

Court File No. CV-25-00000019-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE CORPORATION OF THE COUNTY OF PRINCE EDWARD

**Plaintiff/
Defendant by Counterclaim**

and

TENACITY MARINA CORPORATION

**Defendant/
Plaintiff by Counterclaim**

STATEMENT OF DEFENCE AND COUNTERCLAIM

1. The Defendant, Tenacity Marina Corporation, admits the allegations contained in paragraphs 2 and 3 of the Statement of Claim.
2. The Defendant, Tenacity Marina Corporation, denies the allegations contained in the remaining paragraphs of the Statement of Claim.

The Parties

3. The Plaintiff and Defendant by Counterclaim is the Corporation of the County of Prince Edward ("PEC").
4. The Defendant and Plaintiff by Counterclaim is Tenacity Marina Corporation ("Tenacity").

The Essence of this Dispute

5. PEC leased certain lands owned by it to Tenacity to facilitate Tenacity's operation of a boat launch and boat fuelling station which had historically been operated, at a significant financial loss, by PEC.
6. Further, PEC leased certain other lands, such lands comprising a portion of the lakebed of Lake Ontario, to Tenacity (the entirety of such lands being submerged beneath the waters of Lake Ontario).
7. PEC purported to terminate Tenacity's lease of the said lands, without basis.
8. PEC now sues Tenacity for *inter alia*, Orders for vacant possession of certain lands, custody of certain personal property (particularly, docks), and damages.
9. Tenacity takes the position in its Defence, herein, that PEC was and remains without basis to terminate the lease in issue and therefore requests an Order dismissing PEC's Action.
10. Tenacity seeks damages from PEC in amount of \$2,000,000.00 by way of Counterclaim, herein.
11. This dispute is closely tied to an associated Action between 8673691 Canada Inc. ("867 Inc.") and PEC, wherein 867 Inc. is Plaintiff and PEC is Defendant; in that Action, 867 Inc. sues PEC for injunctive relief and damages arising from PEC's infringement/interference with 867 Inc.'s rights as a riparian owner.

The Details

Historical and Legislative Context

12. PEC is a municipal corporation.

13. At default, the beds of navigable waterways, including Lake Ontario, are owned by the Crown for the benefit of the public.

14. Pursuant to the *Public Lands Act*, the Crown, via the Minister of Natural Resources (the “Minister”), has authority to confer control and management over certain public lands to a municipality.

15. The act of the Crown conferring control over certain public lands to a Municipality does not transform the ownership of the lands in issue from public to private.

The Head Lease

16. On March 14, 2012, the Minister and PEC entered an Agreement entitled Beach Management Agreement No. 5 (the “Head Lease”) whereby the Crown conferred control over certain public lands to PEC.

17. The public lands over which PEC acquired control from the Crown are set out in a Schedule to the Head Lease, and comprise Parts 1 through 9 on Plan CL2654, the entirety of such lands being submerged beneath the waters of Lake Ontario.

PEC’s Privately-Owned Property – 1 Head Street, Picton

18. PEC was, on March 14, 2012, and is now, the registered owner of certain real property municipally known as 1 Head Street, Picton, legally described as:

PT LT 1025, 1076 PL 24 PICTON, being PT 1 on 47R5921 (being PIN 55072-0002) (“the Municipal Marina”).

The Municipal Marina is owned by PEC, outright. It is not leased from the Crown and is not the subject of the Head Lease.

The Sublease

19. The Head Lease authorized PEC to sub-lease all or parts of the land over which PEC acquired control (again, the entirety of such lands being submerged beneath the waters of Lake Ontario).

20. On November 30, 2020, PEC entered into a Lease Agreement with Tenacity (the “Sub Lease”).

21. The premises to which the Sub Lease applied entailed:

- (i) The Municipal Marina (again, which was owned, outright, by PEC); and,
- (ii) Parts 1 and 2 on Plan CL2654 (again, the entirety of which are submerged beneath the waters of Lake Ontario).

22. The Sub Lease provided for an initial 5-year term, with three rights of renewal available to the Tenacity, provided the Sub Lease remained in good standing. Consequently, Tenacity had the right to tenant the premises in issue until 2040, provided the Sub Lease remained in good standing.

23. The Sub Lease obliged Tenacity to pay rent to PEC as follows (reproduced verbatim from S. 2(3) of the Sub Lease):

- a) The sum of \$1.00 + HST per year shall be paid in advance, on the 1st day of April, for the term of the agreement.
- b) All amounts due to the MNRF on account of gross revenue pursuant to s.9(i) and (ii) of the Head Lease. The Tenant acknowledges and agrees that it shall fully comply with and provide reports, lists, receipts and expenditures and auditor's certificates as required pursuant to s.8 of the Head Lease.
- c) The annual rental rate may be negotiated preceding lease renewal.

The Rent Obligation, Practically, Imposed on Tenacity by the Sub Lease

- 24. Annually, pursuant to (a), above, Tenacity was obliged to pay to PEC \$1.13, inclusive of HST.
- 25. Further, pursuant to (b), above, Tenacity was obliged to pay to PEC all amounts due by PEC to the Crown pursuant to the Sublease.
- 26. The amount due by PEC to the Crown, pursuant to the Head Lease, is 10% of the PEC's "gross revenue" ("gross revenue" in the Head Lease referring to the net of receipts minus expenditures, i.e. profit) from its control of the lands being the subject of the Head Lease (again, the entirety of which are submerged beneath the waters of Lake Ontario).
- 27. Notably, and obviously, PEC was and is not obliged to remit any funds to the Crown arising from PEC's ownership and operations of the Municipal Marina (as the Municipal Marina is owned, outright, by PEC).

28. Thus, pursuant to (b), Tenacity was, in effect, obliged to pay to PEC, pursuant to the Sub Lease, 10% of its profit arising from Tenacity's use of Parts 1 and 2 on Plan CL2654 (again, being lands entirely submerged beneath the waters of Lake Ontario).

Tenacity's Alleged Breaches of the Sub Lease

29. On September 11, 2024, Mr. Troy Gilmour, PEC's Director of Operational Services, issued a letter to Tenacity demanding that the following documentation be provided by September 27, 2024 (reproduced verbatim from the said letter):

1. Documentation and report of Annual Gross Revenue for:
 - a) January 1 to December 31, 2021;
 - b) January 1 to December 31, 2022;
 - c) January 1 to December 31, 2023;
 - d) January 1 to December 31, 2024.
2. Documentation and report of Expenses incurred in the operation of the marina, docks and boat launch for each of the 4 years listed above;
3. A Statement of Net Revenue (dollar value representing 10% remittance amount) for each of the 4 years listed above; and
4. Remittance of the full outstanding balance for the 4 years listed above to the Municipality.

30. Mr. Gilmour went on in his letter to note that the Sub Lease being in good standing is a condition to its renewal, and that failure to comply with the aforesaid demands would be regarded as a breach.

31. Distilled, Mr. Gilmour demanded that Tenacity provide 4 years of records, statements, and payment (of unspecified amount), the need for same having never before been raised by PEC, all within 16 days. If such records were not provided within 16 days, PEC would “take all necessary steps to preserve its interests”, according to Mr. Gilmour.

32. In response to Mr. Gilmour’s demands, Tenacity provided extensive information to PEC.

33. In response, Mr. Gilmour sent a further letter to Tenacity, dated November 27, 2024. In that letter, Mr. Gilmour alleged that Tenacity had failed to comply with his prior demands, notably by failing to provide information respecting “Docking Fee Revenues”, fulsome information for years 2021-2024, and remittance of full outstanding balance (again, amount unspecified) for years 2021-2024.

PEC’s Allegations of Breach are Incoherent

34. PEC alleged that Tenacity was in breach of the Sub Lease for reason of failing to furnish PEC with certain information and payment related to the Municipal Marina (impliedly, fuel sales, and boat launching fees).

35. The Sub Lease does not oblige Tenacity to provide this information to PEC.

36. Tenacity’s obligation to provide information, if any, to PEC, arises with reference to the Head Lease, which obliges PEC to furnish the Crown with information associated with its control over Parts 1 through 9 on Plan CL2654 (again, such lands being entirely submerged beneath the waters of Lake Ontario).

37. PEC is not obliged to furnish to the Crown any information associated with the Municipal Marina; the Municipal Marina, on which the boat launch and fueling equipment are located, is owned outright by PEC.

38. As PEC has no obligation to furnish any information to the Crown associated with the Municipal Marina (PEC's fee simple property), Tenacity has no concomitant obligation to furnish any such information to PEC.

39. Thus, to the extent PEC, via Mr. Gilmour's said letters, construe Tenacity's failure to furnish information to it associated with boat launching and fuelling at the Municipal Marina as a breach of the Sublease, such allegation is baseless as Tenacity had no obligation to do so, at all.

40. Likewise, to the extent PEC, via Mr. Gilmour's said letters, construe Tenacity's failure to remit payment to PEC, of any amount as a function of boat launching and fuelling at the Municipal Marina, such allegation is similarly baseless as Tenacity had no obligation to do so, at all.

PEC's Purported Termination of the Sub Lease

41. PEC, via its lawyers, wrote to Tenacity on March 4, 2025.

42. The said letter stated as follows (verbatim):

“We write further to the County's letter(s) and communications with respect to the outstanding requirements under the sublease for operations of the Picton Marina (the “Sublease”). To date, these obligations remain unfulfilled by the Sublessee, Tenacity Marina Corporation, which the County views as a material and ongoing breach of the terms of the Sublease.

In light of the foregoing, consider this notice of termination, effective immediately, of the Sublease for the operations of the Picton Marina, between the County and Tenacity Marina Corporation.

The County will be taking immediate steps to post an Expression of Interest with respect to Picton Marina operations for the 2025 season, and reserves all rights at law, and otherwise, to recovery of any damages or other losses incurred as a result of the breach(es)/termination necessitated herein.

Please ensure the removal of all Tenant chattels, other than those items listed at Schedule “B” to the Sublease and other capital assets of the County thereon from the Picton Marina Property by no later than March 31, 2025 following which such chattels shall be deemed to be abandoned by the County.”

PEC's Purported Termination of the Sub Lease is Invalid

43. The *Commercial Tenancies Act* requires that a Landlord, here PEC, issue Notice to a Tenant, prior to re-entering a leased premises, specifying the breach complained of, and the manner in which the alleged breach may be remedied.
44. PEC failed to issue such Notice to Tenacity.
45. To the extent PEC attempted to issue Notice to Tenacity, such attempted Notice entails the letters of Mr. Gilmour to Tenacity dated September 11 and November 27, 2024.
46. As detailed herein, Mr. Gilmour's said letters demand information and payment from Tenacity which Tenacity had no obligation to provide pursuant to the Sub Lease.
47. Thus, PEC's purported Notices to Tenacity are nothing more than bare demands for information and payment from Tenacity, completely detached from the contractual/lease relationship between PEC and Tenacity.

If PEC's Purported Termination of the Sub Lease is Valid, Relief from Forfeiture is Warranted

48. If PEC's purported termination of the Sub Lease is valid, which is expressly denied, Tenacity requests that this Honourable Court exercise its power to relieve from forfeiture for reason, *inter alia*, that PEC's termination of Tenacity's lease, which could persist at Tenacity's insistence until 2040, is founded on a technical/nominal breach which is entirely disproportionate to the consequence (being Tenacity's loss of the right to use the leased premises for the next 16 years).

PEC's Motivation for Purportedly Terminating the Sub Lease

49. To repeat, and as context, PEC's lawyer wrote to Tenacity on March 4, 2025 confirming PEC's position that the Sub Lease was terminated.

50. The said letter demanded that Tenacity remove its chattels from the Municipal Marina by March 31, 2025.

51. On March 20, 2025, Mr. Gilmour (PEC Director of Operations), together with several other PEC staff members, namely Mr. Jeff Bryans (PEC Manager of Infrastructure), Mr. Albert Paschkowiak (PEC Environmental Services & Sustainability Supervisor), and Stacy Hammond (Executive Assistant to the PEC Director of Operations) attended at the Municipal Marina Property. The said Staff used keys to access a locked office building on the property.

52. Tenacity had, in 2021, after portions of the Municipal Marina were vandalized, installed video surveillance at the Municipal Marina.

53. The video surveillance was installed by Tenacity at the request of PEC.

54. Tenacity installed highly prominent signage at the Municipal Marina stating “PROPERTY MONITORED 24/7 BY VIDEO SURVEILLANCE”.

55. The video camera and signage remained in place and operating on March 20, 2025 when the said PEC staff members attended at the Municipal Marina.

56. The video camera captured the following exchange:

Mr. Gilmour – “Those are nice. I love those docks. Can you imagine if we had hydro out there? Hydro and water?”

Mr. Bryans – “If you could get the County to put in hydro and water, you could make a fortune.”

Ms. Hammond – “Yeah.”

Mr. Gilmour – “We were doing some quick numbers, and we were trying to figure it out. \$1,700 for...”

Mr. Bryans – “You’d have to talk to Pat.”

Mr. Gilmour – “\$1,700 times 76 slips. So what we need to do is—if we could have her get Emily Scutin***and [indiscernible] on grants for 2025—we could get it done for 2026, then just have them market the shit out of this place.”

57. The video camera also captured the following exchange:

Mr. Gilmour – “Another day we’re gonna own the docks.”

Unknown Speaker – “One day closer.”

Mr. Bryans – One day closer to Troy [Gilmour] being a harbormaster.”

58. The docks that PEC staff members are speaking about are owned by a non-party, 867 Inc., being the Plaintiff in the aforesaid related Action wherein PEC is Defendant.

59. PEC staff, in the above-noted exchanges, are expressing their (misunderstood) desire to commandeer extensive floating dock infrastructure owned by 867 Inc., installed across the

frontage of 867 inc.'s property, which is situated to the immediate west of the Municipal Marina property.

60. Though the said exchanges reveal PEC staff's pointed misunderstanding of the Sub Lease, the exchanges also evidence PEC's motivation in purporting to terminate the Sub Lease – PEC saw an opportunity to profit from operating the Municipal Marina (by doing so itself) and fabricated a means of terminating the Sub Lease to allow it to do so.

61. In doing so, PEC unlawfully terminated the Sub Lease, motivated by its own (misunderstood) economic interests, deprived Tenacity of its right to operate the Municipal Marina for the proceeding 16 years, and, in doing so, extensively meddled in the economic affairs of a non-party to the Sub Lease, 867 Inc.

Relief Requested

62. Tenacity requests an Order from this Honourable Court declaring the Sub Lease to be persisting, re-instating the Sub Lease, or relieving against forfeiture, as the case may be, and an Order compelling PEC to pay Tenacity's costs on a full indemnity basis.

COUNTERCLAIM

63. Tenacity repeats and relies upon the entirety of its herein pleadings.

64. In addition to the relief requested in its herein Defence, Tenacity requests an Order from this Honourable Court as follows:

- i. General, specific, aggravated, and/or punitive damages from PEC, in amount of \$2,000,000.00 for, *inter alia*, breach of contract, tortious interference with economic relations, trespass to property, and trespass to chattels;

- ii. Pre-judgment and post-judgment interest on any and all monetary sums herein;
- iii. Costs of this Action on a full indemnity basis; and,
- iv. Any and all further relief as counsel for Tenacity may advise and to this Honourable Court may seem just.

Authorities, Etc.

65. Tenacity pleads and relies, non-exhaustively, on the provisions of the *Public Lands Act*, the *Commercial Tenancies Act*, the *Courts of Justice Act*, and the *Rules of Civil Procedure*.
66. Tenacity proposes that a Trial of the herein Action be convened at Picton.
67. Tenacity proposes that a Trial of the herein Action be heard together with the Action commenced by 867 Inc. against PEC respecting the herein subject matter.

September 23, 2025

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THE CORPORATION OF THE COUNTY OF PRINCE EDWARD Plaintiff	-and- TENACITY MARINA CORPORATION Defendant	Court File No. CV-25-00000019-00
ONTARIO SUPERIOR COURT OF JUSTICE PROCEEDING COMMENCED AT PICTON		
STATEMENT OF DEFENCE AND COUNTERCLAIM		
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