

Form 3-15A

(Rule 3-15)

COURT FILE NUMBER 174 of 2018
COURT OF QUEEN'S BENCH FOR SASKATCHEWAN
JUDICIAL CENTRE YORKTON
PLAINTIFFS L. & V. ENTERPRISES LTD. and DONNA
 BROWN
DEFENDANT IMPERIAL OIL LIMITED

STATEMENT OF DEFENCE

1. The Defendant Imperial Oil Limited ("Imperial") is a corporation organized pursuant to the laws of Canada and extra-provincially registered in the Province of Saskatchewan.
2. Imperial admits that it is the registered owner of certain lands located in Yorkton, Saskatchewan legally described as: Surface Parcel #143911852, Block D, Plan 82Y08710 (the "Imperial Land").
3. Imperial further admits that the Imperial Land is located adjacent and directly to the west of certain other lands owned by the Plaintiffs L. & V. Enterprises ("L&V") and Donna Brown ("Brown"), which lands are legally described as: Surface Parcel #143911852, Block E, Plan 82Y08710 (the "L&V Land") and Surface Parcel #143911885, Block F, Plan 84Y03916 (the "Brown Land", and together with the L&V Land, the "Plaintiffs Land").
4. Imperial has no knowledge of or denies each of the remaining allegations contained in the Statement of Claim and puts the Plaintiffs to a strict proof thereof.
5. The Imperial Land is the site of an active fertilizer facility (the "Fertilizer Facility").
6. The Imperial Land was historically the site of a cardlock and bulk petroleum facility.
7. The bulk petroleum facility was decommissioned in or around May 2002.

8. The cardlock facility was decommissioned in or around August 2008.

No contamination

9. Imperial denies that the Plaintiffs Land is contaminated with any petroleum fuels and hydrocarbons, volatile organic compounds, or other related chemicals and substances (individually or collectively, the "Contaminants").
10. In the alternative, if the Contaminants are present on the Plaintiffs Land, which is not admitted, Imperial denies that:
- (a) the Contaminants originated on, and migrated from, the Imperial Land;
 - (b) the Contaminants are the result of any acts or omissions on the part of Imperial, or those for whom Imperial is liable; and
 - (c) the Contaminants are present at concentrations that require any remedial measures.

No negligence

11. Imperial denies that it has been negligent in the manner alleged, or at all.
12. Imperial denies that it owed the Plaintiffs a duty of care.
13. In the alternative, if Imperial did owe the Plaintiffs a duty of care, Imperial denies that it breached the applicable standard of care.
14. At all material times, Imperial met the standards imposed on it by law with respect to the management of the Imperial Land.
15. Imperial specifically denies that:
- (a) any material escape of Contaminants occurred on the Imperial Land;
 - (b) Imperial allowed the Imperial Land to become contaminated; and
 - (c) the Imperial Land was or is contaminated at all.

16. In the alternative, if the Imperial Land was or is contaminated, which is denied, the contamination did not result in the alleged presence of the Contaminants on the Plaintiffs Land.

No nuisance

17. Imperial further denies that it has created a nuisance on the Plaintiffs Land. Further, Imperial did not allow the Contaminants to escape the Imperial Land and migrate to the Plaintiffs Land.
18. In the alternative, if Imperial did allow the Contaminants to escape the Imperial Land and migrate to the Plaintiffs Land, which is denied, then the presence of the Contaminants constitutes a mere chemical alteration and not an interference with the reasonable use and enjoyment of its land and has not caused any physical injury to the Plaintiffs Land.
19. In the alternative, if any migration of Contaminants from the Imperial Land to the Plaintiffs Land has occurred, which is denied, such migration occurred prior to the Plaintiffs acquiring ownership of the Plaintiffs Land.

No trespass

20. Further, Imperial has not trespassed on the Plaintiffs Land.
21. In the event that Contaminants originating with the operations of Imperial on the Imperial Land have migrated to the Plaintiffs Land, which is denied, this was not the result of an intentional act on the part of Imperial.
22. Furthermore, if Contaminants originating with the operations of Imperial on the Imperial Land have migrated to the Plaintiffs Land, which is denied, such Contaminants have not resulted in a direct and immediate interference with the Plaintiffs, or their property and rights.

No strict liability

23. Notwithstanding that it has not expressly been pled in the Statement of Claim, Imperial also denies that it is liable to the Plaintiffs under the doctrine of *Rylands v. Fletcher*.
24. Neither the operation of the cardlock and bulk petroleum facility nor the fertilizer facility constitutes a non-natural use of the Imperial Land.
25. Furthermore, there was no escape of a dangerous substance from the Imperial Land.

No breach of statute

26. Imperial denies that it failed to comply with any applicable laws, including but not limited to the Saskatchewan *Environmental Management Protection Act, 2010*, or any direction, instruction, or order of the Saskatchewan Ministry of Environment.
27. In the alternative, if any statutory or regulatory obligations have been breached, such breaches do not give rise to any cause of action on the part of the Plaintiffs.

Action is barred by the Limitations Act

28. Imperial pleads that the limitation period in respect of any cause of action that could be alleged by the Plaintiffs as against it has expired. Accordingly, this Action and the claims advanced by the Plaintiffs against Imperial are barred by the provisions of the Saskatchewan *Limitations Act*.

Plaintiff is responsible

29. If Contaminants are present on the Plaintiffs Land, which is denied, the Plaintiffs knew or ought to have known of such presence prior to its purchase of the Plaintiffs Land. As such, the proximal cause of any loss or damage incurred by the Plaintiffs as a result of the presence of the Contaminants is due to its own voluntary actions in acquiring the lands.
30. Further, any such loss or damage is as a result of the Plaintiffs' contributory negligence.
31. Imperial pleads and relies upon the Saskatchewan *Contributory Negligence Act*.

No damages

32. Imperial denies that the Plaintiffs have suffered any injury, loss or damage at all, or for which Imperial is responsible.
33. If the Plaintiffs Land is contaminated with Contaminants, which is denied, it has not resulted in any damage to the Plaintiffs.
34. Furthermore, if the Plaintiffs Land is contaminated with Contaminants, which is denied, there has been no increase in the Contaminants since the Plaintiffs acquired the Plaintiffs Land and, as such, the Plaintiffs have not suffered any loss.
35. If the Plaintiffs have suffered damage as a result of the alleged presence of Contaminants on the Plaintiffs Land, which is denied, the activities of the Plaintiffs or other individuals or entities are responsible for the damage.
36. Imperial denies that the Plaintiffs have suffered any diminution in value or stigma associated with the Plaintiffs Land at all, or, in the alternative, related in any way to the alleged presence of the Contaminants.
37. Imperial denies that the Plaintiffs are entitled to any damages as claimed, and that further, such damages are excessive, remote, not foreseeable and unrecoverable at law, and the Plaintiffs have failed to mitigate any damages that it may in fact have suffered.
38. Imperial denies that it is liable to the Plaintiffs for any costs incurred, or to be incurred, by the Plaintiffs in relation to the remediation of the Plaintiffs Land or at all.
39. Imperial seeks the following relief:
 - (a) dismissal of the claims advanced by the Plaintiffs against Imperial.
 - (b) costs against the Plaintiffs on a solicitor and own client basis, or in the alternative, on a party and party basis; and
 - (c) such further and other relief as this Honourable Court may deem just: