

Court File No. 48/06.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

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

REASONS FOR JUDGMENT ON
CONTEMPT MOTION

BEFORE THE HONOURABLE MR. JUSTICE T.D. MARSHALL
on Friday, March 17, 2006, at CAYUGA, Ontario

APPEARANCES:

M. Bordin Counsel for Henco Industries Limited
and S. van Engen

D. Brown Counsel for the Sheriff

C. Diana Counsel for the O.P.P.

C. Young Counsel for the Ministry
of the Attorney General

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REASONS FOR JUDGMENT

MARSHALL, J. (Orally):

I am prepared to give my ruling this morning, on this matter of contempt brought by the Applicant, Henco Industries Limited, against the Six Nations Confederacy Council, Janie Jamieson, Dawn Smith, Tom Deer, John Doe, Jane Doe, and the Corporation of Haldimand County, or any person or agents acting on their instructions.

First, let me say that the Applicant has agreed to make no submissions against the County of Haldimand, so that they did not appear on this motion for contempt.

The Facts:

By order of Justice Matheson, dated March 3rd, 2006, hereafter "the Order", the Respondents were restrained from interfering with the use of, or blocking certain public highways; from hindering or in any way impeding the Applicant, its employees, contractors or sub-contractors, and their agents from continuing with construction of homes in the Douglas Creek Estate. The Respondents were required to tear down and remove any barricades or other obstructions placed or maintained by them.

By order of the court, again on March the 9th, the Order was continued till the matter was disposed of, and an order for substitutional service was

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granted the Applicant.

No one appeared for the Respondents when called to the courtroom, so no submissions were made on their behalf.

Since those orders, that is more than two weeks ago, the Respondents have continued to occupy the land in question, and have maintained their barricades. The Respondents have continued these actions despite notice and despite wide public awareness of the Order.

There were no submissions by the Respondents in this regard until this morning, and hence, I accept the uncontroverted evidence in the affidavits of Don Henning, of March 9th, and March the 16th.

THE ISSUES BEFORE THE COURT:

The Applicant raises four issues to be dealt with:

- 1) The issue of civil contempt
- 2) The issue of criminal contempt
- 3) The appropriate sanctions on the motion, and
- 4) Enforcement of the Order

First - Civil Contempt:

In regards to jurisdiction, Rule 60.11(1) allows a party to move before a judge to seek a contempt order to enforce an order made in a proceeding that requires a person to do an act or to abstain from

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doing an act.**

[This court,] ... the ... [Superior] Court [of
Ontario] has inherent jurisdiction to punish
for contempt ... where such contempt consists
... [in] a violation of a court order ...

See the case of the Queen v. B.E.S.T., B-E-S-T,
Plating Shoppe Limited and Siapas, (1987), O.J. No.
165 (Ontario Court of Appeal), 59 O.R. (2d) 145.
See the judgment of Justice Goodman.

Civil and criminal contempt remedies are employed
by courts to ensure compliance with orders and the
maintenance of the rule of law. The rule of law is
basic to civil society, to any civil society, and
without it there could neither be peace, good
government, nor the conduct of business through
reliance on law to uphold peace, to support rights
and enforce contracts. To uphold the rule of law,
courts must have civil and criminal contempt powers
if the court's dignity is to be respected, and its
orders followed. And this dignity is not the
dignity of the person of the judge, it is the
dignity of the court, so that the public respect
the court and follow its orders.

As Justice Cumming, of this court, said in the case
of Sussex and Fangeat, F-A-N-G-E-A-T, [2003] O.J.
No. 3348, and I quote at paragraph 50:

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"The deliberate failure to obey a court order strikes at the very heart of the administration of justice."

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In regard to the issue of John and Jane Doe, see Madam Justice McLachlin, the Chief Justice of the Supreme Court of Canada, in the United Nurses of Alberta and Alberta (AG), [1992] 1. S.C.R. 901, File Number 21870, Paragraph 50 in the Quick Law version, where she said:

"As well it's clear that contempt proceedings can be initiated against persons who are not parties to the proceedings."

Justice Kellock held in the case of Poje, P-O-J-E, and British Columbia (Attorney General), [1953] 1 Supreme Court Reports, 516 on Page 6 and the Appellant's Factum, and I quote:

"... a party and a non-party are on exactly the same footing, so far as contempt['s] of court ... [are] concerned."

To make out a case of contempt, the court must be satisfied beyond a reasonable doubt, that four requirements are met:

- 1) that the terms of the order are clear and unambiguous;
- 2) that proper notice was given regarding the

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terms of the order;

- 3) that the terms of the order have been breached;
- 4) that the respondents intended to do the acts prohibited by the order.

See the case of iTrade Finance Incorporated and Webworx Incorporated, W-E-B-W-O-R-X, [2005] O.J. No. 1200, the judgment of Karakatsanis, J., Ontario Superior Court of Justice.

Let me deal with the four requirements seriatim.

The Order of Justice Matheson, I find is clear and unambiguous. The injunction restrains the Respondents from interfering with the Applicant's use of Thistlemoor Drive and Surrey Streets. Also, the Order restrains the Respondents from hindering, interfering with, or physically obstructing, and as well the Order requires the Respondents to remove any vehicles, and to tear down and remove barricades and obstruction. All this is clear and unambiguous on any reading of the Order.

I am as well satisfied that proper notice was given. Copies of the Order were distributed and read aloud and posted. As well as, I have said, the matter has been subject to very wide media reporting. I am satisfied that proper notice was given to the Respondents.

In regards to the issue of whether the terms have

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been breached by the Respondents, I am satisfied beyond a reasonable doubt, that the terms have been breached by the Respondents. Indeed, in speaking this morning, Ms. Smith made clear that the terms had been breached. On the evidence that I have accepted, and there has been no evidence I might add, submitted before the court by the Respondents, I make that finding.

Finally then, on the issue of intent, and the Respondents' intent to do the prohibited act, again, Ms. Smith spoke of this, this morning. But I am satisfied beyond a reasonable doubt on the material before me, that the intent to breach the Order is clear.

Indeed, there is evidence before the court that some of the Respondents represented to reporters and indeed, made the representation in this court room that they were willing to be arrested. Dawn Smith, one of the Respondents who appeared and spoke to us yesterday and today, made clear that the Respondents were aware of the Order but had chosen not to follow it. She did not stay in court yesterday, but she declared that she would not recognize the legitimacy, or the power, or the right of this court to make an order.

No submissions, other than those I have mentioned were made on the application before me, and no evidence was submitted, as is the Respondents'

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right, no evidence was submitted to the court by them.

I might add that under our law, it is no defence to argue that the order is wrong or that it is ineffective. Indeed, it is no defence that the court order is incorrect, null, or under appeal.

For all of the reasons that I have given of the necessity for following court orders in regards to the rule of law and for respect for the administration of justice, these court orders stand till another equally effective order is made. The authority for that is the Sussex case that I have referred to. Justice Cumming is an authority on these matters.

I am satisfied then that the requirements are made out by the Applicants. Justice Kellock in the Poje case that I have referred to stated, and I quote:

... generally, the distinction between ... [contempt] criminal and ... [contempt civil] seems to be that contempts which tend to bring the administration of justice ... to interfere with the ... [administration of justice or the] due course of justice, are criminal in their nature ...

Here the Respondents, I find, defied the clear Order of the court, and in a very public way, which

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was their intent. They could not have but known that such defiance would harm the court's enforcement of its orders generally.

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Men and women appear before the courts in all manner of cases daily, on the peaceful understanding that the court's orders must be obeyed, and will be obeyed for our society to function, for all of us to drive on the roads, or walk on the streets, or enter into contracts, or to buy a home.

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As well, there is evidence before the court that one of the Respondents burned, and many of the Respondents stamped into the mud, the prior Order of this court.

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The Order carefully and conservatively was prepared, considering the rights of all the parties, after giving the parties a right and time to be heard. The Order was issued in good faith to the Respondents.

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For all these reasons, there will be a finding of contempt, contempt civil and contempt criminal.

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Let me speak for a moment to the Clan mothers and the Mohawk people that so eloquently have spoken here today and yesterday. Let me say to you what this case is about. This case put at its most basic, its most simple form is this: The Mohawk

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people feel that they have been unfairly treated in regards to the Haldimand Land Grant. I can say nothing today of the validity of that claim.

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I can say on the basis of what has been said here by one of the Mohawks who spoke, one who identified himself as a Mohawk, I can say that I accept that you believe in your hearts that you have been unfairly treated, in regard to the Haldimand Land Grant. I understand and respect that. I respect that that is your belief, that that is your grievance in this matter. However, what is happening here is that the Mohawks and the people manning the barriers are asking this court not to protect the Applicants, Mr. Henning and other people who like yourselves, have bought and paid for land and want to go on it. You are preventing the Hennings from using their land, and indeed from using their houses, and other people from using their houses on those lands.

The court will make a measured and peaceful order, and it will be a measured and peaceful order that you stop blocking the Applicant from his property. I recognize that you have a claim in your hearts to the property of the Haldimand Grant.

You have come to court and you have said in effect, we will not allow this individual to use his property till you adjudicate on our land claim. You have said, "We are above your justice. We will

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what you have said, and what we have heard from Ms. Smith and others, that historically they are a peaceful people.

It is true that it takes courage to stand up as you have, man your barricades, and make your claims. But indeed, it takes courage as well to maintain peace and fairness to all people, including Mr. Henning. It also takes courage to hold your hand, or hold your arm, and not go further. It takes courage to turn and walk away, to be strong enough to turn and walk away, walk away. This court and this judgment ask the Clan mothers and the chiefs and the Mohawks to turn and walk away.

We will take a short break gentlemen and ladies, then I am going to deal with the matter of sanctions on the findings that I have made.

...WHEREUPON THIS MATTER WAS RECESSED

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12.
Certification

FORM 2

Certificate of Transcript
Evidence Act, Subsection 5(2)

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I, J. H. Fleet certify that this document is a true and accurate transcription of the recording of Henco Industries Limited 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, in the Superior Court of Justice, held at 55 Munsee Street North, Cayuga, Ontario, taken from Recording No. 53/2006 (1052 - 2578), which has been certified in Form 1.

April 4, 2006

(Date)



(Signature of authorized person)

Transcript Ordered:

March 31, 2006

Transcript Completed:

April 4, 2006

Ordering Party Notified:

April 4, 2006

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