



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD

Plaintiffs

and

TENACITY MARINA CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by

Local Registrar
44 Union Street
Picton ON K0K 2T0

TO: TENACITY MARINA CORPORATION
c/o CJ Thompson
PEC Innovation Centre
8-35 Bridge Street
Picton ON K0K 2T0

THE CLAIM

1. The plaintiff, The Corporation of the County of Prince Edward (the “County”), claims:
 - a) A Declaration that the defendant, Tenacity Marina Corporation (“Tenacity”), has breached its sub-lease with the County dated November 30, 2020 relating to the operation of a marina and related commercial activities at, and occupation of, the premises known as the ‘Picton Marina’ and adjacent water lots further described herein (the “Sub-Lease”), pursuant to which the County has validly terminated the Sub-Lease and is entitled to vacant possession of the leased premises including the adjacent part water lots subject thereof.
 - b) An Order authorizing the County’s seizure and removal of all tenant chattels remaining upon the Leased Premises, including but not limited to docks, hereinafter further described, and/or other such improvements erected pursuant to the Sub-Lease upon the Leased Premises, and Declaration that the County, as landlord under the Sub-Lease, is entitled to distrain against any such tenant chattels for arrears of rent owing by Tenacity under the Sub-Lease.
 - c) An Order granting vacant possession of ‘Picton Marina’ premises and adjacent part water lots subject of the Sub-Lease (the “Leased Premises”) in a condition satisfactory to and in accordance with the terms of the Sub-Lease and/or the parties’ respective property rights/obligations arising at law.
 - d) If necessary, an interim and/or interlocutory Injunction for the removal of all, or in the alternative only those portions, of the docks that have been erected upon the Leased Premises that interfere with the County’s ability to use, operate and comply

with its contractual and regulatory obligations to manage public lands composed of, *inter alia*, lands covered with water including the County's ability to offer fueling services for public boaters and access to two boat slips for use by the Canadian Border Services Agency ("CBSA") hereinafter described.

- e) An interim, interlocutory and/or permanent Injunction enjoining Tenacity from publishing and/or disseminating to the public, by any means, surreptitious surveillance taken by them of County staff and employees carrying out their operational and employment duties upon the Leased Premises, being County property, without these individuals' consent or permission and where there was a reasonable expectation of privacy; and an Order directing the delivery up and/or destruction of all such recording(s) surreptitiously obtained.
- f) Damages against Tenacity in an amount to be particularized comprising rent, arrears of rent and interest on unpaid rent due and owing under the Sub-Lease, less amounts set off by the distraint of tenant chattels remaining upon the Leased Premises.
- g) Damages in an amount to be particularized prior to trial for such further damages, costs, expenses and interest incurred for the removal of tenant chattels, including the docks and other fixtured erected under the Sub-Lease, and to secure vacant possession of the Leased Premises in a condition satisfactory to and in accordance with the terms of the Sub-Lease following the valid termination thereof by the County.

- h) General, special and aggravated damages in an amount to be particularized prior to trial for breach of contract, inducing breach of contract, trespass, intentional interference in economic relations and breach of privacy.
- i) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
- j) Costs of this action on a substantial indemnity basis; and
- k) Such further and other relief as counsel may request and this Honourable Court may deem just.

The Parties and Background

- 2. The County is a single-tier municipal corporation incorporated pursuant to the provisions of the *Municipal Act, 2001*, SO 2001, c 25, as amended, with its municipal offices located at 332 Main Street in Picton, Ontario.
- 3. Tenacity is a corporation incorporated pursuant to the *Business Corporations Act*, RSO 1990, c B.16 on September 24, 2020 with its head office located at 35 Bridge Street in Picton, Ontario.
- 4. The Leased Premises subject of the within action are comprised of:
 - a) the property known as ‘Picton Marina’ located at 1 Head Street in Picton, Ontario, legally described as: PT LT 1025, 1076 PL 24 PICTON PT 1 47R5921, PT 1 47R2099 EXCEPT PT 2 47R5921; PRINCE EDWARD, being all of PIN 55072-0002(LT) (the “Picton Marina”); and

- b) the part water lots described as Part 1 and Part 2 on Plan and Field Notes of Water Lot Location CL 2654, on record in the Ministry of Natural Resources at Peterborough, being part of the bed of The Bay of Quinte in front of Registered Plan 24 (the “Part Water Lots”).
5. The County is the registered owner of the Picton Marina, which includes a fuel dock that provides fuel for public boat users and two docking slips to be kept available for use by the CBSA. The Picton Marina fuel dock and CBSA docking slips are located upon Part 2 of the Part Water Lots, in the Bay of Quinte.
6. The Part Water Lots are unpatented Crown Lands.

The Head Lease

7. On April 10, 2012, the County entered into the Beach Management Agreement No. 5 with the Ministry of Natural Resources (“MNR”) pursuant to section 44 of the *Public Lands Act* and under which certain public land composed of beaches or lands covered with water was placed under the control and management of the County for a period of twenty-five years from the commencement date of January 1, 2009 (the “Head Lease”).
8. The public lands subject of the Head Lease included, among other lands, the Part Water Lots.
9. The Head Lease provided, *inter alia*:
- a) That the County was required to file an annual report of revenues arising from its operation and management of the public lands subject of the Head Lease, including

the Part Water Lots, that was to include an itemized list of all receipts and expenditures related thereto;

- b) That the County was required to remit to the Minister of Finance 10% of the gross revenue detailed in its annual report relating to the public lands subject of the Head Lease, which amounts were to be subject to review and adjustment each year by the Minister of Finance; and
 - c) That the County may grant leases permitting occupation of any part or parts of the public lands subject of the Head Lease, to such person or persons and for such term or terms which the County sees fit.
10. As provided for under the Head Lease, the County did thereafter sub-lease the Leased Premises delegating as part of such sub-lease the commercial marina operations upon the Leased Premises. As a result, a dock system had been installed upon Part 1 the Part Water Lots in the Bay of Quinte.
11. The Head Lease remained and continues to remain in full force and effect.

The Sub-Lease

12. On September 22, 2020, the County passed By-Law No. 174-2020 approving the Sub-Lease, being an agreement with Tenacity for the sublease of the Picton Marina and Part Water Lots (1 and 2) for the sole and express purposes of operating a marina for commercial tourism.

13. With reference to and incorporation of the provisions of the Head Lease, the Sub-Lease provided for the County's sublease of the use and operation of the Leased Premises (along with associated equipment thereon) to Tenacity premised upon, *inter alia*:

- a) The payment of Rent by Tenacity comprised of all amounts due to MNR by the County on account of gross revenues owing under the Head Lease; and
- b) The acknowledgment and agreement by Tenacity to fully comply with the filing of annual reports of revenues arising from its operations of the Leased Premises as a marina and commercial tourism location, including itemized list of receipts and expenditures related thereto.

14. The Sub-Lease further provided:

- a) For a Term of five years commencing January 1, 2021 and ending December 31, 2025.
- b) For the satisfactory operation by Tenacity of the Leased Premises as a marina and commercial tourism location.
- c) That no additions, alterations or improvements, including docks, decks, pilings or any such additional structures (collectively, "Improvements"), shall be made upon the Leased Premises without the County's written approval and that any such Improvements:
 - i. Were expressly undertaken at the sole cost of Tenacity;

- ii. Were made pursuant to an agreement to indemnify the County against any
liens, costs, damages and expenses; and
 - iii. Where requested, were to be promptly removed by Tenacity at its sole
expense with the Leased Premises restored to their previous condition.
- d) For surrender of the Leased Premises in a condition upon which it was to be
maintained under the Sub-Lease, upon termination of the Sub-Lease for any reason.

Tenacity's Docks on the Part Water Lots

- 15. When Tenacity entered into the Sub-Lease with the County in 2020, it assumed the
obligations to operate the County's marina and associated commercial activities upon the
Leased Premises thereunder.
- 16. Tenacity set up its own private marina business benefitting from its access to and use of the
pre-existing dock system on Part 1 of the Part Water Lots and its concomitant management
of the Picton Marina operations under the Sub-Lease.
- 17. Irrespective of its private commercial activities, Tenacity at all times remained obligated
under the terms of the Sub-Lease to remit Rent and report, as required therein, in relation to
any gross revenues arising from its use of the Leased Premises, which included the Part
Water Lots.
- 18. At some point, Tenacity installed new docks replacing the former dock system situated upon
Part 1 of the Part Water Lots (the "Tenacity Docks"). At all times, the Tenacity Docks, and

the previous docks, constituted Improvements, as per the Sub-Lease, which were installed with the consent and at the discretion of the County.

19. The Tenacity Docks were significantly larger than the previous dock system offering more slips for boats to dock in but, as a result, encroaching well into Part 2 of the Part Water Lots rather than being contained as the previous docks had been to Part 1.
20. The Tenacity Docks extended to such an extent into Part 2 of the Part Water Lots that these encroached into the area where the County's fuel dock and CBSA slips were located, in front of the Picton Marina.
21. Under the terms of the Sub-Lease, Tenacity was required to oversee the management of the marina and commercial operations upon the Leased Premises, which included the County's fueling and CBSA slips, and limit any interference or access issues posed by the encroachment of the Tenacity Docks in Part 2 of the Part Water Lots.

Breach of the Sub-Lease and Damages

22. On September 11, 2024, the County gave written notice to Tenacity that it was in breach of the Sub-Lease as a result of its failure to provide annual report submissions to the MNR detailing gross revenues arising from the operation of the marina and associated commercial activities upon the Leased Premises; and to remit the specified percentage of such gross revenues.
23. On October 25, 2024, Tenacity, via its principal CJ Thompson ("Mr. Thompson"), acknowledged its non-compliance under the Sub-Lease and indicated steps had been taken to reach out to MNR to submit the proper financial documentation and relevant payments

owing under the Sub-Lease. In response, the County requested that such reporting and payments be made to the County per the terms of the Sub-Lease.

24. Tenacity continued to remain in breach and non-compliant with, *inter alia*, its reporting and Rent obligations under the Sub-Lease, despite extended deadlines imposed by the County for Tenacity's compliance with same.
25. MNR has identified Tenacity's breach of the reporting and remittance obligations under the Head Lease, which has forced the County to remit payment in amounts approximated by the County based on Tenacity's commercial activities on the Leased Premises, and in place of Tenacity, so as to avoid liability and breach of its own obligations to the MNR under the Head Lease.

Termination of the Sub-Lease

26. On March 4, 2025, written notice of termination of the Sub-Lease was sent to Tenacity to the address for notice provided for Tenacity in the Sub-Lease along with an electronic copy sent to the e-mail address for its principal, Mr. Thompson. In its Notice of Termination, the County requested the removal of all tenant chattels, fixtures and other items, including the Tenacity Docks occupying the Part Water Lots by no later than March 31, 2025, so as to facilitate a new sub-lessee or other operational direction with respect to the Picton Marina and associated Part Water Lots moving forward into the 2025 boating season.
27. Thereafter, Tenacity took steps and did abandon its operations and the premises at the Picton Marina but continued to operate their marina which operations continued to utilize and occupy the Part Water Lots.

28. Despite purporting to abandon the Picton Marina premises, and having been instructed to remove all chattel, fixtures and other tenant items from the Leased Premises following termination of the Sub-Lease, Tenacity (intentionally) left behind its own video cameras and surveillance equipment that, unbeknownst to the County, continued to record video and audio in areas of the Leased Premises.
29. Well after notice of termination of the Sub-Lease had been conveyed, as well as the stated abandonment by Tenacity of the Picton Marina premises, the County took steps to re-enter and take possession of the Leased Premises, including the Picton Marina, in order to undertake an inspection and arrange a limited seasonal opening of its fueling and CBSA docks for the 2025 boating season.
30. In the course of one of these attendances, a surreptitious recording of the County's staff attending at Picton Marina premises and discussing the County's marina operations for the 2025 season was taken from the cameras and surveillance equipment Tenacity had left behind at the Picton Marina (the "Recording").
31. No principal or other agent on behalf of Tenacity was present or attending with the County's staff for any part of the Recording.
32. No express or implied consent was ever given by the County or its staff to being recorded. Any notice of surveillance being undertaken upon the Leased Premises was for the sole benefit of the County, as landlord, and, insofar as it related to any video surveillance installed by Tenacity as the sub-tenant, such notice had expired upon termination of the Sub-Lease.

33. Rather, the Recording was taken post-termination of the Sub-Lease, by cameras that should have been removed by Tenacity when they expressly abandoned the Picton Marina, which (following termination) constituted property owned by the County and upon which the County, including its agents and employees, had a reasonable expectation of privacy.
34. The County pleads and the fact is that the Recording, being the recording of third-party communications without those parties' knowledge or consent, constitutes, *inter alia*, invasion of privacy and/or intrusion upon seclusion apart aside from the any potential contraventions of the *Criminal Code*.
35. The release of the Recording, constituting a blatant breach of privacy impacting upon the County's staff in the course of their employment, would cause irreparable harm to the County's interests, including that of its employees shown in the Recording, if disseminated without context and without authorization, to the public. The balance of convenience weighs in favour of the grant of an injunction requiring the destruction of the Recording and preventing the dissemination of the Recording to the public.

Material and ongoing interference(s) with the County's marina operations

36. Despite termination of the Sub-Lease that provided for Tenacity's use, occupation and management of the Leased Premises thereunder, Tenacity's private marina operations remains ongoing utilizing the Tenacity Docks that continue to occupy the Part Water Lots.
37. These operations outside the terms of the Sub-Lease are in breach thereof and also constitute ongoing and material interference with the County's own operations and obligations at the Picton Marina and arising under the Head Lease, including but not limited to its ability to

offer re-fueling to public boaters and access to the designated CBSA slips. The interference is neither fleeting nor transitory and is permanent and continuous in nature especially during the busy summer boating season.

38. Specifically, the County's Picton Marina services boats of varying sizes, and up to 36.6 meters in length. The proximity of the Tenacity Docks that continue to occupy the Leased Premises to the County's fueling and CBSA slips upon Part 2 of the Part Water Lots is between twelve to fifteen meters in some sections, which makes it difficult, if not impossible, for larger boats to access the fueling and CBSA docks in the Picton Marina.
39. The issue is further compounded when Tenacity rents out the boat slips located on the south side of the Tenacity Docks located upon Part 2 of the Part Water Lots in the course of its private commercial activities carried. The slips along the south side of the Tenacity Docks abut the designated CBSA slips at the County Marina and further impede the ability of public boaters from accessing the fuel and CBSA docks in the Picton Marina.
40. The foregoing interference and access issues constitutes ongoing and irreparable harm to the County's interests, including but not limited to liability for breach of contract arising under the provisions of the Head Lease between the County and MNR. The balance of convenience favours interim or injunctive relief directed to Tenacity and/or, if necessary, others, to address the ongoing interference caused by the Tenacity Docks that remain upon the Leased Premises.

Summary

41. The County has validly and properly terminated the Sub-Lease in response to Tenacity's breach of the Rent and other fundamental lease provisions thereunder. As a result of which, Tenacity has no right, title or claim (legal or otherwise) to ongoing use and/or occupation of any portion(s) of the Leased Premises, which include the Part Water Lots under the management and control of the County pursuant to the Head Lease with MNR.
42. Upon such termination of the Sub-Lease, Tenacity is required to surrender and the County is entitled to recover vacant possession of the Leased Premises in a condition stipulated by the terms of the Sub-Lease reflecting the respective rights and obligations of the parties in relation to those lands.
43. Tenacity has failed to surrender vacant possession of the Leased Premises upon termination of the Sub-Lease; the Tenacity Docks continue to occupy and operate upon the Part Water Lots despite termination of the Sub-Lease, for its own private commercial endeavours in breach of, *inter alia*, the Sub-Lease, the Head Lease and any proprietary and/or equitable rights held by the County.
44. Tenacity's breaches and ongoing breaches have caused and will continue to cause irreparable harm to the County's interests, including but not limited to, material interference with the County's responsibilities to the public and its ratepayers relating to the operation of the Picton Marina as well as the County's ability to meet its own contractual obligations to MNR under the Head Lease.

45. The Plaintiff pleads that Tenacity's conduct warrants an award of punitive, aggravated and exemplary damages to ensure that the conduct it has displayed is sufficiently impugned and as a deterrence of future such conduct in the context of civil litigation proceedings.
46. The Plaintiffs plead and rely on Section 101 of the *Courts of Justice Act*, RSO 1990, c C.43, as amended; Rules 1.04, 1.05, 2.03, 3.02, 14.05, 16, 37, 39, 40, 49 and 57 of the *Rules of Civil Procedure*, RRO 1990, Reg 194; the provisions of the *Municipal Act, 2001*, SO 2001, c. 25, as amended; the *Public Lands Act*; and, such further and other grounds as counsel may advise and this Honourable Court deems just.
47. The Plaintiff proposes that this action be tried in Picton, Ontario.

July 17, 2025

TEMPLEMAN LLP
Barristers & Solicitors
401 – 366 King Street East
Kingston, ON K7K 6Y3

JENNIFER NG
LSO No. 66411M
E: jng@tmlegal.ca
Tel: 613-542-1889
Fax: 613-542-8202

Lawyer for the Plaintiff

Court File No.

**THE CORPORATION OF
THE COUNTY OF PRINCE EDWARD**
Plaintiff

-and-

TENACITY MARINA CORPORATION
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
Picton, Ontario

STATEMENT OF CLAIM

TEMPLEMAN LLP
Barristers & Solicitors
401 - 366 King Street East
Kingston, ON K7K 6Y3

JENNIFER NG
LSO No. 66411M
E: jng@tmlegal.ca
Tel: (613) 542-1889
Fax: (613) 542-8202

Lawyers for the Plaintiff