

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) FRIDAY, THE 11TH DAY
JUSTICE M.S. JAMES) OF OCTOBER, 2019

BETWEEN:



2461351 ONTARIO INC.

Plaintiff

and

MICHAEL J. ANDERSON, CHIEF BUILDING OFFICIAL OF THE TOWNSHIP OF BRUDENELL, LYNDOKH AND RAGLAN and THE CORPORATION OF THE TOWNSHIP OF BRUDENELL, LYNDOKH AND RAGLAN

Defendants

ORDER

THIS MOTION, made by the plaintiff, for an order amending the statement of claim, was heard this day at the Court house, 297 Pembroke Street East, Pembroke, Ontario K8A 3K2.

ON READING the plaintiff's motion record, defendants' cross-motion record, the plaintiff's responding motion record, Affidavit of Allison Russell sworn October 4, 2019 and on hearing the submissions of counsel for both the plaintiff and the defendants;

1. THIS COURT ORDERS that the statement of claim be amended pursuant to the draft amended statement of claim attached to this order as schedule "A";

2. THIS COURT ORDERS that the plaintiff shall serve the amended statement of claim on the defendants within seven days after it is issued with the Court;

3. THIS COURT ORDERS that the defendants shall serve and file its amended statement of defence within 20 days after it is served by the plaintiff;

4. THIS COURT ORDERS that the defendants shall pay costs of this motion in the sum of \$ _____ to the plaintiff within 30 days hereof. "MSJ"

**The Honourable
Mr. Justice James**

THE HONOURABLE

SCHEDULE "A"

Court file no.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2461351 ONTARIO INC.

Plaintiff

and

MICHAEL J. ANDERSON, CHIEF BUILDING OFFICIAL OF TOWNSHIP OF
BRUDENELL, LYNDPOCH AND RAGLAN and THE CORPORATION OF TOWNSHIP OF
BRUDENELL, LYNDPOCH AND RAGLAN

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

SCHEDULE "A"

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: April 30, 2018

Issued by _____
Local registrar

Address of court office:

297 Pembroke Street East
Pembroke, Ontario
K8A 3K2

TO:

MICHAEL J. ANDERSON, CHIEF BUILDING OFFICIAL OF
TOWNSHIP OF BRUDENELL, LYNDOKH AND RAGLAN
42 Burned Bridge Road, P.O. Box 40
Rapids, Ontario
K0J 2E0

AND TO:

THE CORPORATION OF TOWNSHIP OF BRUDENELL, LYNDOKH AND RAGLAN
42 Burned Bridge Road, P.O. Box 40
Rapids, Ontario
K0J 2E0

CLAIM

1. The Plaintiff claims against the Defendants, jointly and severally:
 - a. Declaration that the chip truck owned and operated by the plaintiff is not a building within the meaning of section 1 of the Building Code Act;
 - b. an Order, if necessary, extending the time for making the appeal against ORDER TO COMPLY WITH ACT OR CODE issued on May 6, 2016 (Order to Comply) by the Chief Building Official of Township of Brudenell, Lyndoch and Raglan;
 - c. an Order rescinding ORDER TO COMPLY WITH ACT OR CODE issued on May 6, 2016 (Order to Comply) by the Chief Building Official of Township of Brudenell, Lyndoch and Raglan (hereinafter referred to as "CBO");
 - d. an Order rescinding Stop Work Order issued by CBO on May 24, 2016 ("Stop Work Order");
 - e. an Order rescinding Order to Uncover issued by CBO on May 24, 2016 ("Order to Uncover");
 - f. a Declaration that the respondents are estopped from alleging or defining that the chip truck owned and operated by the applicant is a building for the following reasons:
 - i. it had septic connection;
 - ii. it was connected to a well;
 - iii. it had a deck shorter than two feet;
 - iv. any other condition or status which CBO allowed or advised or instructed or acquiesced to the applicant for the chip truck to be equipped or be dispensed with.
 - g. general damages in the sum of \$200,000 for bad faith and negligence;

- h. Special damages in an amount as yet undetermined but to be advised before the trial of the within action;
- i. Punitive, Aggravated and/or Exemplary damages in the sum of \$100,000.00;
- j. Pre-judgement interest in accordance with Section 128 of the Courts of Justice Act, R.S.O. 1990;
- k. Post-judgment interest in accordance with Section 129 of the Courts of Justice Act;
- l. The costs of this proceeding on a substantial indemnity basis, plus H.S.T.;
- m. Such further and other relief as to this Honourable Court may seem just.

THE PARTIES

- 2. The plaintiff, 2461351 Ontario Inc., is a private company incorporated pursuant to the laws of Ontario, carries on business of a convenient store and chip truck business and has its principal place of business in Palmer Rapids, in the Township of Brudenell, Lyndoch and Raglan, Ontario.
- 3. The defendant Michael Anderson ("CBO") is the Chief Building Official of the Township of Brudenell, Lyndoch and Raglan, Ontario.
- 4. The defendant the Corporation of the Township of Brudenell, Lyndoch and Raglan ("Township") is a corporation under the Ontario *Municipal Act*.
- 5. On or about March 21, 2016, on behalf of the plaintiff, the plaintiff's employee Ilkyoung Kim ("Kim") made an agreement with the original chip truck owner Mr. Joseph Bernardi in Caledon, Ontario to purchase the plaintiff's chip truck (a.k.a. "Chip Trailer").
- 6. In early April 2016, Kim went to Township office of Township of Brudenell, Lyndoch and Raglan ("Township Office") and told Ms Michelle Mantifel, a clerk-treasurer of the Township ("Michelle"), that plaintiff purchased a chip truck and asked for an application for a necessary permit. Kim further asked whether the plaintiff could park the chip truck in community centre parking lot.

7. On that day, Michelle told Kim that Kim needs to pay about \$100 and would advise Kim soon what application the plaintiff needs. Michelle said once she finds out whether Kim could put the chip truck in the community centre parking lot or not she would advise Kim.
8. On April 22, 2016, Ms Michelle Mantifel e-mailed Kim an application for a transient trader license for the chip truck and advised Kim that chip trucks cannot be parked on municipal owned property since transient trader by-law prohibits the very act.
9. On April 26, 2016, Kim had the chip truck unloaded in the back yard of the plaintiff's store, Hannah's Food Mart, situated at 5952B Palmer Road, Palmer Rapids, ON K0J 2E0.
10. On April 28, 2016, Kim paid for transient trader permit at the Township and Michelle provided Kim with a receipt. Michelle advised Kim that CBO would visit the plaintiff's chip truck soon.
11. On April 29, 2016, CBO brought a site plan of previous chip truck that used to be located at the plaintiff's store's back yard. CBO said the plaintiff had to pay \$150 for a building permit, but Kim told CBO that he already paid \$100 for a transient trader permit and the plaintiff's chip truck was not a building. Then CBO advised Kim that Kim had to install a grey water pit and told Kim to call Lynval or Zuracon. CBO further advised Kim that Lynval would be much cheaper and Kim should really call Lynval. CBO wanted to make sure that whoever installs the chip truck's grey water pit should be licensed to install grey water pit. Kim called Lynval and they said they would come and visit on the following Monday.
12. On May 2, 2016, Kim met plumber Jeff Schutt to connect drilled well in backyard. At that time, CBO showed up with two workers from Lynval and told Kim that the well must be 100 feet from the drive point.
13. On that day, a worker from Lynval construction called and said the installation of grey water pit is going to cost the plaintiff \$1,950 plus H.S.T. Kim thought it was expensive and called Zuracon and Mr. Miles Tettemer of Crosstown Construction for a new estimate.

14. On May 3, 2016, Mr. Miles from Crosstown Construction said 50 feet is enough from the well and further advised Kim that Kim does not need anyone with license to install grey water pit as long as it meets its requirements. On the same date, Zuracon's worker told Courtney, an employee at Hannah's Food Mart, that the chip truck just needs to be connected to a septic and that would be the easiest and cheapest way.
15. On May 5, 2016, Health Inspector from Renfrew County And District Health Unit ("Health Inspector") visited and gave the plaintiff a report. The Health Inspector advised Kim that people connect drain from chip truck sink to the septic and advised Kim to install good grease interceptor. Kim was further advised that the plaintiff could open up the chip truck business once all of power, water, propane and drain are connected.
16. On May 6, 2016, Kim was unloading beer with his contractor Alfred and employees at the plaintiff's store, Keith and Jasmine. CBO showed up and started yelling at Kim. CBO left an Order to Comply With Act or Code ("Order to Comply").
17. Kim asked CBO to provide him with any written requirements in advance, so Kim could follow them. CBO refused to provide him with any written instructions.
18. On that day, Kim went to Township and asked Michelle to provide him with written requirement. She then asked CBO and came back to tell Kim that CBO would review the requirement and provide Kim with the written requirement by following Monday. Alfred asked Michelle that the plaintiff really needed specific instructions, but Michelle said the regulation book is too thick for CBO to provide the plaintiff with any instruction regarding the Order right away.
19. Michelle then requested Health Inspector's report and Fire system Inspection Report, so Kim sent her those two reports via e-mail.
20. On May 9, 2016, Kim filed complaint with the Township by e-mailing the official complaint to Michelle. The Township acknowledged receipt of the plaintiff's complaint via a reply e-mail of

Michelle and subsequently, Kim sent a reply to inform Township that grease interceptor and drainage to Septic installations are all scheduled.

21. On May 11, 2016, CBO himself responded to Kim's complaint by delivering his response to Ms Pamela Reid at the plaintiff's store and no further action or decision was made by the Township. This reply was not responsive to the specific complaint of the plaintiff.
22. On May 13, 2016, Kim went to the Township and asked Michelle to arrange a meeting with Mr. Gary Grunt, the Reeve of Township regarding the plaintiff's complaint against CBO. Kim delivered a piece of paper with three issues written on the paper. Michelle filed that paper to provide same to the Reeve.
23. On May 17, 2016, Michelle e-mailed Kim a letter of Township. In that letter, Township defined the applicant's chip truck or chip trailer as a building and further stated that the deck also required a permit. The plaintiff disagreed for the following reasons:
 - a. The plaintiff's chip trailer or chip truck was moved by flat bed trailer and will be moved again if and when necessary or desired by the plaintiff;
 - b. The chip truck does not have any separate roof structure, no separate pillar and absolutely no installation or construction of any kind which permanently stabilizes the chip truck to the back yard of the plaintiff's store;
 - c. The plaintiff built the deck in accordance with instructions of CBO. He told the plaintiff's contractor, Kim and workers at the site where the chip truck was that as long as the plaintiff builds a deck of which height is less than 2 feet, it does not become a building no matter how wide or long it is;
 - d. While the plaintiff's construction company was there digging the ground to bury the pipes connecting to chip truck and the well, CBO was there and saw the entire process. He never ever complaint or said the plaintiff should stop. It is only after the plaintiff completed the work he said it was improper;

- e. Since CBO insisted that the plaintiff should attach wheels and attach Towing Tongue, the plaintiff did so as he insisted, but he still issued two more Orders on May 24, 2016
24. There is another Chip Truck in Quadeville, in the other side of the Township. That chip truck is still within the jurisdiction of the Township. That Chip Truck has pillars which are permanently planted down around the chip truck and there is a roof built above that chip truck. Still the Township does not define that chip truck as a building as defined by the Building Code Act.
25. Several people in the Township told Kim that it was his most grievous mistake to purchase a chip truck without seeking permission from the Reeve. Kim was advised that it is Reeve's friend who owns the chip truck in Quadeville and the owner of that chip truck stands on the city owned property and pays rent for parking there. No matter what is done or not done to this chip truck, it would never turn into a building, but no matter what the plaintiff's chip truck will be a building according to the Township.
26. On May 18, 2016, Kim's friend and agent, Andrea Buderick ("Andrea"), called CBO and asked him the requirement for the mobile chip truck unit and specifically what the plaintiff's chip truck must be equipped with in order not to be a building. CBO told her that it needs towing tongue, tires and grey water installation.
27. On May 19, 2016, David from Quadeville found tires for the plaintiff and two tires were installed and Tongue was also installed.
28. May 20, 2016, Andrea had another conversation with CBO and CBO requested the following:
- a. Two more tires should be installed;
 - b. Tongue should be welded;
 - c. Drainage should be disconnected from the septic system because the septic tank is not big enough.

29. Kim called Gerry's Septic Pumping Company and asked the size of the tank. They said the septic tank size is between 800 - 1000 Gallons. Also they confirmed it is an average size.
30. CBO kept changing his instructions. First he wanted Tongue installed, then he wanted the Tongue to be welded. When all these requests were complied, he required that it had to be done by a certified welder.
31. CBO kept changing his instructions until it became impossible for the plaintiff to keep up. CBO has been making vague orders to which there was no explanation or direction and when he finally instructed Kim, the instructions kept changing and they were arbitrary.
32. On May 24, 2016, CBO gave two Orders to the applicant. One was Stop Work Order and the other was Order to Uncover.
33. On June 2, 2016, at 9:23 a.m., Kim received an e-mail from CBO. CBO said the plaintiff breached his order and there would be a further action to be taken by him. Kim had no idea what Kim did or did not do that breached CBO's order and Kim did not know what he meant by a further action to be taken.
34. The plaintiff via its lawyer inquired both Township and CBO what exactly CBO meant to say in his e-mail of June 2, 2016, what he really needs the plaintiff to do or not to do in terms of three orders he issued against the plaintiff and also notified him and Township of the plaintiff's intent to bring an appeal to rescind these three orders.
35. On June 3, 2016, Health Inspector from Renfrew County And District Health Unit, Morgen Veres ("Veres"), CBO and Kim met together to have discussion about the three orders CBO issued against the plaintiff. During the meeting, Veres wrote down everything CBO required the plaintiff to do. Further, during the meeting, Veres asked CBO three to four times to find out and make sure whether CBO required the plaintiff to shut down the chip truck business. CBO said none of his orders has anything to do with the applicant's operation of chip truck business and the plaintiff can continue running this chip truck business. He said this multiple times. CBO also

said that he never meant the chip truck business to be halted or stopped at any time and his orders did not and do not prohibit the plaintiff from running the chip truck business. Veres provided a copy of the minutes of this meeting to Kim and CBO.

36. On June 6, 2016, Township's lawyer sent the plaintiff's lawyer a letter stating that the plaintiff must immediately stop running its chip truck business.
37. Kim immediately instructed the plaintiff's lawyer to respond and find out what their orders really require at this time. Just one day before the letter from Township's lawyer, Kim was advised specifically by CBO that the plaintiff could continue running the chip truck business and he never ever meant the applicant to stop running its business by any of his orders. Subsequently, the plaintiff's lawyer asked Township's lawyer whether Township and CBO take different positions on whether the plaintiff should continue running its chip truck business or not and also whether the lawyer was retained by both Township and CBO.
38. The defendants via their lawyers' response took a new position that the plaintiff was not prohibited from running its chip truck business in condition that the plaintiff would demonstrate good faith effort to apply for building permit and admit that the applicant's chip truck is a building. The letter further stated that since the plaintiff's lawyer's letter dated June 6, 2016 stated that the chip truck is not a building, the applicant may not continue running the chip truck.
39. Since then the plaintiff appealed under section 25 of the Ontario Building Code Act to obtain an order of Superior Court of Justice to rescind the three orders issued by CBO.
40. The damages of loss of business income for not being able to run chip truck business surpassed \$200,000 to date.
41. The plaintiff alleges that CBO and Township had ulterior motive in issuing three Orders against the plaintiff and more specifically these orders were in contravention of *Ontario Building Code Act*.

42. The plaintiff alleges that CBO and Township acted unreasonably and arbitrarily, and without any degree of fairness, openness and impartiality required of CBO and Township.
43. The plaintiff avers that there was absolutely no set standard or clear policy or any guideline whatsoever to define a chip truck to be a chip truck or a building and there was absolutely no set standard or clear policy or any guideline whatsoever to define any mobile unit to qualify as a mobile unit or as a building.
44. The plaintiff has always been and still is taking a position that its chip truck is not a building within the meaning of section 1 of the Building Code Act, S.O. 2002, c.9.
45. The plaintiffs aver that the Order to comply, Stop Work Order and Order to Uncover ("Three Orders") are invalid orders because the chip truck (or "chip trailer") owned and operated by the plaintiff is not a building within the meaning of section 1 of the Building Code Act, S.O. 2002, c.9.
46. The plaintiffs allege that the particulars of their claim for bad faith and discrimination of CBO and Township and the particulars of the defendants' negligence are as follows:
 - a. CBO did not specify the reason he issued May 6, 2016 order and did not specify what could be done to remedy same;
 - b. CBO constantly changed his positions and instructions in connection with his order dated May 6, 2016;
 - c. CBO acted in bad faith for a clearly unlawful purposes by creating extraordinary circumstances;
 - d. CBO never ever gave any proper or preliminary or concrete warning in connection with the Three Orders to the plaintiff or agent/servant/employee of the plaintiff;

- e. CBO never ever gave any specific instruction or concrete direction in connection with the Three Orders to the plaintiff or agent/servant/employee of the plaintiff;
- f. CBO never ever gave any specific instruction or direction in connection with the Three Orders to the plaintiff or agent/servant/employee of the plaintiff even after the plaintiff's agent or servant or employee requested specific instructions or directions in order to comply with the Three Orders;
- g. CBO eventually provided some partial instructions and direction after the Order to Comply was issued, but CBO kept changing his instructions and direction to make sure that the plaintiff can never comply with constantly changing instructions and directions in connection with the said Order;
- h. CBO constantly delayed in providing instructions to what plaintiff should do in order to have its chip truck defined as a truck and not a building, and, eventually, when he gave the instructions and the plaintiff complied with the instructions, those instructions constantly evolved and the plaintiff could never ever catch up with constantly changing instructions of CBO;
- i. CBO advised, instructed or directed the plaintiff in a certain way for the plaintiff's chip truck to be treated as a truck and not a building, but eventually CBO himself prohibited the very same act he advised, instructed or directed the plaintiff to do;
- j. Township sent messages and instructions which were diametrically opposed to CBO's instructions and at times those instructions were

confusing and different from that of CBO, and the plaintiff was completely lost;

- k. CBO issued Three Orders which did not contain any specific notice as to what it was ordering the plaintiff to do or prohibiting plaintiff from doing;
- l. CBO never ever provided a specific written instructions in connection with those said Three Orders despite multiple request made by agent/employee/servant of the plaintiff;
- m. CBO sent an e-mail to the plaintiff stating that CBO would take a "further action" since the applicant breached his Stop Work Order. No work was done by the plaintiff;
- n. The plaintiff was confused as to what the plaintiff should do or should not do, and on June 3, 2016, the plaintiff asked CBO whether CBO meant applicant to stop operating the chip truck business, but CBO advised the plaintiff that CBO never meant it and the plaintiff may continue to run the business;
- o. On June 6, 2016, Township via its lawyer sent a notice ordering the plaintiff to stop operating the chip truck business;
- p. On the same date, the plaintiff requested the Township and CBO to unify their message, so that the plaintiff is not confused;
- q. Subsequently on June 8, 2016, CBO changed its position again and ordered the plaintiff to stop running its business. CBO then took a position by saying that he meant and ordered the applicant to close down its chip truck business since May 17, 2016;
- r. There are other chip trucks in Township and neighbouring Townships but they are not defined as buildings;

- s. Other chip truck or chip trucks in Township enjoy privileges of which the plaintiff applied and was denied by Township. Such privileges were denied by Township and the reasons were that such privileges were against by-laws; however, other Chip Truck owner/owners have been enjoying those privileges for close to two decades;
 - t. There are ulterior purpose to these Three Orders, and there are unlawful purposes to these Three Orders.
47. The plaintiffs aver that the actions of the defendants are deliberate, callous, manipulative, intimidating, planned, high-handed, discriminatory and complete lack of any form of good faith whatsoever. As such, the plaintiff seeks that such conduct be penalized by this Honourable Court by an award of punitive damages, aggravated damages and exemplary damages.
48. The plaintiffs propose that this action be tried at Pembroke, Ontario.
49. The plaintiff allege that the Township is vicariously liable for the negligent actions and omissions of CBO.
50. In or about April 2017, the parties started negotiating the settlement, but the negotiation settled only a part of the action. More particularly, the defendants admitted that the three orders they issued against the plaintiff were without base and admitted that the chip truck was not a building, but the parties failed to agree up on the quantum of the damages.
51. In or about April, 2018 one of the councillors of the Township admitted that the chip truck was not a building.
52. On May 25, 2018, the Township advised the plaintiff that the Township would not take any further action if the plaintiff opens its chip truck business.
53. In June 2018, the Township officially took a position that the three orders are null and void and issued Transient Trader License to the plaintiff.

Date of issue: , 2018

**SANG JOON BAE PROFESSIONAL
CORPORATION**

Sang Joon Bae, [53198S]
Barrister and Solicitor

2200 - 4950 Yonge Street
Toronto, Ontario
M2N 6K1

Tell: (416) 840-1205
Fax: (416) 640-4789
Lawyer for the plaintiffs

2461351 ONTARIO INC.

Plaintiff

and

MICHAEL J. ANDERSON, CHIEF BUILDING OFFICIAL OF TOWNSHIP
OF BRUDENELL, LYNDOCH AND RAGLAN et al.

Defendants

Court file no.

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at PEMBROKE

**AMENDED STATEMENT OF
CLAIM**

**SANG JOON BAE PROFESSIONAL
CORPORATION**

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Lawyer for the Plaintiffs

2461351 Ontario Inc.

Plaintiff

and The Corporation of Township of Brudenell, Lyndoch and Raglan

Defendants

Court file no. CV-18-031

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at PEMBROKE

ORDER

SANG JOON BAE PROFESSIONAL
CORPORATION

Sang Joon Bae [53198S]

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