

June 8, 2012

Delivered via Registered Mail

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File: 136872.0001

Gabriola Rod, Gun and Conservation Club
1825 Tait Road
Gabriola Island, BC V0R 1X6

Dear Sir/Madam:

**Re: Province of British Columbia Lease No. 113308, File No. 0333052, Disposition
No. 845868; Gabriola Rod, Gun and Conservation Club (the "Gun Club") –
Ongoing Nuisance**

Please find enclosed for service upon you in accordance with the *BC Supreme Court Civil Rules* the Notice of Civil Claim filed June 6, 2012.

Yours truly,

MILLER THOMSON LLP

Per:



M. Ashley Mitchell
MAM/tb

Enclosure
8051163.1

JUN - 6 2012

S-124092



No. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

CENTRE STAGE HOLDINGS LTD., DAVID YOUNG, MICHIKO YOUNG, GWENDOLYN SMEETS, TAMARA HUDGEON, GORDON HOWARD, FREDERICK HARRIS, MARY ANNE MCDONALD, SIMON COSSAR, ANDREW STANILAND, ROGER PERRY, CATHERINE PERRY, NEIL RICH and LINEKE RICH

PLAINTIFFS

AND

GABRIOLA ROD, GUN AND CONSERVATION CLUB and HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA

DEFENDANTS

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs 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:

- (c) 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
- (d) 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(s):

- (e) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service;
- (f) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service;
- (g) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service; or
- (h) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFFS

PART 1: STATEMENT OF FACTS

1. The Plaintiff, Centre Stage Holdings Ltd. ("Centre Stage") is a company incorporated pursuant to the laws of British Columbia with a registered and records office located at 2761 McBride Avenue in Surrey, British Columbia.
2. The Plaintiffs, David Young and Michiko Young are retired and reside at 1785 Seymour Road, on Gabriola Island, British Columbia.
3. The Plaintiff, Gwendolyn Smeets, owns and operates a bakery business and resides at 1450 Ferne Road, on Gabriola Island, British Columbia.
4. The Plaintiff, Tamara Hudgeon owns and operates an art studio and resides at 1790 Seymour Road, on Gabriola Island, British Columbia.
5. The Plaintiff, Gordon Howard is a forestry worker and resides with the Plaintiff, Tamara Hudgeon at 1790 Seymour Road, on Gabriola Island, British Columbia.
6. The Plaintiffs, Frederick Harris and Mary Anne McDonald are retired and reside at 1755 Seymour Road, on Gabriola Island, British Columbia.
7. The Plaintiff, Simon Cossar is a construction worker who resides at 106 99 Chapel Street in Nanaimo, British Columbia and owns property located at 1765 Tait Road, on Gabriola Island, British Columbia.
8. The Plaintiff, Andrew Staniland is a carpenter and resides at 1435 Hess Road, on Gabriola Island, British Columbia.
9. The Plaintiff, Roger Perry is a plant manager and resides with the Plaintiff, Catherine Perry at 1610 Hess Road, on Gabriola Island, British Columbia.
10. The Plaintiffs, Neil Rich and Lineke Rich are retired and reside at 1665 Hess Road, on Gabriola Island, British Columbia.
11. The Defendant, Gabriola Rod, Gun and Conservation Club (the "Gun Club"), is a society incorporated under the laws of British Columbia with a registered office located at 1825 Tait Road, PO Box 114, on Gabriola Island, British Columbia.

12. The directors of the Gun Club are Kenneth Decarle, Robert Lake, Paul Metcalfe, Martin Nichols and Michael Stewart.
13. The Defendant, Her Majesty the Queen in right of the Province of British Columbia (the "Province") is joined in this action in accordance with the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89.
14. The Province owns approximately 40 acres of land on Gabriola Island, British Columbia located at 1825 Tait Road on Gabriola Island, British Columbia, which is legally described as:

Block A, of Northwest ¼, Section 8 Gabriola Island, Nanaimo District

(the "Gun Club Property").

Background

15. In or about 1977, the Province granted a ten year lease of the Gun Club Property to the Gun Club for a nominal rent, which lease was renewed in or about 1987 for a thirty year term to expire in or about 2017 (the "First Lease").
16. In or about 1995, the Plaintiff, Centre Stage became the registered owner of the lands and premises located on Seymour Road on Gabriola Island, British Columbia, which are legally described as:

Parcel Identifier: 003-134-792

SW 1/4, Section 8, Gabriola Island, Nanaimo District

(the "Section 8 Lands")

and

Parcel Identifier: 003-134-806

NE 1/4, Section 3, Gabriola Island, Nanaimo District, except Parcel A DD773261

(the "Section 3 Lands")

17. The Section 8 Lands constitute about 160 acres and abut the southern boundary of the Gun Club Property. The Section 3 Lands constitute about 130 acres and are located within about 1300 metres from the Gun Club Property.
18. In about 2005, Centre Stage subdivided the Section 8 Lands into 25 separate parcels, in order to sell the parcels to buyers.
19. Centre Stage remains the owner of the Section 3 Lands and the remaining unsold subdivided lots of the Section 8 Lands, which include the following:

Lot	Parcel Identifier
Lot 2	027 806 321
Lot 3	027 806 330
Lot 5	027 086 356
Lot 7	027 086 372

Lot 9	027 086 399
Lot 12	027 086 429
Lot 15	027 086 453
Lot 19	027 086 496
Lot 20	027 086 500

SW 1/4, Section 8, Gabriola Island, Nanaimo District, Plan VIP 82759

(collectively described as the "Centre Stage Lands").

20. In about 1998, the Regional District of Nanaimo enacted Bylaw No. 1082, entitled "A Bylaw to Regulate or Prohibit Objectionable Noise Within Electoral Area 'B' (the "Noise Bylaw"). The Noise Bylaw, which applies to Gabriola Island, provides the following at section 5:

No person, being the owner, tenant or occupier of real property, shall allow or permit the real property to be used so that noise which occurs on or is emitted from that real property disturbs or tends to disturb the quiet, peace, rest, enjoyment, comfort or convenience of any person or persons in the neighbourhood or vicinity.
21. The Gun Club Property is located immediately adjacent to or within about 200 to 1,000 metres from properties owned or occupied by the Plaintiffs.
22. In addition, many other residents of Gabriola Island own or occupy properties within close proximity to the Gun Club Property (the "Neighbours").
23. In about 2005, the Gun Club developed a plan to substantially expand its facilities, increase the activities on the Gun Club Property and enter into a new 30-year lease with the Province for use of the Gun Club Property. This plan was developed without notification to or consultation with either the Plaintiffs or the Neighbours.
24. The expansion of the Gun Club facilities, which begun in or about 2005, included the construction of a 16 stand outdoor sporting clay range, an outdoor five-stand facility and structure and a pistol and rifle shed. In addition, the Gun Club expansion required the removal of numerous trees, alterations to the land including changes to ground elevations, soil relocation and the construction of berms on the Gun Club Property.
25. On or about June 21, 2009, without any consultation with the Plaintiffs or the Neighbours, and without their knowledge, the Province granted a new 30 year lease of the Gun Club Property to the Gun Club for a nominal fee of \$1.00, for use of the land as a clubhouse, trap and rifle range, sports field and for other recreational purposes (the "New Lease").
26. The New Lease provides, *inter alia*, that the Gun Club must:
 - (a) observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting the Gun Club's use or occupation of the Gun Club Property; and

- (b) not do anything on the Gun Club Property that may be or become a nuisance or annoyance to an owner or occupier of land in the vicinity of the Gun Club Property.

Gun Club Facilities and Activities

27. At all material times, the Gun Club has and continues to do business on the Gun Club Property at 1825 Tait Road on Gabriola Island, British Columbia.
28. At all material times, the Gun Club has and continues to operate as an outdoor shooting club. The outdoor shooting activities which take place at the Gun Club include, but are not limited to, target range practicing, silhouette shooting, air and target pistol shooting, rifle range shooting and shotgun activities.
29. The Gun Club consists of, but is not limited to, a 25 yard outdoor pistol range, a 100 metre outdoor rifle range, a multi-use range, an archery range and a silhouette range.
30. The firearms used for the above mentioned activities at the Gun Club include varying degrees of different caliber hand-guns and pistols, semi-automatic hand-guns, small-bore rifles, semi-automatic rifles and assault rifles, high powered rifles and shot guns (the "Firearms").
31. At all material times, the activities which take place on the Gun Club Property are limited to fee paying members and guests invited onto the Gun Club's Property by the Gun Club, its servants and agents.
32. The Gun Club was originally established in about 1974. However, changes to the Gun Club, including the recent expansion of the Gun Club, additional and updated shooting ranges and an increase in the number of members and guests who visit the Gun Club Property, have significantly and dramatically affected the nature of the Gun Club's operations.
33. Since about 2005, the Gun Club has regularly hosted invitational shooting competitions involving various Firearms.
34. Gabriola Island Land Use Bylaw No. 177, the zoning bylaw which applies to the Gun Club Property, does not restrict or limit either the days or hours during which the discharge of firearms is permitted on the Gun Club Property.
35. It is common for members and visitors of the Gun Club to discharge firearms on the Gun Club Property from 9:00 a.m. until 5:00 p.m., five days per week.

Nuisance

36. Each of the Plaintiffs described in paragraphs 2 to 10 and paragraph 19 herein are owners and/or occupiers of the lands described in those respective paragraphs.
37. The noise from the discharge of firearms on the Gun Club Property is extremely loud and percussive. The noise is distressing and upsetting to the Plaintiffs and the Neighbours and is intolerable to any ordinary person.
38. Through the discharge of firearms on the Gun Club Property, the Gun Club has caused and continues to cause the emission, release and escape of excessive and unreasonable noise into the surrounding community, including the Plaintiffs' properties.

39. In causing and permitting the emission, release and escape of excessive and unreasonable noise, the Gun Club has created and permitted an ongoing nuisance which unreasonably and substantially interferes with and diminishes the reasonable use and enjoyment of the properties owned or resided on by the Plaintiffs.
40. At all material times, the Province, as owner and lessor of the Gun Club Property, has been aware of the noise emanations caused by the Gun Club and has authorized, permitted and/or acquiesced in the Gun Club's activities which have caused or contributed to the nuisance.
41. Pursuant to the terms of the New Lease, the Province has the ability to terminate the New Lease if the Gun Club fails to observe, abide by and comply with the provisions of the New Lease.
42. The Plaintiffs and Neighbours have made repeated attempts to address the excessive noise emanations with the Gun Club and the Province, but the Gun Club and/or the Province have refused to take reasonable or any steps to abate or prevent the nuisance caused by the noise from the Gun Club Property.
43. By reason of the nuisance, the Plaintiffs have suffered loss and damage including mental distress, fear and anxiety, annoyance, inconvenience, loss of reasonable use and enjoyment of their properties, loss of rental income, loss of property sales, reduction in property values, damage to their properties, and further loss and damage resulting from their properties being rendered unfit for peaceful and ordinary use.
44. The activities of the Gun Club, including the discharge of firearms on the Gun Club Property, have caused and continue to cause irreparable harm to the Plaintiffs and their properties.
45. In particular, the noise nuisance caused by the Gun Club has reduced the value of the Centre Stage Lands and has had a detrimental effect on the ability of Centre Stage to market and sell the subdivided lots on the Centre Stage Lands.

PART 2: RELIEF SOUGHT

46. The Plaintiffs claim against the Gun Club as follows:
 - (a) An interim and permanent injunction enjoining and restraining the Gun Club, its directors, employees and members, and all other persons having notice of the injunction, from discharging or firing any firearms including, but not limited to, handguns, pistols, semi-automatic handguns, small-bore rifles, semi-automatic rifles, high-powered rifles, shotguns, or any other firearm as described in section 2 of the Criminal Code of Canada on any and all portions of the Gun Club Property or any adjoining land;
 - (b) An interim and permanent injunction enjoining and restraining the Gun Club, its directors, employees and members, and all other persons having notice of the injunction, from carrying on or, alternatively, from hosting any event, tournament, invitational, open or otherwise, wherein the purpose of such event is to discharge or fire any firearms, including but not limited to, handguns, pistols, semi-automatic handguns, small-bore rifles, semi-automatic rifles, high-powered rifles, shotguns, or any other firearm as described in section 2 of the Criminal Code of Canada on any and all portions of the Gun Club Property or any adjoining land.

47. The Plaintiffs claim against each of the Defendants, jointly and severally as follows:
- (a) General damages;
 - (b) Aggravated, punitive and exemplary damages;
 - (c) Interest, pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
 - (d) Costs; and
 - (e) Such further and other order as this Honourable Court may deem just.

PART 3: LEGAL BASIS

48. The Gun Club has created, allowed, engaged in and caused noise and continues to cause noise that has substantially and unreasonably interfered with the Plaintiffs' use and enjoyment of their respective properties, and diminished the value of those properties, in a manner which under all of the circumstances constitutes a legal nuisance.
49. The activity causing the nuisance was plainly contemplated by, and is a natural and necessary result of, the authorized purpose for which the Gun Club Property was leased. The Province, as owner and lessor of the Gun Club Property, is jointly and severally liable for the nuisance caused by the Gun Club for authorizing, permitting or acquiescing in the discharge of firearms on the Gun Club Property in a manner which constitutes a nuisance and for failing to compel the Gun Club to abate or cease the nuisance once the Province became aware of it.
50. The conduct of the Gun Club towards the Plaintiffs and its refusal to properly address the concerns of the Plaintiffs and the Neighbours or to cease the nuisance caused by the discharge of firearms from the Gun Club Property constitutes arrogant, high-handed and malicious conduct justifying aggravated, punitive and exemplary damages.
51. The Plaintiffs plead and rely upon the Regional District of Nanaimo Gabriola Island Noise Control Regulatory Bylaw No. 1082, 1998: *A Bylaw to Regulate or Prohibit Objectionable Noise within Electoral Area "B"*. The Defendants are and continue to be in breach of section 5 of the bylaw by allowing the discharge of firearms on the Gun Club Property which causes noise that disturbs the quiet, peace, rest, enjoyment, comfort and convenience of the Plaintiffs and Neighbours.

Plaintiffs' address for service:

Miller Thomson LLP
Barristers and Solicitors
1000-840 Howe Street
Vancouver, BC V6Z 2M1
Attention: Ashley Mitchell

Fax number address for service (if any)

604.643.1200

E-mail address for service (if any)

mitchell@millertomson.com


Place of trial:

Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, British Columbia V6Z 2E1

Date: 4/June/2012



Signature of Lawyer for the Plaintiffs
John R. Shewfelt

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.