



Form 32 (Rule 8-1(4))

No. S117458
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF VANCOUVER

PLAINTIFF

AND:

SEAN O'FLYNN-MAGEE, JANE DOE, JOHN DOE
AND OTHER UNKNOWN PERSONS

DEFENDANTS

NOTICE OF APPLICATION

Name of applicant: City of Vancouver

To: Sean O'Flynn-Magee, Jane Doe, John Doe and others

TAKE NOTICE that an application will be made by the applicant to the presiding judge or master at the courthouse at 800 Smithe Street, Vancouver, BC on TUESDAY, November 8, 2011 at 2:00 PM for the order set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of the order, to forthwith remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by them which are located on lands legally described as Block 51 District Lot 541 Plan 14423, Group I New Westminster District (the "Art Gallery Lands").
2. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease constructing, placing, or maintaining structures, tents, shelters, objects and things upon the Art Gallery Lands, without having first obtained a permit or written consent.

3. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease burning materials and setting fires on the Art Gallery Lands.
4. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease depositing garbage, litter or refuse on the Art Gallery Lands.
5. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease removing soil from the Art Gallery Lands.
6. An interlocutory injunction requiring the Defendants to forthwith comply with any and all Fire Orders issued pursuant to the City of Vancouver *Fire By-law*.
7. An interlocutory injunction requiring the Defendants, all other persons having knowledge of this order, to forthwith cease trespassing on the Art Gallery Lands.
8. A declaration that this order does not prohibit or limit the right of the Defendants, or any other persons, to lawfully assemble on the Art Gallery Lands.
9. An order authorizing all employees or agents of the City to remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the Defendants which are located on the Art Gallery Lands, should the Defendants and all other persons with notice of the order fail to comply with an injunction.

10. An order authorizing any police officer with the Vancouver Police Department to arrest and remove from the Art Gallery Lands any person who the police officer has reasonable and probable grounds to believe is interfering with or obstructing, or is attempting to interfere or obstruct, any employee or agent of the City of Vancouver (the "City") who is seeking to remove any structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the Defendants which are located on the Art Gallery Lands.
11. An order authorizing any police officer with the Vancouver Police Department to arrest and remove from the Art Gallery Lands any person who the police officer has reasonable and probable grounds to believe is interfering with or obstructing, or is attempting to interfere or obstruct, any Defendant or person with notice of the order who is seeking to remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the Defendants from the Art Gallery Lands.
12. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. The Plaintiff, the City, is a municipality incorporated pursuant to the provisions of the *Vancouver Charter*, S.B.C. 1953, c. 55 as amended (the "Vancouver Charter") and has the address for service at 453 West 12th Avenue, Vancouver, British Columbia.
2. The Defendant, Sean O'Flynn-Magee, is involved in an unincorporated group identifying itself as Occupy Vancouver, which advocates economic and political goals.
3. The Defendant, Jane Doe, is an unknown person involved in Occupy Vancouver.

4. The Defendant, John Doe, is an unknown person involved in Occupy Vancouver.
5. Many other unknown persons are also involved in Occupy Vancouver.
6. The Art Gallery Lands comprise the City block bordered by Georgia Street, Howe Street, Robson Street and Hornby Street.
7. The City leases the Art Gallery Lands from the Province of British Columbia.
8. Pursuant to the provisions of the *Vancouver Charter*, the City has the authority to regulate, including the power to prohibit, the use of land owned or leased by the City.
9. The City has exercised this authority by enacting the *City Land Regulation By-law*.
10. Section 3 of the *City Land Regulation By-law* reads:
 3. A person must not, without the prior written consent of the manager:
 - (a) cut, break, injure, damage, or destroy any tree, shrub, plant, turf, or flower on city land;
 - (b) remove any rock, soil, tree, shrub, plant, turf, or flower from city land;
 - (c) deposit any garbage, refuse, litter, or other waste material on city land, except in containers provided by the city for that purpose;
 - (d) construct, erect, place, deposit, maintain, occupy, or cause to be constructed, erected, placed, deposited, maintained or occupied, any structure, tent, shelter, object, substance, or thing on city land; or
 - (e) light any fires or burn any material on city land.
11. The *City Land Regulation By-law* governs the Art Gallery Lands
12. The Defendants, Sean O'Flynn-Magee, Jane Doe, John Doe and others, whose identities are unknown to the City, established a protest site or encampment site on the Art Gallery Lands beginning on or about October 15, 2011.

13. The Defendants have placed, constructed, erected, maintained and occupied structures, tents, shelters, objects and things on the Art Gallery Lands.
14. The Defendants have lit fires and burned materials on the Art Gallery Lands.
15. The Defendants have deposited garbage, refuse and litter or other waste material on the Art Gallery Lands, outside of containers provided for that purpose.
16. The Defendants have removed soil from the Art Gallery Lands.
17. The Defendants do not have written permission from the City Manager for any activities on the Art Gallery Lands.
18. On or about Friday November 4, 2011, the City notified the Defendants that construction and continued maintenance and use of the structures, tents and shelters on the Art Gallery Lands violate the *City Land Regulation By-law*.
19. Pursuant to the provisions of the *Vancouver Charter*, the City has the authority to regulate in relation to fire safety.
20. The City has exercised this authority by enacting the *Fire By-law*.
21. Section 1.4.4.4(1) of the Fire By-law authorizes the Fire Chief to issue Fire Orders.
22. The Fire Chief of the City of Vancouver has issued Fire Orders to the Defendants pursuant to the *Fire By-law*.
23. The Defendants have not complied with the Fire Orders.

24. Pursuant to section 334 of the Vancouver Charter, the City is granted the power to enforce the *City Land Regulation By-law* and the *Fire By-law* by bringing a proceeding and seeking an injunction in BC Supreme Court.
25. On or about November 7, 2011, the City notified the Defendants that their activities in violation of the *Fire By-law* and *City Land Regulation By-law* are a trespass on the Art Gallery Lands and asked the Defendants to cease the trespass.

Part 3: LEGAL BASIS

1. Section 334(1) of the *Vancouver Charter*, S.B.C. 1953, c. 55 authorizes the City to commence a proceeding in the Supreme Court of British Columbia seeking to enforce its by-laws and restrain the breach of its by-laws.
2. The Council of the City has adopted the *City Land Regulation By-law*.
3. The Defendants are in breach of the *City Land Regulation By-law*.
4. The Council of the City has adopted the *Fire By-law*.
5. The Defendants are in violation of the *Fire By-law* for failing to comply with the Fire Orders.
6. Section 65 of the *Land Act*, R.S.B.C. 1996, c. 245 authorizes a leaseholder of Crown land to bring an action in trespass.
7. The Defendants have been told that their activities in violation of the *Fire By-law* and *City Land Regulation By-law* are a trespass on the Art Gallery Lands.
8. The Defendants have continued the unlawful activity.
9. Section 4 of *Trespass Act*, RSBC 1996, c. 462 makes it an offence to engage in an activity after being notified that the activity is prohibited.
10. The Plaintiff relies on Rules 8-1, 8-5 and 10-4 of the Rules of Court.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit of Murray Wightman sworn November 6, 2011;
2. Affidavit of Garrick Bradshaw, sworn November 7, 2011;
3. Affidavit of Frank Dodich, sworn November 7, 2011;
4. Affidavit of John McKearney, sworn November 7, 2011;
5. Affidavit of Penny Ballem, sworn November 7, 2011;
6. Affidavit of Cael Hopwood, sworn November 7, 2011
7. Affidavit of Brenda Prosken, sworn November 7, 2011;
8. Affidavit of Will Johnston, sworn November 7, 2011; and
9. Affidavit of Blake Chersinoff sworn November 7, 2011.

The applicant estimates that the application will take 2 hours.

This matter is within the jurisdiction of a master.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: November 7, 2011


Signature of Ben Parkin

applicant lawyer for applicant

[type or print name]

To be completed by the court only:

Order made

in the terms requested in paragraphs *[specify]* of Part 1 of this notice of application

with the following variations and additional terms:

Date: *[dd/mmm/yyyy]*.

Signature of
 Judge Master

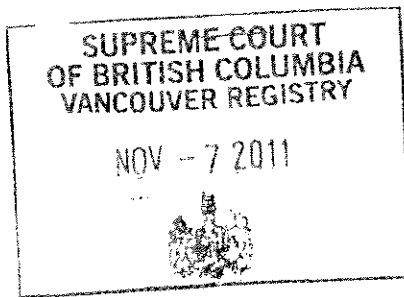
APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts



S=117498

Form 1 (Rule 3-1 (1))

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CITY OF VANCOUVER

PLAINTIFF

AND:

SEAN O'FLYNN-MAGEE, JANE DOE, JOHN DOE

AND OTHER UNKNOWN PERSONS

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

1. The Plaintiff City of Vancouver (the "City") is a municipality incorporated pursuant to the provisions of the *Vancouver Charter*, S.B.C. 1953, c. 55 as amended (the "Vancouver Charter") and has the address for service at 453 West 12th Avenue, Vancouver, British Columbia.
2. The Defendant, Sean O'Flynn-Magee, is involved in a group identifying itself as Occupy Vancouver, an unincorporated group which advocates economic and political goals.
3. The Defendant, Jane Doe, is an unknown person involved in a group identifying itself as Occupy Vancouver, an unincorporated group which advocates economic and political goals.
4. The Defendant, John Doe, is an unknown person involved in a group identifying itself as Occupy Vancouver, an unincorporated group which advocates economic and political goals.
5. Many other unknown persons are also involved in Occupy Vancouver.
6. Those lands legally described as Block 51 District Lot 541 Plan 14423, Group I New Westminster District are the "Art Gallery Lands". The Art Gallery Lands comprise the City block bordered by Georgia Street, Howe Street, Robson Street and Hornby Street.

7. The City leases the Art Gallery Lands from the Province of British Columbia.
8. Pursuant to the provisions of the *Vancouver Charter*, the City has the authority to regulate, including the power to prohibit, the use of land owned or leased by the City.
9. The City has exercised this authority by enacting the *City Land Regulation By-law*.
10. Section 3 of the *City Land Regulation By-law* reads:
 3. A person must not, without the prior written consent of the manager:
 - (a) cut, break, injure, damage, or destroy any tree, shrub, plant, turf, or flower on city land;
 - (b) remove any rock, soil, tree, shrub, plant, turf, or flower from city land;
 - (c) deposit any garbage, refuse, litter, or other waste material on city land, except in containers provided by the city for that purpose;
 - (d) construct, erect, place, deposit, maintain, occupy, or cause to be constructed, erected, placed, deposited, maintained or occupied, any structure, tent, shelter, object, substance, or thing on city land; or
 - (e) light any fires or burn any material on city land.
11. The City Land Regulation By-law governs the Art Gallery Lands.
12. The Defendants, Sean O'Flynn-Magee, Jane Doe, John Doe and others, whose identities are unknown to the City, established a protest site or encampment site on the Art Gallery Lands beginning on or about October 15, 2011.
13. The Defendants have placed, constructed, erected, maintained and occupied structures, tents, shelters, objects and things on the Art Gallery Lands.
14. The Defendants have lit fires and burned materials on the Art Gallery Lands.
15. The Defendants have deposited garbage, refuse and litter or other waste material on the Art Gallery Lands, outside of containers provided for that purpose.
16. The Defendants have removed soil from the Art Gallery Lands.

17. The Defendants do not have written permission from the City Manager for any activities on the Art Gallery Lands.
18. On or about Friday November 4, 2011, the City notified the Defendants that construction and continued maintenance and use of the structures, tents and shelters on the Art Gallery Lands violate the *City Land Regulation By-law*.
19. Pursuant to the provisions of the *Vancouver Charter*, the City has the authority to regulate in relation to fire safety.
20. The City has exercised this authority by enacting the *Fire By-law*.
21. Section 1.4.4.4(1) of the *Fire By-law* authorizes the Fire Chief to issue Fire Orders.
22. The Fire Chief of the City of Vancouver has issued Fire Orders to the Defendants pursuant to the *Fire By-law*.
23. The Defendants have not complied with the Fire Orders.
24. Pursuant to section 334 of the *Vancouver Charter*, the City is granted the power to enforce the *City Land Regulation By-law* and the *Fire By-law* by bringing a proceeding and seeking an injunction in BC Supreme Court.
25. The Defendants have been told that their activities in violation of the *Fire By-law* and *City Land Regulation By-law* are a trespass on the Art Gallery Lands.
26. The Defendants have continued the unlawful activity.
27. Section 4 of *Trespass Act*, RSBC 1996, c. 462 makes it an offence to engage in an activity after being notified that the activity is prohibited.

Part 2: RELIEF SOUGHT

1. A permanent injunction requiring the Defendants, and all other persons having knowledge of the order, to forthwith remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by them which are located on the Art Gallery Lands.

2. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of the order, to forthwith remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by them which are located on the Art Gallery Lands.

3. A permanent injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease constructing, placing, or maintaining structures, tents, shelters, objects and things upon the Art Gallery Lands, without having first obtained a permit or written consent.

4. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease constructing, placing, or maintaining structures, tents, shelters, objects and things upon the Art Gallery Lands, without having first obtained a permit or written consent.

5. A permanent injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease burning materials and setting fires the Art Gallery Lands.

6. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease burning materials and setting fires on the Art Gallery Lands.

7. A permanent injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease depositing garbage, litter or refuse on the Art Gallery Lands.
8. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease depositing garbage, litter or refuse on the Art Gallery Lands.
9. A permanent injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease removing soil from the Art Gallery Lands.
10. An interlocutory injunction requiring the Defendants, and all other persons having knowledge of this order, to forthwith cease removing soil from the Art Gallery Lands.
11. A permanent injunction requiring the Defendants to forthwith comply with any and all Fire Orders.
12. An interlocutory injunction requiring the Defendants to forthwith comply with any and all Fire Orders.
13. A permanent injunction requiring the Defendants, all other persons having knowledge of this order, to forthwith cease trespassing on the Art Gallery Lands.
14. An interlocutory injunction requiring the Defendants, all other persons having knowledge of this order, to forthwith cease trespassing on the Art Gallery Lands.
15. A declaration that this order does not prohibit or limit the right of the Defendants, or any other persons, to lawfully assemble on the Art Gallery Lands.
16. An order authorizing all employees or agents of the City to remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the

Defendants which are located on the Art Gallery Lands, should the Defendants and all other persons with notice of the order fail to comply with an injunction.

17. An order authorizing any police officer with the Vancouver Police Department to arrest and remove from the Art Gallery Lands any person who the police officer has reasonable and probable grounds to believe is interfering with or obstructing, or is attempting to interfere or obstruct, any employee or agent of the City who is seeking to remove any structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the Defendants which are located on the Art Gallery Lands.
18. An order authorizing any police officer with the Vancouver Police Department to arrest and remove from the Art Gallery Lands any person who the police officer has reasonable and probable grounds to believe is interfering with or obstructing, or is attempting to interfere or obstruct, any Defendant or person with notice of the order who is seeking to remove all structures, tents, shelters, objects and things owned, constructed, maintained, placed or occupied by the Defendants from the Art Gallery Lands.
19. Such further and other relief as this Honourable Court deems just.

Part 3: LEGAL BASIS

1. Section 334(1) of the *Vancouver Charter*, S.B.C. 1953, c. 55 authorizes the City to commence a proceeding in the Supreme Court of British Columbia seeking to enforce its by-laws and restrain the breach of its by-laws.
2. The Council of the City has adopted the *City Land Regulation By-law*.
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6. Section 65 of the *Land Act*, R.S.B.C. 1996, c. 245 authorizes a leaseholder of Crown land to bring an action in trespass.
7. The Defendants have been told that their activities in violation of the *Fire By-law* and *City Land Regulation By-law* are a trespass on the Art Gallery Lands.
8. The Defendants have continued the unlawful activity.
9. Section 4 of *Trespass Act*, RSBC 1996, c. 462 makes it an offence to engage in an activity after being notified that the activity is prohibited.

Plaintiff's address for service:

Ben Parkin
City of Vancouver, Legal Services
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Fax number address for service (if any): 604-873-7445

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street
Vancouver, BC V6Z 2E1

Date: November 7, 2011



Signature of

Plaintiff lawyer for Plaintiff

Ben Parkin

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

(a) prepare a list of documents in Form 22 that lists

(i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

(ii) all other documents to which the party intends to refer at trial, and

(b) serve the list on all parties of record.

Appendix

[The following information is provided for data collection purposes only and is of no legal effect.]

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Application for injunctive relief compelling compliance with City by-law, and prohibiting trespass..

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case.]

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

1. *Vancouver Charter,*
2. *City Land Regulation By-law, and*
3. *Fire By-law.*