

COURT FILE NUMBER 1804 00382
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE GRANDE PRAIRIE
PLAINTIFFS CAN-WEST CORPORATE AIR CHARTERS LTD. and NOR-ALTA AVIATION LEASING INC.
DEFENDANTS NORTHERN AIR CHARTER (P.R.) INC. and TOWN OF PEACE RIVER
DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT Wilson Laycraft
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NOTICE TO DEFENDANTS

You are being sued. You are a defendant.

Go to the end of this document to see what you can do and when you must do it.

Introduction

1. This is an action for conspiracy, interference with economic relations, breach of the duty of good faith and violations of the *Competition Act* all arising from the deliberate and calculated actions of the Defendants designed and intended to harm the Plaintiffs by preventing them from obtaining a hangar at the Peace River Airport needed by them to service their air-ambulance business.

Parties

2. The Plaintiff Can-West Corporate Air Charters Ltd. ("**Can-West**") carries on business throughout Alberta. It provides air charters and air-ambulance services.

3. Can-West is a wholly owned subsidiary of the Plaintiff Nor-Alta Aviation Leasing Inc. (“**Nor-Alta**”). Nor-Alta owns the assets used by Can-West in the operation of its business.
4. Both Plaintiffs have business offices and registered offices in Grande Prairie.
5. The Defendant Town of Peace River (the “**Town**”), is a municipal corporation under the laws of Alberta. The Town owns and manages the Peace River Airport (sometimes referred to as the “**Airport**”).
6. The Defendant Northern Air Charter (P.R.) Inc. (“**NAC**”), is a regional airline based in Peace River. It provides scheduled flights from Peace River to Edmonton and Calgary. Until recently, NAC provided air ambulance services to Alberta Health Services (“**AHS**”).

Statement of Facts Relied on

Air Ambulance Request for Proposal

7. In August 2017, AHS issued a request for proposal for air ambulance services (the “**RFP**”). On March 22, 2017, it announced that Can-West was the preferred proponent to provide air-ambulance services for the Grande Prairie and Peace River region, known as Group 2. In September 2017, AHS and Can-West entered into a 10-year agreement for air ambulance services for Group 2.
8. Can-West’s air-ambulance service for Peace River was to commence in the fall of 2017, but due to the wrongful actions of the Defendants in preventing the Plaintiffs from obtaining a hangar at the Airport, the commencement date was extended to April 1, 2018.

The Plaintiffs’ need for a hangar at the Peace River Airport

9. It was expected that Can-West would have the use of a hangar at the Peace River Airport to store two air ambulance aircraft.
10. The Peace River Airport has 13 commercial lots adjacent to the taxiway for lease to aviation businesses needing access to the taxiway. These lots are referred to as the “**Lots**” or “**Airside Lots**”, and the tenants of same are referred to as the “**Airside tenants.**”

11. Prior to Can-West submitting its air ambulance proposal to AHS, the Plaintiffs spoke with the Town about their need for a hangar at the Airport should Can-West be selected as the successful proponent for Peace River. The Plaintiffs were assured this would not be a problem as two existing Airside tenants were interested in selling their hangars and the Town had three vacant Airside Lots available for lease.
12. NAC well knew of the Plaintiffs' need for a hangar at the Airport, as it had been providing air-ambulance services at Peace River for many years and had submitted a proposal to AHS to continue this service.
13. Soon after Can-West was selected as the successful proponent for Group 2, the Defendants began a media and political campaign to discredit Can-West, AHS and the RFP process, advocating that the selection of Can-West should be set aside and that NAC should continue to be the air-ambulance provider for Peace River.
14. To further their cause, the Defendants acted in concert to prevent the Plaintiffs from obtaining a hangar at the Peace River Airport and cause them economic harm. The Defendants' actions constitute a civil conspiracy. The Defendants' actions, both in concert and individually, also constitute an interference with Can-West's economic relations, namely its agreement with AHS to provide air-ambulance services for Peace River.
15. The wrongful actions taken by the Defendants to exclude the Plaintiffs from obtaining a hangar at the Airport include:
 - a. transferring to NAC all of the available hangars and Airside Lots at the Airport in order to exclude the Plaintiffs from acquiring same; and
 - b. when the Plaintiffs finally succeeded in acquiring a lease of Airside Lots 11 and 12 from Highland Helicopter Ltd. ("**Highland**"), on which they could build a new hangar:
 - i. unlawfully refusing to consent to the assignment of the lease;
 - ii. imposing conditions and terms on the assignment that were not commercially reasonable and had never been imposed on any other Airside tenants;

- iii. after the court held that the Town's actions were unreasonable and its consent dispensed with, unlawfully rejecting Highland's notice of renewal of the lease; and
- iv. after the court held that the lease renewal was valid, arbitrarily reducing the term and increasing the rent payable under the lease so as to destroy its utility and value.

16. The details of the Defendants' wrongful actions are set forth below.

All available hangars and Airside Lots acquired by NAC

17. At the time Can-West was selected as the successful proponent to provide the air-ambulance service for Peace River, there were two hangars at the Airport available for sale:

- a. Airside Lot 5 leased by the Town to Albert Cooper through his corporation 681886 Alberta Ltd. (the "**Cooper Lease**"). This lease commenced January 1, 2013 for an initial term of five years, followed by 13 renewal terms of five years each; and
- b. Airside Lot 6 leased by the Town to Dr. Potvin through his corporation Potvin Professional Medical Corporation (the "**Potvin Lease**"). This lease commenced October 15, 2012, for an initial term of five years, followed by four renewal terms of five years each.

18. In addition, the Town had vacant Airside Lots 13, 14 and 15 available for rent.

19. Between May 1 and June 19, 2017, the Defendants collaborated to ensure that NAC acquired all of the available hangars and Airside Lots in order to prevent the Plaintiffs from doing so. The actions of the Defendants include:

- a. with the Town's written approval granted May 1, 2017, NAC purchased the Potvin Lease and hangar;
- b. with the Town's written approval granted May 4, 2017, NAC purchased the Cooper Lease and hangar; and

c. after the Plaintiffs formally offered to lease Airside Lots 13 and 14, the Town asked NAC to lease same and on June 14, 2017, granted NAC leases for these two lots as well as the adjacent Lot 15. The Town granted these three leases to NAC without imposing on the tenant the usual obligation to develop these Lots.

20. After these transactions, NAC was then the tenant of 10 of the 13 Airside Lots. The other three Airside Lots had been leased in 2013 to Highland Helicopter Ltd. (“**Highland**”) (Lots 11-12) and Advanced Paramedics Ltd. (“**APL**”) (Lot 10).

21. Before these transactions, NAC already owned three hangars at the Airport – its main hangar on Lots 7-9, its air-ambulance hangar on Lot 4, and the old Peace Air hangar on Lot 2. NAC did not need or use in its aviation business the two additional hangars it purchased and the three vacant Airside Lots it leased. Indeed, the additional hangars and Airside Lots acquired by NAC are not used by anyone for aviation purposes - NAC subleased Lot 5 for bus storage, subleased Lot 6 for car restoration, and Lots 13-15 remain empty.

22. Had the Defendants not conspired against the Plaintiffs to transfer all the available hangars and vacant Airside Lots to NAC, the Plaintiffs would have had a hangar at the Airport by September 1, 2017, if not earlier.

Purchase of Highland Lease

23. Having been blocked by the Defendants from acquiring a hangar or a vacant Airside Lot on which they could build a new hangar, the Plaintiffs approached Highland with a view to acquiring its lease of Airside Lots 11 and 12. Highland’s lease with the Town was for an initial 5-year term commencing May 1, 2013, with 12 renewal terms of 5-years each (the “**Lease**” or the “**Highland Lease**”). The rent during the initial 5-year term was \$8,590 per annum or \$1.50 per sq. meter. The term and rental rate for the **Highland Lease** was consistent with the Town’s leases for the other Airside Lots.

24. On September 1, 2017, Nor-Alta entered into an agreement to purchase, by assignment, the Highland Lease.

25. Highland’s hangar on Lot 11 was too small to accommodate the Plaintiffs’ fixed wing air-ambulance aircraft. The Plaintiffs’ plan was to build a new hangar on Lot 12 and keep the

existing hangar on Lot 11 for other uses. To that end, the Plaintiffs purchased a new hangar to construct on Lot 12 at a cost of \$1 million, and had it shipped to Peace River to be ready for installation. For the reasons described herein, it is still in storage.

26. The assignment of the Highland Lease to Nor-Alta was expressly subject the Town's consent. This is because Article 21.1 of the Lease provides that it shall not be assigned, and the tenant shall not sublet, without the landlord's consent, which "may not be unreasonably withheld or delayed." A similar term appears in the leases for the other Airside Lots.
27. As described in detail below, to prevent the Plaintiffs from acquiring Lots 11 and 12 on which they could build a new hangar, the Town:
 - a. acted unlawfully to prevent the assignment of the Highland Lease to the Plaintiffs;
 - b. after those efforts failed, acted unlawfully to reject Highland's notice that it was renewing the Lease; and
 - c. after those efforts failed, declared that it would terminate the Highland Lease in 3.5 years and increase the rent as much as it pleased, thus effectively destroying all utility and value in the Lease.
28. On September 8, 2017, Highland sought the consent of the Town as landlord to the assignment of the Highland Lease. Instead of granting this consent, the Town:
 - a. demanded that the Plaintiffs provide information that was irrelevant to any landlord-tenant consideration; and
 - b. on September 28, 2017, denied its consent to the assignment of the Lease until the determination of a judicial review application filed by NAC on September 21, 2017, seeking to set aside the RFP so that NAC would retain the air-ambulance contract for Peace River.
29. The Town's refusal to consent to the assignment of the Highland Lease is contrary to the treatment it afforded other Airside tenants when they sought consent to the assignment of their leases. This includes the Town's special treatment for NAC when in May 2017 it requested the

Town's consent to the assignment of the Cooper Lease and the Potvin Lease, which consent the Town granted immediately upon request without contest or inquiry.

30. On November 10, 2017, the Plaintiffs commenced an action against the Town for a declaration that it acted unreasonably in withholding its consent to the assignment of the Highland Lease, QB 1709-0249 (the "Lease Assignment Action").
31. NAC assisted the Town in defending the Lease Assignment Action.
32. During the course of the Lease Assignment Action, the Town declared that if the Highland Lease was assigned to the Plaintiffs:
 - a. the Town would increase Can-West's landing fees from \$20 to \$1,285. No such increase was ever proposed or charged to other Airside tenants;
 - b. the Town would impose a capital depreciation fee of \$22,000 per year. No such capital fee was ever proposed or charged to other Airside tenants;
 - c. the Town would charge \$920,000 to extend the taxiway from Lot 10 to Lot 11 (later reduced to \$450,000), when the actual cost would not exceed \$200,000. No such taxiway-extension costs were ever proposed or charged to other Airside tenants; and
 - d. the Town would not allow Can-West to access the taxiway from the adjacent Lot 10, even with consent of the tenant of that lot, APL.
33. The Lease Assignment Action was resolved in favour of the Plaintiffs by the ruling of the Honourable Mr. Justice Graesser, issued February 23, 2018, with a supplemental clarification on March 16, 2018. Justice Graesser held that the Town's refusal to provide its consent to the assignment of the Highland Lease was unreasonable and that such consent was dispensed with. The Town appealed the ruling.
34. The day after Justice Graesser's clarification that the Town's consent to the assignment of the Lease was dispensed with, being Saturday, March 17, 2018, the Town issued a statement to Highland and Can-West that the 5-year renewal of the Highland Lease, notice of which Highland delivered to the Town on January 10, 2018, was not effective. This was purportedly because the wording of the renewal term was defective. The Town declared that the Highland

Lease ended on April 30, 2018, and demanded that Highland vacate the premises and remove its hangar from the property by that date.

35. The Town did not reveal this purported defect in the Highland Lease when it defended the Lease Assignment Action.
36. No lease renewal exercised by other Airside tenants has ever been rejected by the Town, including the lease renewals NAC delivered only a few months before for the Potvin Lease and the Cooper Lease.
37. On March 20, 2018, Highland commenced an action against the Town seeking a declaration that the lease renewal it exercised on January 10, 2018, was valid, QB 1809-0044 (the “**Lease Renewal Action**”). The action was heard by the Honourable Mr. Justice Nielsen on April 19, 2018, who found in favour of Highland and confirmed that Highland’s notice of renewal of the Lease was valid.
38. During the Lease Renewal Action, the Town declared that if the Highland Lease was renewed:
 - a. it would terminate the Lease in 3.5 years, knowing that the Plaintiffs needed a hangar at the Airport for at least 10 years; and
 - b. it would increase the rent to whatever it wanted, taking into account how important it is for the Plaintiffs to have a hangar at the Airport.
39. The Town has never imposed such terms and restrictions on any other Airside tenant, including NAC.
40. The Town’s action to convert a long-term lease with modest rent to a short-term lease with unlimited rent effectively extinguishes the utility and value of the Highland Lease for the Plaintiffs or anyone else. This was the Town’s intention so as to prevent the Plaintiffs from building a hangar at the Airport.

Breach of duty of Good Faith

41. The Town, as landlord of the Airport, owes the Plaintiffs, as the intended assignee of the Highland Lease, a duty of good faith. The Town breached its duty of good faith by, inter alia:

- a. failing to provide the Plaintiffs with the same benefits and treatment afforded other Airside tenants including, in particular, NAC;
- b. treating the Plaintiffs in a biased, arbitrary and capricious manner;
- c. unlawfully refusing to consent to the assignment of the Highland Lease;
- d. unlawfully refusing to acknowledge the renewal of the Highland Lease; and
- e. extinguishing all utility and value in the Highland Lease.

42. These actions by the Town were designed and intended to cause harm to the Plaintiffs.

Violations of the Competition Act

43. The Defendants' actions in concert to prevent the Plaintiffs from obtaining a hangar at the Peace River Airport constitute an unlawful conspiracy under s. 45(1) the *Competition Act* (Canada) to:

- a. control prices for the supply of hangars at the Peace River Airport; and
- b. control and prevent the supply of hangars at the Peace River Airport.

44. The Defendants' actions in concert are also a pre-emption of scarce facilities (hangars at the Peace River Airport) required by NAC's competitor (Can-West) for the operation of its business, with the object of withholding the facilities from the market, in violation of s. 78(1)(e) of the *Competition Act*.

45. Pursuant to s. 36 of the *Competition Act*, the Plaintiffs are entitled to bring this action to collect the damages they have suffered by reason of the Defendants' unlawful actions.

Concealment

46. The full extent of the wrongful actions of the Defendants designed to harm the Plaintiffs has been concealed. The Plaintiffs reserve the right to amend this Statement of Claim once all of the facts are known.

Damages

47. The wrongful actions of the Defendants have caused or will cause loss and damage to the Plaintiffs by inter alia:

- a. destroying the value of the Highland Lease;
- b. making the Plaintiffs' purchase of a hangar to erect on Lots 11 and 12 unnecessary;
- c. delaying the commencement of Can-West's air-ambulance service at Peace River;
- d. compromising and possibly ending Can-West's agreement with AHS; and
- e. causing the Plaintiffs to incur legal and other expenses arising from their need to commence and prosecute the Lease Assignment Action and assist Highland in the Lease Renewal Action.

48. The actions of the Defendants are egregious. The Plaintiffs are entitled to punitive and exemplary damages, and full indemnity costs.

Remedy sought

49. The Plaintiffs seek the following remedies:

- a. damages in the sum of \$5 million or such further amount as may be determined at trial;
- b. damages for violation of the *Competition Act* in a sum to be determined at trial;
- c. damages for the expenses incurred by the Plaintiffs by reason of having to commence and prosecute the Lease Assignment Action and assist Highland in the Lease Renewal Action;
- d. punitive and exemplary damages in a sum to be determined at trial;
- e. costs of this action on a full indemnity basis; and
- f. such further and other relief as the nature of the action requires.

NOTICE TO THE DEFENDANTS:

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Peace River, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's(s') address for service.

WARNING If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.