



S-135590

No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

NOMI DAVIS, AS REPRESENTATIVE PLAINTIFF

PLAINTIFF

AND:

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

DEFENDANT

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(s),

- (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.

[continued...]

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

A. Parties

1. The Representative Plaintiff, Nomi Davis, is an individual residing at 334 Cusheon Lake Road ("the Property") on Salt Spring Island, in the Province of British Columbia.
2. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, RSBC 1996, c 50. She claims on her own behalf and on behalf of a class of individuals as defined herein.
3. The Defendant, British Columbia Hydro and Power Authority ("BC Hydro"), is a Crown corporation and agent of the Crown operating under the *Hydro and Power Authority Act* R.S.B.C. 1996, c. 212.

B. The impugned conduct

4. The Defendant operates a utility whereby the Defendant generates, distributes and sells electrical power to residential and other customers throughout British Columbia.
5. The Defendant enjoys a monopoly over the area in which it sells electrical power to residential customers ("the Monopoly").
6. The Defendant operates a meter at the residence of each customer for the purpose of measuring customer power consumption.
7. At the domestic dwelling of each of its residential customers, the Defendant has installed and/or sought to install a microwave radiofrequency-emitting, communication transmitter ("the Microwave Device") for the purpose of transmitting customer power consumption data from each meter to the Defendant's network.
8. The Microwave Device emits microwave radiation at a frequency range of 902 Megahertz (MHz) to 928 MHz ("the Emissions").
9. The World Health Organization's *International Agency for Research on Cancer* has classified the Emissions as a class 2B possible human carcinogen.
10. There is consensus in the scientific community as to the fact that exposure to the Emissions causes biological effects; however there is division in the scientific community as to whether those biological effects are adverse to human health.

11. Where the Microwave Device is installed at a domestic dwelling, it operates on a constant and continuous basis and causes domestic residents of that dwelling to be exposed to the Emissions on a constant and continuous basis for an indefinite duration.

C. Contract

12. The power supply relationship between the Defendant and the Plaintiff is a relationship governed by an adhesion contract (“the Contract”) which includes terms allowing the Defendant to access the Plaintiff’s Property for the purpose of reading, repairing or replacing the meter.
13. The Plaintiff has exclusive occupancy and possession of the Property and has, at all material times, allowed the Defendant to access the Property for the purpose of reading, repairing or replacing the meter.
14. The installation and operation of the Microwave Device is an act that exceeds the scope of the Defendant’s right to access the Plaintiff’s Property for the purpose of reading, repairing or replacing the meter. By installing the Microwave Device, the Defendant has added a communication device to the meter that is not necessary to the functionality of the meter as required by law and yet has material implications on the rights of the Plaintiff.
15. The Microwave Device is not necessary to the Defendant’s ability to read, repair or replace its meters. The Defendant has available to it alternative methods to measure and collect electrical consumption data without the use of the Microwave Device.

D. The refusal

16. At the material time, the Plaintiff clearly communicated to the Defendant that she refused to allow the Defendant to install or operate the Microwave Device at her Property and/or enter her Property for the purpose of installing the Microwave Device.
17. The Defendant, at all material times, knew or ought to have known of the Plaintiff’s position as set out in the preceding paragraph.
18. On or about August 22, 2012, the Defendant or the Defendant’s agent entered and accessed the Property for the purpose of installing the Microwave Device and did so install the Microwave Device by embedding it in a replacement electrical meter.
19. The Microwave Device is attached to the electrical infrastructure of the Plaintiff’s residence and cannot be removed by the Plaintiff.

20. The Plaintiff has requested that the Defendant remove the Microwave Device from her Property.
21. The Defendant refuses to remove the Microwave Device from the Plaintiff's Property notwithstanding the Plaintiff's request for removal.
22. The Microwave Device is operating continuously so as to expose the Plaintiff and her resident family members to the Emissions.
23. The Microwave Device attached to the home of the Plaintiff is transmitting consumption data pertaining to the Plaintiff's Property as well as consumption data pertaining to other BC Hydro customers. As such, the Plaintiff's Property is being used to host infrastructure that forms a part of a wireless communication network for the operational and commercial benefit of the Defendant.
24. The Plaintiff has not consented to, and does not accept, the continued operation of the Microwave Device at the Property.
25. The Defendant uses the threat of cutting off electrical supply to compel the Plaintiff to accept the continued operation of the Microwave Device at the Property.
26. Without any contractual or statutory right, the Defendant has used its Monopoly status to coercively and deceptively impose the Microwave Device on the Plaintiff against her express wishes.
27. The installation and operation of the Microwave Device on the Plaintiff's Property has caused her emotional distress.
28. The installation and operation of the Microwave Device on the Plaintiff's Property has interfered with the quiet enjoyment of her Property, the particulars of which are as follows. The Plaintiff uses her Property to host yoga and meditation retreats including a spiritual practice of attunement to resonant states of consciousness. The installation and operation of the Microwave Device and the presence of the Emissions in the Plaintiff's domestic environment has interfered with that practice. The presence of a device with bio-effects on the Plaintiff's Property has disrupted the integrity of the space as a sanctuary for meditation, peace of mind and resonant attunement.

[continued...]

E. The Class

29. The Representative Plaintiff claims on her own behalf and on behalf of a class of persons (“the Class”) who meet all of the following criteria:
- a. The Class member is an adult individual resident of British Columbia.
 - b. The Class member resides or seeks to reside at a residential property over which he or she has occupancy and possession by way of legal right (“the Subject Property”).
 - c. At the material time, the Defendant supplied power (or had been asked to supply power) to the Subject Property pursuant to a utility-customer relationship between the Defendant and the Class member or his/her proxy.
 - d. The Class member, by way of explicit communication, has indicated to the Defendant that he/she opposes and/or does not consent to the installation and/or operation of the Microwave Device at the Subject Property (“the Notice of Refusal”).
 - e. One of the following has occurred:
 - i. Notwithstanding the Notice of Refusal, the Defendant proceeded to install and operate the Microwave Device at the Subject Property;
 - ii. Notwithstanding the Notice of Refusal, the Defendant has failed to terminate the operation of the Microwave Device at the Subject Property;
 - iii. Notwithstanding the Notice of Refusal, the Plaintiff has received information from the Defendant setting out the Defendant’s intention to install the Microwave Device at the Subject Property;
 - iv. The Defendant has declined to supply power to the Subject Property as a consequence of the Class member’s refusal to allow the installation of the Microwave Device at the Subject Property; or
 - v. The Defendant has indicated its intention to decline to supply power to the Subject Property as a consequence of the Class member’s refusal to allow the installation of the Microwave Device at the Subject Property.

Part 2: RELIEF SOUGHT

30. On her own behalf and on behalf of the members of the Class, the Plaintiff seeks the following relief:
- a. Certification of this action pursuant to the *Class Proceedings Act*, RSBC 1996, chapter 50;
 - b. An order in the nature of a permanent injunction:
 - i. requiring the Defendant to remove, without condition, the Microwave Device from the Subject Property or cease the operation of the Microwave Device at the Subject Property;
 - ii. restraining the Defendant from installing / operating the Microwave Device at the Subject Property without the Class member's consent; and
 - iii. restraining the Defendant from declining to supply power to the Subject Property in relation to the removal of the Microwave Device or the Class member's refusal to consent to the installation of the Microwave Device.
 - iv. restraining the Defendant from exacting payment from the Plaintiff in exchange for the Defendant's agreement to:
 - a. remove the Microwave Device;
 - b. refrain from installing the microwave Device; and/or
 - c. supply power in the absence of the installation/operation of the Microwave Device.
 - c. General damages for intrusion against seclusion, trespass and nuisance in an amount to be determined by the Court;
 - d. Exemplary and/or punitive damages relating to the Defendant's unlawful leveraging of its Monopoly powers against the rights of the Plaintiff and Class members;
 - e. Costs of this action; and
 - f. Such further and other relief as counsel may request and this Honourable Court deem just.

Part 3: LEGAL BASIS

A. Rights and Freedoms

31. The Plaintiff enjoys a common law right of autonomy and privacy at her domestic place of residence; a right of control over environmental exposures generated from her home; a right to be free from interference in that regard.
32. The Plaintiff claims a right of free choice as to whether a Microwave Device is hosted on her property so as to continuously expose her and her family in residence to the Emissions.
33. The Plaintiff claims a right to be free from physical intrusion into the private space of her domestic environment.

B. Causes of Action

34. By entering the Property and leaving behind a continuously emitting Microwave Device, against the express will of the Plaintiff, the Defendant has intentionally intruded, physically, upon the seclusion and/or private and autonomous space of the Plaintiff. The Plaintiff pleads the tort of *intrusion against seclusion* as that tort includes physical intrusions into private places. Further and in the alternative the Plaintiff pleads the application of the *Privacy Act* [RSBC 1996] ch. 373.
35. Against the Plaintiff's explicit objections, the Defendant has entered onto the Plaintiff's Property and left behind, affixed to the electrical infrastructure, a continuously emitting Microwave Device that physically affects the Plaintiff. The Plaintiff is incapable of removing the Device and the Defendant has wrongfully refused to remove it. By conducting itself as such, the Defendant commits the tort of *trespass* and the ongoing presence and operation of the Microwave Device constitutes a continuing trespass.
36. The Defendant has caused an emission of microwave radiofrequency radiation to flow, for an indefinite duration, from the Plaintiff's Property in a manner which constantly and continuously exposes the premises of her domestic dwelling and its inhabitants to the Emissions and their physical effect. By conducting itself as such, the Defendant interferes with the Plaintiff's quiet enjoyment of her Property and commits the tort of *nuisance*.

C. Contract

37. The Plaintiff and her resident family are contractually entitled to the Defendant's continued supply of electrical power free from interference with their rights to privacy and autonomy.

38. The Defendant is not contractually entitled to insist on the installation and operation of the Microwave Device as a condition of the ongoing supply of electrical power to the Plaintiff's Property.
39. The Contract does not entitle the Defendant to install or operate the Microwave Device at the Property or otherwise effect the transmission of microwave radiofrequency emissions at or from the Property.
40. The Contract does not entitle the Defendant to use the Plaintiff's Property to host infrastructure that forms a part of a wireless communication network for the operational and commercial benefit of the Defendant.
41. The installation / operation of the Microwave Device is not necessary to the enjoyment or fulfillment of the Defendant's rights or obligations under the Contract.

D. Legislation

42. The Province has not adopted any standards in British Columbia for the regulation of the Emissions and no Federal licensing requirements are applicable to the Emissions.
43. The Defendant is not required or authorized by any statute to install the Microwave Device at the Plaintiff's Property. The Defendant has available to it alternative methods to measure and collect electrical consumption data in compliance with the *Clean Energy Act* [SBC 2010] Chapter 22 without the use of the Microwave Device.
44. Alternatively, to the extent that the Defendant is required or authorized by any statute to install the Microwave Device at the Plaintiff's Property, then that statute violates the quasi-constitutional right to privacy as it arises by way of section 8 of the *Canadian Charter of Rights and Freedoms* [Schedule B to the *Constitution Act*, 1982].

Plaintiff's address for service:

c/o David M. Aaron, Barrister & Solicitor, 208 - 507 Baker Street Nelson, BC
V1L 4J2 Tel: 250.551.6840 Fax: 866.685.7376 Email: david@legalmind.ca

Place of trial: Vancouver, British Columbia

The address of the registry is: 800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: July 25, 2013



David M. Aaron
Counsel for the Plaintiff

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

A representative claim in tort for intrusion upon seclusion, trespass and nuisance;

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A dispute concerning:

a matter not listed here

Part 3: THIS CLAIM INVOLVES:

a class action

constitutional law

Part 4:

Hydro and Power Authority Act R.S.B.C. 1996, c. 212.

Canadian Charter of Rights and Freedoms [Schedule B to the Constitution Act, 1982]

Clean Energy Act [SBC 2010] Chapter 22