

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

KRP ENTERPRISES INC., 1643078)
ONTARIO INC., KEVIN CLARK, ESTA) John W. Findlay and Margaret
CLARK, CHRISTINA ACCIACCAFERRO,) McCarthy, counsel on behalf
JEFFREY ACCIACCAFERRO, STEVE) of the Plaintiffs/Applicants
TONG, LORI TONG,)
RUSSELLKAVANAGH, MICHELLE)
KAVANAGH, PAUL DURCEK, STEFANY)
DURCEK, QUINTON CHAUSSE, DONNA)
CHAUSSE, ANNE MARIE VANSICLE,)
JAMES PUAL VANSICKLE, J.P.)
WOOLLEY SURVEYING LTD. and)
MARGARET COOK)

Plaintiffs/Respondents)

- and -)

THE CORPORATION OF HALDIMAND) Steven Stieber, and Murray
COUNTY, ONTARIO PROVINCIAL) Stieber, counsel on behalf of
POLICE COMMISSONER GWEN M.) the Defendant/Applicant, The
BONIFACE, ONTARIO PROVINCIAL) Corporation of Haldimand
POLICE INSPECTOR BRIAN HAGGITH) County
and HER MAJESTY THE QUEEN IN)
RIGHT OF ONTARIO)

Defendants/Applicants) No One Appearing for the
other Defendants/Respondents,
although duly served with
this motion)

) HEARD: June 20, 2007
) and Reserved for
) Decision
) (at Hamilton)
)

CRANE J.

[1] The Amended Statement of Claim proposes a class proceeding and asserts on behalf of the proposed Caledonia business class and the property owners class, a claim in nuisance against the applicant/defendant, Corporation of Haldimand County, based upon the closure of Argyle Street by a group of protestors, not parties to this action, who blockaded themselves behind barricades, effectively closing a portion of the main street of the Town of Caledonia, namely Argyle Street, in the period from April 20, 2006 to May 24, 2006.

[2] The Amended Statement of Claim frames the action as against the applicant/defendant, the Corporation of Haldimand County, hereinafter Haldimand, in nuisance. The applicant concedes, for the purposes of the motion, that as pleaded, the aforesaid blockade did constitute a nuisance. It is central to this motion and not controversial, that Haldimand took no positive step with regard to the closing of Argyle Street. It is accepted that the protestors barricaded themselves on Argyle Street and thereby blocked the use of the thorough fare to others. There is no evidence that Haldimand permitted or, indeed, acquiesced in any blockage of the street.

[3] Haldimand further accepts that there is recognized in law, a common right of passage applicable to Argyle Street. However, the sticking point on the motion is the submission that there is no duty on Haldimand to protect or maintain that right. The evidence on the motion is that Haldimand did not deny the plaintiffs the right of way; that denial being that of the protestors.

[4] Haldimand is a municipal corporation and as such is a creature of provincial statute. Accordingly, it has only those powers, duties and obligations as are conferred on it by statute. One may see the development of the doctrine of nonfeasance which is, in effect, that a municipality is not liable in law for not acting, unless there is an expressed statutory requirement to do so.

[5] The plaintiffs/respondents have been unable to demonstrate or to implicate any positive duty upon Haldimand to remove the protestors and open Argyle Street.

[6] It is worthy of emphasis to state that the cause of action here does not rest upon a duty on a municipality to keep a common way (Argyle Street) maintained and repaired (s. 44 the **Municipal Act**, S.O. (2001) c.25), which is a positive statutory duty. The complaint in this action is a denial to the public

(represented by the plaintiffs) of common passage. The authority for the proposition that there is no liability upon a municipality for non-feasance, absent express statutory duty, has been well-stated in our law. (See for example, *Montreal (City) v. Muclair*, [1898] 28 S.C.R.458 at p. 7 (Q.L.); *Brown v. Hamilton (City)*, [1902] O.J. No. 135 H.C.J. at para. 13; *Lefebvre v. Grande-Mere (Town)*, (1917), 55 S.C.R. 121 at pp. 5-6 (Q.L.).

[7] It is also worthy of note in these reasons, the fact that Haldimand had entered into a contract with the defendant Ontario Provincial Police. The relevant portions of the *Police Services Act* provide as follows:

4.(1) Every municipality to which this subsection applies shall provide adequate and effective police services in accordance with its needs.

5. The municipality's responsibility for providing police services shall be discharged in one of the following ways:

3. The council may enter into an agreement under s. 10 (agreements for provision of police services by O.P.P.).

...

10.(1) The Solicitor General may enter into an agreement with the council of a municipality of jointly with the councils of two or more municipalities for the provision

of police services for the municipality or municipalities by the Ontario Provincial Police.

[8] The evidence is that Haldimand did enter into such a police services contract under which the Ontario Provincial Police undertook the duties of providing police services in Haldimand. The Council of Haldimand, in accordance with that contract, transferred its policing owners to the O.P.P. Accordingly, the Amended Statement of Claim does not presently assert a breach of duty against Haldimand to provide adequate and effective police services pursuant to s. 4 of the **Police Services Act**. That claim being withdrawn by the plaintiffs.

[9] The moving party, Haldimand, makes the following statement in its Factum, at paragraph 58:

The plaintiffs have incorrectly characterized the Argyle Street barricades as a municipal road closure and a public nuisance, when it was in fact a manifestation of a political land claims dispute and a policing issue. It was entirely the responsibility of the O.P.P. to provide effective and adequate police services to the residents of the County pursuant to the Police Services Agreement, which would include the removal of the Protestors by force if deemed necessary. The County had absolutely no authority to interfere with the operational decisions of the O.P.P. with respect to the manner in which they responded to the occupation.

DECISION

[10] I am satisfied that there is no genuine issue for trial. Accordingly, I am obliged to grant summary judgment pursuant to rule 20.01(3) and 20.04(2) of the **Rules of Civil Procedure** pursuant to the process and authority established in **Dawson v. Rexcraft Storage Warehouse Inc.**, [1998] O.J. No. 3240 (C.A.); **Augonie v. Galian Solid Waste Material Inc.** (1998), 156 D.L.R. (4th) 222 (Ont. C.A.); **1061590 Ontario Limited v. Ontario Jockey Club** (1995), 21 O.R. (3d) 546 (C.A.); **Irving Ungerman Limited v. Galanis** (1991), 4 O.R. (3d) 545 (C.A.); **Transamerica Accidental Life Insurance Co. v. Toronto Dominion Bank**, [1998] O.J. No. 1273 (Gen. Div.), varied in part (1999), 44 O.R. (3d) 97 (C.A.).

[11] I have concluded by inference that the other defendants in this action do not have an intention to cross-claim as against Haldimand, each of whom, was served with this motion and elected not to attend.

[12] In the result, judgment is granted dismissing the action as against the defendant, Haldimand.

[13] Should Haldimand wish to make submissions on the issue of costs, I direct that a written submission be served upon the plaintiffs' counsel as to the entitlement of costs and quantum,

within 30 days hereof. The plaintiffs will have 20 days thereafter to deliver a reply.


CRANE J.

Released: July 30, 2007

COURT FILE NO.: 114/2006-CP
DATE: 20070730

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Plaintiffs/Respondents

- and -

THE CORPORATION OF HALDIMAND
COUNTY, ONTARIO PROVINCIAL POLICE
COMMISSONER GWEN M. BONIFACE,
ONTARIO PROVINCIAL POLICE
INSPECTOR BRIAN HAGGITH and HER
MAJESTY THE QUEEN IN RIGHT OF
ONTARIO

Defendants/Applicants

REASONS FOR JUDGMENT

CRANE J.

DSC/sh

Released: July 20, 2007