

Court file no.

RE 1630/81

SUPREME COURT OF ONTARIO

BETWEEN:

NATIONAL SEWER PIPE LIMITED

APPLICANT(S)

(Court seal.)

and

THE CORPORATION OF THE CITY OF BURLINGTON

RESPONDENT(S)

(Insert statutory provision or rule under which the application is made.)

APPLICATION UNDER The Municipal Act Sections 138, 139, 140(6) and 193; The Courts of Justice Act, Sections 110 & 114; and The Rules of Civil Procedure
NOTICE OF APPLICATION of Civil Procedure
Section 14.05(1) (2) (3)

TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant(s). The claim made by the applicant(s) appears on the following page.

(Insert a High Court judge, a local judge of the High Court or as may be.)

THIS APPLICATION will come on for a hearing before a Justice of the Supreme Court of Ontario

on Tuesday, July 29th 1986, at 10:00 a.m.
(day) (date) (time)

(Address of court house.)

at Osgoode Hall, 130 Queen Street West, Toronto, Ontario M5H 2N9

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in this court office, and you or your lawyer(s) must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s) or, where the applicant(s) do(es) not have a lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date July 17, 1986

Issued by

Warren J. Dunlop per E.S.

Local registrar

(Name and address of each respondent.)

TO: THE CORPORATION OF THE CITY OF BURLINGTON
City Hall
426 Brant Street
Burlington, Ontario
L7R 3Z6

Address of court office:

145 Queen Street West
Toronto, Ontario
M5H 2N9

APPLICATION

1. The Applicant makes application for:

- (a) an Order pursuant to Section 139 of The Municipal Act, R.S.O., 1980, c. 302, as amended, quashing the resolution identified as SWM-69-85-1 by motion 271 passed at the Regular Meeting of the Council of the Respondent held on July 22nd, 1985, purportedly passed by the Respondent pursuant to Section 139 of The Municipal Act and relating to the commencement of expropriation proceedings of the Applicant's lands;
- (b) an Order pursuant to Section 139 of The Municipal Act R.S.O., 1980, c. 302, as amended, quashing the resolution identified as EM-63-86, dated June 9, 1986 and the resolution identified as EM-35-86, dated April 7, 1986, relating to the Notice of Application for approval to expropriate the Applicant's lands which was served upon the Applicant pursuant to the provisions of The Expropriations Act R.S.O., 1980, c. 148, and in particular Section 6 thereof;
- (c) an Order pursuant to Section 110 of the Courts of Justice Act or alternatively pursuant to Rule 14.05(3)(d),(g) of the Rules of Civil Procedure declaring that the resolutions passed by the Respondent and identified under paragraphs (a) and (b) aforesaid, are invalid and unenforceable as against the Applicant with respect to any steps taken by the Respondent or its council pursuant to the provisions of The Expropriations Act with regard to the Applicant's lands which are the subject matter of the aforesaid resolutions;
- (d) an Order declaring that the Respondent exceeded its statutory authority purportedly exercised pursuant to Section 193 of The Municipal Act in commencing expropriation proceedings of the Applicant's lands which exceed in acreage the requirements of the Respondent for its legitimate use;
- (e) an Order declaring that the aforesaid resolutions were enacted in bad faith and with the sole intent and purpose of preventing the Applicant from using its lands for legitimate purposes;
- (f) a mandatory and permanent Order pursuant to Section 114 of the Courts of Justice Act or pursuant to Rule 14.05(3)(g) of the Rules of Civil Procedure prohibiting, restraining and enjoining the Respondent its servants, agents or

representatives from enforcing or taking any steps or acts pursuant to the aforesaid resolutions and in particular from proceeding under those resolutions with the expropriation of the Applicant's lands or the expropriation proceedings commenced by the Respondent pursuant to the provisions of The Expropriations Act;

- (g) an interim Order pursuant to Section 140 (6) of The Municipal Act or alternatively pursuant to Section 114 of the Courts of Justice Act restraining and enjoining by way of an interim injunction, pending the disposition of this application, the Respondent its servants, agents or representatives from enforcing or taking any steps or acts pursuant to the aforesaid resolutions and in particular from proceeding under those resolutions with the expropriation of the Applicant's lands or the expropriation proceedings commenced by the Respondent pursuant to the provisions of The Expropriations Act and from referring its application for approval to expropriate the Applicant's lands to the Chief Inquiry Officer pursuant to Section 7 of The Expropriations Act;
- (h) an Order pursuant to Section 140 (6) of The Municipal Act directing that the Respondent do nothing under the aforesaid resolutions until this application is disposed of;
- (i) an Order that the Respondent pay the Applicant's costs of these proceedings; and
- (j) such further and other Order or relief including interim relief as to this Honourable Court may seem just.

2. The grounds for the Application are:

- (a) the resolutions which are treated as by-laws under Section 138 of The Municipal Act are void at law, illegal and unenforceable in that they were enacted in bad faith by the Respondent's council in that they were enacted not for the purported purpose but to prevent the Applicant from using its lands as a landfill site and to circumvent the legal obligation of the Respondent to alleviate its trespass on the Applicant's lands and the nuisance caused upon the Applicant's lands by the Respondent and in particular to circumvent the Respondent's legal obligation to remove from the Applicant's lands garbage, refuse and landfill owned

by the Respondent which was deposited upon the Applicant's lands by the Respondent and to abate the contaminate and pollution of the Applicant's lands by the Respondent; and

- (b) the resolutions are ultra vires the Respondent corporation in that the Respondent exceeded its statutory authority under Section 139 of The Municipal Act as the said resolutions concern land which is not required for legitimate purposes by the Respondent or its use.
3. The Applicant intends to rely upon the following statutory provisions:
- (a) The Municipal Act, R.S.O. 1980, c. 302, as amended; and in particular Sections 138, 139, 140(6) and 193;
 - (b) The Expropriations Act, R.S.O. 1980, c. 148, as amended Sections 4, 5, 6 and 7.
 - (c) the Courts of Justice Act, S.O. 1984, c. 11, Sections 110, 114; and
 - (d) the Rules of Civil Procedure, Rule 14.
4. The following documentary evidence will be used at the hearing of the Application:
- (1) the Affidavit of Roger S. Christensen;
 - (2) the Affidavit of Robert Tait;
 - (3) Such further and other material as counsel may advise and this Honourable Court permit.

DATE OF ISSUE July 17, 1986

FASKEN & CALVIN
Box 30, Toronto-Dominion Centre
Toronto, Ontario
M5K 1C1, (416) 366-8381
(R.B. Tuer, Q.C. and
Peter R. Greene)
Solicitors for the Applicant

1-2-1850186

JULY 29/86

NATIONAL SEWER PIPE LIMITED

and

THE CORPORATION OF THE CITY OF BURLINGTON

APPLICANT(S)

RESPONDENT(S)

Short title of proceeding)

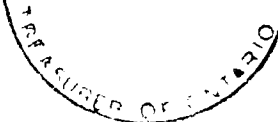
Court file no.

SUPREME COURT OF ONTARIO

Proceeding commenced at the City of
Toronto, ~~EEH PAID~~ Financial District

TO THE
of York

JUL 17 1986



NOTICE OF APPLICATION

THE SUPREME COURT OF ONTARIO (Form 14B) Under the Rules

FILED

JUL 21 1986

DYE & DURHAM CO. LIMITED—Form No. 932

(68161/93) ~~SECRET~~
Name, address and telephone number of solicitor or applicant:
VALLEY COURT OFFICE

FASKEN & CALVIN
Box 30
Toronto-Dominion Centre
Toronto, Ontario
M5K 1C1

R.B. Tuer and Peter R. Greene
(416) 366-8381

Solicitors for the Applicant