



Court File No. **VLC-S-S-147226**

Form 1
(Rule 3-1(1))

VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

XU KUAI and SHU XIAO YANG

PLAINTIFFS

AND:

ROMY CHEN

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiffs 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 Plaintiffs.

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 Plaintiffs 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 Plaintiffs,

- (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,
- (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

1. The plaintiff Xu Kuai is a businessman who resides at 2452 Chippendale Road, West Vancouver, British Columbia.
2. The plaintiff Shu Xiao Yang, businesswoman, is the wife of Mr. Xu and also resides at 2452 Chippendale Road, West Vancouver, British Columbia.
3. The defendant Romy Chen is a businesswoman who resides at 2485 Hudson Court, West Vancouver, British Columbia.
4. The plaintiffs are the registered owners of the property located at 2452 Chippendale Road in West Vancouver legally described as PID 025-444-964, Lot 71 District Lot 793 Group 1 New Westminster District Plan BCP274 ("Lot 71").
5. The defendant is the registered owner of the property located at 2485 Hudson Court in West Vancouver legally described as PID 025-102-010, Lot 66 District Lot 793 Group 1 New Westminster District Plan LMP50753 ("Lot 66").

6. Lot 71 and Lot 66 are residential lots, each with a single-family homes located on it, and both situated on a south-facing slope of land in the neighbourhood of West Vancouver known as the “British Properties”. Lot 71 lies immediately to the north of and uphill from Lot 66.
7. On or about August 16, 2001, British Pacific Properties Limited (“BPP”), which then owned Lot 66, caused a restrictive covenant to be registered against the title to Lot 66, as servient tenement, in favour of the owner of the parcel of land located to the north of it then legally described as Lot F Except Portions in Plans LMP43013, LMP47937 and LMP50753, District Lot 793, Group 1, New Westminster District Plan LMP43012 (“Lot F”), as dominant tenement, in the Vancouver Land Title Office under registration number BR210033 (the “Restrictive Covenant”).
8. The Restrictive Covenant, by its terms, states (in part) that:

“WHEREAS:

...

C. As the lot that comprises the Servient Tenement [Lot 66] is downhill from and in close proximity to the lots comprising the Dominant Tenement [Lot F and two other parcels], the Grantee believes that vegetation and landscaping on the Servient Tenement may negatively affect the physical state and value of the Dominant Tenement; and

D. The Grantee has agreed to grant a restrictive covenant (the “Restrictive Covenant”) over the Servient Tenement for the benefit of the Dominant Tenement on the terms and conditions set forth in this Agreement.

NOW THEREFORE . . . THE PARTIES HERETO HEREBY COVENANT AND AGREE AS FOLLOWS:

1. . . . [N]o tree or shrub, naturally existing or planted, within the Servient Tenement or any lot or part thereof, shall be permitted by the Grantor to exist at, or grow to, a height greater than the height of the ridge of the roof of the single family residence constructed on the Servient Tenement.

2. The burden of the Restrictive Covenant shall run with and bind the Servient Tenement and the benefit of the Restrictive Covenant shall be annexed to and run with the Dominant Tenement.

3. The Grantor and the Grantee acknowledge and agree that:
 - (a) the covenants and restrictions contained in section 1 are necessary generally for preserving the value of each of the lots comprising the Dominant Tenement; and
 - (b) any breach or violation of the covenants and restrictions contained in section 1 shall not be susceptible of adequate relief by way of damages alone, and that in addition to any other remedies to which the Grantee may at any time be entitled in law or in equity, the Grantee shall be entitled to obtain injunctive relief in any court of competent jurisdiction.
4. Nothing contained in section 1 of this Agreement shall obligate or be construed to obligate the Grantor to expend any money in complying with its obligations under section 1 hereof other than to remedy a breach or violation of the terms thereof."
9. On or about July 26, 2002, Lot 71 was created as a legally distinct parcel of land as a result of a subdivision of Lot F and, since that time, Lot 71 has been a dominant tenement of the Restrictive Covenant.
10. On or about July 8, 2003, the defendant purchased Lot 66 and, since that time, the defendant has been bound, as the registered owner of Lot 66, by the obligations contained in the Restrictive Covenant.
11. In or about 2004, the defendant constructed a single family dwelling on Lot 66 (the Defendant's House").
12. On or about July 6, 2010, the plaintiffs purchased Lot 71 and, since that time, have been entitled, as the registered owners of Lot 71, to enforce the provisions of the Restrictive Covenant for their benefit against the registered owner of Lot 66.
13. Since approximately 2011, the defendant has been in breach of her obligations under the Restrictive Covenant in that she has permitted trees located on Lot 66 to exist, or to grow, to a height greater than the height of the ridge of the roof of the Defendant's Home.
14. Since 2011, the plaintiffs have asked the defendant on numerous occasions to trim the trees located on Lot 66 to reduce them to a height below that of the ridge of the roof

of the Defendant's House. The defendant has, at various times since 2012, indicated to the plaintiffs her willingness to trim the trees on her property but, to date, has failed to do so.

15. As of August of 2014, approximately ten trees existed on Lot 66 of a height greater, and in some cases up to 20 feet higher, than the height of the ridge of the roof of the Defendant's House.
16. By a letter dated August 14, 2014 sent by their solicitors to the defendant, the plaintiffs formally demanded that the defendant trim the trees located on Lot 66 to reduce them to a height below that of the ridge of the roof of the Defendant's House, but the defendant refused or neglected to comply with that demand.
17. The plaintiffs have suffered, and continue to suffer, loss and damage as a result of the defendant's ongoing breach of the Restrictive Covenant, particulars of which include the following:
 - (a) the presence of trees located on Lot 66 blocking the plaintiffs' view has impaired the plaintiffs' ability to market Lot 71 for sale, which the plaintiffs have been attempting, unsuccessfully, to do since approximately June of 2014;
 - (b) the presence of trees located on Lot 66 blocking the plaintiff's view has diminished, and continues to diminish, the fair market value of Lot 71; and
 - (c) the presence of trees located on Lot 66 blocking the plaintiffs' view has impaired, and continues to impair, the plaintiffs in the use and enjoyment of their property.

Part 2: RELIEF SOUGHT

1. A mandatory injunction requiring the defendant to trim, top or otherwise reduce the height of all trees located on Lot 66 to a height no greater than the height of the ridge of the roof of the Defendant's House.

2. Alternatively, an Order authorizing one or more experienced tree-cutters engaged by the plaintiffs and a qualified arborist designated by the Court, acting on the plaintiffs' behalf and expense, to enter on to Lot 66, at a time and date specified by the Court, with authority to trim or top the trees located on Lot 66 to a height no greater than the height of the ridge of the roof of the Defendant's House.
3. Damages against the defendant for the injury and losses sustained by them as a result of the defendant's breach of the Restrictive Covenant.
4. Interest on such damages pursuant to the *Court Order Interest Act*.
5. Costs

Part 3: LEGAL BASIS

1. The plaintiffs are entitled to the relief claimed in paragraph 1 or, alternatively, paragraph 2 of Part 2 on the basis that it is just and equitable that the Court grant such relief, pursuant to s. 39 of the *Law and Equity Act* and the Inherent Jurisdiction of the Court, in order to enforce compliance by the defendant with her obligations under the Restrictive Covenant.
2. The plaintiffs are entitled to the relief claimed in paragraph 3 of Part 2 on the basis that the defendant has breached the provisions of the Restrictive Covenant and the plaintiffs are entitled at law to be compensated in damages for the injury and losses sustained by the plaintiffs as a result of such breach.

The Plaintiffs' ADDRESS FOR SERVICE is:

c/o Henshall Scouten
540 - 220 Cambie Street
Vancouver, BC V6B 2M9

Fax number for service: 604-608-0385

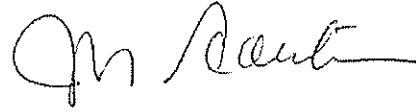
Email address for service: jscouten@hs-law.ca

PLACE OF TRIAL: Vancouver, British Columbia

The ADDRESS OF THE REGISTRY is:

The Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: September 18, 2014



Signature of
 Plaintiff Lawyer for Plaintiffs
Jeffrey P. Scouten

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:

A claim by the plaintiffs to enforce a restrictive covenant registered against the title to a neighbour's property

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

[Check one box below for the case type that best describes this case]

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
- investments 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

[Check all boxes below that apply to this case]

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

Part 4: ENACTMENTS

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

Law and Equity Act, R.S.B.C. 1996, c. 253