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No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

SAN INDUSTRIES LTD. and
SAN FOREST PRODUCTS LIMITED
(collectively "SAN Group")

Plaintiffs

And:

CITY OF PORT ALBERNI

Defendants

NOTICE OF CIVIL CLAIM

[Rule 22-3 of the Supreme Court Civil Rules applies to all forms.]

This action has been started by the plaintiff(s) 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(s),

- (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

The Parties:

1. The plaintiffs, SAN Industries Ltd., and SAN Forest Products Limited are bodies corporate which carry on the business of forest product re-manufacture at 5005 Nuupts' Ikapis Way, Port Alberni, British Columbia, *inter alia*.
2. The defendant, City of Port Alberni, is a municipality continued under the *Local Government Act*, RSBC 2015 c. 1 and having a place of business at City Hall, 4850 Argyle Street, Port Alberni, British Columbia.
3. The plaintiffs, the SAN Group, occupied a remanufacturing facility at 5005 Nuupts' Ikapis Way, Port Alberni, B.C. at all material times.
4. The defendant, City of Port Alberni, delegated policing responsibilities to the Royal Canadian Mounted Police, Port Alberni detachment which was at all material times a contractor performing policing duties as agent for the City of Port Alberni (hereinafter "RCMP").
5. The defendant, City of Port Alberni, delegated fire prevention and suppression and certain public safety issues to the Port Alberni Fire Department which department was made up of the city employees for which the City of Port Alberni is responsible and vicariously liable in the circumstances of this case.
6. On or about Thursday, July 4th, 2024, at approximately 10:00 p.m. with the advance knowledge of the City of Port Alberni and its mayor and Chief Administrative Officer (hereinafter "CAO") but without prior judicial authorization, and without notice to the

plaintiffs, or permission, or colour of right, the agents of the City of Port Alberni, being its employees regularly assigned to the fire department, its contract forces being members of the RCMP and RCMP employees, and with the participation of other forces of the City of Port Alberni, conducted an unauthorized search of the premises at 5005 Nuupts' Ikapis Way, Port Alberni, B.C. for approximately seven (7) hours until approximately 5:00 a.m. on July 5th, 2024 (the "Search").

7. The Search was conducted without notice on a clandestine basis, secretly, and not affording the plaintiffs with any opportunity to supervise the Search as there was no representative of SAN Group present and certainly no authorized representative.
8. During the Search, road access to 5005 Nuupts' Ikapis Way, Port Alberni, B.C. was blocked by two truck vehicles bearing fire department insignia and at least three police cruisers.
9. The Search was planned and performed secretly but involved multiple personnel from both the Fire Department and the police detachment and, the plaintiffs believe, under the direction and supervision of the City, including both the administration and elected officials of the City.
10. In a small town such as Port Alberni, B.C., the mustering of substantial numbers of public servants to perform a secret Search on a clandestine basis through the night foreseeably attracted substantial attention and became the source of rumours as to justification for the Search, leading to widespread speculation that has been highly damaging to the plaintiffs' business and reputation.
11. The plaintiffs have objected to the Search as being "illegal" but the defendant has not acknowledged illegality or apologized for it or the ongoing damage.
12. In fact, the representative of the defendant sought to justify the Search as somehow authorized by process that arose on September 7th, 2022, months prior to the Search and that could not remotely be fairly interpreted as authorization for the Search.

Part 2: RELIEF SOUGHT

1. The plaintiffs seek a declaration that the Search was an illegal,

- a) Breach of the *Canadian Charter of Rights and Freedoms*, section 8 that was not saved as a reasonable limit prescribed by law that was demonstrably justified in a free and democratic society, under section 1 of the *Charter*,
 - b) Invasion of privacy contrary to section 1 of the *Privacy Act*,
 - c) Trespass,
 - d) Abuse of process, and
 - e) Negligence.
2. General Damages for the consequences of the Search.
 3. Special Damages.
 4. Aggravated Damages.
 5. Punitive Damages.
 6. An interim, interlocutory and permanent injunction restraining the defendant from any repetition of the Search or any similar *Charter* or tortious breach and restraining the defendant from making any use of information or property of any kind, gleaned by virtue of the Search.
 7. A court order that the defendant deliver up to the plaintiffs all copies of all records gleaned by virtue of the Search.
 8. A mandatory injunction or order in the nature of *mandamus* that the defendant post at a prominent position in the Port Alberni Fire Hall, City Hall and RCMP Detachment an acknowledgment that the Search was illegal and a *Charter* breach not saved by section 1 of the *Charter*.
 9. Special costs or in the alternative increased costs.
 10. Such further relief as counsel shall advise.

Part 3: LEGAL BASIS

1. The *Canadian Charter of Rights and Freedoms* being Part 1 of the *Constitution Act*, 1982 provides at section 8 that “Everyone has the right to be secure against unreasonable search or seizure.”
2. The breach of the *Charter* in this case is not saved by section 1 of the *Charter* under the test in *R. v. Oakes*, [1986] 1 SCR 103.
3. Under s. 24(1) of the *Charter*, “anyone whose rights or freedoms, as guaranteed by [the] *Charter*, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”
4. Breach of Section 8 of the *Charter* is compensated by damages, *City of Vancouver v. Cameron Ward*, 2010 SCC 27.
5. An unreasonable invasion of privacy is actionable under s. 1(1) of the *Privacy Act*, R.S.B.C. 1996, c. 373.
6. The plaintiffs rely upon the emergent cause of action of false lights privacy tort – see *Yenovkian v. Gulian*, 2019 ONSC 7279.
7. The plaintiffs say that injury to reputation need not be pursued through defamation but may be compensated for by proof of other causes of action as per *Young v. Bella*, 2006 SCC 3.
8. Punitive damages may be awarded under the principles established in *Whiten v. Pilot Insurance Co.* (2002), 209 DLR (4th) 257 at paragraphs 111 – 132 (SCC).
9. Injunctive relief is governed by equitable principles and at common law and by Rule 10 – 4 of B.C. Civil Rules of Court.

Plaintiffs’ address for service: **DAVID SUTHERLAND & ASSOCIATES**
2000 Ontario Street, Vancouver, B.C., V5T 2W7

E-mail address for service: dfs@dfsutherland.com

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, B.C., V6Z 2E1

Dated: July 31, 2024

David F. Sutherland

Signature of lawyer for Plaintiffs
David F. Sutherland, K.C.

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: This is a claim of infringement of *Charter* rights and freedoms not saved by section 1, and invasion of privacy, trespass, abuse of process and negligence arising from an illegal search.

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:

Canadian Charter of Rights and Freedoms, sections 1, 8, 24(1)

Privacy Act, R.S.B.C. 1996, c. 373, s. 1(1)

Supreme Court Civil Rules, B.C. Reg 168/2009, as amended, Rule 10 – 4 (Injunctions)