



Court File No. **VLC-S-S-183541**

Court File No.
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TRANS MOUNTAIN PIPELINE ULC

PLAINTIFF

- and -

DAVID MIVASAIR, BINA SALIMATH, MIA NISSEN, COREY SKINNER (aka CORY SKINNER), UNI URCHIN (aka JEAN ESCUETA), ARTHUR BROCIER (aka ARTUR BROCIER), KARL PERRIN, YVON RAOUL, EARLE PEACH, SANDRA ANG, REUBEN GARBANZO (aka ROBERT ARBESS), GORDON CORNWALL, THOMAS CHAN, LAUREL DYKSTRA, RUDI LEIBIK (aka RUTH LEIBIK), JOHN DOE, JANE DOE, AND PERSONS UNKNOWN

DEFENDANTS

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,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

Overview

1. Since November 30, 2017, all or some of the Defendants, David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner), Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner), Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka Robert Arbess), Gordon Cornwall, Thomas Chan, Laurel Dykstra, Rudi Leibik (aka Ruth Leibik), and other individuals who could not be identified (collectively, "**Blockade Participants**"), have consistently obstructed roads and gates that the Plaintiff, Trans Mountain Pipeline ULC ("**Trans Mountain**"), requires to access the Westridge Marine Terminal in Burnaby, BC (the "**WMT**").
2. On March 5 and 6, 2018, all or some of the Blockade Participants attended the Burnaby Terminal in Burnaby, BC (the "**BT**") and obstructed Trans Mountain's workers from conducting work at the BT.
3. The Blockade Participants' actions are illegal and have interfered with Trans Mountain's lawful rights to access to the WMT, operate the WMT and the BT, and conduct work at the WMT and the BT. The Blockade Participants' actions have caused Trans Mountain serious harm.

4. Trans Mountain requests, among other things, an injunction enjoining the Defendants from interfering with Trans Mountain's right to access and operate the WMT, the BT, and other Trans Mountain locations.

The Parties

5. The Plaintiff, Trans Mountain, an unlimited liability company, is a Canadian corporation with its head office located in Calgary, Alberta, formed pursuant to the laws of Alberta and extra-provincially registered in British Columbia.
6. The Defendants, David Mivasair, Bina Salimath, Mia Nissen, Corey Skinner (aka Cory Skinner), Uni Urchin (aka Jean Escueta), Arthur Brociner (aka Artur Brociner), Karl Perrin, Yvon Raoul, Earle Peach, Sandra Ang, Reuben Garbanzo (aka Robert Arbess), Gordon Cornwall, Thomas Chan, Laurel Dykstra, and Rudi Leibik (aka Ruth Leibik) are persons that are or have been Blockade Participants and that are currently known to Trans Mountain.
7. John Doe(s) and Jane Doe(s) are persons that are or have been Blockade Participants, and that are currently unknown to Trans Mountain.

Trans Mountain and the Project

8. Trans Mountain is the general partner of Trans Mountain Pipeline L.P. (both Trans Mountain and Trans Mountain Pipeline L.P. will be referenced herein as collectively "**Trans Mountain**").
9. Trans Mountain owns a pipeline that runs from Sherwood Park, Alberta, to marketing terminals and refineries in the central BC region, the Lower Mainland area, and the Puget Sound area in Washington State (the "**Pipeline**").
10. The initial capacity of the Pipeline was 150,000 barrels per day ("**bpd**"). Since 1953, the capacity of the Pipeline has been increased several times by twinning parts of the line and adding associated facilities. Today the Pipeline is 1,147 kilometres in length and has a capacity of approximately 300,000 bpd.

11. Demand for transportation services exceeds the Pipeline's current capacity. In particular, Western Canadian oil producers and West Coast refiners have requested increased pipeline capacity to support growing oil production and to access West Coast offshore markets.
12. In response to this demand, Trans Mountain and its affiliates applied to the National Energy Board (the "NEB") in December 2013 to expand the Pipeline (the "Project"). After Trans Mountain's application, the NEB implemented a nearly three-year process to evaluate and consider Trans Mountain's application that included, among other things: environmental and socio-economic assessments; consultation with Indigenous groups; consultation with government and other third-party stakeholders; and various hearings.
13. The NEB issued its recommendation and report in respect of Trans Mountain's application for the Project on May 19, 2016. The NEB concluded, among other things, that the Project was in the public interest and that the Project should be approved, subject to compliance with certain conditions (the "Conditions") and approval from the Governor in Council (the "GIC").
14. On November 29, 2016, the GIC issued Order in Council p.c. 2016-2017 (the "OC"). The OC accepted the NEB's recommendation that the Project, among other things, will, if the Conditions are complied with, be required by the present and future public convenience and necessity.
15. Following the OC, the NEB issued a Certificate of Public Convenience and Necessity to Trans Mountain on December 1, 2016. This certificate allows Trans Mountain to construct and operate the Project, subject to the Conditions.

The WMT

16. The WMT is located in Burnaby, BC. The WMT currently has one berth that can accommodate up to an Aframax-size ship (approximately 120,000 dead weight tons) and barges. In addition to shipping crude oil, the WMT also receives and ships jet fuel to the Vancouver International Airport through a jet fuel pipeline system. The WMT currently houses three storage tanks and can handle volumes of approximately 395,000 barrels (63,000 m³).

17. The Project proposes to expand the WMT, including:
 - (a) building a new dock complex at the WMT with three berths, and a berth to moor smaller utility and service vessels. This new dock will increase loading capacity from one to three Aframax-size tankers;
 - (b) building additional delivery pipelines; and
 - (c) extending the land along the shoreline to accommodate new equipment,(the “**WMT Expansion**”).
18. The WMT Expansion involves significant construction on the WMT’s lands, shoreline, and surrounding waters. Trans Mountain has received the majority of approvals to commence and conduct construction of the WMT Expansion.

The BT

19. The BT is located in Burnaby, BC. The BT is the end point of the Pipeline. It is a distribution point for crude oil and refined products to local terminals, such as the WMT and the Parkland refinery in the Lower Mainland.
20. The Project proposes to expand the BT, including:
 - (a) installing 14 new storage tanks (and removing an existing tank);
 - (b) constructing an enhanced stormwater treatment system; and
 - (c) implementing certain plant modifications, including the demolition of an existing storage tank, relocation of some existing delivery pipeline, and relocation of certain third-party utilities,(collectively, the “**BT Expansion**”).
21. As of the date of filing, the BT Expansion work involves certain tree clearing work, which Trans Mountain has received all approvals to commence and conduct.

The WMT Blockades

22. Since at least November 30, 2017, and almost every day thereafter, the Blockade Participants obstructed critical roads that Trans Mountain requires to access the WMT (“**Critical Roads**”), and interfered with Trans Mountain’s ability to access the WMT.
23. The Blockade Participants engage in consistent and intentional blockades designed to cause delay and financial harm to Trans Mountain with the ultimate goal of stopping the Project entirely.
24. The blockades have consistently and purposely interfered with Trans Mountain's ability (and that of its employees and contractors) to access the WMT and to conduct construction-related activities and operations generally. The blockades have caused and continue to interfere with and cause delays to construction work on the WMT Expansion.
25. Trans Mountain has expended significant efforts to manage and mitigate the effects of the blockades, with limited success.
26. Trans Mountain has exhausted all reasonable means of minimizing the effects of the blockades. Further and continued blockades carry with them the obvious risk of further construction-related delays that will cause significant harm to Trans Mountain and third parties (including safety-related risks to Blockade Participants and others). Trans Mountain has suffered and continues to suffer significant harm.

The BT Blockades

27. Beginning on or about March 6, 2018, and continuing in the following days, the Blockade Participants attended the BT and physically obstructed workers, preventing some from accessing the site and obstructing work. The Blockade Participants also entered and occupied safe-work zones, forcing work stoppages.

Harm to Trans Mountain and Third Parties

28. Trans Mountain has suffered, and continues to suffer, obvious harm as a result of the Blockade Participants’ blockades at the WMT and at the BT. This harm includes but is not limited to:

- (a) operational delays at the WMT and the BT;
- (b) delays in construction and construction schedules for the WMT Expansion and the BT Expansion;
- (c) interference with its right of access to and/or use the WMT and the BT;
- (d) increased labour and equipment costs; and
- (e) increased security costs.

Part 2: REMEDY SOUGHT

29. Trans Mountain seeks the following:

- (a) an injunction, including an interim injunction, enjoining the Defendants from, among other things: (i) obstructing roads that Trans Mountain requires to access the WMT, or otherwise obstructing access to the Reed Point Marina, the WMT or the BT; (ii) obstructing workers from conducting work at the WMT or the BT; and (iii) otherwise coming within 50 metres of the WMT or the BT;
- (b) further, and in the alternative, damages in an amount as yet to be determined but which will be proved at the trial of this Action;
- (c) pre and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, as amended;
- (d) solicitor-client costs, or in the alternative such other costs as this Honourable Court may permit; and
- (e) such further and other relief as Trans Mountain may request and this Honourable Court may permit.

Part 3: LEGAL BASIS

Nuisance

30. The Defendants' actions, including their participation in and creation of blockades of the Critical Roads, and at the WMT and at the BT, create a private nuisance in that they substantially and unreasonably interfere with Trans Mountain's lawful and rightful access to and use of the Critical Roads, and to access and operate the WMT and the BT.
31. Further, and in the alternative, the Defendants' actions, including their participation in and creation of these blockades, create a public nuisance that causes special damage unique to Trans Mountain.

Conspiracy

32. The Defendants agreed amongst themselves and have acted in combination for the predominant purpose of injuring Trans Mountain through unlawful and/or lawful means. The Defendants either knew, or certainly ought to have known, that their actions, including their participation in and creation of blockades on the Critical Roads, at the WMT, and at the BT, would injure Trans Mountain. Trans Mountain has suffered injury and loss due to the Defendants' misconduct.

Unlawful Interference with Economic Relations

33. The Defendants were aware at all material times that Trans Mountain had contractual relations with third parties, including contracts for work with Trans Mountain contractors involved in, among other things, operations at the WMT and the BT, and construction activities at the WMT and the BT. The Defendants' unlawful actions, including their participation in and creation of blockades, were intended to interfere with the performance of those contracts and cause injury and loss to Trans Mountain and third parties. The Defendants' actions have interfered with Trans Mountain and third parties' performance of those contracts, causing Trans Mountain and third parties to suffer injury and loss.

Plaintiff's address for service:

OSLER, HOSKIN & HARCOURT LLP
Suite 2500, Trans Canada Tower
450 – 1 St SW
Calgary, AB T2P 5H1

Attention: Maureen Killoran, Q.C. / Shaun Parker
Telephone: 403.260.7003 / 403.260.7013
Matter No. 1179700

Fax number address for service:

403.260.7024

E-mail address for service:

mkilloran@osler.com / sparker@osler.com

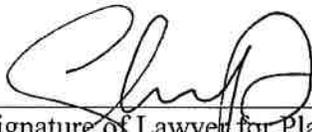
Place of trial:

Vancouver, BC

The address of the registry is:

800 Smithe Street, Vancouver, BC V6Z 2E1

Date: March 8, 2018



Signature of Lawyer for Plaintiffs
Maureen Killoran, Q.C. / Shaun Parker

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a List of Documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff seeks an injunction to enjoin the Defendants from obstructing its access to its facilities and operations.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

Court Order Interest Act, R.S.B.C. 1996, c. 79