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03-w.253768 cm 3

Court File No. 21521/95

ONTARIO COURT (GENERAL DIVISION)

B E T W E E N:

CHIEF RICHARD KAHGEE and BERNICE KAHGEE, HARRIET KEWAQUOM,
LORNE MANDAWOUB, MARIE MASON, JAMES RITCHIE, RITA ROOT,
MELVIN ROOTE, FRANK SHAWBEDEES, ARNOLD SOLOMON, CAROL
SOLOMON and CARMAN ROOTE ON THEIR OWN BEHALF AND ON BEHALF
OF THE MEMBERS OF THE CHIPPEWAS OF SAUGEEN FIRST NATION

Plaintiffs

- and -

THE CORPORATION OF THE TOWNSHIP OF AMABEL,
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,
HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
THE ATTORNEY GENERAL OF CANADA, BARBARA TWINING,
LARRY TWINING, DAVID DOBSON, ALBERTA LEMON,
SAUBLE BEACH DEVELOPMENT CORPORATION
ESTATE OF WILLIAM ELDRIDGE, and ESTATE OF CHARLES
ALBERT RICHARDS THE ATTORNEY GENERAL OF ONTARIO

Defendants

AMENDED

**STATEMENT OF DEFENCE AND COUNTERCLAIM, WITH CROSSCLAIM
OF
SAUBLE BEACH DEVELOPMENT CORPORATION**

1. This Defendant admits the facts set out in paragraphs 3, 5 and 9 of the Statement of Claim.
2. This Defendant denies the remaining allegations in the Statement of Claim and puts the Plaintiffs to the strict proof thereof.
3. This Defendant states that it's chain of title traces

to a Crown Patent and that its Deed of Title provides ownership in its particular lands to Lake Huron.

4. This Defendant states that it has become aware of the "companion proceeding" referred to in paragraph 9 of the Statement of Claim and asserts the following:

(a) That this proceeding should be stayed as an abuse of process because:

- i. Similar relief is sought in the action commenced on January 18th, 1990;
- ii. The Plaintiffs knew or ought to have known of the title claims of this Defendant, at the time the "companion action" was commenced and deliberately chose not to include this Defendant as a necessary party to that action, essentially using that action as a negotiating tool for political and economic purpose rather than the litigation of the real title issue;
- iii. That the Plaintiffs maintain the two actions for the purpose of making inconsistent and contradictory pleadings. For the purpose of this action the Plaintiffs seek to challenge the validity or fulfilment of Treaties referred to in the Statement of Claim. For the purposes of the companion proceeding the Plaintiffs seek to accept the validity or fulfilment of those

Treaties for the purposes of taking the benefits that may accrue with them.

- b. In the alternative this Defendant states that the Plaintiffs are estopped from proceeding against them in this action. For particulars see paragraphs 6, 8 and 9 below.

5. This Defendant states that the Plaintiffs do not represent, and cannot trace the representative capacity to, the Saugeen Indians who entered into the Treaty of surrenders referred to in paragraph 3 through 6 of the Statement of Claim in the "companion action".

6. This Defendant states that from time to time over the past 50 years various parties have approached this Defendant or it's predecessors in title attempting to assert some claim in the property of this Defendant. At all material times this Defendant and it's predecessors have resisted those claims. This Defendant states that it has maintained it's property, paid realty taxes and insurance on the property throughout it's period of ownership. This Defendant states that it's representatives are familiar with other Defendants named in this action and have from time to time discussed generally the nature of native Indian land claims and this Defendant has pursued the acquisition and maintenance of it's property relying upon information conveyed by other Defendants herein to the effect that no native Indian claims had been made or were

contemplated with respect to lands in the vicinity of this Defendant's lands.

7. This Defendant states that it has taken reasonable steps to protect its title to the beach property as its predecessors in title have also done. This Defendant has been levied property tax by the Township of Amabel, recognizing its respective ownership rights in the property in question and this Defendant has paid such realty tax and other charges as levied. This Defendant has controlled the use of its beach property and has entered into an agreement with the Township of Amabel allowing the Township to use the property for recreational purposes from time to time.

8. This Defendant and its predecessors have acquired title to its beach property for valuable consideration, initially by a Crown Patent, Notice of which is deposited in the Land Registry Office in Walkerton, Ontario. This Defendant asserts that it has possessed its beach property adversely to the interest of any other claiming parties and has done so over the course of its ownership and that of its predecessors since the granting of the Crown Patents. This Defendant further pleads and relies upon the provisions of the Limitations Act R.S.O. 1990, Chapter L.15 and in particular Section 4 and 15 thereof.

9. This Defendant states that the Plaintiffs are now estopped from bringing or continuing this action or any related action because of undue delay and because of attempts

to litigate this same issue before. In or about the month of October 1976 Chief James Mason of the Saugeen Indian Reserve advised members of the public, in a press interview, that the Band had officially submitted a legal claim to the same land in question in this current litigation, advising among other things that there was a Survey error and a final Survey had established the true line. That same press publication also put the Band on notice that their claim was being opposed by at least one of the Defendants herein.

10. This Defendant therefore submits that the Plaintiffs claims be dismissed with costs payable on a solicitor and his own client basis.

COUNTERCLAIM

11. This Defendant counterclaims against the Plaintiffs for the following relief:

- (a) For a Declaration that it is the legal and beneficial owner of the beach property registered in it's name and that it is entitled to sole and exclusive use and benefit of such property, having traced it's title through prior title holders to Crown Patents.
- (b) In the alternative for a Declaration that it has acquired possessory title to the property in question by-way-of adverse possession which has been open and notorious since the time of the granting of Crown

Patents and for at least the last 50 years, on a continuous basis;

- (c) For a Declaration that the Plaintiffs action be stayed on the basis of abuse of process, undue delay, laches or estoppel;
- (d) In the alternative damages against the Plaintiffs for compensation based on the fact that this Defendant has maintained and improved the property, pursuant to the provisions of paragraph 37 of the Conveyancing and Law and Property Act;
- (e) It's costs of this Counterclaim payable on a solicitor and his own client basis;
- (f) Pre-Judgment and Post-Judgment interest on all sums owing to it pursuant to the provisions of the Courts of Justice Act of Ontario;
- (g) Such further and other relief as this Honourable Court may deem just in the circumstances.

12. This Defendant pleads and relies upon the facts pleaded in the Statement of Defence and Counterclaim.

AND BY WAY OF CROSSCLAIM

13. This Defendant crossclaims against Her Majesty the Queen in Right of Canada, the Attorney General of Canada and

the Corporation of the Township of Amabel as follows:

- (a) As against Her Majesty the Queen in Right of Canada and the Attorney General of Canada, damages in the amount of \$1,000,000.00 on the basis of negligence, negligent misstatement or negligent misrepresentation and breach of fiduciary duty;
- (b) Damages as against the Corporation of the Township of Amabel in the amount of \$200,000.00;
- (c) Interest and Pre-Judgment interest as allowed by the Courts of Justice Act of Ontario;
- (d) It's costs of maintaining the Defence of this action and this costs of this Crossclaim payable on a solicitor and client basis;
- (e) Such further and other relief as this Honourable Court may deem just in the circumstances.

14. The Plaintiffs have brought an action against this Defendant and others claiming among other things an interest in land owned by this Defendant particulars of which are set out in Statements of Claim filed in Court Action Nos. 2152/95 and 44874/90. To protect it's interest this Defendant has disputed the Plaintiffs right to make such claims and this Defendant has filed a Statement of Defence and Counterclaim with Crossclaim.

15. In the event that the Plaintiffs are successful

in this action, this Defendant pleads and relies upon the following facts to support a claim for relief against Her Majesty the Queen in Right of Canada and the Attorney General of Canada:

- (a) That is by-way-of Crown Patent, issued by said parties that this Defendant and it's predecessors obtained title to the lands in question;
- (b) That recognizing the value of it's property this Defendant and it's predecessors have jealously guarded it's title interest in the property and have relied upon assurances made by authorized representatives of these Defendants to other Defendants herein from time to time. The particulars of some of these assurances are set-forth in paragraphs 6 of the Statement of Defence filed on behalf of David Dobson.
- (c) That this Defendant continues to maintain and improve it's property and pay realty taxes on the property relying upon representations of said Co-Defendants.
- (d) That these Co-Defendants have a fiduciary relationship to this Defendant in view of the original grant of title and this Defendant has every reason to rely on such Crown Patent and in fact did rely upon the Crown Patent;
- (e) That the Attorney General of Canada and Her Majesty the Queen in Right of Canada were negligent in not providing the Plaintiffs

with the lands which they were entitled to receive by treaty;

- (f) That said Co-Defendants were negligent in preparing a proper Survey of the Plaintiffs lands initially and subsequently when they received complaints from the Saugeen Band;
- (g) That said Defendants were equally negligent in making misleading statements to other Defendants named herein and their predecessors in title as to their personal title rights.

16. This Defendant says that Her Majesty the Queen in Right of Canada and the Attorney General of Canada are estopped from pleading any limitation period for their negligence due to the fact that the negligent preparation of the Survey has only been recently discovered by this Defendant through pleadings received in connection with this action.

17. As against the Township of Amabel, this Defendant states that it has paid Municipal taxes, as levied, from time to time on the basis that it is the registered owner of it's property and in the event that it should become disentitled then this Defendant claims that the Township of Amabel has been unjustly enriched by the improper levy of taxes and that such profit should be disgorged to this Defendant and the

Township be called upon to account for all taxes paid by it.

Dated: February 18th, 1997

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Solicitor for the Defendant,
Sauble Beach Development
Corporation