HAMILTON COURT FILE NO.: *09/8301*
DATE: 2009-04-03

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
JOHN VOORTMAN & ASSOCIATES LIMITED	)	Michael Bordin, for the Plaintiff
	)	
Plaintiff	)	
	)	
- and-	)	
	)	
THE HAUDENOSAUNEE CONFEDERACY CHIEFS COUNCIL, Members of THE HAUDENOSAUNEE MEN'S FIRE OF GRAND RIVER, or any agent or person acting under their instructions, DICK HILL, JOHN DOE, JANE DOE and other persons unknown	)	The Haudenosaunee Men's Fire of Grand River, Self Represented
	)	No one else appearing
Defendants	)	
	)	**HEARD:** March 26 and 27,2009 in Hamilton

The Honourable Mr. Justice J. R. Henderson

REASONS FOR DECISION ON MOTION

INTRODUCTION

[1] The plaintiff, John Voortman & Associates Limited, (hereinafter called "Voortman") brings this motion for an interlocutory injunction restraining the defendants from entering onto the property known municipally as 68A Main Street North, Hagersville, Ontario (hereinafter called "the property"), and restraining the defendants from interfering with Voortman' s construction of a residential subdivision on the property.

[2] The Haudenosaunee Confederacy Chiefs Council (hereinafter called the "HCCC") did not appear on this motion. However, several members of the Haudenosaunee Men's Fire of Grand River appeared in court and spoke against Voortman's motion. In this decision I will refer to the members of the Haudenosaunee Men's Fire as the "HMF".

[3] The Haudenosaunee are aboriginal people whose ancestors were members of the five original nations of the Iroquois Confederacy. They are part of what is now commonly called the Six Nations. The HCCC are the traditional leaders of the Haudenosaunee people, and the HMF is a group composed of some of the Haudenosaunee people.

[4] Voortman submits that the plaintiff corporation is the registered owner of the property and as such is entitled to exercise the rights of a property owner. Those rights include the development and construction of a subdivision.

[5] The HMF correctly state that the property is part of the Haldimand Tract, which is an area of land that is the subject of an ongoing unresolved dispute between the Six Nations and the federal and provincial governments.

[6] The HMF do not deny that they have attended on the property and have obstructed the construction of the subdivision, but state they have done so because they have an interest in the property and are bound by aboriginal laws to protect that land.

THE BACKGROUND FACTS

[7] I find that Voortman purchased the property on November 30,2001 for value and consequently became the registered owner on title in the Haldimand County Land Registry Office. Subsequently, the land registration system was converted to the land titles system. Since that time Voortman has been shown as the owner of the property under the land titles system.

[8] Voortman can trace its title to the property back to the Crown Patents of 1849 and 1850. Also, there are sworn declarations that establish quiet undisturbed possession of the property by the registered owners back to 1916.

[9] The property consists of six acres of raw land upon which Voortman intends to build a subdivision of 46 townhomes. I note that the property is in an area of Hagersville that is bordered on all sides by a mixture of residential, commercial, and community buildings. There are no woodlands, rivers, streams, or bodies of water on the property.

[10] Voortman submitted a draft plan of subdivision to Haldimand County in the spring of 2008, and the plan of subdivision was approved and registered on title on April 4, 2008. Voortman did not have notice of any aboriginal claim prior to the registration of the plan of subdivision, but the County Planner had clearly circulated the plan of subdivision to all interested parties, including representatives of the Six Nations Elected Council (hereinafter called the "Six Nations Council").

[11] I note that the Six Nations Council is a recognized body that deals with administrative matters on behalf of the Six Nations people. However, the Six Nations Confederacy Chiefs (hereinafter called the "Six Nations Chiefs") are recognized as the hereditary leaders of the Six Nations people.

[12] Thereafter, a site plan agreement was entered into between Voortman and Haldimand County on September 11,2008, and that site plan agreement was registered on title on October 14, 2008.

[13] Chief William Montour of the Six Nations Council wrote to the Senior Planner at Haldimand County on June 6, 2008, and said that the property was part of the lands in the Hamilton-Port Dover Plank Road land claim. That land claim is one of many that the Six Nations Council has filed regarding lands in the Haldimand Tract.

[14] In his letter Chief Montour wrote: *"Six Nations' position still stands that these lands should not be subject to any development until Six Nations' land claims are settled with the provincial and federal governments".* A copy of that letter was sent to Voortman,and constituted Voortman's first notice of any potential aboriginal objection to the subdivision.

[15] Prior to receiving this letter and prior to circulating the plan of subdivision, John Voortman Sr., an officer of Voortman, had in fact spoken with Chief William Montour about this subdivision, and he had received some oral assurances from Chief Montour that the Six Nations Council would be supportive of this subdivision. After his receipt of the letter Mr Voortman tried to contact Chief Montour, but his calls were not returned.

[16] In early October 2008 Voortman arranged for the clearing and the levelling of the property for the purpose of commencing the construction. Voortman hired Almas Construction to do the levelling and clearing.

[17] On October 9, 2008 a group of approximately 8 to 10 aboriginal persons attended at the property to protest the construction. I accept that the aboriginal persons occupied the property and had the collective intention to interfere with and prevent the construction on the site. Voortman was advised that the property was aboriginal land and that the aboriginal group would come back to the property day after day until construction was stopped.

[18] On that date O.P.P. officers attended at the construction site, but refused to remove the aboriginal persons from the site. One of the O.P.P. officers advised John Voortman Jr. that the O.P.P. was there to keep the peace, but they would not act to remove any protesters unless a court injunction was obtained.

[19] As a result of the events of October 9,2008, Almas Construction was forced to stop its work and thereafter refused to carry on any further work on the property. Therefore, no work was done on the property between approximately October 10,2008 and December 7,2008.

[20] During that time John Voortman Sr. contacted several leaders in the aboriginal community for assistance with respect to this dispute. Also on November 25,2008, Voortman's lawyers wrote to Chief Montour of the Six Nations Council and Chief MacNaughton of the Six Nations Chiefs, requesting that they contact Voortman's lawyers in order to resolve the issue.

[21] By letter dated December 4,2008, Lonny Bomberry wrote back to Voortman's lawyers on behalf of the Six Nations Council. Mr. Bomberry acknowledged that there was a presumption of the legality of the Crown Patents upon which Voortman relied to establish its title, but also stated that it was the position of the Six Nations that these lands had never been lawfully surrendered. The letter confirmed that there was an ongoing lawsuit with respect to the Haldimand Tract lands, but the lawsuit was being held in abeyance pending negotiations with the federal and provincial governments. The negotiations were being led by the Six Nations Chiefs with the assistance of the Six Nations Council.

[22] This letter also stated that the Six Nations Council was aware that the HMF and another group called the Haudenosaunee Development Institute (hereinafter called the "HDI") were showing up at construction sites to stop developments in Brant and Haldimand Counties, but that the Six Nations Council did not condone the conduct of the HDI or the HMF or their supporters.

[23] As a result, on December 7,2008 Almas Construction went back to the job site and commenced work clearing the property.

[24] Then, on December 18,2008 there was another incident on the property. On that date approximately 8 to 10 aboriginal persons again occupied the property and shut down work on the property. Again O.P.P. officers attended at the site but would not remove the aboriginal persons.

[25] John Voortman Sr. attended at the property and spoke with Dick Hill, one of the aboriginal persons, who informed Mr. Voortman that he represented the HMF. He said that the aboriginal people would not allow construction to occur on the property and that he and other aboriginal people intended to occupy the property to prevent construction. He said that he and the others would do whatever it took to prevent the development; that they would block Voortman' s machinery; that they would jump on the machinery and remove the keys by force if necessary.

[26] Dick Hill demanded that Voortman meet with the HMF about this matter. Consequently, on December 21, 2008, John Voortman Sr. and his wife attended a meeting with members of the HMF.

[27] At the meeting of December 21,2008, Mr. Voortman and his wife attended with approximately 14 men who were apparently members of the HMF. I accept the evidence that these 14 men did not clearly identify who they were, or who they represented, except that they used the name Haudenosaunee and claimed to represent the interests of Haudenosaunee people.

[28] At the meeting, Mr. Voortman attempted to explain how he had obtained title to the property and how he intended to develop it. I accept his evidence that he was told by one of the apparent leaders of the group that he had to give the property back. He was informed that he should convey the property back to the Haudenosaunee people and then take a lease of the land in perpetuity.

[29] When Mr. Voortman raised the issue of a potential injunction he was informed that the HMF would not abide by any injunction. He was told that the HMF would fight for the land and were prepared to die for it. He was also the subject of an angry racial attack against "white people".

[30] The net result of the meeting was that Mr. Voortman came away with the clear understanding that the HMF and their supporters would occupy the property and obstruct construction on the property at any cost. I accept that he felt very intimidated and frustrated.

[31] The construction work was stopped on December 18,2008 and did not resume until after this court action was commenced and a temporary order was made on March 4,2009 that permitted limited work to be done on the property.

[32] At the present time Mr. Voortman estimates that the plaintiff corporation has spent approximately $539,000 in purchasing and developing the property. Moreover, Voortman has entered into several binding contracts for subcontractors to do work on the property, and Voortman has entered into the site plan agreement with the County to build town homes on the property.

THE LAW REGARDING INJUNCTIONS

[33] The traditional test to be applied in considering whether an interlocutory injunction will be granted is the three-step test set out by the Supreme Court of Canada in the case of *RJR-MacDonald Inc.* v. *Canada (Attorney General),* [1994] 1 S.C.R. 311. The three criteria in this test can be set out by way of the following three questions:

> 1. Is there a serious question to be tried?
> 2. If the injunction is not granted will the plaintiff suffer irreparable harm?
> 3. Which party will suffer the greater harm if the injunction is granted or refused? This is called the balance of convenience test.

[34] Where there has been interference with property rights it has been held that the traditional test should be modified so that the issue of whether there is a serious question to be tried will be strongly emphasized, almost to the exclusion of the other two issues.

[35] I reviewed the law in support of that proposition in an earlier case reported as *City of Hamilton* v. *Loucks* (2003), 232 D.L.R. (4th) 362, and I adopt my reasoning in that case for the purposes of this decision.

[36] Also, in support of the modification of the traditional test I refer to an excerpt from *Injunctions and Specific Performance,* Loose Leaf Edition, at paragraph 4.610 wherein the author of the book, Justice Robert Sharpe wrote:

> "Under our system of law, property rights are sacrosanct. For that reason, the rules that generally apply to injunctions do not always apply in cases such as this. The balance of convenience and other matters may have to take second place to the sancrosanctity [sic] of property rights in matters of trespass."

[37] Justice Sharpe also wrote at paragraph 4.10 of his book:

> "Where property rights are concerned, it is almost that damages are presumed inadequate and an injunction to restrain continuation of the wrong is the usual remedy."

SERIOUS ISSUE TO BE TRIED

[38] Voortman's claim is quite simple. Voortman claims to be the owner of the property by way of a chain of title going back to the Crown Patents. Voortman is entitled to rely on that chain of title. Therefore Voortman has the right to exclude others from the property, and has the right to build on the

property, provided it has complied with all regulatory laws. If another party interferes with Voortman's property rights, Voortman is entitled to a court remedy. Thus, Voortman claims to have a strong case for relief today.

[39] The HMF on the other hand also act as if they have a proprietary interest in the land. They claim to have a right to occupy the land and control the activity on the land. In effect they claim to have a right to regulate development on the property in the Haldimand Tract on such terms as they deem to be appropriate.

[40] If Voortman is the lawful owner, the actions of the members of the HMF amount to trespass, nuisance, extortion, intimidation and inducing breach of contract. Therefore, if Voortman can establish a strong case to support its submission that it is the lawful owner of the property, then I accept that there is a serious issue to be tried, and *prima facie* an injunction should issue.

[41] The presentation by the HMF at this motion was somewhat unusual in that the representatives of the HMF stated that they did not wish to submit to the court process, but wished to deliver a message to the court. I permitted them to deliver their message and gave them some leeway as to the way in which the message was delivered. Having done that, I feel as if I received the message that they wished to convey.

[42] The HMF message dealt with aboriginal laws and beliefs. I accept that the message was delivered in good faith and in the spirit of resolution. However, I need to adapt that message and consider it in the context of the laws of this Province. It is important, for reasons that I will set out later in this decision, that one set of laws apply to all of the people in this Province.

[43] From the presentation by the HMF, I discern that there are three issues that the HMF say affect the strength of Voortman's case. They say first, that the Six Nations people have a legal claim to the property; second, that Voortman does not have legal title to the property; and third, that the court does not have jurisdiction to make the requested order because the Crown has not consulted with the aboriginal people about this property. I will deal with each of these issues in order.

I - THE PROPERTY CLAIM OF THE SIX NATIONS

[44] The HMF take the position that their actions are justified because the aboriginal people have a legal claim to this land. It is acknowledged that the property lies within the Haldimand Tract; an area of land encompassing six miles on either side of the Grand River. The Haldimand Tract was the subject of the Haldimand Proclamation of 1784, and the subject of Simcoe's Patent of 1793.

[45] It has been submitted in the past that the Haldimand Proclamation and Simcoe's Patent combined to grant title to the Haldimand Tract to the Six Nations people. That position was taken by

Chief J oseph Brant and has been maintained by many of the hereditary chiefs thereafter. This issue was considered by the courts in 1974 in the case *of Isaac* v. *Davey,* 5 O.R. (2d) 610. In summary, the Ontario Court of Appeal held in *Isaac* that the combined effect of the Haldimand Proclamation and Simcoe's Patent did not vest title to the lands in the Six Nations people.

[46] In *Isaac,* after a thorough review of the history, the court stated, using the language of the day, at paras. 31 and 32 that the intention of the Proclamation and the Patent was *"to confer upon the loyal subjects of the Crown within the Six Nations Confederacy ... the same rights as were enjoyed by those Indians who had always been there".* They did not *"create a unique interest"* in the Haldimand Tract which no other native people enjoyed.

[47] The court in *Isaac* wrote at paragraph 30:

> "For the purposes of this case, it is sufficient to say that Indian title in Ontario has been 'a personal and usufructuary right, dependent on the good will of the Sovereign'. Indian lands were reserved for the use of the Indians, as their hunting grounds, under the Sovereign's protection and dominion. The Crown at all times held a substantial and paramount estate underlying the Indian title. The Crown's interest became absolute whenever the Indian title was surrendered or otherwise extinguished."

[48] The Six Nations Council have filed several claims regarding different parts of the Haldimand Tract, including a claim filed in 1987 regarding the lands known as the Hamilton-Port Dover Plank Road lands. Subsequently, in 1995, a legal action was commenced by the Six Nations Council against the federal and provincial governments regarding the entire Haldimand Tract. The Six Nations Chiefs and the Six Nations Council are both involved in negotiations to resolve this action.

[49] The position of the Six Nations Council is set out in their letter to Voortman's counsel. Essentially, the Six Nations Council takes the position that the aboriginal interest in the land in the Hamilton-Port Dover Plank Road land claim was never lawfully surrendered to the Crown. But, in the legal action there is no claim for an interest in the land. That is, the Six Nations Council do not make a legal claim for possession of or return of the land. Rather, the 1995 legal action claims an accounting for all revenues that the Six Nations people should have received from the land.

[50] In summary, the Ontario Court of Appeal has found that there has been no conveyance of title to the Six Nations people, and the two recognized governing bodies of the aboriginal people, namely the Six Nations Council and the Six Nations Chiefs, have not made any claim for title to or possession of the property.

[51] Moreover, even if the HMF have the authority to speak on behalf of the Six Nations people, I note that there is no claim made by the HMF in this action or in any other action for the possession of or return of this property. The only request that the HMF have made with respect to the return of the lands is the demand that was made of Mr. Voortman Sr. at the meeting of December 21, 2008.

[52] Therefore, I find that there is no merit to the suggestion that the Six Nations people have a right to ownership of the property. I find that if there is an aboriginal claim it is for compensation for the loss of the usufructuary right regarding the property, not for title to the land.

II - THE PROPERTY CLAIM OF VOORTMAN

[53] The validity of a Crown Patent was raised in the case of *The Chippewas of Sarnia Band* v. *Canada,* 51 O.R. (3d) 641. In that case at para. 24 the Ontario Court of Appeal held that a Crown Patent was valid on its face and continued to have legal effect unless and until a court decides to exercise its discretion to set it aside.

[54] In that case, the court found that the aboriginal lands in question had never been surrendered, and therefore the validity of the Crown Patent, known as the Cameron Patent, was called into question. The court had to consider a potential remedy for the Chippewas. At para. 243 the court wrote:

> "In particular, the issue was whether it is appropriate, in deciding whether or not to accord the Chippewas a remedy, for the court to consider that no claim was asserted for 150 years, and that innocent third parties may have relied on the apparent validity of the Cameron patent."

[55] The court decided that because of the delay of 150 years in asserting the claim, combined with the reliance on the Patent by the registered owners, the court should use its discretion to refuse a remedy in the form of a return of or possession of the land. However, the court noted that the Chippewas still had a claim against the Crown for damages. See paragraphs 246, 248, 302, and 310 of the *Chippewas* case.

[56] In the present case Voortman can trace its title back to the Crown Patents, and therefore, pursuant to the *Chippewas* case, Voortman' s title is presumed to be valid. That presumption is acknowledged by the Six Nations Council in its letter to Voortman's lawyers. Moreover, even if the surrender of the Hamilton-Port Dover Plank Road land in this case is found to be invalid, given the decision in the *Chippewas* case, it is very unlikely that the court would set aside the Crown Patents.

[57] Therefore, I find that Voortman has a strong case to show that it is the legal owner of the property, and that Voortman is entitled to exercise its rights as the property owner. The arguments to

the contrary are weak, and even if successful would not result in any change in the registered ownership of the property.

III - THE DUTY TO CONSULT

[58] The HMF take the position that this court has no jurisdiction to make the requested order because the Crown has not fulfilled its duty to consult regarding this dispute.

[59] The obligation of the Crown to consult where a claim is made with respect to aboriginal rights was discussed in the case of *Haida Nation* v. *British Columbia (Minister of Forests),* 2004 S.C.C.73. In that case the Supreme Court of Canada held at paras. 32 to 35 that a duty to consult and possibly accommodate arises when the Crown has knowledge, real or constructive, of the potential existence of the aboriginal right or title and contemplates conduct that might adversely affect it.

[60] The court also wrote at paras. 39 to 51 that the duty to consult was contextual in nature, and varied according to the circumstances of each specific case. In particular, at para. 39 of the *Haida Nation* case the court wrote:

> "The content of the duty to consult and accommodate varies with the circumstances. Precisely what duties arise in different situations will be defined as the case law in this emerging area develops. In general terms, however, it may be asserted that the scope of the duty is proportionate to a preliminary assessment of the strength of the case supporting the existence of the right or title, and to the seriousness of I the potentially adverse effect upon the right or title claimed."

[61] The court also further defined the nature of the duty to consult at paras. 43 and 44 as follows:

> "Against this background, I turn to the kind of duties that may arise in different situations. In this respect, the concept of a spectrum may be helpful ... At one end of the spectrum lie cases where the claim to title is weak, the Aboriginal right limited, or the potential for infringement minor. In such cases, the only duty on the Crown may be to give notice, disclose information, and discuss any issues raised in response to the notice ...
>
> At the other end of the spectrum lie cases where a *strong prima facie* case for the claim is established, the right and potential infringement is of high significance to the Aboriginal peoples, and the risk of non-compensable damage is high. In such cases deep consultation, aimed at finding a satisfactory interim solution, may be required." ...

[62] Moreover, the Supreme Court of Canada held at paras. 52 to 56 that the duty to consult was the duty of the Crown, not the duty of a third party land owner.

[63] The Ontario Court of Appeal appeared to push this duty further in the case of *Frontenac Ventures Corp.* v. *Ardoch Algonquin First Nation* (2008), 91 O.R. (3d) 1, at para. 48 where the court wrote:

> "Where a requested injunction is intended to create 'a protest-free zone' for contentious private activity that affects asserted aboriginal or treaty rights, the court must be very careful to ensure that, in the context of the dispute before it, the Crown has fully and faithfully discharged its duty to consult with the affected First Nations ... The court must further be satisfied that every effort has been exhausted to obtain a negotiated or legislated solution to the dispute before it..."

[64] I agree with Voortman' s counsel that the *Frontenac* case cannot be interpreted to mean that in every dispute between a private land owner and an aboriginal group the Crown must engage in exhaustive consultations. The Ontario Court of Appeal could not have meant that every private land owner in the Haldimand Tract could be subjected to an aboriginal occupation of his/her lands, and if so, then the Crown must consult about every parcel of private land in the Haldimand Tract.

[65] For that reason, I must use the contextual approach set out in the *Haida Nation* case to define the nature of the duty to consult in the present case and determine where in the spectrum the Crown's duty to consult lies.

[66] I have taken into account the fact that there is a presumption based on the Crown Patents that Voortman is the registered owner of the property, and that Voortman *prima facie* is entitled to exercise the rights of a property owner. I have also considered the fact that there has been no aboriginal claim to the land asserted for more than 150 years and that there is documentation to establish quiet undisturbed possession back to at least 1916. I have also taken into account the fact that the recognized aboriginal leaders, the Six Nations Council and the Six Nations Chiefs, have not asserted a claim to ownership of the land, and the HMF have not made a legal claim for ownership of the land. Using the language of the *Haida Nation* case, I find that the aboriginal claim is weak and the private landowner's case is strong.

[67] I have also taken into account the fact that an injunction would not significantly affect any aboriginal claim for damages. The remedy of the Six Nations people seems to be a claim for damages against the Crown, and that remedy would not be affected by an injunction.

[68] Given all of these considerations, I find that the Crown's duty to consult in this case is at the low end of the spectrum. I find that the Crown had a duty to notify the Six Nations Council of Voortman's intention to develop the property, and to listen to, but not necessarily agree with, any concerns raised by the Six Nations Council in response.

[69] Therefore, on the facts of this case I must find that the Crown has complied with its duty to consult. Specifically, the Six Nations Council were provided with the draft plan of subdivision for their comments. No response to the draft plan of subdivision was received prior to its approval and registration.

[70] Later, after Voortman became aware of the concerns of the Six Nations Council and the HMF, Mr. Voortman Sr. responded by contacting several aboriginal leaders and attempting to contact Chief Montour. Moreover, Voortman's lawyers wrote to the Six Nations Chiefs and the Six Nations Council, and received a response that the Six Nations Council was not supporting the occupation of Voortman's property by the HMF or its supporters.

[71] Furthermore, I find that there were, and continue to be, ongoing consultations regarding the Haldimand Tract and those consultations in part deal with the Voortman property. Both the Six Nations Chiefs and Council are participating in those consultations. That alone constitutes good faith consultation by both sides in this very complex dispute.

[72] That brings me to the question of whether the Crown is compelled to consult with the HMF directly in addition to consulting with the Six Nations Chiefs and Council. Clearly, HMF takes the position that the Crown must negotiate with them about any development on the property. However, I have not received any cogent explanation of the relationship between the HMF and the Six Nations Chiefs or Council.

[73] In my view the HMF is not well defined and its authority to represent aboriginal people is not well established. There are two entities that are recognized as having some authority to speak for the Six Nations; namely the Six Nations Council and the Six Nations Chiefs. The Crown has consulted with both, and in my view, has no duty to also consult with yet another aboriginal group.

[74] That being said, I note that Voortman did participate in one meeting with 14 men who apparently were members of the HMF, but in hindsight that meeting was fruitless. There is no further obligation on Voortman or on the Crown to consult directly with the HMF.

[75] For all of these reasons I find that in this case the Crown has fulfilled its duty to consult. I find that the suggestion by the HMF that the court cannot grant an injunction because the Crown has failed to consult with the aboriginal people has no merit.

IV - CONCLUSION REGARDING SERIOUS ISSUE TO BE TRIED

[76] I now wish to summarize my findings with respect to whether there is a serious issue to be tried. I accept that Voortman is the registered owner of the property and therefore is entitled to exercise its

rights as owner. I accept that the Six Nations people have an ongoing claim regarding these lands, but that claim is not for title to or possession of the lands; rather it is for damages.

[77] I find that the ongoing claim was commenced by the Six Nations Council, and that there are ongoing negotiations regarding this claim. These negotiations are being pursued by the Six Nations Council and the Six Nations Chiefs. There is no independent claim of the HMF.

[78] I also find that the actions of the HMF amount to both criminal and civil misconduct. Their actions have interfered with the property rights of Voortman and can be characterized as nuisance, trespass, extortion, intimidation, and inducing breach of contract.

[79] Therefore, I find that Voortman has established that there is a serious question to be tried and Voortman has done so to standard of establishing a strong *prima facie* case.

IRREPARABLE HARM AND BALANCE OF CONVENIENCE

[80] Even though the issues of irreparable harm and balance of convenience are not significant factors in a case like this, I still find that both factors favour Voortman.

[81] Regarding irreparable harm, I find that if the injunction is not granted it is probable that Voortman would suffer irreparable damage to its reputation as a builder; that Voortman's ability to construct a townhome development and sell the townhomes would be diminished; that Voortman' s investment in the property would be depleted or extinguished; and that Voortman would probably be the subject of legal actions for breach of already existing contracts. Voortman could not be adequately compensated for these losses by monetary damages alone.

[82] Regarding the balance of convenience, Voortman has a strong case as the registered land owner and will clearly suffer damages if the injunction is not granted. On the other hand, the case of the HMF is limited. The claim of the Six Nations is only with respect to damages, not with respect to the land. The appropriate remedy for the Six Nations people is to make a claim for damages against the Crown, and that has already been done. Their remedy will not be lost if an injunction were granted.

[83] Therefore, I find that all three of the criteria set out in the *RJR MacDonald* case favour Voortman in this case.

THE RULE OF LAW

[84] Before I conclude I would like to emphasize the rule of law. All people in Canada are governed by the rule of law as confirmed in the preamble to the *Charter of Rights and Freedoms.* That is, all people in Canada are required to obey the law. As a corollary, all people in Canada are entitled to know

that every other person in Canada will be required to obey the law. If any person in Canada does not obey the law, the courts will enforce the law. In that way the public has some assurance that they can live in peace without fear of those who might choose to disobey the law.

[85] In the present case the representatives of the HMF delivered a message to this court that they did not accept the court process. Moreover, there was a veiled threat that if an injunction were to issue the HMF would have no choice but to continue their tactics of intimidation and criminal and civil disobedience. That threat does not alter or affect my decision today.

[86] The HMF clearly have a choice. An injunction will be issued today. The HMF may choose in good faith to abide by the injunction, live within the criminal and civil law, participate in peaceful demonstrations, and pursue whatever claim they believe they have through their own negotiations and/or court actions. They are not compelled, as was suggested, to disobey the injunction and engage in further criminal and civil misconduct.

[87] The rule of law means that the HMF will be required to obey any court order, just as any person in Canada would be required to obey a court order. The assertion of an aboriginal right does not permit any person, aboriginal or otherwise, to break the law.

CONCLUSION

[88] For all of the aforementioned reasons I find that Voortman is entitled to an Order for an interlocutory injunction restraining the defendants from entering onto the property and from obstructing Voortman's development of the property.

[89] I also declare that Voortman has title to and is the owner of the property, and as such is entitled to exclusive possession of the property. I make this finding so that no other group can come forward to occupy the property as the putative land owner.

[90] This Order will be enforced by the Sheriff of Haldimand County with the assistance of the O.P.P. I also order that Voortman and its designates may use reasonable force to prevent any person from trespassing upon the property, and to remove any trespasser from the property in accordance with the provisions of the *Criminal Code of Canada.*

[91] Therefore, an Order for an interlocutory injunction will go in accordance with paragraphs three (a), (b) and (c), four, five, six (a), (b) and (c), seven and eight of the Notice of Motion.

Henderson, J.
Released: April 3, 2009