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S-211602

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TEAL CEDAR PRODUCTS LTD.

PLAINTIFF

AND:

UNKNOWN PERSONS OPERATING AS THE "RAINFOREST FLYING SQUAD", ROBERT ARBESS (ALSO KNOWN AS REUBEN GARBANZO), JOHN DOE, JANE DOE, AND PERSONS UNKNOWN

DEFENDANT

NOTICE OF APPLICATION

Name of applicant: the plaintiff, Teal Cedar Products Ltd. ("**Teal Cedar**" or the "**Plaintiff**")

To: the Defendants

TAKE NOTICE that an application will be made by the applicant to the presiding judge at the courthouse at 800 Smithe Street, Vancouver, BC, V6Z 2E1 on March 4, 2021 at 9:45 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. An interlocutory injunction lasting until midnight on September 4, 2021, requiring that the Defendants (by themselves, and for their officers, members, servants, agents, representatives) and anyone having knowledge of the Court's order, be restrained, enjoined and prohibited from:

(a) impeding, physically obstructing, or in any way interfering with any person, including any member of the public, from gaining access to or egress from, or otherwise making use of any road, road construction site or planned road construction site (the "**Roads**") situate within the area bordered by (i) the E&N Railway Land Grant Boundary to the east, (ii) the San Juan River and the Pacific Rim National Park boundary to the south, (iii) the boundary of the Carmanah Walbran Provincial Park to the west, and (iv) the Nitinaht River and Nitinaht Lake to the north, as indicated on the map attached for illustrative purposes as Schedule A (the "**Injunction Area**");

(b) obstructing, impeding, or otherwise interfering with the safe passage of motor vehicles or machinery belonging to the Plaintiff, its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff (the "**Motor Vehicles**"), and in particular, not to come within 50 metres of the Motor Vehicles in the Injunction Area;

(c) obstructing, impeding or otherwise interfering with any construction activities conducted on the Roads by the Plaintiff, its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff;

(d) obstructing, impeding, or otherwise interfering with timber harvesting activities in the Injunction Area by the Plaintiff, its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff;

(e) interfering with the business, contractual or economic relationships between the Plaintiff and its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff;

(f) threatening, harassing, intimidating, assaulting, obstructing, or interfering with the Plaintiff's employees, management staff, agents, contractors or suppliers or others in privity of contract with the Plaintiff, or their families;

(g) conspiring to use unlawful means against the Plaintiff and its employees, agents, contractors or suppliers, or others in privity of contract with the Plaintiff, or their families; and

(h) ordering, aiding, abetting, counselling or encouraging in any manner whatsoever, either directly or indirectly, any person to commit the acts above mentioned or any of them.

2. An order lasting until midnight on September 4, 2021:

(a) authorizing any police officer with the Royal Canadian Mounted Police, and/or the appropriate police authority in the jurisdiction in question (the "Police"), to arrest and remove any person who has knowledge of this Order and who the Police have reasonable and probable grounds to believe is contravening or has contravened any provision of this Order;

(b) that the Police retain discretion as to the timing and manner of enforcement of this Order, and specifically retain discretion as to the timing and manner of arrest and removal of any person pursuant to this Order;

(c) that the Police retain discretion to detain and release any person without arrest who the Police have reasonable and probable grounds to believe is contravening or has contravened any provisions of this Order, upon that person agreeing in writing to abide by this Order;

(d) authorizing any peace officer and any member of the Police who arrests or arrests and removes any person pursuant to this Order to:

(i) release that person from arrest upon that person agreeing in writing to obey this Order;

(ii) release that person from arrest upon that person agreeing in writing to obey this Order and require that person to appear before this Court at such place as may be directed by this Court, on a date to be fixed by this Court;

(iii) bring that person forthwith before this Court at Victoria, British Columbia, or such other place as may be directed by this Court;

(iv) detain that person in custody until such time as it is possible to bring that person before this Court; and/or,

(v) otherwise take steps in accordance with Part XVI of the *Criminal Code*, R.S.C. 1985, c. C-46.

3. Provided the terms of this Order are complied with, the Defendants and other persons are free to participate in a peaceful, lawful and safe protest.

4. An order that any person affected by the court's order, including the Plaintiff, be at liberty to apply to the Court to set aside or vary this Order on two business days' notice.

5. An order that the Plaintiff shall abide by any order that this Court may make as to damages as a result of obtaining injunctive relief.

6. An order dispensing with the requirement that any of the Defendants approve the form of the Court's order.

7. Costs of this application in any event of the cause payable forthwith, or alternatively, costs of this application in the cause.

8. Such further and other relief as this Court may deem just.

Part 2: FACTUAL BASIS

Overview

1. Over the past seven months, Teal Cedar has been subject to an organized campaign to blockade lawful forestry activities in and around its forest tenure, Tree Farm Licence 46 ("**TFL 46**").

2. These blockades have caused significant disruption to Teal Cedar's business and that of its contractors. They have impeded Teal Cedar's ability to access valuable resources to which it is legally entitled. The blockades threaten not only Teal Cedar's right to harvest timber, but also the continued operation of its mills.

3. Teal Cedar has a serious case to be tried, it has suffered and will continue to suffer irreparable harm, and the balance of convenience is in Teal Cedar's favour. An injunction is necessary to prevent further unlawful attacks on Teal Cedar's business.

Teal Cedar's activities in and around TFL 46

4. Teal Cedar is in the business of harvesting timber and manufacturing primary lumber products.

> Affidavit #1 of Gerrie Kotze made February 11, 2021 at para. 3 [Kotze Affidavit #1]

5. Teal Cedar owns TFL 46, which grants Teal Cedar the exclusive right to harvest Crown timber within the area described in the licence for a term of 25 years (beginning on July 1, 2012). Teal Cedar harvests timber and engages in related forestry activities within the boundaries of TFL 46 under the terms of a Forest Stewardship Plan.

> Kotze Affidavit #1 at paras. 4, 7 and 8, and Exhibits B and C
>
> Affidavit #1 of Mark Carter made February 12, 2021 at para. 4 and Exhibit B [Carter Affidavit #1]

6. Teal Cedar also owns Road Permit No. R05413 ("**R05413**") and Road Permit No. R05412 ("**R05412**"), which grant Teal Cedar the right to construct roads in and around TFL 46.

> Kotze Affidavit #1 at para. 6
>
> Carter Affidavit #1 at para. 15

7. The Ministry of Forests, Lands, and Natural Resource Operations (the "**MOF**") has amended R05413 and R05412 to allow Teal Cedar to construct roads in Cutblocks 7165, 4732, 4733, 7265, and 1608 (the "**New Roads**"). Teal Cedar has retained Stone Pacific Contracting Ltd. ("**Stone**") to construct New Roads.

Carter Affidavit #1 at paras. 13-16, 20, and 52, and Exhibits A and F

Affidavit #1 of Robbi Lovett made February 12, 2021 at para. 3 [Lovett Affidavit #1]

Affidavit #1 of Kenneth Ramwell made February 12, 2021 at para. 3 [Ramwell Affidavit #1]

Affidavit #1 of Kirstie MacLeod made February 17, 2021 at para. 3 [MacLeod Affidavit #1]

8. The MOF has granted Teal Cedar the following cutting permits:

(a) Cutting Permit 20D, for a term of four years (from January 30, 2020);

(b) Cutting Permit 20G, for a term of four years (from July 29, 2020); and

(c) Cutting Permit 20H, for a term of four years (from November 8, 2020).

(collectively, the "**Cutting Permits**")

Carter Affidavit #1 at paras. 5-8 and Exhibit C

Kotze Affidavit #1 at para. 5

9. The Cutting Permits authorize Teal Cedar to harvest timber within certain specified cutblocks, including: 8022, 7165, and 4732. Teal Cedar expects to obtain valid Cutting Permits for two additional cutblocks, 4733 and 7265, as soon as practical in 2021. Cutblocks 8022, 7165, 4732, 4733, 7265, and 1608 will be defined collectively as the "**Cutblocks**" in this Notice of Application.

Kotze Affidavit #1 at para. 5

Carter Affidavit #1 at para. 8

10. At least some of the Cutblocks fall within territory claimed by the Pacheedaht First Nation (the "**Pacheedaht**") as their traditional territory.

Carter Affidavit #1 at para. 9

11. Teal Cedar sent letters to the Pacheedaht requesting that they review the prospect of harvesting timber in each of the Cutblocks. After receiving these letters, the Pacheedaht conducted surveys of each of the Cutblocks and advised that Teal Cedar is permitted to harvest timber in the Cutblocks, subject to the laws and procedures of the Crown. The Pacheedaht also advised that they would not physically oppose Teal Cedar's activities in the Cutblocks.

Carter Affidavit #1 at paras. 10-12 and Exhibit E

The Blockades

12. Since August 2020, a group of largely unknown individuals (the "**Blockaders**") have erected blockades in and around TFL 46, which prevent Teal Cedar and its contractors from engaging in lawful forestry and road construction activities. These blockades include:

(a) The Fairy Creek Blockade #2, which commenced on or about August 10, 2020;

Carter Affidavit #1 at paras. 20-26

Lovett Affidavit at paras. 5-15 and Exhibit B

Affidavit #1 of Austin Galbraith made February 12, 2021 at paras. 7-10 and Exhibit C [Galbraith Affidavit #1]

Affidavit #1 of Ken Ramwell made February 12, 2021 at paras. 10(a)-(b) and Exhibit B [Ramwell Affidavit #1]

(b) The Granite Creek Blockade, which commenced on or about August 17, 2020;

Carter Affidavit #1 at paras. 27-32 and Exhibit G

(c) The Truck Road 11 Blockade, which commenced on or about August 24, 2020;

Carter Affidavit #1 at paras. 33-36

Lovett Affidavit #1 at paras. 16-20 and Exhibit C

Ramwell Affidavit #1 at para. 10(c)-(j) and Exhibit B

(d) The Fairy Creek Blockade #1, which commenced on or about August 31, 2020;

Carter Affidavit #1 at paras. 37-40

Galbraith Affidavit #1 at paras. 11-13

(e) The Bugaboo Blockade, which commenced on or about December 7, 2020;

Carter Affidavit #1 at paras. 41-44

Lovett Affidavit #1 at paras. 21-31

MacLeod Affidavit #1 at paras. 6-14 and Exhibit B

Ramwell Affidavit #1 at para. 10(n)-(s) and Exhibit B

(f) The Grierson Blockade, which commenced on or about December 11, 2020; and

Carter Affidavit #1 at paras. 45-49

Galbraith Affidavit #1 at para. 14 and Exhibit D

MacLeod Affidavit #1 at paras. 15-23

Ramwell Affidavit #1 at para. 10(m) and (t), and Exhibit B

(g) The Mt. Edinburgh Blockade, which commenced on or about December 17, 2020.

Carter Affidavit #1 at paras. 50-57 and 59-60, and Exhibits H and I

(collectively, the "**Blockades**")

13. The Granite Creek Blockade and the Mt. Edinburgh Blockade (the "**Current Blockades**") were in place as of Thursday, February 11, 2021.

Carter Affidavit #1 at paras. 32, 53-57 and 59-60, and Exhibits H and I

See also Galbraith Affidavit #1 at paras. 15-18 and Exhibit E

14. Each of the Blockades has prevented Teal Cedar or its contractors from moving vehicles and equipment past the Blockade site and from accessing the Cutblocks.

15. The Blockades other than the Current Blockades have previously prevented Teal Cedar's contractor Stone from constructing New Roads. These Blockades were positioned such that they obstructed the sole vehicle access to Stone's worksites.

See the Overview Map attached as Exhibit A to Carter Affidavit #1

16. The Blockaders have used wooden structures, vehicles, tents, trees, fire pits, camping chairs, large signs, and other material to construct the Blockades. It was and continues to be impossible for Teal Cedar to safely move equipment through the Blockades.

Lovett Affidavit #1 at Exhibits B and C

Galbraith Affidavit #1 at Exhibits C and D

Carter Affidavit #1 at Exhibits G and H

17. The Blockaders have created significant safety hazards. They have obstructed the movement of heavy machinery, including by coming too close to heavy machinery in operation. In one instance, a Blockader followed and approached one of Stone's truck drivers while she was operating a low-bed truck. This behaviour was unsafe

and made the driver feel uncomfortable. Teal Cedar filed a police report following this incident.

MacLeod Affidavit #1 at paras. and 19-23

Carter Affidavit #1 at paras. 48-49 and 58

18. The Blockaders have also left a fire pit unattended at the height of summer, and may be responsible for constructing a fire-heated bathing station under a tree.

Galbraith Affidavit #1 at paras. 7-10 and 16, and Exhibits C and E

19. At the present time, Stone has not attempted to move road construction equipment beyond the Current Blockades. There are no plans to construct additional roads in Cutblock 8022, which is currently blockaded by the Granite Creek Blockade. The Granite Creek Blockade does, however, prevent Teal Cedar from harvesting trees in Cutblock 8022, which Teal Cedar is authorized to do under Cutting Permit 20D.

Carter Affidavit #1 at paras. 17 and 29, and Exhibit G

20. Teal Cedar intends to construct roads in Cutblock 1608, which is currently blockaded by the Mt. Edinburgh Blockade.

Carter Affidavit #1 at paras. 15 and 52, and Exhibit F

21. The Current Blockades are actively maintained. They have evolved into fairly extensive campsites with numerous vehicles (including a recreational vehicle and two buses), semi-permanent structures, common areas, and tents.

Carter Affidavit #1 at Exhibits G and H

22. On February 11, 2021, a Blockader stood in the road to prevent Teal Cedar's Operations Planner from driving past the Mt. Edinburgh Blockade. Also on that date, the Granite Creek Blockade appeared to be an active campsite, complete with posted rules stating that the campsite was "an action camp and an active blockade".

Carter Affidavit #1 at paras. 32, 53-57, 59-60, and Exhibits G, H and I

23. The Blockaders appear to be an organized group. At the present time they operate under the banner of "Rainforest Flying Squad". The Rainforest Flying Squad has a logo, a website, and a very active social media presence. There many recent social media posts where individuals express their support for and commitment to obstructing Teal Cedar's forestry activities in the TFL 46 area.

Affidavit #1 of Aisha Jeffery made February 16, 2021 at Exhibits A, B, C, D, E, F, J, N, O, P, Q, R, and T [Jeffery Affidavit #1]

24. The Blockaders have crowdsourced a significant amount of money to finance the Blockades. A GoFundMe page soliciting donations in support of the Blockades claims to have raised more than $70,000.

Jeffery Affidavit #1 at Exhibit G

History of blockades in TFL 46

25. In late 2015 and early 2016, there were a series of blockades in TFL 46. Teal Cedar filed an action (BC Supreme Court Action No. S159759, Vancouver Registry) against the largely-unknown group of defendants and obtained four orders enjoining the blockaders from obstructing Teal Cedar's forestry and road construction activity.

26. The second of these injunctions included a police enforcement clause. One individual was arrested for breach of the court's injunction order. This individual was ultimately found liable in civil contempt and ordered to do community service.

27. The Blockades at issue in this proceeding are better organized, better attended, and more numerous than the blockades of 2015 and 2016.

Impact of the Blockades

28. The Blockades have caused, and continue to cause, significant damage to Teal Cedar's business. They prevent Teal Cedar from exercising its lawful rights under TFL 46, Road Permit R05413, Road Permit R05412, and the Cutting Permits.

29. The Blockades interfere with Teal Cedar's business as a going concern, obstruct it from accessing valuable resources to which Teal Cedar is entitled, cause Teal Cedar to lose the goodwill and loyalty of its customers, and cause Teal Cedar to lose a material amount of revenue.

30. If Teal Cedar cannot complete construction of the New Roads, it will not be able to harvest timber in Cutblocks 7165 and 4732 (for which Teal Cedar has secured the Cutting Permits), nor in 4733 and 7265 (once cutting permits are issued for those cutblocks).

    Carter Affidavit #1 at paras. 15-18 and 61-63

    Kotze Affidavit #1 at para. 5

31. The construction season in the TFL 46 area may soon close. If it begins to snow heavily, Stone's road crew will be unable to continue construction of the New Roads until the snow melts, possibly in the spring. If construction of the New Roads does not begin in March 2021, Teal Cedar will lose valuable time during the summer and fall harvesting season to harvest timber under the Cutting Permits.

    Kotze Affidavit #1 at paras. 18-21

    Carter Affidavit #1 at paras. 61-65

32. If the Granite Creek Blockade remains in place then Teal Cedar cannot exercise its rights under Cutting Permit 20D to harvest timber in Cutblock 8022.

    Carter Affidavit #1 at para. 29

33. Teal Cedar estimates the value of the timber rendered inaccessible by the Blockades to be approximately $10 million. The timber in TFL 46 is Teal Cedar's

main internal source of logs to supply its three mills in Surrey, BC (two sawmills and one shake and shingle mill). Teal Cedar's mills in Surrey produce finished products and also provide lumber to Teal Cedar's four remanufacturing mills: two on a single site in Surrey, one in Sumas, Washington, and one in Salmon Arm, British Columbia.

Kotze Affidavit #1 at paras. 10-17 and Exhibit D

34. If Teal Cedar is not able to harvest its intended volumes under the Cutting Permits, Teal Cedar will not have adequate fibre supply for its mills.

Kotze Affidavit #1 at para. 22

35. The supply of timber on the open market is generally very tight, and the supply for cedar logs is particularly tight. Teal Cedar cannot count on the open market to source timber for its mills. Teal Cedar relies on its own timber licences to supply approximately 50% of its fibre needs for the three mills, mostly from TFL 46.

Kotze Affidavit #1 at paras. 23-25

36. If Teal Cedar cannot harvest the expected volumes from TFL 46 this year, Teal Cedar may be forced to temporarily shut down its mills. This would result in Teal Cedar employees being laid off. It would also mean Teal Cedar could not supply its customers with the products they expect.

Kotze Affidavit #1 at para. 26

37. Teal Cedar estimates that the value of the products manufactured from timber sourced from TFL 46 to be about $19.4 million, which is an incremental value-added over the value of the logs of approximately $9 million.

Kotze Affidavit #1 at paras. 27-29

38. Production delays at Teal Cedar's mills will impact many of its customers. Production delays and order cancellations due to continued shortfalls in log supply will damage these customer relationships and negatively impact Teal Cedar's market share, reputation and ability to compete.

Kotze Affidavit #1 at para. 31

39. Teal Cedar will suffer particular damage to its Tonewood division, which supplies book-matched pairs of timber used to manufacture custom-made guitars.

Kotze Affidavit #1 at paras. 32-33

40. Only the highest quality all-blonde, straight-grain Western Red Cedar meets Teal Cedar's standards for this business. This wood is difficult to come by. A disproportionate volume of the Western Red Cedar logs that do meet this standard originate from the Southern Vancouver Island logging area where the Blockades have occurred.

Kotze Affidavit #1 at para. 32

41. From September to December 2020, Teal Cedar experienced a decline in production of approximately 25,000 Tonewood units, resulting in lost revenue exceeding $250,000. This was due primarily to a sharp shortage in Western Red Cedar logs available during this period for production. Teal Cedar's customers have begun to seek out substitute suppliers and lower cost European and Sitka Spruce product alternatives. For these customers, the shift to lower cost, lower quality alternatives would likely be permanent.

Kotze Affidavit #1 at para. 33

42. The Blockades have also caused Stone and Stone's crews to suffer financial loss.

Ramwell Affidavit #1 at paras. 25-28

Part 3: LEGAL BASIS

1. Teal Cedar claims against the Defendants in respect of their actions to impair Teal Cedar's lawful forestry operations.

2. On this application, Teal Cedar seeks an interlocutory injunction enjoining the Defendants from further impairing its lawful forestry operations.

Teal Cedar meets the test for obtaining an interlocutory injunction

3. The Court's inherent jurisdiction to grant injunctive relief is recognized in s. 39 of the *Law and Equity Act*, RSBC 1996, c. 253 and Rule 10-4.

4. The test for injunctive relief is set out in *RJR - MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 [*RJR - MacDonald*]. The applicant must show that:

   (a) there is a serious issue to be tried;

   (b) the applicant will suffer irreparable harm if the relief is not granted; and

   (c) the balance of convenience favours granting the relief.

5. The three factors are not a checklist, each of which must be satisfied before injunctive relief may be granted. The three parts of the test are not intended to be separate watertight compartments. The three parts are interrelated such that the strength of one part can compensate for the weakness of another.

   > *B.C. (A.G.) v. Wale*, (1986) 9 B.C.L.R. (2d) 333 at 346-347, aff'd in S.C.C. dismissed: [1991] 1 S.C.R. 62 [*Wale*]
   >
   > *Cambie Surgeries Corp. v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19 (In Chambers)

6. Although the test in *RJR - MacDonald* sets up irreparable harm as an independent branch of the test, the BC Court of Appeal held in *Wale* that the test for an interlocutory injunction had only two steps: there is a serious issue to be tried; and the balance of convenience favours granting the relief. In the *Wale* formulation, the element of irreparable harm is considered as part of the balance of convenience.

7. In *Kern*, this Court questioned whether the conventional analysis in *RJR - MacDonald* is appropriate in cases of civil disobedience, compared with the context of private disputes.

   > *International Forest Products Ltd. v. Kern*, 2000 BCSC 1141 at paras. 27 to 35 [*Kern*]

There are serious issues to be tried

8. The first part of the *RJR - MacDonald* test requires that the applicant show there is a serious issue to be tried.

9. Under this part of the test, "the application must satisfy the court that there is a fair question to be tried as to the existence of the right which he alleges and a breach thereof, actual or reasonably apprehended."

> *Wale* at 345

10. The threshold for this part of the test is a low one. It will suffice if the applicant can satisfy the Court that the claim is not "frivolous or vexatious".

> *RJR - MacDonald* at 337

11. This case raises a serious issue to be tried. The evidence demonstrates that Teal Cedar has a clear legal right to:

    (a) harvest timber in some of the Cutblocks;

    (b) access all roads in and around TFL 46; and

    (c) construct the New Roads.

12. Teal Cedar's interest in TFL 46, the Cutting Permits, Road Permits R05413, and Road Permit R05412 are interests in land in the nature of *profits à prendre*. It is settled law that interference with such an interest is sufficient to support injunctive relief.

> *MacMillan Bloedel Limited v. Simpson*, (1993) 96 BCLR (2d) 201 (CA), aff'd [1996] 2 S.C.R. 1048 at paras. 9 and 10 [*MacMillan Bloedel*]
>
> See also *Marine Harvest Canada Inc. v. Morton*, 2017 BCSC 2383 at paras. 82-84 [*Marine Harvest*] (trespass to land or chattels constitutes irreparable harm)

13. The facts give rise to claims that by erecting the Blockades, the Defendants are committing the torts of trespass, nuisance, unlawful interference with economic relations, interference with contractual relations, inducing breach of contract, intimidation, and conspiracy.

14. In addition, the Defendants may be committing a criminal offence. Paragraph 423(1)(g) of the *Criminal Code* makes it a criminal offence to block or obstruct a "highway". The term "highway" is defined in the *Criminal Code* as a road to which the public has the right of access. This Court has found a Forest Service Road to be a "Highway" under s. 423(1)(g) of the *Criminal Code*.

    Kern at paras. 73-76

15. An injunction may be issued to prohibit criminal conduct where, as here, the criminal conduct affects the exercise of a private right.

    Kern at para. 45

Teal Cedar will suffer irreparable harm

16. The second part of the test requires that the applicant establish it will suffer irreparable harm if an injunction is not issued.

17. In *Wale*, McLachlin JA (as she then was) noted that "clear proof of irreparable harm is not required. Doubt as to the adequacy of damages as a remedy may support an injunction [...]".

    Wale at 346

18. Interference with a business as a going concern has always been regarded as irreparable harm within the meaning of the injunction test.

    West Fraser Mills Ltd. v. Members of Lax Kw'Alaams Indian Band, 2004 BCSC 815 at paras. 21 and 22 [*West Fraser*]

    Kern at para. 33

    MacMillan Bloedel v. Simpson, 1993 Carswell BC 1040 at para. 33, affirmed (1993) 96 BCLR (2d) 201 (CA)

Tlowitsis Nation v. MacMillan Bloedel Ltd., (1990) 53 BCLR (2d) 69 (CA) at 78

Chingee v. British Columbia, 1988 CarswellBC 1326 at para. 17

19. As discussed above, the Blockades are interfering with Teal Cedar's business as a going concern, causing Teal Cedar to lose the goodwill and loyalty of its customers, and causing Teal Cedar to lose revenue.

20. The MOF issued the Cutting Permits for terms of four years. It is not certain whether their expiry can be postponed. The Blockades have caused and continue to cause Teal Cedar to lose valuable — perhaps unrecoverable — time to harvest timber in Cutblocks 8022, 7165, and 4732.

Forest Act, RSBC 1996, c. 157, ss. 35(1)(f) and 58.1 (generally limiting Cutting Permits to four years' term)

See also section 58.21 of the *Forest Act* (authorizes the Minister of Forests, Lands & Natural Resource Operations to postpone the operation of a cutting permit for up to two years)

21. Because the Blockades have been perpetrated by many individual Blockaders whose identity is not known to Teal Cedar, it will be very difficult if not impossible for Teal Cedar to recover damages from the Blockaders. Damages that cannot be recovered are a relevant consideration for the purposes of assessing irreparable harm.

Husby Forest Products Ltd. v. Jane Doe, 2018 BCSC 676 at para. 46 [*Husby*]

Red Chris Development v. Quock, 2006 BCSC 1472 at para. 28 [*Red Chris* 2006]

Red Chris Development Company Ltd. v. Quock, 2014 BCSC 2399 at paras. 63-67 [*Red Chris* 2014]

RJR - MacDonald at 341

22. If the Blockaders force Teal Cedar to shut down its mills, the resulting unemployment will affect Teal Cedar's workers, their families, and their communities. This Court has held that the emotional and psychological effects of

long-term unemployment cannot be compensated by damages and constitutes irreparable harm.

Red Chris 2014 at para. 68

23. In addition, the Blockaders are preventing Stone from meeting its contractual obligation to Teal Cedar to construct the New Roads. This in turn causes Stone's road crews to lose wages, and Stone to lose revenue.

The balance of convenience strongly favours granting an injunction

24. The third stage of the test involves "a determination of which of the two parties will suffer the greater harm from the granting or refusal of an interlocutory injunction, pending a decision on the merits."

RJR - MacDonald at 342

25. The is no inconvenience to "balance" when the Court is compelled to protect the lawfulness of the plaintiff's behaviour and address the illegality of the defendants' behaviour.

Marine Harvest at para. 93

26. If the injunction is not granted, Teal Cedar will be unable to engage in its lawful forestry operations. This would result in significant harm to Teal Cedar, as well as its employees, contractors, and customers.

27. On the other hand, an injunction will not result in any harm to the Defendants. An injunction will only limit the Defendants from engaging in unlawful activity. That cannot be considered harm.

28. The order sought by Teal Cedar would limit the Defendants' ability to protest only to the extent necessary to ensure that Teal Cedar can conduct its operations unhindered. This is a minor limitation that would not cause any harm to the Defendants.

29. The protestors have a right to freedom of expression. Their freedom of expression would not be impaired by the order sought by Teal Cedar. As this Court has held, "[p]hysical obstruction is not an acceptable demonstration of dissent in a democratic society."

Red Chris 2006 at para. 34

30. *Kern* was also a case of balancing convenience between individuals engaged in a blockade and a forestry company. Pitfield J. held at para. 34 that:

> ...the balance of convenience assessment in a case such as this is easily made. The actions of the protestors interfere with the lawful right of the plaintiffs to log the Cut Blocks. The plaintiffs' exercise of those rights does not interfere with any right the protestors might have against Interfor. The protestors are free to express their views and protest in any lawful way they wish but they cannot engage in unlawful activities that deny or affect the capacity of another member of the public to exercise a lawful right.

<u>It would be appropriate for an injunction order to include an enforcement provision</u>

31. Teal Cedar submits that it is appropriate to include enforcement provisions in any injunction order this Court may make.

32. Enforcement orders are generally granted as part of an injunction in circumstances where the location of a blockade is remote or hard to access, the number or blockaders varies from day to day, the blockaders are difficult to identify, or the RCMP has stated that it will not act without an enforcement order.

Husby at para. 57

Red Chris 2014 at para. 84

West Fraser Mills at para. 26

33. There are many potential Blockaders whose identities are not known to Teal Cedar. Various individuals have manned the Blockades over the past seven months. The Blockades are located in a remote and difficult-to-access part of Vancouver Island.

34. Further, the Blockaders are organized, well-financed, and obviously committed to obstructing Teal Cedar's operations in TFL 46. There can be little doubt that if this Court declines to include enforcement provisions with its order, Teal Cedar will soon have to return to court seeking such provisions.

35. Granting an enforcement order would support the purpose of such orders, as set out by the Supreme Court of Canada:

> I observe only that the inclusion of police authorization appears to follow the Canadian practice of ensuring that orders which may affect members of the public clearly spell out the consequences of non-compliance. Members of the public need not take the word of the police that the arrest and detention of violators is authorized because this is clearly set out in the order signed by the judge. Viewed thus, the inclusion does no harm and may make the order fairer.
>
> *MacMillan Bloedel* at para. 41

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Mark Carter, made February 12, 2021;

2. Affidavit #1 of Gerrie Kotze, made February 11, 2021;

3. Affidavit #1 of Austin Galbraith, made February 12, 2021;

4. Affidavit #1 of Robbi Lovett, made February 12, 2021;

5. Affidavit #1 of Kenneth Ramwell, made February 12, 2021;

6. Affidavit #1 of Kirstie MacLeod, made February 17, 2021;

7. Affidavit #1 of Aisha Jeffery, made February 16, 2021;

8. Affidavit #1 of Patti Allen, made February 18, 2021;

9. The pleadings and proceedings in BC Supreme Court Action No. S159759; and

10. Such further and other material as counsel may advise and this Court may permit.

The applicant estimates that the application will take two hours.

☐ This matter is within the jurisdiction of a master.

☒ This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

(a) file an application response in Form 33;

(b) file the original of every affidavit, and of every other document, that

(i) you intend to refer to at the hearing of this application, and

(ii) has not already been filed in the proceeding; and

(c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:

(i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

February 18, 2021
Dated

DLA Piper (Canada) LLP
Signature of ☑ lawyer for filing party
DLA Piper (Canada) LLP (Dean Dalke)
Lawyer for the plaintiff

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application

☐ with the following variations and additional terms:

_____

_____

_____

_____

Date: _____ _____

Signature of ☐ Judge ☐ Master

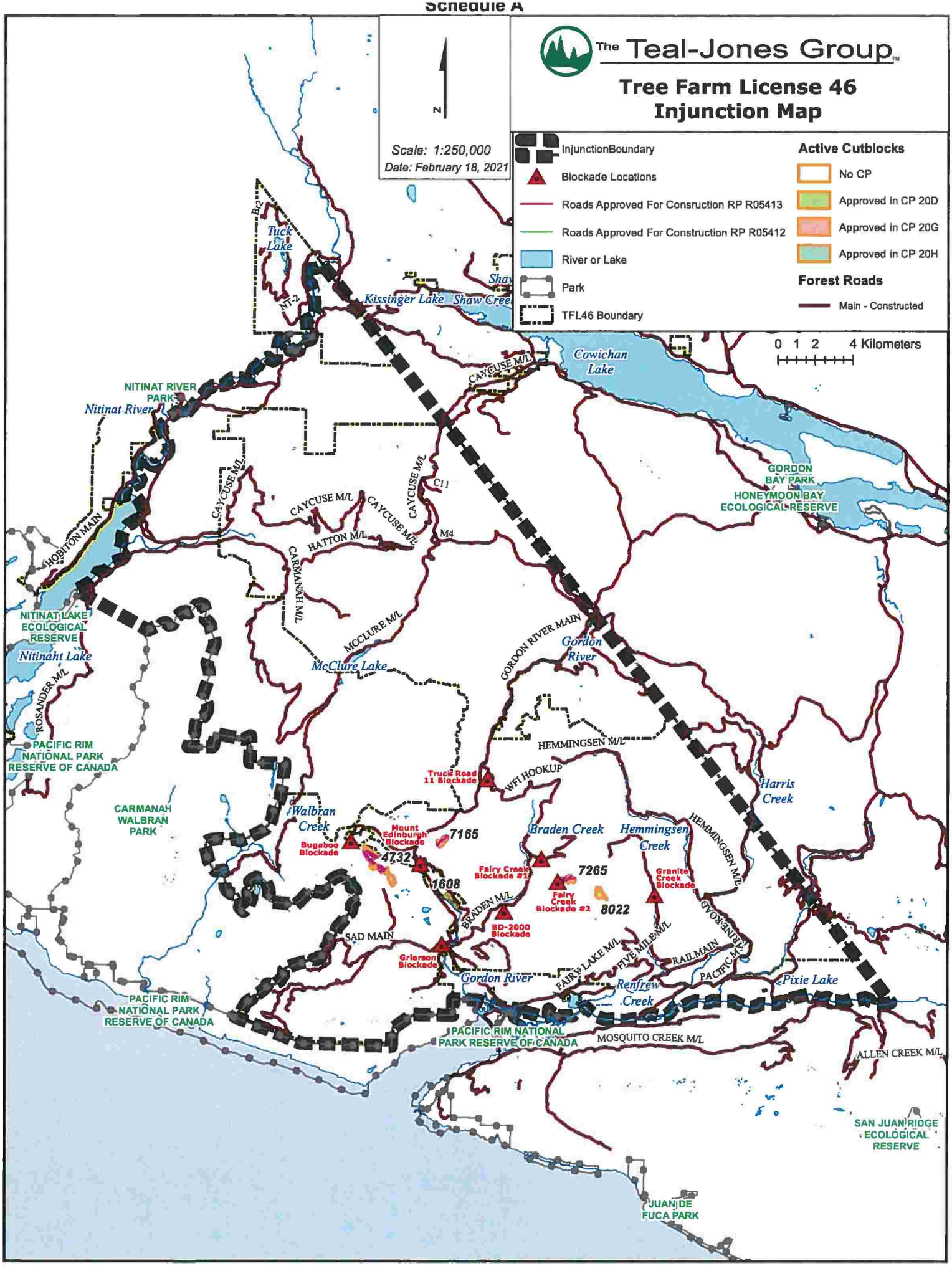
APPENDIX

The following information is provided for data collection purposes only and is of no legal effect.

THIS APPLICATION INVOLVES THE FOLLOWING:

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ oral matters concerning document discovery
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above

Schedule A


The Teal-Jones Group
Tree Farm License 46
Injunction Map
N
Scale: 1:250,000
Date: February 18, 2021
InjunctionBoundary
Blockade Locations
Roads Approved For Consruction RP R05413
Roads Approved For Construction RP R05412
River or Lake
Park
TFL46 Boundary
Active Cutblocks
No CP
Approved in CP 20D
Approved in CP 20G
Approved in CP 20H
Forest Roads
Main - Constructed
0 1 2 4 Kilometers
Tuck Lake
Kissinger Lake
Shaw Cree
Cowichan Lake
NITINAT RIVER PARK
Nitinat River
CAYCUSE M/L
C11
M4
HATTON M/L
CARMANAH M/L
HOBITON MAIN
NITINAT LAKE ECOLOGICAL RESERVE
Nitinaht Lake
ROSANDER M/L
MCCLURE M/L
McClure Lake
GORDON RIVER MAIN
Gordon River
GORDON BAY PARK
HONEYMOON BAY ECOLOGICAL RESERVE
HEMMINGSEN M/L
WFI HOOKUP
Truck Road 11 Blockade
Harris Creek
PACIFIC RIM NATIONAL PARK RESERVE OF CANADA
CARMANAH WALBRAN PARK
Walbran Creek
Mount Edinburgh Blockade
Bugaboo Blockade
7165
4732
1608
Braden Creek
Hemmingsen Creek
HEMMINGSEN M/L
Fairy Creek Blockade #1
7265
Fairy Creek Blockade #2
8022
Granite Creek Blockade
BRADEN M/L
BD-2000 Blockade
SAD MAIN
Grierson Blockade
Gordon River
FAIRY LAKE M/L
FIVE MILE M/L
RAILMAIN
PACIFIC MAIN
Renfrew Creek
Pixie Lake
PACIFIC RIM NATIONAL PARK RESERVE OF CANADA
MOSQUITO CREEK M/L
ALLEN CREEK M/L
SAN JUAN RIDGE ECOLOGICAL RESERVE
JUAN DE FUCA PARK

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TEAL CEDAR PRODUCTS LTD.

PLAINTIFF

AND:

UNKNOWN PERSONS OPERATING AS THE "RAINFOREST FLYING SQUAD", ROBERT ARBESS (ALSO KNOWN AS REUBEN GARBANZO), JOHN DOE, JANE DOE, AND PERSONS UNKNOWN

DEFENDANT

NOTICE OF APPLICATION

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Barristers & Solicitors
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Vancouver, BC V6C 2Z7

Tel. No. 604.687.9444
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File No.: 077728-00050 AYH/mkk