuant to Rule 37.15. The defendants say that I should make that appointment but defer to the Rule 37.15 judge the issue of whether the adjournment of the motion for an interlocutory injunction should be with or without terms.

Terms of Adjournment

[5] I heard extensive argument on the issue of the terms, if any, to be imposed during the period of the adjournment for filing material and completing cross examinations prior to argument of the motion for an interlocutory injunction pending trial. I am mindful that this is an adjournment for what should be a relatively short period of time to allow the parties to compile a complete record to be placed before the judge hearing the motion for the interlocutory injunction. I am also mindful that the facts before me are by no means developed to the extent they will be developed by the time the motion for the interlocutory injunction is heard. I therefore think it appropriate that I not comment extensively about the facts notwithstanding the thorough arguments that were presented to me by all counsel.

[6] As a term of adjournment, the plaintiff seeks an injunction prohibiting interference with development and construction with respect to five locations identified in Schedule A to the Notice of Motion. The uncontradicted evidence in the material before me is that persons or corporations other than the defendants are the beneficial owners of the lands referred to in Schedule A. The uncontradicted evidence before me is also that each of the owners have obtained from the City of Brantford the requisite approvals and building permits to develop and construct buildings on their respective properties.

[7] In my view, whether the defendants or other aboriginal persons have an interest in the lands described in Schedule A is a triable issue. Further, in my view, irreparable harm will be suffered by the City of Brantford if it is not permitted to control development of, and construction on, lands within its jurisdiction. Thirdly, the balance of convenience favors the plaintiff. Hazel Hill, Aaron Detlor, and the Haudenosaunee Development Institute deny any interference with construction at the sites referred to in Schedule A. Therefore there can be no inconvenience to them by the granting of the terms of the adjournment. With respect to the remaining defendants, there can be no inconvenience to them by being required to comply with the law prohibiting interference with an owner's lawful use and enjoyment of property.

[8] Therefore, there will be terms imposed for the period of the adjournment. The plaintiff proposed terms that are more limited than the terms of the injunction sought in the Notice of Motion. No terms were suggested by counsel for any of the defendants. In my opinion, the terms proposed by the plaintiff are reasonable. Accordingly the terms will be those put forward by the plaintiff.

Appointment of a Rule 37.15 Judge

[9] The heading above Rule 37.15 reads "Motions in a Complicated Proceeding or Series of Proceedings". The Rule itself speaks of a proceeding that "involves complicated issues". Counsel for Aaron Detlor presented two motions that will be brought in this proceeding. One is to invite the Attorney General of Canada to intervene as a friend of the Court. The other proposed motion is for an order adding Her Majesty the Queen in the Right of Ontario as a third party and a defendant in the action. Counsel for Aaron Detlor also presented a draft Notice of Application to quash the bylaws passed by Council of the City of Brantford which bylaws are partially relied on by the plaintiff in this proceeding.

[10] I also heard submissions from counsel for the Six Nations Council and the Six Nations Confederacy Council who advised that instructions are expected from these two entities to seek intervenor status or to be added as parties to this proceeding.

[11] Counsel for the plaintiff advised that, in all likelihood, there will be no objection to the Attorney General of Canada, Her Majesty the Queen in the Right of Ontario, the Six Nations Council or the Six Nations Confederacy Council being added to this action as parties or interveners. Counsel for the Attorney General of Ontario appeared before me and advised that material is currently being prepared to seek an order that Her Majesty the Queen in the Right of Ontario be added to the action as either a party or an intervenor.

[12] At first blush it may appear that there will be a series of complicated issues to be dealt with in this proceeding. But on further analysis, it seems to me, at least at the present time, the action may not be as complicated as suggested by the defendants. From the submissions that I heard, Her Majesty the Queen in the Right of Ontario, the Six Nations Council and the Six Nations Confederacy Council all wish to be added as parties to the action. None of the current parties, based on the submissions that I heard, appear to be objecting to these four entities being added as either parties or interveners. Only the position of the Attorney General of Canada is unknown.

[13] The proposed application to quash the City of Brantford bylaws causes me some concern. It is clearly a related proceeding, which if it proceeds, will involve similar issues to the issues in the present action. However, as counsel for the plaintiff said, it is not necessary for the defendants to seek an order quashing the bylaws. It can equally be argued on the motion for the interlocutory injunction pending trial that the bylaws are invalid.

[14] Therefore, I am not convinced that, at the present time, it is either necessary or desirable that a judge be appointed pursuant to Rule 37.15 of the Rules of Civil Procedure to hear all motions in this case. It may be that as this matter progresses, it will become apparent that a judge should be appointed to hear all motions that may arise and therefore my order will be without prejudice to any party renewing the motion for the appointment of a Rule 37.15 judge in the future.

[15] Although not necessary to do so based on the decision I have made, I wish to comment on the request, as part of the request of to appoint a Rule 37.15 judge, that motions in this proceeding be heard in the City of Toronto. The basis for that request is that all counsel who

have currently been retained practice in the City of Toronto. In my view, the issues to be decided in this proceeding are sufficiently important to the citizens of the City of Brantford and members of the Haudensaunce community and the Six Nations community that motions and other steps in this action should be held in or near the City of Brantford.

Disposition

[16] For these brief reasons, the motion before me today is adjourned *sine die* to be returned on seven days notice on the following terms:

Pending the return of the motion for an interlocutory injunction pending trial, the defendants are ordered to cease and desist from blocking, interfering or in any way obstructing development/construction related activities on the lands set out in Schedule A to the Notice of Motion including blocking access to development sites, standing in front of machinery/equipment or otherwise interfering with such machinery's/equipment's operation or in any way threatening or intimidating workers at the development sites.

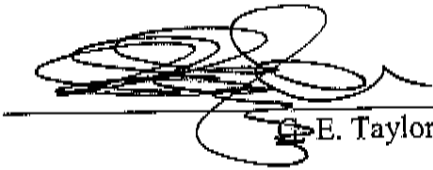
[17] There will also be an order dismissing the request by the defendants to appoint a judge pursuant to Rule 37.15 of the Rules of Civil Procedure to hear all motions in this proceeding but that order is without prejudice to being renewed in the future.

[18] There was some discussion about setting a timetable for the completion of all steps necessary to take this action to the hearing for an interlocutory injunction pending trial. If counsel are unable to agree on an appropriate schedule, I will entertain written submissions on the issue and will impose what I consider to be an appropriate timetable. Written submissions, not to exceed 10 pages in length, are to be submitted to me within 10 days of the release of this Endorsement.

[19] Costs of the appearances before me on May 23 and 30, 2008 are referred to the judge hearing the motion for the interlocutory injunction pending trial.

[20] The formal order based on this endorsement may be mailed to Clive Garlow, Charlie Green, Mary Green and David Martin at the addresses at which they were served with the Notice

of Motion, for their approval as to form and content. If their approval of the order as to form and content has not been received within 12 days after the date of mailing, the order may be issued and entered without their approval.



G. E. Taylor

DATE: June 2, 2008

COURT FILE NO.: CV-08-344

DATE: 20080602

**SUPERIOR COURT OF JUSTICE –
ONTARIO**

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Brantford v. Ruby Montour, Floyd
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Green, Mary Green, David Martin,
Hazel Hill, Aaron Detlor, the
Haudenosaunee Development
Institute, Jane Doe, John Doe and
Persons Unknown

BEFORE: The Honourable Mr. Justice G. E.
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The Honourable Mr. Justice G. E. Taylor

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