

Court file no. CV-18-031

**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

TRIAL RECORD

Date: February 14, 2025

**SANG JOON BAE PROFESSIONAL
CORPORATION**

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**ONTARIO
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Defendants

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TAB 1

Court file no. CV-18-031

**ONTARIO
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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 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.

Electronically amended this 7th day of January 2025
pursuant to the Order of Justice Holowka dated Dec 6 2024

J. Malone

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

~~Amended on~~, 2024

Issued by "Electronically issued"
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.
- n. The costs of the application with the court file no. 16/409 to the plaintiff/applicant on a substantial indemnity basis.

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 by an application with its court file no. 16/409.
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.
54. On May 31, 2019, the Regional Senior Justice ordered that all productions and cross examinations done as part of the application with its court file no. CV-16-409 all to form part of the record in the action.
55. On the same date, the Regional Senior Justice further ordered that the application be stayed and the within action with its court file no, CV-18-031 be allowed to proceed, so that all evidence and argument be heard at one time, in one proceeding, and fully decided at that time.

Date of issue: , 2018

**SANG JOON BAE PROFESSIONAL
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Lawyer for the plaintiffs

Plaintiff

Defendants

Court file no. CV-18-031

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at PEMBROKE

AMENDED AMENDED
STATEMENT OF CLAIM

**SANG JOON BAE PROFESSIONAL
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Lawyer for the Plaintiffs

TAB 2

Court File No.: CV-18-031

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2461351 ONTARIO INC.

Plaintiff

-and-

MICHAEL J. ANDERSEN, CHIEF BUILDING OFFICIAL OF TOWNSHIP OF
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OF BRUDENELL, LYNDOKH AND RAGLAN

Defendants

AMENDED AMENDED STATEMENT OF DEFENCE

1. The defendants (hereinafter "BLR") admit the allegations set out in paragraphs 3 and 4 of the statement of claim.
2. BLR denies that the plaintiff is entitled to any of the relief claimed at paragraph 1 and further denies the allegations contained in paragraphs 6 through 47 inclusive and paragraphs 50 to 53 inclusive of the statement of claim.
3. BLR has no knowledge or insufficient knowledge with respect to the allegations set out in paragraphs 2 and 5 of the statement of claim.
4. At all material times, Michael J. Andersen was employed by the Township of Brudnell, Lyndoch and Raglan (the "Township") as Chief Building Official.

Amended Electronically this 12th day of December 2024
pursuant to Rule 26.02 (b)

J. Malone
Registrar

5. At all material times, Michael J. Andersen acted within the scope of his duties as Chief Building Official. At no material time was Michael J. Andersen acting in his own capacity or contrary to the interest of the Township.
6. At all material times, the Township was vicariously liable for the actions of Michael J. Andersen.

This claim is an abuse of process of the court

7. The plaintiff's claim is frivolous, vexatious and an abuse of the Court's process.
8. The matters at issue in this claim are the same as matters at issue in the Application commenced by the plaintiff against the same defendants in the Ontario Superior Court, Pembroke, in the matter bearing Court File No. 16-409.
9. The relief claimed in sub-paragraphs 1 a, c, d, e, f, and l of the Statement of Claim correspond to and are identical to the relief claimed respectively in paragraphs (b), (c), (d), (e), (f), and (g) of the Notice of Application.
10. The allegations made against the Township's Chief Building Official in sub-paragraphs 46 c, d, e, f, g, h, i, j, k, l, m, n, o, p, q, r, s, and t of the Statement of Claim correspond to and are identical to the allegations made against the Township's Chief Building Official in paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (n), (o), (p), (q), (r), (s), and (t) of the Notice of Application.

11. Cross-examinations on the affidavits filed in the above-noted Application have been completed. The original hearing date for the Application of June 14, 2016, was postponed and the plaintiff has not set the Application down for a hearing nor has it withdrawn the Application.
12. BLR states that it fulfilled all of its duties and responsibilities mandated by the *Ontario Building Code Act* and Regulations with respect to the plaintiff's operation of a Chip Truck in the Township.
13. The plaintiff had a legislated duty and responsibility to ensure that any proposed work or operations pertaining to the subject chip truck was carried out in compliance with the *Ontario Building Code Act* and Regulations, in addition to applicable municipal by-laws, in effect at that time. BLR states that Order to Comply OTC-02-2016 issued May 11, 2016, Stop Work Order SWO-01-2016 issued May 24, 2016 and Order to Uncover OUT 01-2016 issued May 24, 2016 were all issued lawfully by the Chief Building Official. The plaintiff has admitted that the subject chip truck has been substantially altered in the two years since these Orders were issued.
14. BLR fulfilled its duties and has acted reasonably and in good faith throughout. Any damages or losses suffered by the plaintiff is not due to any act, omission, breach of duty or want of care on the part of BLR.

15. BLR's inspections of the property were carried out in accordance with the Township's duty to inspect to confirm general compliance with the Ontario *Building Code Act* and Regulations, as well as the applicable municipal by-laws.

16. Any damages or losses sustained were caused or contributed to by the negligence of the plaintiff, with the particulars of include the following:
 - a. They were responsible to ensure the proposed chip truck was designed, built and operated in conformity with all applicable statutes, municipal by-laws, as well as the appropriate standards in effect at that time, but failed to do so;

 - b. They failed to design, build or maintain the chip truck in accordance with the applicable statutes, municipal by-laws, as well as the appropriate standards in effect at that time;

 - c. They failed to comply with the provisions of all applicable plans and specifications, codes, municipal by-laws, and/or prudent industry practices;

 - d. they failed to hire appropriate or any other competent experts to provide them advice on the chip truck;

 - e. they failed to take into account the information provided to them by BLR;

- f. such further grounds as BLR may advise, and this Honorable Court choose to admit.
17. BLR has no knowledge with respect to any of the damages or losses allegedly sustained by the plaintiff. Any such damages or losses are excessive or too remote to be compensable at law, and the plaintiff has failed to take reasonable steps to mitigate its damages, if any.
18. If the damages or losses were sustained as alleged by the plaintiff, then these were caused by pre-existing or subsequent conditions, or by an event or events occurring before or after the facts alleged in the claim and having no cause or connection to and were not made worse or in any way aggravated by the matters which are the subject of this action.
- 18.1 With respect to the allegations at paragraphs 1(g) and 46 of the amended statement of claim, BLR states that the limitations period for these allegations have expired and, as such, the plaintiff is barred from advancing these allegations. BLR pleads and relies upon the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B.
19. Without any admission of liability, BLR pleads and relies upon the *Negligence Act*, R.S.O. 1990, c.N-1; the *Municipal Act*, 2001, S.O. 2001, c. 25; and the *Building Code Act*, 1992, S. O. 1992, c.23, and the regulations thereunder.

- 19.1 BLR requests that, as part of this action, this Honourable Court makes an order that the costs awarded to the defendants pursuant to the Order of the Honourable Mr. Justice MacLeod dated October 14, 2016 in the related application bearing court file number 16-409 be paid by the plaintiff at the conclusion of this action.
- 19.2 BLR requests that the action be dismissed with costs (including the costs of the within action and the costs of Application bearing court file number 16-409) on a substantial indemnity basis.

Dated: October 10, 2018

Amended: October 30, 2019

Amended: _____

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Lawyer for the Plaintiffs

2461351 ONTARIO INC.

AND

TOWNSHIP OF BRUDENELL, LYNDOCH AND RAGLAN ET AL

Plaintiff

Defendants

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at PEMBROKE

AMENDED STATEMENT OF DEFENCE

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TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2461351 ONTARIO INC.

Plaintiff

and

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

Defendants

AMENDED REPLY

1. The plaintiff admits the allegation contained in paragraph 4 of the Statement of Defence (hereinafter referred to as the "Defence").
2. The plaintiff denies allegations contained in the rest of the paragraphs of the Defence.
3. The plaintiffs repeat and rely upon the allegations in the Statement of Claim.
4. With respect to paragraphs 7, 8, 9 and 10 of the Defence, the plaintiff and the defendants were in the process of settling the application with its court file no. 16/409 and the issues of settlement included but were not limited to the following:
 - a. All issues raised by the said application;
 - b. Claims of various damages which will have to be included in the plaintiff's proposed statement of claim, if not settled.
5. The negotiation for settlement lasted almost one year and the limitation period for the plaintiff's claim was about to expire.

6. The parties continued their efforts to settle the issues, but, in the mean time, on April 30, 2018, the plaintiff issued their statement of claim.

7. During the negotiation, the parties accomplished the following resolutions:

- a. On April 12, 2018, one of the councillors of the defendant Township of Brudenell, Lnydoch and Raglan ("Township") sent a text message to Mr. Ilkyoung Kim ("Kim"), an employee of the plaintiff, and told him that Township agrees that the subject chip truck is a chip truck and not a building;
- b. On May 25, 2018, Township's Clerk-Treasurer Michelle Mantifel ("Michelle") sent a letter to the plaintiff on behalf of Township and told the plaintiff, "Township will take no further action if you open Chip Stand.";
- c. On June 28, 2018, Township granted Transient Trader License to the plaintiff;
- d. On June 29, 2018, Chief Building Official of Township, Michael Anderson ("CBO"), sent an e-mail to Kim and stated that three Orders, namely OTC-02-dated May 11, 2016, SWO-01-2016- dated May 24, 2016 and OTU-01-2016-dated May 24, 2016, issued against the plaintiff are null and void.

8. The parties could not agree upon the amount of damages and costs of the application to be paid to the plaintiff.

9. The plaintiff avers that in substance the only issue left from the said application with its court file no. 16/409 is costs of the application.

10. The plaintiff avers that the within action is not abuse of process, this action properly deals with damage claims, including claims of bad faith, loss of business income as a part of general damages, special damages and punitive damages, of the plaintiffs which cannot be dealt with by way of application.

10-1. With respect to paragraph 13 of the defendants' Amended Statement of Defence dated October 30, 2019 (hereinafter referred to as "Amended Defence"), since May 24, 2016, there was no alteration to the chip truck, save and except for the fact that on June 1, 2016, gray water drain pipe and water pipe was disconnected as per CBO' recommendation.

10-2. On June 1, 2016, the plaintiff's employee Ilkyoung Kim ("Kim") disconnected two water pipes and sent the photographs of the disconnection to CBO via email to show CBO that he followed CBO's instructions.

10-3. Further with respect to paragraph 13 of Amended Defence, all the changes to the chip truck between May 20 to June 1, 2016 were made in accordance with CBO's instructions.

10-4. The plaintiff never ever made any change to the chip truck since June 1, 2016.

10-5. On June 2, 2016, CBO again changed his position by sending an email to Kim and stating that the plaintiff breached CBO's order and CBO would take further action against the plaintiff.

10-6. The defendants, including CBO, changed their position again at paragraph 13 of their Amended Defence. The particulars of the defendants' constant changes of their position are as follows:

- a. On May 20, 2016, CBO instructed the plaintiff to do the following:
 - i. Two more tires should be installed;
 - ii. Tongue should be welded;
 - iii. Drainage should be disconnected from the septic system because the septic tank is not big enough.
- b. On June 2, 2016, CBO told the plaintiff that the plaintiff breached his order though the plaintiff diligently followed CBO's recommendation.
- c. On October 30, 2019, the defendants changed their position again by stating that since the plaintiff did make changes to chip truck between May 20 to June 1, 2016 as per CBO's instructions, the defendants eventually withdrew the three Orders in June 2018.

10-7. The defendants prohibited the plaintiff from running its chip truck business for the very reasons that the plaintiff followed CBO's Orders from May 20 to June 1, 2016, but on October 30, 2019, at paragraph 13 of the defendants' Amended Defence, the Defendants allege that, in June 2018, the defendants withdrew the three Orders because the plaintiffs made substantial changes to its chip truck between May 20 to June 1, 2016.

10-8 The plaintiff avers that the record shows the defendants are contradicting their own past conduct at paragraph 13 of their Amended Defence.

10-9. The defendant officially withdrew three Orders in June 2018 by stating that the three Orders are null and void, but the damage to the plaintiff had already been caused for over two years.

11. The plaintiff avers that the plaintiff is entitled to damages caused by three Orders improperly issued based on bad faith and negligence.

Date: October 16, 2018
November 11, 2019

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Lawyer for the defendants

2461351 Ontario Inc.

Plaintiffs

and

Michael Anderson, et al.

Defendants

Court file no. CV-18-031

ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Pembroke

AMENDED REPLY

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Lawyer for the plaintiff

TAB 4

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

2461351 ONTARIO INC.

Plaintiff

and

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

Defendants

LAWYER'S CERTIFICATE OF TRIAL RECORD

I, SANG JOON BAE, Lawyer for the Plaintiff certifies that the Trial Record contains the documents indicated below in the following order as required by clauses 48.03 (a) to (g) as marked below;

- A table of contents, describing each document by its nature and date;
Copy of any jury notice;
- A copy of the pleadings, including those relating to any counterclaim or crossclaim;
- A copy of any demand or order for particulars of financial statement and the particulars delivered in response;
- A copy of any notice of amounts and particular of a pleading or special damages delivered under clause 25.06 (9)(b);
- A copy of any order respecting the trial; and

I ALSO CERTIFY

- That this trial record contains the documents required by clauses (a) to (g) of Rule 48.03(1) of the Ontario Rules of Civil Procedure.
- That the time for delivery of pleadings has expired;

- ___ That the Defendant, has failed to deliver a Statement of Defence and had been noted in default;
- ___ That judgment against the Defendant whose name has been obtained;
- ___ That the action against the Defendants whose names are
Has been -discontinued
 -dismissed

DATED AT: TORONTO, ONTARIO

This 14th day of February, 2025



Signature of Lawyer

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Plaintiffs

and

Michael J. Anderson, et al.

Defendants

Court file no. CV-18-031

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at PEMBROKE

TRIAL RECORD

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