



No. 57144
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BEWEEN:

KAREN ESPERSEN and ERIK ESPERSEN

PLAINTIFFS

AND:

THOMAS OWEN QUIGLEY and
CATHERINE ANN QUIGLEY

DEFENDANTS

AND:

DAVID MICHAEL BILINSKI, LORRAINE BILINSKI
and UNIVERSAL OSTRICH FARMS INC.

DEFENDANTS BY
COUNTERCLAIM

COUNTERCLAIM

Filed by: **Thomas Owen Quigley and Catherine Ann Quigley (the “Defendants”)**

To: **Karen Espersen and Erik Espersen (the “Plaintiffs”) and David Michael Bilinski and Lorraine Francis Bilinski and Universal Ostrich Farms Inc.**

This action has been brought by the Plaintiffs against the Defendants for the relief set out in the notice of civil claim filed in this action.

TAKE NOTICE that the **Defendants Thomas Owen Quigley and Catherine Ann Quigley** claim against you for the relief set out in Part 2 below.

IF YOU INTEND TO RESPOND to the claim made against you in this counterclaim, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to counterclaim in Form 4 in the above-named registry of this court within the time for response to counterclaim described below and SERVE a copy of the filed response to counterclaim on the address for service of the Defendant(s) bringing this counterclaim.

YOU OR YOUR LAWYER may file the response to counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to counterclaim within the time for response to counterclaim described below.

TIME FOR RESPONSE TO COUNTERCLAIM

A response to counterclaim must be filed and served on the Defendant(s) bringing this Counterclaim,

- (a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed counterclaim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed counterclaim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed counterclaim was served on you, or
- (d) if the time for response to counterclaim has been set by order of the court, within that time.

CLAIM OF THE DEFENDANTS BRINGING THE COUNTERCLAIM

Part 1: STATEMENT OF FACTS

1. The Defendant repeats and relies upon all the statements of fact, defined terms, and legal bases as set out in the Amended Response to Civil Claim filed in this action, and relies on the same as if reproduced in full in this Counterclaim.
2. The Defendant by Counterclaim David Michael Bilinski ("**David**") is an ostrich farmer, who resides on the Property, and the Defendant by Counterclaim Lorraine Francis Bilinski ("**Lorraine**"), is a homemaker. Collectively, David and Lorraine are referred to herein as the "**Bilinskis**". The Bilinskis are a married couple.
3. The Defendant by Counterclaim Universal Ostrich Farms Inc. ("**Universal**") is a company incorporated pursuant to the laws of the Province of British Columbia, and has a registered and records office at Suite 2300, Bentall 5, 550 Burrard Street, Vancouver, BC, V6C 2B5
4. At all material times, the Plaintiffs have lived in a dwelling house on the Property.
5. At all material times, the Plaintiff Karen Espersen and David Bilinski have been engaged in an ostrich farming business together, as principals and shareholders of Universal.
6. Sometime in the Spring or Summer of 2015, the Plaintiffs allowed the Bilinskis to move onto the Property into a second dwelling house also located on the Property (the

“**Manufactured Home**”), and since then, the Bilinskis have continued to reside on the Property in the Manufactured Home.

7. As described in the Response to Civil Claim, the Defendants purchased the Property in a court ordered foreclosure, on or about November 14, 2014.
8. Since November 14, 2014, the Plaintiffs, Universal and/or David Bilinski have utilized the Property for the purpose of raising ostriches.
9. Neither the Bilinskis nor Universal have ever paid the Defendants any rent for their occupation of the Property or entered any form of agreement with the Defendants permitting the Bilinskis or Universal to use, enjoy or access the Property.
10. If the Plaintiffs have collected any rent from the Bilinskis or Universal, the Plaintiffs have never remitted the rent, or any portion thereof, to the Defendants, and have wrongfully retained such rent for themselves.
11. By their occupation of the Property, the Plaintiffs, the Bilinskis and/or Universal have prevented the Defendants from farming hay fields on the Property and have wrongfully appropriated revenue generated from the hay fields for themselves.

Part 2: RELIEF SOUGHT

12. The Defendants claim judgment against the Plaintiffs, the Bilinskis and Universal, as follows:
 - (a) A declaration that the Defendants are the sole legal and equitable owners of the Property, and that the Plaintiffs, Bilinski and Universal have no legal or equitable interest in the Property;
 - (b) Damages for trespass;
 - (c) Alternatively, damages for ouster, including occupational rent;
 - (d) Damages for conversion;
 - (e) General damages;
 - (f) Special damages;
 - (g) An order for vacant possession of the Property;

- (h) A mandatory injunction requiring the Plaintiffs, Bilinski and Universal to vacate the Property forthwith;
- (i) In the alternative, an order that the Plaintiffs' interest in the Property be determined, and that the Property be sold, pursuant to section 8 of the *Partition of Property Act* and/or Rule 13-5 of the *Supreme Court Civil Rules*;
- (j) Interest;
- (k) Costs; and
- (l) Such other relief as this Honourable Court seems just.

Part 3: LEGAL BASIS

- 13. The Defendants are the lawful owners of the Property. The Plaintiffs, the Bilinskis and Universal have no legal or equitable right to the Property.
- 14. The Defendants repeat and rely upon the Legal Bases as set out in the Amended Response to Civil Claim filed herein.

Trespass to Land

- 15. The Plaintiffs, the Bilinskis and Universal have committed the tort of trespass to land by remaining upon the Property without lawful justification, by refusing to remove themselves from the Property, and by other acts.
- 16. The Plaintiffs, the Bilinskis and Universal have wrongfully interfered with the Defendants' possession of the Property. As a result of said interference, the Defendants have lost the use and enjoyment of the Property and have been forced to incur costs associated with finding alternative living accommodations.
- 17. In the alternative, the Plaintiffs, the Bilinskis and Universal have ousted the Defendants from the Property.

Trespass to Chattels

- 18. The Plaintiffs, the Bilinskis and/or Universal have prevented the Defendants from accessing hay fields on the Property and have appropriated revenue from the hay fields for themselves.

Conversion of Property

19. The Plaintiffs, the Bilinskis and/or Universal have committed the tort of conversion through profiting from farming ostriches and hay on the Property without the consent of the Defendants, and by other acts.

Breach of Contract

20. The Plaintiffs have breached the Second Agreement by not making rent payments to the Defendants.

Injunction

21. Under the *Law and Equity Act*, s. 39, and the law of equity, the Defendants are entitled to injunctive relief, both permanent and interlocutory, to permit them to access, use and enjoy the Property, and to restrain the Plaintiffs, the Bilinskis and Universal from trespassing and converting the Defendants' Property.

Authorities

22. The Defendants rely on:
- (a) The common law of trespass, conversion, contract, and injunction;
 - (b) *Supreme Court Civil Rules*, Rule 13-5
 - (c) *Law and Equity Act*, RSBC 1996, c. 347;
 - (d) *Partition of Property Act*, RSBC 1996, c. 347; and
 - (e) The inherent jurisdiction of this Court.

Address for service of the Defendant bringing this Counterclaim:

Attention: Richard P. Barton

DuMoulin Boskovich LLP
3009-28th Street
Vernon BC V1T 4Z7

Fax number address for service (if any): 778-943-2133
E-mail address for service (if any): service.okanagan@dubo.com

Place of trial: Vernon, BC

The address of the registry is: 3001 – 27 Street
Vernon, B.C., V1T 4W5

Dated: 13th March 2024



Richard P. Barton
Lawyer for the Defendants

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.

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DEFENDANTS BY COUNTERCLAIM



COUNTERCLAIM

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