

S-102419

No. \_\_\_\_\_

Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**CHIEF ERNEST CAMPBELL, B. MARY CHARLES, NOLAN CHARLES, ALLYSON FRASER, HOWARD GRANT, H. WADE GRANT, WENDY GRANT-JOHN, TAMMY HARKEY, WAYNE SPARROW, NORA STOGAN, the elected Chief and Councillors of the Musqueam Indian Band and Nation suing on their own behalf and on behalf of all other members of the Musqueam Indian Band and Nation, and GARDEN CITY VENTURES LIMITED PARTNERSHIP**

PLAINTIFFS

AND:

**CITY OF RICHMOND**

DEFENDANT

**WRIT OF SUMMONS**

**Name and address of each Plaintiff:**

MUSQUEAM INDIAN BAND  
6735 Salish Drive  
Vancouver, B.C.  
V6N 4C4

GARDEN CITY VENTURES LIMITED  
PARTNERSHIP  
6735 Salish Drive  
Vancouver, B.C.  
V6N 4C4

**Name and address of each Defendant:**

CITY OF RICHMOND  
6911 No. 3 Road  
Richmond, B.C.  
V6Y 2C1

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

*To the Defendant(s):*

TAKE NOTICE that this action has been commenced against you by the Plaintiff(s) for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set-off or counter-claim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above Registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above Registry of this Court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the Registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF:

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

#### TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[Or, if the time for defence has been set by order of the Court, within that time.]

#### TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff(s) within 14 days after the later of:

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the *Rules of Court*, and
- (b) the end of the Time for Appearance provided for above.

[Or, if the defence has been set by order of the Court, within that time.]

- (1) The address of the Registry is:

800 Smithe Street  
Vancouver, B.C. V6Z 2E1

- (2) The plaintiffs' address for delivery is:

Attention: **Maria Morellato, Q.C.**  
Mandell Pinder  
Barristers & Solicitors  
422 – 1080 Mainland Street  
Vancouver, B.C. V6B 2T4

Tel.: (604) 681-4146 Fax: (604) 681-0959

- (3) The name and office address of the plaintiffs' solicitor is:

Attention: **Maria Morellato, Q.C.**  
Mandell Pinder  
Barristers & Solicitors  
422 – 1080 Mainland Street  
Vancouver, B.C. V6B 2T4

Tel.: (604) 681-4146 Fax: (604) 681-0959

#### ENDORSEMENT

The Plaintiffs' claim is as follows.

The Plaintiff Musqueam Indian Band ("Musqueam") and the Defendant, along with the Canada Lands Company CLC Limited ("CLC") and the Department of Fisheries and Oceans ("DFO") are parties a Memorandum of Understanding Regarding Garden City Property dated March 18, 2005 ("MOU"), in relation to the Garden City Lands (the "Lands") that are located

within the Agricultural Land Reserve (“ALR”) that is within the Defendant’s municipal boundaries.

The MOU provides *inter alia* that: 50% of the Lands will be used by the Defendant for parks and public amenities (“Public Lands”); 50% of the Lands will be jointly owned and developed by Musqueam and the CLC (“Development Lands”); 15% of the Lands may be used by the Defendant as a Trade and Exhibition Centre (“TEC Lands”); and if the TEC does not proceed, the TEC Lands may be jointly developed by the Defendant, Musqueam, and the CLC with the proceeds of such development being divided 50%, 25%, 25% respectively. The MOU contains provisions for registration of a restrictive covenant in favour of Musqueam to preserve the Public Lands for the purposes of parks and public amenities. The MOU is based on the removal of the Lands from the ALR; an implied term of the MOU is that the Defendant will not do anything to hinder the removal of the Lands from the ALR or to frustrate Musqueam’s interests in the development of the Lands.

The Defendant, Musqueam, the Plaintiff Garden City Ventures Limited Partnership, and the CLC were also parties to a Purchase and Sale Agreement signed on or about November, 2005 (“PSA”) that contains a covenant of cooperation whereby the parties agree to use commercially-reasonable efforts to complete the development application process for the Lands.

The Defendant undertook to act on behalf of the Plaintiffs and the CLC to make an application to the ALR Commission (“Commission”) to remove the Lands from the ALR (the “Application”). The Defendant is in both a fiduciary relationship and a relationship of proximity with the Plaintiffs and owed the Plaintiffs a fiduciary duty and a common law duty of care in relation to the making of the Application.

The Defendant submitted the Application on or about April 4, 2008, but failed to respond to the Commission’s requests for further information regarding enhancements to agriculture in Richmond, which resulted in the Commission’s decision not to remove the lands from the ALR.

The Defendant acted negligently and unilaterally in making the Application. The Defendant’s actions and omissions in relation to the Application breached its obligations in the MOU and the PSA, and breached the fiduciary and common law duties it owed to the Plaintiffs.

On or about October 15, 2009, the Defendant made an unsolicited offer to Musqueam and the CLC (the “Offer”) to purchase the Lands for significantly less than the value of the Lands were they to be developed as agreed in the MOU. The Offer was made without prejudice to the rights and obligations in the MOU.

On or about January 19, 2010 Musqueam accepted the Offer under duress, and in order to mitigate its loss. Musqueam has never provided the Defendant with a release from the MOU.

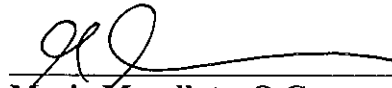
The Plaintiffs seek the following relief:

1. A declaration that:
  - (a) the respective rights and obligations of Musqueam and the Defendant in the MOU remain in force and effect, other than the provisions contained in paragraphs 1(15)

through 1(20) of the MOU which deal with Development Lands and which have been modified by the Offer; and

- (b) the rights of Musqueam with respect to “Public Lands” in the MOU now refer to all the Lands;
- 2. Common law and equitable damages or compensation including: damages for breach of contract, compensation for breach of fiduciary duty, damages for negligence, compensation for unjust enrichment, costs, and interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended; and
- 3. Such further and other relief as this Honourable Court deems just.

DATED at Vancouver this 9th day of April, 2010.



**Maria Morellato, Q.C.**

Mandell Pinder

Barristers & Solicitors

422 – 1080 Mainland St.

Vancouver, BC V6B 2T4

Tel.: (604) 681-4146

Fax: (604) 681-0959

Counsel for the Plaintiffs

No. \_\_\_\_\_

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AND:

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**WRIT OF SUMMONS**

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MANDELL PINDER  
Barristers & Solicitors  
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Vancouver, B.C. V6B 2T4  
Tel.: (604) 681-4146  
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Per: **Maria Morellato, Q.C.**

Counsel for the Plaintiffs