BRITISH COLUMBIA

Court Services Online

File Summary Report

Requested by: ANONYMOUS - Anonymous User

Date / Time: 27FEB2020 01:53 PM

File Number: VLC-S-S-201779

Your Cross Reference Number:

General File Details

Date File Opened: 14FEB2020

Style of Cause: CULTUS LAKE PARK BOARD v FRASER VALLEY REGIONAL DISTRICT

Location: Vancouver Law Courts

Level of Court: Supreme

Class of Court: Supreme Civil (General)

Initiating Documents: Notice of Civil Claim

Parties on File

Seq. #	Date Entered	Party Name	Party Role	Counsel Name	Also Known as Names / Other Legal Representatives
1	14FEB2020	CULTUS LAKE PARK BOA	Plaintiff		
2	14FEB2020	FRASER VALLEY REGIOI	Defendant		

Documents Filed

Seq. #	Date Entered	Document Description	Initiating Document?	Amended Document?	Claim Amount	Filing Parties
1	14FEB2020	Notice of Civil Claim	Yes	No		(Plaintiff) CULTUS LAKE PARK BOARD

Hearing and Results

Transfers

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Court record information on civil Provincial and Supreme Court activity throughout the province with the exception of family proceedings in Provincial Court.

Court information - Court of Appeal

Court record information on civil and criminal Court of Appeal activity for appeals filed after 1 January 2004.

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File Summary Report

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

FEB 14 2020

S201779

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CULTUSLAKEPARKBOARD

PLAINTIFF

AND:

14FEB20 2002969 RISS 200.00
21422 S201779

FRASER VALLEY REGIONAL DISTRICT

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

(a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

(a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

(b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

TIME FOR RESPONSE TO CIVIL CLAIM

A response to civil claim must be filed and served on the plaintiff,

(a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,

(b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,

(c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or,

(d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Parties

1. The plaintiff Cultus Lake Park Board (the "**Park Board**") is a corporation continued by *The Cultus Lake Park Act*, S.B.C. 1932, c. 63. The Park Board's statutory mandate is the use, regulation, protection, management, maintenance and improvement of Cultus Lake Park (the "**Park**").

2. The defendant Fraser Valley Regional District (the "**District**") is a regional district incorporated by letters patent and pursuant to s. 193 of the *Local Government Act*, R.S.B.C. 2015, c. 1. The District is an amalgamation of the Fraser-Cheam Regional District and Central Fraser Valley Regional District and a portion of the Dewdney-Alouette Regional District.

3. In this Notice of Civil Claim references to the "District" include, as may be applicable, the District's officers, employees, contractors and agents.

4. The Park is located within the boundaries of the District. Within the District, the Park is located within the District's Electoral Area H.

Sewer System

5. Beginning in the 1970s, the Park Board established, owned and operated a public sewer system servicing connections in the Park, a system which remains in place today (the "**Sewer System**").

6. In or about 1979, pursuant to the *Municipal Act*, R.S.B.C. 1960, c. 255, as amended, operation of the Sewer System was transferred to the District (then known as the Fraser-Cheam Regional District). The District passed bylaws with regard to the Sewer System, including the following:

(a) in 1979, District Bylaw #233 established a specified area for the purpose of providing a collector sewer system to a specified area within Cultus Lake Park;

(b) in 1980, District Bylaw #253 established that the District (then known as the Fraser-Cheam Regional District) had control of and was responsible for construction, maintenance and operation of the Sewer System, stating "[t]he Regional District of Fraser-Cheam shall have the control of all sewers in the Cultus Lake Sewer Specified Area and shall be responsible for the construction, repairs, use, maintenance, and operation of the same and of all matters whatsoever in connection with the sewerage system of the Cultus Lake Specified Area";

(c) in 1989, District Bylaw #875 established the specified area for the Sewer System as a local service for a particular District electoral area;

(d) in 1991, District Bylaw #876 extended the boundaries of the Sewer System; and

(e) in 1998, District Bylaw #0237, 1998 extended the boundaries of the Sewer System.

7. Users of the Sewer System, including the Park Board are required by District bylaws to pay user fees to the District for use of the Sewer System.

8. From time to time after 1980, the Park Board performed routine maintenance and cleaning on the Sewer System under the District's supervision and in return for payment from the District. At all material times, the District operated the Sewer System, and retained responsibility for construction, repair, use, major maintenance and operation of the Sewer System.

9. On or about January 4, 2014, the District reassumed the routine maintenance and cleaning of the Sewer System and the Park Board ceased doing this work.

10. Since on or about January 4, 2014, the District has been solely responsible for all aspects of the operation and maintenance of the Sewer System.

11. Pursuant to Ministry of Environment permits issued in 1979, as amended or replaced from time to time, and currently pursuant to a permit issued by a director under s. 14 of the *Environmental Management Act*, S.B.C. 2003, c. 53, as amended on February 4, 2011 (the "**Permit**"), the District is authorized to operate certain works (including septic tanks and subsurface disposal fields containing disposal pipe) and discharge certain effluents relating to the Sewer System. The Permit requires the District to regularly inspect the authorized works and maintain them in good working order.

12. The Park Board is a user of the Sewer System as it owns and operates multiple facilities within the Park, with separate connections to the Sewer System, including the Sunnyside Campground and Park Board subsidiaries and affiliates. In addition, the Park Board is contractually responsible to provide at its expense connections to the Sewer System to third party commercial leaseholders within the Park. As such, the Park Board pays to the District a significant portion of the user fees associated with the Sewer System.

The Project

13. By at least October 2016, the District was aware that the Sewer System had a corroded septic tank outlet, corroded pump chamber, corroded distribution bax, lateral pipes with solid deposits, and septic field failures visible above-ground.

14. In 2016, the District began publicly, and in meetings with Park Board members and staff, proposing a substantial replacement of the Sewer System with a new Class A+ sewage treatment plant and related works (the "**Project**"). The District described the existing Sewer System as risking liability for environmental damages and government fines, and as having no emergency effluent storage, no adequate system reliability and no growth capacity.

15. The District made the following representations to the Park Board and to members of the public:

    (a) the capital cost of the Project would be a maximum of $6.5 million;

    (b) the District would borrow up to $6.5 million from the Municipal Finance Authority to finance the Project, which loan would be repaid over time by an additional charge of up to $565 per year to each property connected to the Sewer System (based on the number of Sewer System connections at the time); and

    (c) the District would use its best efforts to obtain grants from other levels of government, to reduce the cost of the Project to the Park Board and members of the public as far as possible below the $6.5 million maximum

    (the "**Representations**").

16. The District made the Representations verbally and in writing including at meetings and District presentations held between October 2017 and October 2018. The District's written Representations included a document prepared and publicly distributed by the District titled "Cultus Lake Sewer System Fact Sheet".

17. The District informed the Park Board that the Project would require the use of certain Park Board property and the removal of 86 trees on Park Board property to accommodate the new sewage treatment plant and related works. The Park Board controls and is entitled to possession of the property on which the Project's sewer treatment facility would be located and from which these trees were to be removed.

18. On April 4, 2018 and April 14, 2018 the District held a referendum (the "**Referendum**") in which users of the Sewer System who were electors residing in Cultus Lake Park were asked to approve District borrowing for the Project by answering the following question:

> Are you in favour of the Fraser Valley Regional District adopting the North Cultus Sewer System Loan Authorization Bylaw No. 1468, 2018 to authorize the borrowing of up to $6.5 million for the construction of a new sewage treatment plant to serve the North Cultus Sewer System Service Area?

19. The result of the Referendum was approval from the required number of eligible voters.

20. On or before May 2018, the District was aware of higher than anticipated levels of effluents at Sunnyside Campground.

21. In or around January 2019, the District commenced construction on the Project. The District acted as general contractor on the Project.

22. The District entered on, and removed approximately 432 trees from, property controlled by the Park Board without requesting or receiving Park Board authorization to use land in excess of the area that had previously been discussed, or to remove significantly more than the 86 trees that the District had proposed as part of the Project, thereby wrongfully interfering with the Park Board's possession of its property without the Park Board's consent (the "**Tree Trespass**").

23. The District constructed or began constructing sewer facilities on property controlled by the Park Board over a significantly greater area than previously proposed by the District as part of the Project without requesting or receiving Park Board authorization to increase the Project footprint, thereby wrongfully interfering with the Park Board's possession of its property without the Park Board's consent (the "**Construction Trespass**").

24. At no time did the District request or receive from the Park Board a lease, licence or easement in respect of the lands in question.

25. Since in or around August 2019, the District has abandoned all visible work on the Project, which remains uncompleted.

26. Prior to the Referendum, or alternatively prior to the commencement of Project construction, the District had received credible estimates and other information indicating that the capital cost of the District's preferred option for the Project would be over the $6.5 million figure, and in fact could exceed $9 million (the "**True Cost Information**").

27. The District failed or refused to disclose the True Cost Information to the Park Board or other users of the Sewer System until October 17, 2019, on which date the District disclosed an Urban Systems report to the District dated October 22, 2018 and signed by two Professional Engineers (the "**Urban Systems Report**"). The Urban Systems Report refers to an earlier draft version of the report and summarizes changes between the draft and final versions, none of which relate to Project cost. The Urban System Report estimated the capital cost of the District's preferred option for the Project at $9,195,000, and estimated the capital cost of an alternative option at $9,715,000.

28. On or about November 26, 2019, the District publicly released a "Project Update: Cultus Lake Sewer System" document (the "**Update**") in which it stated that the Project's cost had increased by approximately $5 million. The District attributed this increase in part to higher than anticipated levels of effluent at Sunnyside Campground. The Update went on to state that the District would hold another referendum as soon as possible to seek approval for it to borrow an additional $5 million, which would increase the cost to

Sewer System users by a further amount of approximately $415 per year for each connection to the Sewer System.

District's Negligence

29. At all material times, the District owed the Park Board and other paying users of the Sewer System a duty of care to design, construct, repair, use, maintain and operate the Sewer System and to plan, manage, supervise, oversee and ensure completion of the Project in a reasonably prompt, timely, cost-effective and competent manner.

30. The District through its actions and omissions, the full particulars of which are known to the District but not the plaintiff, breached the standard of care applicable to the District's design, construction, repair, use, maintenance and operation of the Sewer System and the District's planning, management, supervision, oversight over and duty to ensure completion of the Project, including by:

(a) failing to regularly inspect the Sewer System;

(b) failure to adequately maintain the Sewer System;

(c) failing to comply with the Permit's requirement that the District regularly inspect the Sewer System works and maintain them in good working order;

(d) failing to perform regular and accurate measurements of sewage flow from the Sewer System;

(e) failing to perform regular and accurate sampling of effluents from the Sewer System;

(f) failing to advise the Park Board and other users of the Sewer System of actual, and/or anticipated, Project cost overruns and delays in a reasonably timely fashion;

(g) halting the construction of the Project for lengthy periods of time;

(h) cutting down significantly more trees on Park property than necessary or reasonable for the Project, without Park Board authorization;

(i) expanding the footprint of the Project to occupy and impact a significantly larger area of Park property than was authorized, and/or than was necessary or reasonable for the Project;

(j) proceeding with the Project without having adequately assessed the possibility that the Project might disturb or impact archaeologically sensitive areas; and

(k) failing to obtain required permits or approvals in a timely manner;

31. As a result of the District's breaches of the standard of care, the cost of the Project increased substantially.

32. The Park Board has suffered loss and damage including:

    (a) increased debt servicing costs for Park connections to the Sewer System;

    (b) replacement costs for trees removed in excess of those necessary for the Project; and

    (c) loss of use and/or lease value of Park Board property used in excess of that necessary for the Project.

33. By reason of the facts described above, including without limitation the District's authority and powers under the *Local Government Act*, R.S.B.C. 2015, c. 1, and its control over the Sewer System pursuant to District bylaws, the District's duties of care as pleaded above were based upon a special relationship between the District and users of the Sewer System, including the Park Board.

34. The Representations were untrue, inaccurate or misleading.

35. The District acted negligently in making the Representations.

36. The Park Board relied on the District's negligent Representations by supporting and encouraging the District's Project, including on Park property, and the Park Board's reliance was reasonable in the circumstances.

37. The District, contrary to the Representations, also failed to make best efforts to obtain the grant funds from other levels of government.

38. As a result of the Park Board's reliance on the District's negligent Representations, the Park Board has suffered loss and damages including without limitation, increased present and future costs for all Park connections to the Sewer System.

District's Trespass

39. The Park Board controls all or substantially all of the property on which the Project as initially proposed by the District was to be constructed, and is entitled to possession of said property.

40. Between January 2019 and August 2019 the District without the consent of the Park Board wrongfully interfered with the Park Board's possession of its property by committing the Tree Trespass and the Construction Trespass.

41. The said acts amounted to trespasses by the District and the trespasses are continuing.

42. As a result of the District's Tree Trespass and Construction Trespass, the Park Board has been deprived of the use and enjoyment of its property, and has thereby suffered loss and damage.

Part 2: RELIEF SOUGHT

1. The plaintiff claims for a declaration that the District is responsible for paying costs of the Project in excess of $6.5 million, or in excess of such other amount as this Honourable Court may determine at trial.

2. The plaintiff claims damages, including general, compensatory, punitive and special damages.

3. The plaintiff claims for possession of the property on which the District trespassed..

4. The plaintiff claims its costs.

5. The plaintiff claims interest pursuant to the *Court OrderInterest Act*, R.S.B.C. 1996, c. 79.

6. Such further and other relief as this Honourable Court may grant.

Part 3: LEGAL BASIS

1. The plaintiff pleads and relies on the common law of negligence, including negligent misrepresentation, and the provisions of the *Negligence Act*, R.S.B.C. 1996, c. 333.

2. The plaintiff pleads and relies on the common law of trespass.

3. The plaintiff has suffered loss, damage and expense as a result of the plaintiff's negligence, negligent misrepresentation and trespass as described above.

Plaintiff's address for service:

Farris LLP
Barristers & Solicitors
2500 - 700 West Georgia Street
Vancouver, B.C. V7Y 1B3

Fax number address for service (if any): 604-661-9349

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, B.C.

Dated: February 13, 2020

Signature
☒ Lawyer for plaintiff
Mike Wagner

Rule 7-1(1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Claim in negligence and negligent misrepresentation.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

Part 4: