

Cv-17-131451-00

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

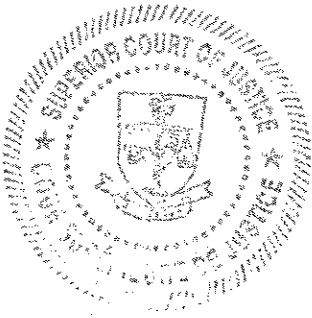
CORPORATION OF THE TOWN OF NEWMARKET

Applicant

and

MAIN STREET CLOCK INC.

Respondent



Application brought under Rule 14.05(3)(d), (e) & (g) of the Rules of Civil Procedure

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

Nov 15 2017
October 20

THIS APPLICATION will come on for a hearing on August 23, 2017, at 50 Eagle Street West, Newmarket, Ontario, L3Y 6B1, at 11:00 am
9:30

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IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, whether the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

APPLICATION

1. THE APPLICANT MAKES APPLICATION FOR:

- (a) A determination of the Corporation of the Town of Newmarket's ("Town") rights to acquire certain lands pursuant to a 2003 Land Exchange Agreement between the Town of Newmarket and 1508164 Ontario Inc. ("Agreement");
- (b) A declaration that the Agreement is binding upon 1508164 Ontario Inc.'s successor in title, Main Street Clock Inc.;
- (c) A declaration that Main Street Clock Inc. had actual notice of the Agreement;
- (d) A declaration that the Town has an interest in those lands it is to receive pursuant to the Agreement;
- (e) A mandatory order that the land exchanges set out in the Agreement be transferred forthwith; and
- (f) Such further and other relief as this Honourable Court deems just.

2. THE GROUNDS FOR THE APPLICATION ARE:

- (a) The Applicant is a municipality incorporated pursuant to the *Municipal Act, 2001*, S.O. 2001, c. 25.
- (b) The Respondent is a company incorporated pursuant to the laws of Ontario.
- (c) 1508164 Ontario Inc. ("1508164") is a company incorporated pursuant to the laws of Ontario.
- (d) In 2003, the Town and 1508164 entered into the aforesaid Land Exchange Agreement to facilitate the Market Square Redevelopment in the Town's historic downtown area.
- (e) The Agreement has been partially performed to date. All monetary payments have been made and received. The redevelopment of Market Square was undertaken by the Town, including the reconstruction of a public parking lot and provision of a parking area for the exclusive use of 1508164 and its tenants.

- (f) The Town was to convey lands to 1508164 to provide that company with ownership of the parking area set aside for its exclusive use.
- (g) 1508164 was to convey lands to the Town to provide the Town with ownership of a portion of the public parking area on the redeveloped Market Square.
- (h) The Town and 1508164 abided by the terms of the agreement during 1508164's ownership of lands abutting Market Square.
- (i) 1508164 had quiet enjoyment of the parking area set aside for its exclusive use and the Town had quiet enjoyment of that portion of the public parking area located on lands owned by 1508164.
- (j) The only substantive matter under the Agreement that has yet to be performed is the actual transfer of the lands to be exchanged pursuant to its terms.
- (k) Notice of the Agreement was not registered against the title of the lands to be exchanged and owned by 1508164.
- (l) The lands to be exchanged and owned by 1508164 are part of the land parcel which was moved into the Land Titles system on September 24, 1999 and assigned Property Identifier Number 03606-0007.
- (m) The Respondent became the owner of the lands mentioned in (l) above by transfer registered on September 9, 2013.
- (n) Prior to acquiring title, the Respondent had received actual notice of the Agreement.
- (o) After acquiring title, the Respondent and its tenants used the parking area set aside for their exclusive use and the Respondent permitted public parking over that portion of its lands forming part of Market Square's public parking area.
- (p) The Respondent applied to the Town in September, 2013 to rezone and redevelop its lands mentioned in (l) above together with other abutting lands it owned for a mixed-use development comprising of lands municipally known as 178, 180, 184, 188, 190 & 194 Main Street.

- (q) The original proposed redevelopment site did not include any surface development on the lands that the Town is to receive pursuant to the Agreement.
- (r) The Respondent's development application has been revised over time. Until recently, the proposed redevelopment site continued to exclude any surface development on the lands that the Town is to receive pursuant to the Agreement.
- (s) Town Council denied the Respondent's rezoning application on December 5, 2016.
- (t) The Respondent appealed that decision to the Ontario Municipal Board ("OMB").
- (u) At a May 3, 2017 OMB prehearing, the Respondent filed an alternative development proposal with the Board that, for the first time, included within the development site the lands that the Town is to receive pursuant to the Agreement.
- (v) Courts have read into Ontario's *Land Titles Act* the doctrine of actual notice, under which a registrant of an interest in land takes subject to equitable and legal interests of which he or she had actual notice.
- (w) Rules of Civil Procedure, Rules 14.05(3) & 39.03.
- (x) *Land Titles Act*, R.S.O. 1990, c. L.5, ss. 46 & 72.
- (y) *Municipal Act, 2001*, S.O. 2001, c. 25, ss. 8, 9, 11 & 100.
- (z) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE APPLICATION:

- (a) The Affidavit of Susan Plamondon, to be sworn;
- (b) The Affidavit of Zella Phillips, to be sworn;
- (c) The Affidavit of Paul Voorn, to be sworn;
- (d) The examination of witness Michael Bryan, pursuant to the Rules; and

- (e) Such further and other materials as counsel may advise and this Honourable Court may permit.

Date of Issue: June 14, 2017

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, Ontario
M5J 2T9

Leo F. Longo - LSUC # 18504G

Tel (416) 865-7778
Fax (416) 863-1515
Email: llongo@airdberlis.com

Lawyers for the Applicant

Cv-17-131 451-00

TOWN OF NEWMARKET

and

MAIN STREET CLOCK INC.

Applicant

Respondent

(Short title of proceeding)

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT NEWMARKET

NOTICE OF APPLICATION

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Barristers and Solicitors
Brookfield Place
Suite 1800, Box 754
181 Bay Street
Toronto, ON M5J 2T9

Leo F. Longo - LSUC # 18504G

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