

NOV 10 2016

S1610460

No.  
Vancouver Registry



IN THE SUPREME COURT OF BRITISH COLUMBIA

**BETWEEN:**

**WADE SIMLIK and  
VICKY SIMLIK**

**PLAINTIFFS**

**AND:**

**ENCANA CORPORATION**

**DEFENDANT**

**NOTICE OF CIVIL CLAIM**

**This action has been started by the plaintiff(s) 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(s).

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(s)

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,

10NOV16 1618599 RISS  
21422 S1610460

200.00

(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.

## **CLAIM OF THE PLAINTIFFS**

### **Part 1: STATEMENT OF FACTS**

#### **Parties**

1. The plaintiffs, Wade Simlik, Director of Operations of a school district, and Vicky Simlik, homemaker, have an address for service at Mackoff & Company, Barristers & Solicitors, 1801-808 Nelson Street, Vancouver, in the province of British Columbia.
2. At all material times, the plaintiffs reside and own lands located at 5543 237 Road, Peace River Regional District, in British Columbia, and more particularly described as:
 

Section 30, Township 79, Rg.16,  
W6M Part SE ¼ EXC PCL A (G15652)  
(the “Lands”).
3. The plaintiffs’ primary residence is located on the Lands. The plaintiffs have resided on the Lands from 1988 to the present.
4. The defendant Encana Corporation is a corporation incorporated pursuant to the federal laws of Canada, with a head office at Suite 4400, 500 Centre Street SE, Calgary, in the province of Alberta, and an attorney at Floor 25, 700 West Georgia Street, Vancouver, in the province of British Columbia.

#### **Fracking and drilling activities**

5. In the past, Encana Corporation received approval for drilling and hydraulic fracturing wellsites for natural gas within 5 kilometres of the Lands (the “Wellsites”), including wellsites 13-26-79-17, 4-26-79-17, 15-22-79-17, 14-25-79-17, 11-35-79-17, 06-02-80-17, 06-19-79-16, 13-18-79-16, and 06-18-79-16.
6. No notification or consultation processes were undertaken with regard to proposed wellsites until the *Notification and Consultation Regulations*, BC Reg 279/2010, under the *Oil and Gas Activities Act*, SBC 2008, c 36, came into effect in 2010.

7. From around 2012 to the present time, Encana Corporation and/or its employees, agents, contractors or subcontractors (collectively, "Encana") have been conducting drilling and fracking operations (the "Fracking") at the nearby Wellsites.
8. Fracking is a process of injecting either water and/or drilling mud mixed with a proppant under high pressure into the land in order to fracture shale rocks to release the natural gas inside.
9. From 2012 to the present time, Encana has conducted and/or allowed Fracking at the various Wellsites. The Fracking activities often occurred around the clock, resulting in constant and loud noises being emitted from Encana's rig at the Wellsites at various times, including at night time.
10. In conducting or allowing the Fracking operations, Encana has wrongfully caused or permitted excessive noise and vibration to come onto and about the Lands. The excessive noise and vibration from the Fracking activities are disturbing and audible on the Lands, including inside the personal residence of the plaintiffs.
11. Encana has sought to obtain approval for another wellsite, more particularly described as proposed Encana wellsite #14-30-79-16 (the "Proposed Wellsite"), for drilling and fracking near the Lands. The application for the approval of the Proposed Wellsite is currently being reviewed by the BC Oil and Gas Commission under application #9642803.
12. The location of the Proposed Wellsite is less than 1 kilometre northwest of the Lands. The plaintiffs have expressed their concerns to Encana and the BC Oil and Gas Commission about the seismic events, subsidence, uplift, land creep, cracked walls, and the like that will be caused by the fracking and drilling operations at the Proposed Wellsite.
13. Of the few wellsites that do not belong to Encana within a five kilometre radius of the Lands, as far as known to the plaintiffs, the wellsites have either ended their operations or been abandoned since 2010 at the latest.

### **Nuisance**

14. The excessive noise and vibration produced as a result of the Fracking at certain Wellsites constitutes a nuisance at law for which Encana is liable to the plaintiffs. The particulars of the nuisance are as follows:
  - a. Excessive and unreasonable noise or sound, including:
    - i. Loud motor, generator and heavy equipment noise;

- ii. At times, low frequency, pulsing noises;
  - iii. Excessive noise and vibration emitting from the Wellsites at night time;
  - iv. Sudden and shocking loud bursts of noise;
- b. Earthquake-like and seismic activity on the Lands; and
  - c. Such other particulars as counsel shall advise  
(collectively, the “Fracking Disturbances”).
15. By reason of the Fracking Disturbances, the plaintiffs have suffered annoyance, discomfort and loss of enjoyment of property, and the plaintiffs’ Lands have been rendered unfit for ordinary use. The plaintiffs have further suffered a reduction in the market value of their Lands by rendering the property undesirable, or less desirable, as a residence.
16. The plaintiffs have suffered loss and damage, particulars of which are as follows:
- a. Disturbance to and reduction in the quality of rest and sleep;
  - b. Adverse health effects;
  - c. Interference with normal conversation both in and out of the residence;
  - d. Interference with concentration and the performance of daily tasks;
  - e. Interference with use of the art room in the plaintiffs’ home as a result of the Fracking Disturbances;
  - f. Interference with and reduction of peace and privacy normally associated with the Lands;
  - g. Creation or aggravation of anxiety due to the Fracking Disturbances and Fracking-related seismic activity of the Lands;
  - h. Interference with the reasonable and comfortable use of the Lands;
  - i. Interference with social or family gatherings;
  - j. Creation of apprehension and lack of peace; and
  - k. Such other particulars as counsel shall advise.
17. The defendant has caused and contributed to the nuisance in question.

18. The defendant intends to continue the nuisance.

**Damages and loss**

19. As a direct or indirect result of the Fracking Disturbances, the plaintiffs have suffered, and will continue to suffer harm and damages, including without limitation:

a. Property damage on the Lands in that:

- i. The cement at the entryway of a shop located on the Lands has been pushed up by 4 inches;
- ii. Cracks have formed in the walls of the plaintiffs' residence;
- iii. Locks on the doors, including on the front door, back door, basement door and art room door, have been destroyed due to the shifting ground;
- iv. A trough has formed on the bank of the dugout on the Lands;
- v. The front porch of the plaintiffs' residence has heaved or shifted;
- vi. Cracks have formed on the driveway on the Lands;
- vii. Trees have been bent and/or damaged on the Lands;
- viii. Several craters have formed on the Lands and continue to grow and sink deeper;

b. Expenses for the following:

- i. Replacement locks to replace those destroyed by the Fracking Disturbance;
- ii. Repair of damage to the front porch of the plaintiffs' residence;
- iii. Purchase of an E-Trap Tunable Electronic Bass Trap to minimize the disturbances caused by the Fracking;
- iv. Apartment rental in order to escape the disturbances caused by the Fracking at night;

c. Loss or diminution of value of the Lands;

d. Such other particulars as counsel shall advise.

**Part 2: RELIEF SOUGHT**

The plaintiffs seek against the defendant:

1. General damages;
2. Special damages;
3. Aggravated and/or punitive damages;
4. A permanent injunction prohibiting the defendant by itself, its employees, agents, contractors, subcontractors or otherwise from operating and conducting Encana's Fracking activities in any way that perpetuates nuisance, harm or damage to the plaintiffs, their property, and the Lands;
5. In the alternative, a permanent injunction prohibiting the defendant by itself, its employees, agents, contractors, subcontractors or otherwise from operating and conducting Encana's Fracking activities within a 5 kilometre radius of the Lands in such a way that the sound or vibration levels emanating from the Wellsites is excessive or exceeds a reasonable level on the Lands;
6. Costs;
7. Interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79;
8. Such further and other relief, including such further injunctive relief, as this Honourable Court deems just.

**Part 3: LEGAL BASIS****Nuisance**

1. See paragraphs 1 through 18 in Part 1 above.
2. The plaintiffs have common law right to the use and enjoyment of the Lands free from unreasonable interference.
3. The defendant, its employees, agents, contractors or subcontractors, have caused, or will cause, Fracking Disturbances, and have committed the tort of nuisance.
4. By reason of the Fracking Disturbances, the plaintiff's residence on the Lands has been rendered uncomfortable and the plaintiffs have suffered substantial discomfort, inconvenience, disturbance and upset, including loss of quiet use and enjoyment of their Lands.

- 5. The defendant has failed to take any or any reasonable measures to prevent, mitigate or avoid the Fracking Disturbances emanating from its Fracking activities.
- 6. The defendant has further failed and refused to pay any or any sufficient heed to the complaints of the plaintiffs about the Fracking Disturbances, and have permitted the nuisance to continue for the purpose of the defendant's own financial gain.
- 7. The Fracking Disturbances and consequent damages and other adverse impacts, all caused by or significantly contributed to the defendant as described herein, are substantial and unreasonable interferences with the plaintiffs' rights to the use and enjoyment of the Lands free from unreasonable interference, and, thus, constitute a nuisance against the plaintiffs.

**Statutory provisions**

- 8. The plaintiffs plead the application of the following and any amendments thereto:
  - a) *Drilling and Production Regulation*, BC Reg 282/2010;
  - b) *Oil and Gas Activities Act*, SBC 2008, c 36; and
  - c) *Court Order Interest Act*, RSBC 1996, c 79.

Plaintiffs' address for service: Mackoff & Company  
 Barristers & Solicitors  
 1801-808 Nelson Street  
 Vancouver, BC V6Z 2H2

Fax number address for service (if any): 604-633-1838

E-mail address for service (if any): None

Place of trial: Vancouver

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

Date: Nov 9, 2016

  
 \_\_\_\_\_

*for* Signature of lawyer for plaintiffs  
 Leslie J. Mackoff

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**

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

**Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

The plaintiffs claim damages for nuisance and injunctive relief in relation to the defendant’s fracturing and drilling activity at wellsites near the plaintiffs’ lands.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of: N/A

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**

none of the above

**Part 4: [If an enactment is being relied on, specify]**

*Drilling and Production Regulation, BC Reg 282/2010;  
Oil and Gas Activities Act, SBC 2008, c 36; and  
Court Order Interest Act, RSBC 1996, c 79*

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE OUTSIDE BRITISH COLUMBIA**

The plaintiff(s) claim(s) to serve this pleading/petition on the defendant(s) outside British Columbia on the ground that: N/A