

Court File No. 48/20

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Henco Industries Limited

Applicant

- and -

Haudenosaunee Six Nations Confederacy Council,
Janie Jamieson, Dawn Smith, Tom Deer, or any agent or person
acting under their instructions, John Doe, Jane Doe and other persons unknown,
and The Corporation of Haldimand County

Respondents

APPLICATION UNDER Rules 14.05 (3)(g) and 40 of the
Rules of Civil Procedure, and Section 101 of the *Courts of Justice Act*,
R.S.O. 1990, and amendments thereto.

NOTICE OF APPLICATION

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on March 9, 2006, at 10:00 a.m. at 55 Munsee Street North, Cayuga, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer 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 must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant(s) lawyer or, where the Applicant(s) does 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 at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: March 3, 2006

Issued by:


Local registrar

55 Munsee Street North
Cayuga, Ontario

TO: Haudenosaunee Six Nations Confederacy Council

AND TO: Janie Jamieson

AND TO: Dawn Smith

AND TO: Tom Deer

AND TO: The Corporation of Haldimand County
45 Munsee Street North
P.O. Box 400
Cayuga, Ontario
N0A 1E0

AND TO: Her Majesty the Queen in Right of Ontario,
as represented by the Attorney General of Ontario
c/o Ministry of the Attorney General
720 Bay Street, 8th Floor
Toronto, Ontario
M5G 2K1

APPLICATION

1. The Applicant makes Application for:
 - a) an Order, if necessary, abridging the time for service of this Notice of Application;
 - b) an interim and permanent injunction restraining the Haudenosaunee Six Nations Confederacy Council ("Confederacy Council") and the individual Respondents and their servants or agents, whose identity is unknown, from interfering with the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, use of roadways known municipally as Thistlemoor Drive and Surrey Street, formerly in the Town of Caledonia and the Township of Oneida, now known as The Corporation of Haldimand County, or from in any way obstructing these or other roadways in Douglas Creek Estates or preventing the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, from using these or other roadways for the purposes of entering Douglas Creek Estates, more particularly described in Schedule

"A" attached hereto ("Applicant's property") until the trial of this matter or until such time as this Honourable Court may direct;

- c) an interim and permanent injunction restraining the Confederacy Council and the individual Respondents, their servants or agents, and any other person having notice of this injunction, from hindering, interfering with, intimidating, physically obstructing or otherwise impeding the operations of the Applicant or its employees or agents, or the Applicant's contractors or subcontractors, or their agents, in the performance of work relating to the construction of the Douglas Creek Estate subdivision ("the subdivision") within the area, set out at Schedule "A" until the trial of this matter or until such time as this Honourable Court may direct;

- d) a mandatory Order requiring the Respondents to remove any vehicles and to tear down and remove any barricades owned, placed or maintained by them, constructed across Thistlemoor Drive and Surrey Street, the public highway and/or roadway, or any other obstruction on the public highway and/or roadway, owned and maintained by the Respondent, The Corporation of

Haldimand County, preventing access to the Douglas Creek Estates;

- e) an Order requiring that any peace officer of the Ontario Provincial Police shall, at the request of the Sheriff, accompany the Sheriff and assist in execution of this Order, including the removal of any persons who refuse the request of the Sheriff to obey the provisions of the interlocutory injunction Order;

- f) an Order that posting of this Notice of Application and any Court Orders at Thistlemoor Drive and Surrey Street in Douglas Creek Estates and at the municipal offices at The Corporation of Haldimand County at 45 Munsee Street North, P.O. Box 400, Cayuga, Ontario, and by delivery of three copies of the Notice of Application and Court Orders to persons manning the barricades, shall be good and sufficient service of this Notice of Application and any Court Order on the Respondents, Haudenosaunee Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, Tom Deer, or any agent or person acting under their instructions, John Doe, Jane Doe and other persons unknown, to be effective on the fifth day after posting;

- g) damages for inducing breach of contract, intentional interference with economic relations, intimidation and nuisance in the amount of \$5,000,000.00 against the Respondents, Haudenosaunee Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, Tom Deer, or any agent or person acting under their instructions, John Doe, Jane Doe and other persons unknown;
- h) costs of this Application on a substantial indemnity basis; and
- i) such further and other relief as this Honourable Court deems just.

2. The Grounds for the Application are:

- a) the Applicant is the owner of the lands known as the Douglas Creek Estates;
- b) the Respondents, including unidentified protestors, except The Corporation of Haldimand County, are blocking Thistlemoor Drive and Surrey Street, public highways and/or roadways which allow access to the Douglas Creek Estates;

- c) the conduct of the Respondents, including unidentified protestors, except The Corporation of Haldimand County, is wrongful and constitutes nuisance, intimidation, inducement of breach of contract, and is in violation of municipal By-laws and of the intimidation provisions of the *Criminal Code* prohibiting blockage or obstruction of highways;
- d) the Respondents, including unidentified protestors, except The Corporation of Haldimand County, have openly and repeatedly expressed their intention to continue to commit the aforementioned wrongful acts with the objective of preventing the Applicant and their agents, employees or contractors from proceeding with and/or completing construction of dwellings in the Douglas Creek Estates;
- e) any delay in undertaking the construction of dwellings, including but not limited to that work referenced in the Subdivision Agreement, will substantially and negatively impact the timely completion of the project;
- f) Section 101 of the *Courts of Justice Act*, R.S.O. 1990 and amendments thereto, and Rule 40 of the *Rules of Civil Procedure*;

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- g) The Corporation of Haldimand County By-laws;
- h) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of this Application:

- a) Affidavit of Don Henning, sworn March 2, 2006, and the exhibits attached thereto;
- b) Such further and other material as counsel may provide and this Honourable Court may deem just.

LAZIER HICKEY LLP
Barristers and Solicitors
25 Main Street West
15th Floor
Hamilton, Ontario
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Michael C. Bruder
LSUC # 26107T 1D
Tel.: 905-525-3652
Fax: 905-525-6278
Solicitor for the Applicant

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SCHEDULE A

FIRSTLY:

Parts of Lots B and C, Range West of Plank Road, geographic Township of Onecida, in Haldimand County and being Part 1 on 18R- 6217

SECONDLY

Part of Lot 18, Broken Front Concession on the Grand River, geographic Township of Onecida, in Haldimand County, and being Parts 2, and 3 on Reference Plan 18R- 6217

AND THAT the said land is registered in the Land Registry Office for the Land Titles Division of Haldimand as Parcel BC-18 in the Register for Section Rng W Plank Rd & BFC on GR (Onecida)

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Applicant

Administrative Receivables Council et al

Respondents

Court file no. 48/2004

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Cayuga

NOTICE OF APPLICATION

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and The Corporation of Haldimand County

Respondents

APPLICATION UNDER Rules 14.05 (3)(g) and 40 of the
Rules of Civil Procedure, and Section 101 of the *Courts of Justice Act*,
R.S.O. 1990, and amendments thereto.

**AFFIDAVIT OF DON HENNING
SWORN MARCH 2ND, 2006**

I, Don Henning, of Haldimand County, in the Province of Ontario, **MAKE**

OATH AND SAY:

1. I have knowledge of the matters to which I hereinafter depose, except to the extent that such knowledge is based upon information and belief, in which case I verily believe it to be true.

The Parties

2. I am the Vice-President of the Applicant, Henco Industries Limited ("Henco").
3. Henco is the owner of the lands described in Schedule "A" attached hereto.
4. The Respondent, Six Nations Confederacy Council ("Confederacy Council") is a group of native protestors.
5. The Respondents Janie Jamieson, Dawn Smith and Tom Deer are members of and associated with the Confederacy Council. The Confederacy Council and these individuals will be referred to collectively as the protestors.
6. The Respondent, The Corporation of Haldimand County ("Haldimand County"), is incorporated pursuant to the *Town of Haldimand Act*, R.S.O. 1990 and amendments thereto, and is the owner of public highways in Haldimand County, including Thistlemoor Drive and Surrey Street.

Douglas Creek Estates

7. By Certificate of First Registration As Owner, Henco was registered under

the *Land Titles Act* as owner of the lands more particularly described in Schedule "A" attached hereto.

8. Attached hereto and marked Exhibit "A" is a true copy of the Certificate of First Registration As Owner registered by Henco on July 26, 2005 as Instrument Number 287951.
9. The Schedule "A" lands are known as the "Douglas Creek Estates".
10. On December 1, 2005, Henco registered Plan 18M-24, being a Plan of Subdivision for the Douglas Creek Estates, in the Land Registry Office of the Land Titles division of Haldimand (18) as Plan Document Number LT12933. Attached hereto and marked Exhibit "B" is a copy of the Document General which included a copy of Plan 18M-24 ("Plan of Subdivision").
11. Henco is the owner of the lands referred to in Plan 18M-24, except that the streets referred to on the Plan of Subdivision were dedicated to Haldimand County as public highways, and as such are owned and maintained by Haldimand County.
12. Prior to the registration of the Plan of Subdivision, Henco entered into an Agreement with The Corporation of Haldimand County and Haldimand

County Hydro Inc. with respect to servicing of the Douglas Creek Estates. The Agreement is embodied in a Subdivision Agreement which is attached hereto and marked Exhibit "C".

13. The Subdivision Agreement sets out Henco's legal obligations and responsibilities with respect to the Douglas Creek Estates Phase 1 Development.

**Events leading up to execution of the
Subdivision Agreement and Registration of Plan of Subdivision**

14. In or about 1993, Henco commenced acquiring parcels of land which today form the lands referred to in Schedule "A". For the last number of years, Henco has been negotiating with Haldimand County with respect to their planning requirements and the proposed Subdivision.
15. During the planning process, Henco submitted a Draft Plan of Subdivision for approval. The Six Nations Band Council was notified of Henco's Draft Plan. Haldimand County received no objections to the Draft Plan and as a result, the Douglas Creek Estates Plan of Subdivision was approved.

16. The Respondent, Haudenosaunee, is a group of native protestors who claim that the Douglas Creek Estates subdivision lands encroach on Six Nations' territory and/or lands.
17. To the best of my knowledge, information and belief, the Six Nations has not commenced any legal proceedings in which they seek a Declaration that the Douglas Creek Estates lands are lands which the Six Nations Band Council have a legal claim to.
18. Moreover, in a Hamilton Spectator article dated Thursday, March 2, 2006, Chief David General of the Six Nations is quoted as saying that the area being occupied by the protestors is not one of the twenty-eight registered land claims being asserted in the province. Further, the Douglas Creek Estates lands are part of a tract that was transferred to a third party and that third party claims are exempt from land claims. Attached hereto and marked Exhibit "D" is a copy of this article.
19. I am advised and verily believe by our real estate/corporate solicitor, Ralph Benedict, that the subject lands are registered under the Land Titles system, which is a land registration system in the Province of Ontario, which guarantees title/ownership of the lands registered under it.

Development of Douglas Creek Estates

20. As owner of the property, Henco has entered into Agreements of Purchase and Sale with a number of local builders whereby the local builders will construct dwellings on individual lots within Douglas Creek Estates.
21. The local contractors include Duca Construction, Edwards Custom Homes, Robitaille Homes, Venture Homes, Weirisma Construction and Willik Construction.
22. These local contractors, including Henco, have in turn entered into Agreements of Purchase and Sale whereby they have agreed to construct dwellings on lots in the subdivision for potential purchasers. Approximately ten homes are currently under construction in Douglas Creek Estates. Approximately six homes have been sold to third parties.
23. Attached hereto and marked Exhibit "E" are a series of photographs taken Tuesday, February 28, 2006 which show homes in various stages of construction on the subject lands.
24. Henco maintains their corporate office in a model home which they have constructed on property located in the subdivision. Contained within their

office are all of their corporate records which includes contracts with the builders referred to above, as well as other documentation with respect to Henco's obligations pursuant to the Subdivision Agreement.

25. Since the morning of Tuesday, February 28, 2006, representatives of Henco have been unable to access their corporate office to obtain any records.
26. To date, Henco has expended costs in excess of \$6,000,000.00 with respect to the development of Douglas Creek Estates. These costs include; acquisition costs, servicing costs, and financing costs.
27. In order to finance Henco's operations, they have mortgaged the subject land in the principal amount of \$2,000,000.00 with Haldimand Community Credit Union. Attached hereto and marked Exhibit "F" is a copy of the Charge/Mortgage of Land registered by Henco as Instrument Number LT012914 on November 22, 2005.

Events of Tuesday, February 28, 2006

28. During the evening hours of Monday, February 27, 2006 and/or the early morning hours of Tuesday, February 28, 2006, unidentified parties and/or the protestors caused barricades to be erected and have parked vehicles across

Surrey Street at its intersection with Argyle Street (which is identified as the original road allowance for Plank Road on Exhibit "B"). Further, a barricade was erected across Thistlemoor Drive.

29. The placement of the barricades and vehicles has prevented Henco, their employees, the contractors listed above, their tradespeople, and/or anyone else from entering the Douglas Creek Estates subdivision. Attached hereto and marked Exhibit "E" are copies of photographs taken Tuesday, February 28, 2006 which show the placement of the barricade and vehicles on Surrey Street.
30. In addition to the barricades, the unidentified individuals and/or the protestors are manning the barricade in an attempt to hinder, interfere with, intimidate, any individual or vehicle attempting to enter the Douglas Creek Estates.
31. Their physical presence and placement of the barricades and vehicles has obstructed or otherwise impeded the operation of the Applicant, its employees or agents including their contractors or subcontractors, in the performance of work relating to the construction of the dwellings on the Douglas Creek Estates property.

32. An article printed in The Hamilton Spectator on Wednesday, March 1, 2006 discloses that it is the intention of the protestors to man the barricades 24 hours a day. Further, a camper van has now been parked in the Subdivision. Attached hereto and marked Exhibit "G" is a copy of this article. I verily believe that the unidentified individuals and the protestors intend to remain on the site unless the Court orders them to move.

33. Attached hereto and marked Exhibit "H" is a copy of the Confederacy Council's letter dated February 11, 2006 which confirms that it is their intention to assemble on lands along the Grand (River). This letter identified the Respondents, Janie Jamieson and Dawn Smith.

34. The barricades prevent access to the Douglas Creek Estates. There is no other way of entering the property unless we pass through the barricades. There is no other public highway or means of access to our land except by Surrey Street and Thistlemoor Drive.

35. The effect of the Respondents' actions have shut down construction of any dwellings in the Douglas Creek Estates and prevented the Applicant's employees, agents, and the contractors from carrying out their normal business activities.

36. During a normal business day, approximately 75 people work in the Douglas Creek Estates Subdivision.
37. I have spoken to representatives of the Ontario Provincial Police in an attempt to persuade them to remove the individuals, vehicles and barricades. The Ontario Provincial Police officers have indicated to me that we should seek an injunction restraining the acts complained of and in the event that we obtain a Court Order, they will carry out whatever action is necessary to enforce the terms of the Court Order.
38. If we are unable to obtain a Court Order and gain access to the Douglas Creek Estates lands, Henco and the contractors will be unable to complete the dwellings in accordance with Agreements of Purchase and Sale and third party purchasers will be affected.
39. The actions of the unidentified individuals and protestors could cause Henco to be in breach of Agreements of Purchase and Sale with the contractors as well as third party purchasers.
40. Finally, Henco will be unable to complete the work required by it pursuant to the terms of the Subdivision Agreement and could be in default thereof pursuant to Article 9 and liable for increased costs and damages.

SCHEDULE "A"

FIRSTLY:

Parts of Lots B and C, Range West of Plank Road , geographic Township of Oneida, in Haldimand County and being Part 1 on 18R- 6217

SECONDLY

Part of Lot 18, Broken Front Concession on the Grand River, geographic Township of Oneida, in Haldimand County, and being Parts 2, and 3 on Reference Plan 18R- 6217

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Applicant

Onondaga Six Nations Confederacy Council et al

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Court file no. 48/2006

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Cayuga

**AFFIDAVIT OF DON HENNING
SWORN MARCH 2ND, 2006**

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