Court File No: SC-11-00007447-0000 (Main Action)and
7449-00D1, 7449-00D2,
7449-00D3, 7449-00D4,
(Plaintiffs by Defendant's Claim)

ONTARIO
SUPERIOR COURT OF JUSTICE
BRAMPTON SMALL CLAIMS COURT

BETWEEN:

CLYDE CROCKER, BARBARA CROCKER, MAURO PICCININ AND MELISSA PICCININ

(Plaintiffs)

-and-

VENTAWOOD MANAGEMENT INC, CALEDON CONTRACTING and TOWN OF CALEDON

(Defendants)

Andrew D. Ruzza Unit 6-3850 Steeles Avenue, West, Vaughan, ON L4L 4V6	Counsel for the Plaintiffs in the Main Action
Davies Howe Partners LLP Barristers & Solicitors 99 Spadina Avenue, Fifth Floor Toronto, ON M5V 3P8 Attention: Robert J. Richler	Counsel for Ventawood Management Inc.
Samis & Company Barristers & Solicitors 1600-400 University Avenue Toronto, ON M5G 1S5 Attention: Michael Boura	Counsel for Caledon Contracting
Paterson MacDougall LLP Box 100, Suite 900 1 Queen Street East Toronto, ON M5C 2W5 Attention : Amanda M. Pinto	Counsel for The corporation of the Town of Caledon
Carters Professional Corporation Barristers & Solictiors 211 Broadway Orangeville, ON L9W 1K4 Attention: Sean Carter	Counsel for R.J. Burnside & Associates Limited

REASONS FOR JUDGMENT

Cases and Statutes Considered:

a] *Limitation Act*, 2002, S.O. 2002, c. 24

b] *Courts of Justice Act* R.S.O. 1990, c. C.43, generally and Rules 7.01(2), 9.02(1), 10.01(4), 12.01(1), 12.01(3), 12.01(4), 12.01(5), 13.03(2), and 16, specifically.

c] *Phillips v. Dis-Management*, 24 O.R. (3d) 435 (Ont. Gen. Div.)

d] *Petrykowski v. 553562 Ontario Ltd.* [2010] O.J. No. 1048

e] *Norquay Developments Ltd. v. Oxford County Housing Corp.*, 2010 CarswellOnt. 366 (Ont. S.C.J.)

f] *Dietrich v. Home Hardware Stores Ltd.*, [2007] O.J. No. 213

g] *Streamline Foods Ltd. v. Jantz Canada Corp.* 2011 Carswell 1674, 2011 ONSC 1630

This Motion was heard before J. Brian McNulty, Deputy Judge, at Brampton Small Claims Court on July 8 and July 29, 2013.

1] This Action and the related Defendant's Claims had been scheduled for trial firstly on May 11, 2012. That trial was adjourned, on consent, to December 12, 2012, and again to July 8, 2013 when it then came before me. At that time, counsel for the plaintiffs, for the first time, raised two preliminary motions (without notice) seeking two types of relief.

[2] Relief on the first sought to add or substitute Venta Investments Limited as a defendant in the Main Action. Relief on the second sought further and extensive,

documentary disclosure from the defendant, The corporation of the Town of Caledon. Both motions were vigorously opposed. Following lengthy submissions and presentation of documentation by both sides I adjourned the matter until July 29, 2013 to allow me to review that documentation and consider those submissions and to permit the parties (particularly the opposing parties) to formulate further submissions, to file further documentation, and to present any case law which they might otherwise have done had proper notice of these motions been given.

BACKGROUND

[3] The genesis of the Main Action finds itself in the creation of a new residential subdivision called Deer Run Estates which was constructed in the Town of Caledon twenty-seven years ago in 1986. As part of that development a retaining wall was built between and at the rear of two lots in that subdivision in order to address a significant grading disparity between them. Since its construction that wall, or sections of it, has collapsed three times. The last collapse occurred in 2010.

[4] Those lots, and the retaining wall separating them, form the subject matter of this Action. The Action, and the numerous counter-claims it has spawned, seeks to determine who, among the defendants, bears responsibility for the construction, collapse, and repair of the wall. The answer to that question awaits completion of this trial.

[5] As the docket now stands there are four plaintiffs and three defendants named in the Main Action. In addition, there are four plaintiffs by Defendant's Claim, and twenty-five defendants by Defendant's Claim named in the counter-claims. The claims and defences will no doubt require expert testimony given the nature of the dispute. The first day of trial has now been adjourned to November 28, 2013. This trial will no doubt be

long and complicated. Against this background I now turn my attention to the relief sought on the Preliminary Motions before me.

POSTION OF THE PARTIES

[6] Counsel for the plaintiffs in the Main Action takes the position that a fair and just resolution of this matter cries out for further documentary disclosure from The Town of Caledon (and depending upon what that disclosure might reveal, perhaps further disclosure from the other defendants). The plaintiffs also seek the addition, or substitution, of a new defendant in the Main Action, namely, Venta Investments Limited.

[7] With respect to the issue of further disclosure, counsel for the plaintiffs states that such disclosure was first referenced and discussed in telephone exchanges with former counsel for The Town of Caledon back in November, 2012. Miss Pinto, current counsel for the Town, says that her inquiries reveal that those earlier disclosure references and discussions were scant, unspecific and completely lacking in both earnest and commitment on both sides. She says it was not until June 21, 2013, just days before this trial was finally scheduled to proceed, that she received the very lengthy, and detailed, request for documents and particulars that is now before the court on this Motion.

[8] Moreover, she says that it was not until the virtual eve of this trial date that she was first told by plaintiff's counsel that he intended to raise the issue by way of preliminary motion at trial. I shall deal with the basis of her objection to further disclosure below. Her position is summarized as follows:

(a) that her client has provided full and complete disclosure of all documentation that is needed for this court to determine the issues before it;

(b) that further disclosure is completely unnecessary;

(c) it constitutes a production of documents; and

(d) it will lead to further delay of this trial.

Counsel for the other defendants share her concern about further delay, particularly in view of the fact that many of the events to be discussed at tria', and referenced in the current request for disclosure, date back to the mid 80's and early 90's.

[9] With respect to the motion to add Venta Investments Limited as an additional, or substituted defendant in the Main Action, counsel for the plaintiffs says that this amendment to its claim, too, is required in the interest of a fair and just resolution of this litigation. The realization that this entity might well have been the actual developer of the subdivision, he says, only dawned on him recently. He argues that should responsibility for the problems relating to the wall ultimately prove to fall at its feet following the dance of this litigation, then those feet should be on the floor.

[10] Counsel for this defendant objects to this amendment. Again, I shall deal with the basis for this objection below. Suffice to say at this point that his position is that his client does not want to come to this dance and, given the implications of the *Limitations Act,* 2002, S.O. 2002, c. 24 would like to pass on the invitation to do so.

[11] In support of both motions counsel for the plaintiffs point out that until he got involved, the plaintiffs were self-represented and therefore should be excused for the delay in seeking the relief now sought. This point, too, I shall address below.

THE DISCLOSURE ISSUE

[12] The additional documents and further particulars which counsel for the plaintiffs now seeks to obtain are detailed in the six page letter dated June 21, 2013 from him to counsel for the Town. That letter is attached to these Reasons as exhibit "A". I take the unusual step of attaching it because it shows the nature and extent of the disclosure

sought, and allows one to appreciate why those resisting that request might be inclined to do so. On the return of this motion, and following further submissions, the disclosure set forth in that letter was somewhat modified.

[13] Counsel for the Town says this request for further disclosure is a fishing expedition. More importantly she says it falls beyond the scope of document discovery contemplated by the rules of Small Claims Court. A cursory review of the documents and particulars requested incline me to agree. She might well have to conduct a séance or two to satisfy many of the requests made.

[14] Her view is that there has been ample opportunity to seek an order for production of documents arising from pleadings at the numerous settlement conferences that were held during earlier stages of this Action. This, she says, is one of the main purposes of the settlement conference in our court. She is correct.

[15] The general rule in Small Claims Court Actions is that full and fair disclosure should take place as early as possible in the proceeding. Rules 7.01(2), 9.02(1), and 10.01(4), require that copies of all documents on which a party intends to rely be attached to the claim or defence. Such disclosure, timed as such, puts the parties on notice of the case that they have to meet. To the extent that it discloses the strengths and weaknesses of their respective cases, such disclosure promotes early settlement. This objective assists both the litigants and the court.

[16] As well, and to this end, Rule 13.03(2) dictates an additional disclosure requirement. At least 14 days before the date set for the settlement conference, each party, or his legal representative, must serve the other parties with copies of any documents (including any expert reports) that were not attached to the claim or defence,

and file them with the court. Service and filing of a list of proposed witnesses of each party is also required at this stage Rule13.03(2)(b).

[17] In support of her position counsel for the Town has drawn my attention to the order of this court given on March 28, 2012 following one of the settlement conferences held in this proceeding. At that point it was ordered that all documents to be used at trial be exchanged and filed at least 60 days before trial. The same was ordered with respect to witness lists.

[18] It is during the settlement conference process, she says, that requests for disclosure and orders therefore are to be made. This court, she says, has no jurisdiction to make such orders, and ought to resist the invitation to do so at a later stage of the proceeding, and most certainly, on the eve of trial. To do otherwise, she says, would import into this court a discovery process that is foreign to it. Authorities cited by her lend strength to this proposition.

[19] In *Phillips v. Dis-Management,* 24 O.R. (3d) 435 (Ont. Gen. Div.) Sharpe J. commenting upon a procedural issue before him stated:

> "The amount claimed here, and in most claims of this nature, falls within the jurisdiction of the Small Claims Court *where no discovery is available* and where the proceedings are similarly summary in nature..." (emphasis added)

[20] The sentiment of Sharpe J. is echoed by Deputy Judge, J.S. Winny, in *Petrykowski v. 553562 Ontario Ltd.,* [2010] O.J. No. 1048. There, as in this case, the plaintiff brought a motion seeking an order amongst other things, compelling the defendant to produce certain documents. Deputy Judge Winny denied that relief on the

basis that this court had no jurisdiction to make such an order. His view of the thinking of Sharpe J. in *Phillips* respecting the unavailability of discovery in the Small Claims Court was stated as follows:

> "The policy choice behind that reality is that the limited monetary jurisdiction of this court involves smaller cases in which the cost and time required for pretrial discovery is unwarranted and disproportionate to the amounts in dispute. That is true both as to examination for discovery and discovery of documents."

[21] Deputy Judge Winny goes on to say:

> "The only exception to the absence of discovery rights in this court is the power of a settlement conference judge to make an order for the production of documents between the parties: see Rule 13.05(2)(a)(vi) of the Small Claims Court Rules, O.Reg 258/98."

[22] Counsel for the Town refers to another judgment of this court dealing with this issue. In *Norquay Developments Ltd. v. Oxford County Housing Corp.,* 2010 CarswellOnt. 366 (Ont. S.C.J.) Deputy Judge J.D. Searle in dismissing a motion for disclosure of documents brought by the plaintiff in that action found that nothing in our Rules gives our court the power to order production of documents. Such a motion he found "may be entertained only by a Judge conducting a settlement conference." This decision was followed by Deputy Judge Winny in *Petrykowski.* Elaborating on that finding Deputy Judge Winny goes on to say:

> "An order for the production of documents may be requested of a settlement conference Judge, but the procedures of this Court do not contemplate a pretrial motion for the production

> of documents. *Such motions would import a discovery process that is neither contemplated by nor intended under the Small Claims Court Rules.*" (emphasis added)

[23] In summation on this point Deputy Judge Winny quite succinctly and correctly stated:

> "The basic process in this court has three steps: pleadings, settlement conference, and trial. To inject an additional step in the form of discovery of documents motions would be inappropriate. If such a step were to be considered, that would be a matter for the Civil Rules Committee."

24] Counsel for the plaintiffs would have me ignore, or cautiously apply, the decisions of Deputy Judges Searle and Winny on this point for two reasons. Firstly, he says that the plaintiffs in the case before me were self represented at the settlement conference stage and therefore unaware of the document production opportunity incorporated in the rules governing that stage of the proceeding. Secondly, he states that their rulings should be qualified by application of what he calls a "modified discovery" alluded to by Deputy Judge S.M. McGill out of Kitchener Small Claims Court in *Dietrich v. Home Hardware Stores Ltd.,* [2007] O.J. No. 213.

[25] Dealing with the first of these two reasons, I would say unequivocally that there is no general absolution for the procedural errors of the self-represented. In saying this I am mindful of the extensive guidance that has been provided to this court on this subject in various educational seminars as well as that provided in the annotations under our Rule 16 by Justice Marvin A. Zuker of the Ontario Superior Court of Justice.

[26] A clearly recognizable seam running through this guidance is the requirement that judges of this court, its administrators, and members of the Bar conduct themselves in a

manner so as to ensure that self-represented persons are provided with fair access and equal treatment by the court.

[27] This dictate, however, does not require our court to ameliorate all of the adverse consequences that so often arise when the self-represented litigant takes upon himself the task of preparing pleadings, and prosecuting his own case.

[28] The assistance of this court in such cases ought to be restricted to the provision of legal information, not legal advice. The decision of the self-represented to act as their own counsel should not affect our obligation suggested in the above noted Rule commentary of Justice Zuker to "apply the same legal principles, rules of evidence, and standards of procedure to both sides."

[29] It is clear from the pleadings in this case that the plaintiffs, particularly the Crockers, have had a long history of representing themselves both before Town Council and this court. Their dealings with the Town date back to the early 1990's. They commenced this action in November, 2011 and prosecuted it on their own before bringing legal counsel on board in December, 2012. All the while they were aware of the experienced legal representation of the defendants.

[30] Their apparent ignorance of the document production opportunity of the settlement conference rules is a consequence of their self-representation. I am not prepared to accept that ignorance as justification of the relief they now seek.

[31] I am as equally unarmored with the suggestion that I adopt a "modified discovery" procedure in support of the disclosure relief sought. It is clear from the

reasons of Deputy Judge McGill in *Dietrich* that he was not advocating such relief either.

[32] In the case before him, Deputy Judge McGill was dealing with the scope of documentary productions requested in two summonses to witness that the plaintiff in that case issued three weeks before trial. Counsel for the plaintiffs in the case before me is suggesting that the *Dietrich* case supports document production provided that the request is specifically, as opposed to, broadly written.

[33] On the contrary, Deputy Judge McGill implicitly rejected the idea of motions for production of documents in Small Claims Court regardless of whether the requests contained therein are specifically or broadly stated. He too makes it clear that such production must be done, at and through, the process of settlement conference. On this point he says:

> "The Small Claims Court process does not allow for modified discovery through the list of witnesses and production of documents rules…the settlement conference, now mandatory for all claims, has as one of its express purposes full disclosure of relevant facts and evidence (Rule 13.03, O.Reg. 258 /98 as amended) and Rule 13.05 empowers the judge to order the production of documents at this conference…"

[34] The reasoning in the decisions cited above is sufficient authority for me to deny the disclosure sought. Couple to this the fact the relief was sought without proper written notice, and was raised on the opening day of a trial which had been first scheduled fifteen months before and then twice adjourned. For these reasons further disclosure is denied.

AMENDMENT ADDING NEW DEFENDANT

[35] As stated, the second preliminary motion raised in the same manner and at the same time as the first seeks to add or substitute Venta Investments Limited as a defendant in the Main Action. Counsel for Venta strongly opposes this amendment and has filed convincing materials, and argued persuasively, in support of that opposition.

[36] As in the other motion, counsel for the plaintiffs states that the reason this entity was not named as a defendant when the claim was initiated was due to the fact that the plaintiffs were self-represented at that stage and remained so through to the Settlement Conference stage of these proceedings. My view on that point is stated above and I see no reason to modify its application respecting this issue. The excuse of self-representation ought not be treated as a balm of general application for procedural error. I reject its application as such to this issue as well.

[37] The legal arguments advanced by counsel for the plaintiffs in support of this relief are even less compelling than those advanced respecting disclosure. Before elaborating on this it deserves to be noted that the defendant named in the plaintiff's claim which gives rise to this motion is "Ventawood Management Inc." The entity sought to be included by the proposed amendment is known as "Venta Investments Limited." There is no demonstrated corporate relationship between the two, and to my mind, it matters not whether there is. What is undisputed is that they are separate legal entities, and as such, are separate legal persons in law. The liabilities of one, absent any recognized legal exception, do not attach to the other. And of the two, only Ventawood Management Inc., faces potential liability in the Main Action as currently constituted.

[38] Counsel for the plaintiffs would have me change that. He would have me bring Venta Investments Limited within the purview of that liability.

[39] My resistance to this proposition lies in both procedural and substantive law. Procedurally it is the timing of the relief sought that bothers me. But it is the substantive law on the point that decides the issue for me.

[40] Clearly amendment of a pleading is permitted by our rules. Rule 12.01(1) contemplates that contingency. However, the rule speaks to the timing of that step as well. It states that an amended pleading (in a form dictated by the rule) may be filed and served at any time up until at least 30 days before the *original trial date*, unless the court on a motion allows a shorter notice period Rule 12.01(3) (emphasis added)

[41] As stated, the original trial date in this action was set for May 11, 2012. That date was adjourned firstly to December 11, 2012 and then to July 8, 2013. Not until the day of the final trial date was the matter of amendment to the plaintiff's claim raised. More over, it was raised in a preliminary fashion. To my mind it is significant relief significantly delayed.

[42] The rules provide that where a person is added as a party at trial, the court may order that service of the claim be dispensed with (Rule 12.01(4). They also provide that a party who is served with an amended pleading is not required to amend their own pleading (Rule 12.01(5). However, given the nature of the amendment sought in this case it would most assuredly call for the filing of a defence thereto. This would change the direction of the Main Action, and most likely lead to a substantial delay in these proceedings. The amendment, if allowed, could lead to a further settlement conference, thereby giving the plaintiffs another opportunity to seek the order for disclosure that has

herein been denied. For this reason alone, I would deny the relief. But there are other, more persuasive reasons, in law that urge me to do so.

[43] A common defence raised by all the defendants in both the Main Action and in the counter claims is the expiry of the two-year limitation period. Counsel for Ventawood Management Inc., the current defendant, has vigorously asserted this defence in the proceedings as currently constituted on the basis that many of the events giving rise to these proceedings date back to the mid 80's and early 90's. That defence, and the merit thereof, will be tested at trial.

[44] What counsel for Venta Investments Limited (the proposed defendant) is saying is that if there is merit in the limitations argument for the current defendants, then there would most assuredly be merit in that argument for any defendant added at this late date. Permitting the amendment would compel his client to make an argument that it does not now have to make. Compelling it to do so, he argues, would create an injustice to his client. I agree.

[45] I do not believe it would be fair to the plaintiffs to analyze, and rule on, the evidentiary and legal arguments relating to the limitation defence at this point notwithstanding the invitation to do so by counsel for Venta Investments Limited as reflected in his responding materials filed on this Motion. It is a critical issue and must be tested in the context of the trial wherein the plaintiffs will be afforded the opportunity to respond to the evidentiary and legal arguments advanced by the defendants on the issue.

[46] Suffice it to say that at this point that there is sufficient merit to that argument justifying counsel's opposition to adding Venta Investments Limited at this stage.

[47] One final point which inclines me to deny the amendment is the indecisiveness of counsel for the plaintiffs whether to justify the amendment on the basis of misnomer or the addition of a new party, and his apparent inability to appreciate the very real distinction between the two.

[48] At various points throughout the submissions counsel for the plaintiffs was using the language of misnomer and addition of a party interchangeably. At times he said that "we always intended to make the developer a party to this action." At other times he said "we only found out recently that Venta Investments Limited might actually be the developer." The plaintiffs, he says, being self represented when the claim was initiated most likely mistook Ventawood Management Inc as the developer by reason of correspondence received from the Town throughout their earlier dealings regarding the wall.

[49] At another point in his submissions it was proposed to leave Ventawood Management Inc. in as a named defendant, just in case it turns out they might be liable, and to add Venta Investments Limited as well. When apprised by the court and opposing counsel how that would be inconsistent with the misnomer argument, counsel for the plaintiffs said he might drop Ventawood Management Inc altogether and be satisfied with naming Venta Investments Limited only. At the close of his submissions it was still unclear to me who counsel for the plaintiffs wanted to name as a defendant, as between the two, or why.

[50] Given the history of this dispute and the pleadings filed, there is no doubt in my mind that the plaintiffs knew or ought to have known about the potential involvement of Venta Investments Limited.

[51] Although the finger of litigation may have been pointing at Venta Investments Limited, that finger never clearly rested upon it. That finger was clearly pointed at Ventawood Management Inc. and there is, to this day, a stated reluctance, or at the very least, an obvious ambivalence, to discontinue that gesture.

[52] That there is a clear distinction between misnomer and addition of a party is evident from the treatment of the subject by Herman J. In *Streamline Foods Ltd. V. Jantz Canada Corp.* 2011 CarswellOnt 1674, 2011 ONSC 1630. In that case the court confirmed that the master had applied the correct test in finding that the plaintiff was not attempting to substitute a plaintiff by reason of misnomer, but rather attempting to add a new party to the action.

[53] The test, or the principles involving misnomers, were found to apply equally whether the party in question is the plaintiff or the defendant and was stated as follows:

> "...if the proposed party , while not specifically or correctly named, is otherwise identifiable from the pleading, it is a situation of misnomer; if the party is not identifiable from the pleadings it is not a situation of misnomer but is, an attempt to add a new party..."

[54] Here, as stated, counsel for the plaintiffs is uncertain whether he wishes to characterize the relief sought as a misnomer or the addition of a new party.

[55] On balance, I find that what the plaintiffs are seeking is to add a new party. Their naming of Ventawood Management Inc. as the defendant was done intentionally following long deliberations with the Town and others connected to the building and repair of the wall. The naming of that entity does not constitute a misnomer. That being case, there is much merit in the argument by counsel for Venta Investments Limited that

its addition as a party at this point is statute-barred because of the limitation period. For both the procedural and substantive law reasons given, the amendment is denied.

[56] In conclusion I find that neither of the preliminary motions advanced on behalf of the plaintiffs can succeed, and both are dismissed accordingly.

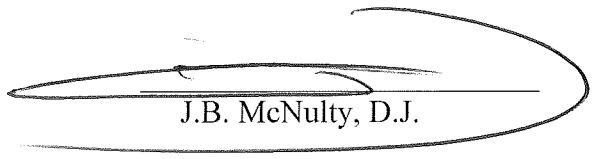
[57] Normally I would reserve costs of this motion to the end of trial. However given the manner and timing in which this relief was brought before the court, and the pressure placed upon opposing counsel to document and articulate their persuasive opposition thereto, I shall award costs now.

[58] As the opposition to the relief sought was primarily left to counsel for Venta Investments Limited and the Town of Caledon I am awarding costs to those parties only, and I fix those costs at $500.00 apiece payable by the plaintiffs on or before November 15, 2013.

Ordered accordingly,

END OF DOCUMENT

Dated this 26th day of September, 2013



J.B. McNulty, D.J.

ANDREW RUZZA

BARRISTER & SOLICITOR

June 21, 2013

VIA FACSIMILE

This is Exhibit "A" to Reasons for Judgment
Given by J.B. McNulty, D.J.
Court File No. SC-11-0000-7447-0000 (Main Action)
Crocker et al v. Ventawood Management Inc. et al

Paterson MacDougall LLP
Box 100, Suite 900
1 Queen Street East
Toronto, Ontario M5C 2W5
Attn: Amanda Pinto

Your client: The Corporation of the Town of Caledon

AR
BARRISTER & SOLICITOR

Dear Ms. Pinto:

RE: Piccinin et al. v. Town of Caledon et al. Court File No.: SC-11-007449-00

We write further to the above referenced matter and to the trial scheduled on **July 8, 2013** at 10:00a.m. at the Brampton Small Claims Court.

The Rules of the *Small Claims Court* provide that Parties are required to exchange all documents at least thirty (30) days before the trial date including any written statements, audio or visual records (photographs), and/or such documents or other evidence to which the party will refer or upon which it will rely on relevant to the matters in dispute as well as any written reports of an expert on which the party seeks to rely at trial.

We had written to you on November 20, 2012, requesting whether the parties would be agreeable to an agreed statement of facts. The reason for this is, upon review of the pleadings, the parties seem too contradict each other on the material facts. We have not received a reply. Based on the parties' pleadings and the documents received from the parties to date, we will require further documents and particulars to properly prepare for trial. We seek as follows:

From the defendant The Corporation of The Town of Caledon:

In the Plaintiff's Document Brief at Tab 13 is a letter from the Town of Caledon, Public Works Department dated June 14, 2011. The letter refers to documents that appear to exist which are or could be relevant to the matters in dispute.

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We request that the Town produce the following documentation and provide further particulars as outlined below:

DOCUMENTS

a) Details of all site visits by Town personnel prior to lot grading certification in 1989 including notes, correspondence, orders to comply, etc.;

b) Daily Report dated May 8, 1987 from the Town's Engineering Department representative or any other notes or documents from any of the Town's personnel who created the report and or who are identified in the report;

c) Daily Report dated July 15, 1987 from the Town's Engineering Department representative or any other notes or documents from any of the Town's personnel who created the report and or who are identified in the report;

d) Was a permit applied for when the wall was repaired in November 1987?

e) Details of inspection of the wall in September 1987 between Town's Representative and Consultant's inspector;

f) Letter to Ms. Tutton in or about May, 1997;

g) Invoices, quotes or agreement from Bolton Nurseries with respect to the construction of the wall;

h) Documentation or correspondence in connection with the "washout" of the all in September 1987, including notes taken by Town's rep and consultant's inspector;

i) All documentation or correspondence in connection with repairs to the wall in November 1987 and September 1988;

j) All documentation in connection with lock grading certification issued by the consultant in December 1988;

k) All documentation in connection with the inspection of the lock grading repairs that occurred in July 1989;

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l) Letter written by consultant to the Town in July 1989 or any or other documents that would indicate what the letter was about;

m) Letter received from the Town from Mayor Calder in 1994;

n) Letter received from Mr. John Tutton in 1994;

o) Letter from Craig Campbell to the Tuttons dated April 15, 1994;

p) Minutes, notes or correspondence in connection with the meeting that took place for council for the Town of Caledon in September 14, 1994;

q) Letter dated august 24, 1995, from Gary Boyce from the Town to Venta Investments regarding repair work to be performed on the wall;

r) All correspondence from Terraprobe in or about 1995 in connection with the design of the retaining wall;

s) February 1996 - application for the building permit that was issued for the wall;

t) The building permit as issued;

u) The grading plan that was attached to the building permit;

v) All notes and correspondence from the Town in connection with the building permit for the wall;

w) Letter dated May 22, 1996 from J. Hook to Crocker;

x) Any correspondence to and from the Town in connection with estimate from Caledon Contracting and or construction of the wall in or about 1996

y) Any correspondence to and from the Town in connection with the fax from Falby Burnside enclosing general plan for construction of wall in or about March 1996;

z) Correspondence from Crockers and Tuttons in connection with payment for the retaining wall in or about December 1996;

aa) Any correspondence to and from the Town regarding apportionment of the cost of construction the wall to the wall;

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bb) Evidence as to payment by the Tuttons to the Town as to their "share" of the cost of rebuilding the wall;

cc) Field inspection notes, photos or any other documentation taken by Dan Fagan in connection with the inspection of the retaining wall on March 27, 1997;

PARTICULARS

a) with respect to paragraph 5 of Town's Defence, when the Town first become aware that the wall had been constructed?

b) Was the Town advised at some time regarding the construction of the wall?

c) Was a building permit applied for the initial construction of the wall? Or the reconstruction of the wall after it had collapsed 1994?

d) How did the Town become aware in 1987 that the retaining wall had failed?

e) Was the Town involved in supervising the repairs to the wall in 1987?

f) Did the Town inspect the work as completed?

g) Detail any inspection by Town personnel subsequent to receiving lot grading certification in December 1988.

h) with respect to paragraph 9, what were the ongoing duties that required the developer to repair the wall?

i) with respect to paragraph 9, what if any involvement did the Town have in supervising the repair of the wall in 1995;

j) with respect to paragraph 10, provide details of the agreement and copies of any written documentation of any agreement between the Tuttons and the Crockers regarding the repair of the wall;

k) with respect to paragraph 12, provide particulars on the basis on which the Crockers refused to approve the Falby Burnside drawings or pay the costs associated with the repair on the wall? Who asked the Crockers and the Tuttons to approve the drawings and pay a portion of the costs?

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l) with respect to paragraph 13, provide particulars of the basis for the statement that since 1995 the Crockers have been of the opinion that the wall is of a faulty design? What efforts undertaken by the Town to address these concerns?

m) with respect to paragraph 14, Why did the Town rely on the developer, Falby Burnside and Terraprobe, to provide an appropriated design, use adequate methods and materials to ensure structural integrity of the wall?

n) Re: May 8, 1987 - Particulars as to whether the Town required the construction of the wall, who was involved in the design and specifications, who paid for it, any subsequent inspection or approval by the Town;

o) Re: September 1987 – Repairs to the wall – details as to discussions with Town representative and consultant's inspector regarding the "wash-out" of the wall and proposed remedy and subsequent action taken to correct the issue;

p) Re: November 1987 – Repairs to the wall – as to whether the Town required the construction of the wall, who was involved in the design and specifications, who paid for it, any subsequent inspection or approval by the Town;

q) Re: September 1988 – Repairs to the wall – as to whether the Town required the construction of the wall, who was involved in the design and specifications, who paid for it, any subsequent inspection or approval by the Town;

r) In or about October 1994, provide particulars on the basis on which Venta Investments Limited was required to repair the wall;

s) Particulars as to any attendances by the Town while the wall was being reconstruction in or about 1996.

t) March 27, 1997 – April 10, 1997 – Inspection of the wall – the basis for the conclusion that the retaining wall appeared to be completed in accordance with the Falby drawings. Provide any and all field notes, observations, etc.

u) As part of the building permit approval process, was the Town required and or it is accepted practice for the Town to complete a number of inspections at difference intervals during the construction including the construction of the footings?

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v) Provide particulars as to the steps taken by the building inspectors to ensure that the wall was constructed in accordance with the Falby drawings.

We look forward to your prompt reply.

Yours very truly,

Andrew Ruzza
ADR/nm
Encl.

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