

SUPREME COURT FOR THE STATE OF NEW YORK
COUNTY OF ESSEX

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LEROY DOUGLAS and THE DOUGLAS
CORPORATION OF SILVER LAKE,

Index No. 959-09

Plaintiffs,

**Amended
Verified Complaint**

-against-

THE ADIRONDACK COUNCIL, INC., BRIAN
RUDER, Individually, as a Member and Chairman
of the Board of Directors of The Adirondack Council,
Inc., and as a Member, Director and Officer of
Hawkeye Conservationists, Inc., and HAWKEYE
CONSERVATIONISTS, INC.,

Defendants.
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Plaintiffs, complaining of defendants by and through their attorneys, Briggs Norfolk
LLP, allege as follows:

PARTY AND JURISDICTIONAL ALLEGATIONS

1. That the Supreme Court for the State of New York is the state court of original, unlimited and unqualified jurisdiction, pursuant to the Constitution of the State of New York, and, as such, has jurisdiction to hear and rule on the matters set forth in this Complaint.
2. That the amount of damages sought in this action exceed the jurisdictional limits of all lower courts of the State of New York which may otherwise have jurisdiction.
3. That, at the time of commencement of the above-captioned action, plaintiff Leroy Douglas (hereinafter referred to as "Douglas") was an individual over 18 years of age.
4. That, at the time of commencement of the above-captioned action, Douglas

maintained residency in the State of New York.

5. That, at the time of commencement of the above-captioned action, plaintiff The Douglas Corporation of Silver Lake (hereinafter referred to as "The Douglas Corporation") was an active corporation duly created, organized and existing by virtue of the laws of the State of New York.

6. That Douglas is the President of The Douglas Corporation.

7. That The Douglas Corporation is a family-run business.

8. That, at the time of commencement of the above-captioned action, defendant The Adirondack Council, Inc. (hereinafter referred to as "The Adk Council") was an active not-for-profit corporation duly created, organized and existing by virtue of the laws of the State of New York, with its principal place of business located in Elizabethtown, Essex County, New York.

9. That, at the time of commencement of the above-captioned action, defendant Brian Ruder (hereinafter referred to as "Ruder") was an individual over 18 years of age.

10. That Ruder is a member of The Adk Council.

11. That Ruder is the Chairman of the board of directors of The Adk Council.

12. That Ruder is a member of Hawkeye Conservationists, Inc.

13. That Ruder is an officer of Hawkeye Conservationists, Inc.

14. That Ruder is a director of Hawkeye Conservationists, Inc.

15. That, upon information and belief, at the time of commencement of the above-captioned action, Ruder maintained residency in the State of New York, on Silver Lake in the Town of Black Brook, Clinton County.

16. That, at the time of commencement of the above-captioned action, defendant Hawkeye Conservationists, Inc. (hereinafter referred to as "Hawkeye") was an active not-for-profit corporation duly created, organized and existing by virtue of the laws of the State of New York, with its principal place of business located in Clinton County, New York.

FACTUAL ALLEGATIONS

17. That The Douglas Corporation owns and possesses, in fee, real property located on Silver Lake in the Town of Black Brook, County of Clinton, State of New York, bearing tax map parcel No. 308-2-1 (hereinafter referred to as the "Premises"), in addition to other lands surrounding Silver Lake.

18. That Douglas resides, owns and possesses real property located at 18 Douglas Lane in the Town of Black Brook, County of Clinton, State of New York, which is located at the east end of Silver Lake, and less than one mile by road from the Premises.

19. That Ruder resides, owns and possesses real property on Silver Lake in the Town of Black Brook, County of Clinton, State of New York, near the Premises and Douglas' residence.

20. That, in 2005, New York State Adirondack Park Agency (hereinafter referred to as "APA") commenced an administrative enforcement proceeding against The Douglas Corporation bearing APA file number E2005-200.

21. That, in the APA enforcement proceeding (E2005-200), the APA alleged that The Douglas Corporation and/or its members or officers unlawfully deposited fill in various alleged wetland areas on the Premises, without an APA permit.

22. That, on November 9, 2006, plaintiffs and the APA entered into a written,

comprehensive settlement agreement to resolve the APA E2005-200 enforcement proceeding against The Douglas Corporation.

23. That Douglas is a party to the Contract or, in the alternative, a third-party beneficiary to the Contract possessing the rights to enforce the terms of the Contract and enjoy and receive benefits of the Contract.

24. That the written settlement agreement was executed by Douglas on behalf of The Douglas Corporation.

25. That the settlement agreement was recorded with the Clinton County Clerk's Office on November 15, 2006.

26. That the settlement agreement related to APA allegations that fill was placed in wetlands on the Premises to widen an existing road and replace an existing culvert that had rusted and partially collapsed.

27. That the settlement agreement resolved all pending violations against plaintiffs, relating to, or existing on, the Premises, alleged or asserted by the APA.

28. That the settlement agreement was in full satisfaction of all alleged violations against plaintiffs, relating to, or existing on, the Premises as asserted by the APA.

29. That the settlement agreement resolved, and was in full satisfaction of, all violations or potential violations of APA rules and regulations and Article 27 of the New York State Executive Law and Article 15 of Environmental Conservation Law possibly committed by plaintiffs that may have existed on the Premises prior to, or at the time of, execution of the settlement agreement.

30. That the settlement agreement expressly and correctly provides that the "fill

was used to widen an existing road and replace a culvert."

31. That annexed hereto as **Exhibit A** is a true and accurate copy of the settlement agreement entered into between The Douglas Corporation and the APA in connection with the APA enforcement proceeding bearing APA file number E2005-200 (hereinafter referred to as the "Contract"), with a true and accurate copy of APA enforcement attorney Paul Van Cott's transmittal letter.

32. That the Contract was entered into contemporaneously with APA's approval of a nine-lot subdivision on the Premises, via issuance by the APA of a non-jurisdictional letter to the benefit of plaintiffs.

33. That, on November 20, 2006, at Douglas' request, Douglas met with APA employee Mark Rooks at the Premises to allow Mr. Rooks to inspect the remediation work Douglas had performed pursuant to the Contract to insure Douglas met the December 1, 2006 remediation work deadline set forth in the Contract.

34. That, during the November 20, 2006, site visit by APA employee Mark Rooks, Mr. Rooks advised Douglas that certain aspects of the remediation work performed would need to be revised or done differently and Mr. Rooks directed Douglas to stop work due to the fact that the ground was frozen.

35. That, during the November 20, 2006, site visit, APA employee Mark Rooks agreed with Douglas that the work should be postponed to Spring of 2007, and Mr. Rooks expressly agreed on behalf of the APA to extend the December 1, 2006, deadline set forth in the Contract to July 1, 2007.

36. That, in February of 2007, plaintiffs' attorney, Jamie Martineau, Esq.,

received a letter from APA enforcement attorney Paul Van Cott wherein Mr. Van Cott referenced Mr. Rooks' November 20, 2006, site inspection, and confirmed that the APA extended the Contract deadline for the work to be completed in 2007.

37. That, on March 22, 2007, plaintiffs' attorney, Jamie Martineau, received another letter from Mr. Van Cott informing Mr. Martineau that the APA had opened a new enforcement file regarding alleged non-compliance with the Contract, and threatening plaintiffs that if the remediation work was not complete by the spring of 2007 with the help of an outside contractor, the APA would impose penalties; such action by the APA was a material breach of the Contract.

38. That, prior to July 1, 2007, during the spring months of 2007, plaintiffs completed all remediation work required by the Contract, including but not limited to, removing fill from the alleged wetlands, narrowing the road where it crosses the alleged wetlands, reducing the slopes around the stream and road to 2:1 ratio, putting down grass seed and straw to stabilize the soil and correctly installing the silt fence.

39. That, on or about August 13, 2007, the APA served plaintiffs' counsel with Notice of Hearing and Complaint for a new APA administrative enforcement proceeding bearing APA file number E2007-047.

40. That annexed hereto as **Exhibit B** are true and accurate copies of the APA's Notice of Hearing and Complaint, both dated August 13, 2007.

41. That the Complaint in the APA E2007-047 enforcement proceeding referenced the Contract, but did not allege a violation premised on an alleged breach thereof; rather, the Complaint reasserted the original claims asserted in the E2005-200

complaint as if the Contract never existed.

42. That plaintiffs interposed an Answer to the APA's E2007-47 Complaint, denying commission of the violations alleged and affirmatively asserting as a defense that all alleged wetland violations at the Premises were resolved by the Contract.

43. That annexed hereto as **Exhibit C** is a true and accurate copy of plaintiffs' Answer filed and served in APA enforcement proceeding E2007-47.

44. That, in later submissions in support of the allegations in the E2007-047 Complaint, the APA expressly asserted that it was no longer honoring or recognizing the Contract.

45. That, on or about January 25, 2008, the APA filed a motion in APA enforcement proceeding E2007-47 for an order without hearing.

46. That annexed hereto as **Exhibit D** are true and accurate copies of, upon information and belief, all papers submitted by the APA in support of its motion for an order without a hearing, to wit: (1) Notice of Motion for Agency Order Without Hearing; (2) Affidavit of Mark Rooks, sworn to January 24, 2008, with exhibits; (3) Affirmation of Paul Van Cott, Esq., affirmed on January 25, 2008, with Exhibit; (4) Memorandum of Law in Support of Agency Staff's Motion for an Agency Order Without Hearing Pursuant to 9 N.Y.C.R.R. §581-4.16; (5) Reply Affidavit of Douglas Miller, sworn to March 27, 2008, with exhibits; (6) Reply Affidavit of Daniel Spada, sworn to March 26, 2008, with exhibit; (7) Reply Affidavit of Brian Grisi, sworn to March 26, 2008, with exhibits; and (8) Reply Memorandum of Law in Support of Agency Staff's Motion for an Agency Order Without Hearing Pursuant to 9 N.Y.C.R.R. §581-4.16.

47. That plaintiffs cross-moved to dismiss the E2007-47 Complaint, inter alia, on grounds that the violations alleged were settled by the Contract and plaintiffs had fulfilled their obligations under the Contract.

48. That the APA denied plaintiffs' cross-motion to dismiss the E2007-47 Complaint and ordered a hearing to be conducted on the violations alleged in the E2007-47 Complaint.

49. That annexed hereto as **Exhibit E** is a true and accurate copy of the APA's Ruling Pursuant to 9 N.Y.C.R.R. §581-4.9.

50. That the APA breached and refused to recognize the Contract with plaintiffs and its terms and conditions when it commenced a second enforcement proceeding (APA file number E2007-047) against plaintiffs.

51. That the APA breached the Contract by commencing a new enforcement proceeding for the same alleged violations contained in the E2005-200 Complaint.

52. That the APA breached the Contract by prosecuting or continuing to prosecute plaintiffs for the same alleged violations asserted in the E2005-200 enforcement proceeding and for seeking substantial and additional penalties and fines.

53. That the APA breached the Contract by refusing to acknowledge and accept the factual findings and stipulations contained therein, such as the fact that a right-of-way, driveway or road did, indeed, exist on the Premises.

54. That the APA breached the implied covenants of good faith inherent and contained in the Contract.

55. That the Contract was a valid and lawful contract in effect when the APA

commenced the E2007-47 enforcement proceeding, and otherwise materially breached the Contract.

56. That, in 2007, 2008 and 2009, upon information and belief, Ruder caused, convinced, influenced, manipulated and instructed the APA and its employees, representatives or members to commence an enforcement proceeding against plaintiffs for the same alleged violations asserted in APA enforcement proceeding 2005-200, while having knowledge of the existence and valid effect of the Contract.

57. That Ruder caused the APA to breach and ignore the Contract in his individual capacity and in his capacity as a member and Chair of the board of directors of The Adk Council and as a member, officer and director of Hawkeye.

58. That Ruder caused the APA to breach the Contract for his personal benefit and gain to stop land development by plaintiffs on Silver Lake, which he had long opposed.

59. That Ruder caused the APA to breach the Contract for his personal gain and benefit as an attempt to force plaintiffs from further development, to harass plaintiffs, to harm plaintiffs and to compel plaintiffs to sell or relinquish ownership of the Premises and other lands on Silver Lake owned by plaintiffs.

60. That Ruder caused the APA to breach the Contract for his personal gain and benefit as he perceived plaintiffs' use and plans of the Premises and other lands plaintiffs' own on Silver Lake, and plaintiffs' personal and commercial use of the waters of Silver Lake, to be contrary to Ruder's vision and personal use and enjoyment of Silver Lake and the land surrounding it.

61. That Ruder caused the APA to breach the Contract for his personal gain and

benefit in an attempt to safeguard the value of his real property on Silver Lake and prevent further people from buying land on Silver Lake and using the waters of Silver Lake.

62. That Ruder caused the APA to breach the Contract as a member and Chair of The Adk Council and as a member, officer and director of Hawkeye in an attempt to stop lawful land development by plaintiffs, to force plaintiffs to sell the Premises and other lands to New York State or the Nature Conservancy, or alternatively, to members of The Adk Council, or Hawkeye, or to members of the public who would not develop the land, to financially harm plaintiffs, and to punish plaintiffs for opposing The Adk Council and Hawkeye's objectives and policies and for an alleged verbal altercation that The Adk Council Executive Director Brian Houseal claims he had with Douglas during a Town of Black Brook Planning Board meeting in 2007.

63. That The Adk Council and Hawkeye condoned and supported Ruder and his procurement of the APA's breach of the Contract.

64. That, on March 22, 2007, upon information and belief, Ruder, individually and in his capacity as a member and Chair of The Adk Council and as a member, officer and director of Hawkeye, sent APA employee Douglas Miller an email summarizing their past conversations wherein it was decided between defendants and the APA that the APA would commence an enforcement proceeding against plaintiffs, which on its face appears to also have been sent to APA enforcement attorney, Paul Van Cott.

65. That said March 22, 2007, email from Ruder was sent on his individual or personal behalf and on behalf of The Adk Council and on behalf of Hawkeye.

66. That, in said March 22, 2007, email, upon information and belief, Ruder

urged, pleaded, influenced, caused, manipulated, and directed the APA to disregard and breach the Contract and, among other things, commence a new enforcement proceeding (E2007-47) against plaintiffs.

67. That, in said March 22, 2007, email, upon information and belief, from Ruder, defendants went as far as to offer their "own legal team" to assist the APA and offered to perform legal research on "town law" to help the APA obtain jurisdiction over, and stop, plaintiffs' purported subdivision plans for the Premises.

68. That, in said March 22, 2007, email and other communications with the APA, defendants, upon information and belief, by and through Ruder, caused, directed, compelled, manipulated and successfully convinced the APA to (1) commence an enforcement proceeding and prosecute plaintiffs for the same violations resolved by the Contract; (2) attempt to force plaintiffs to prepare a master plan for development of plaintiffs' land on Silver Lake; (3) provide plaintiffs with notice of plaintiffs' alleged failure to comply with the Contract and demand that plaintiffs obtain an "outside contractor to complete the work;" (4) send letters to Town of Black Brook supervisor and code enforcement officer advising them of plaintiffs' alleged misconduct and commencement of a new APA enforcement proceeding and requesting that the Town of Black Brook not issue plaintiffs a subdivision permit; (5) attempt to revoke the APA's non-jurisdictional letter issued earlier to plaintiffs for the Premises.

69. That a true and accurate print-out of said March 22, 2007, email from, upon information and belief, Ruder in redacted form is annexed hereto as **Exhibit F**.

70. That, in addition, to said March 22, 2007, email, upon information and belief,

Ruder individually and as a representative of The Adk Council and Hawkeye, and another member of The Adk Council and Hawkeye sent emails on March 21, 2007, to the APA complaining of plaintiffs and demanding the APA take action to stop plaintiffs from subdividing the Premises or other lands on Silver Lake as part of defendants' plan to procure the APA's breach of the Contract.

71. That true and accurate copies of print-outs of said March 21, 2007, emails, in redacted form are annexed hereto as **Exhibit G**.

72. That, in addition to sending written communications to procure the APA's breach of the Contract, upon information and belief, defendants regularly communicated verbally with the APA and engaged in conduct to urge, plead, manipulate, lobby, direct and cause the APA to disregard and breach the Contract, before and during APA enforcement proceeding E2007-47.

73. That defendants used their political and financial influences to manipulate the APA administrative enforcement process as it pertained to plaintiffs and to cause the APA to breach and dishonor the Contract.

74. That, in response to the commencement of APA enforcement proceeding E2007-47, plaintiffs repeatedly asked and demanded the APA to honor the Contract and withdraw or discontinue the enforcement proceeding and, as alleged above, filed a cross-motion to have the proceeding dismissed on grounds that it was contrary to the intention and purposes of the Contract, violated the terms and conditions of the Contract and, in essence, rendered the Contract meaningless.

75. That, by and through a letter, dated April 7, 2008, and signed by The Adk

Council Legislative Director, Scott M. Lorey, The Adk Council and Ruder urged, pleaded, directed, manipulated, influenced, lobbied, and caused the APA to deny plaintiffs' demands that the APA honor the Contract and to continue to prosecute plaintiffs.

76. In said April 7, 2008, letter sent on behalf of The Adk Council and Ruder, said defendants urged the APA to prosecute plaintiffs, find plaintiffs in violation of the allegations raised in the E2007-47 enforcement proceeding, and impose maximum penalties and substantial fines upon plaintiffs and, as a result, a mere four days later, the APA denied plaintiffs' cross-motion to dismiss enforcement proceeding E2007-47.

77. That annexed hereto as **Exhibit H** is a true and accurate copy of said April 7, 2008, letter to APA Commissioner Cecil Wray and APA enforcement attorney Paul Van Cott sent by The Adk Council on behalf of itself and Ruder.

78. That defendants had knowledge of the existence and valid effect of the Contract and its terms, conditions, purpose, and the parties' obligations contained therein.

79. That defendants intentionally procured and caused the APA's breach of the Contract, without justification.

80. That the APA's breach of, and refusal to recognize, the Contract and its terms and conditions as set forth above were proximately caused, and a direct consequence of, defendants' intentional and deliberate interference, inducement, procurement, acts, and representations.

81. That, as a result of the APA's breach of the Contract caused and procured by defendants, plaintiffs were damaged in that they (1) were caused to incur substantial professional services fees and attorneys' fees and other costs and expenses to defend

against the frivolous E2007-47 APA administrative enforcement proceeding, (2) suffered the loss of enjoyment and use of the Premises, (3) suffered a substantial diminution of the fair market value of the Premises, and (4) suffered a substantial loss of future profits or income to be derived from the Premises as plaintiffs' plans to subdivide and sell portions of the Premises were thwarted or impeded due to the pending E2007-047 APA administrative enforcement and the allegations made therein.

82. That defendants anticipated, had knowledge of, and intended the damages incurred by plaintiffs as alleged above.

83. That plaintiffs complied with the Contract and any modifications or revisions thereto agreed upon by the APA and plaintiffs.

84. That, in the fall of 2009, after more than two years of prosecuting plaintiffs in the E2007-47 enforcement proceeding, the APA dropped the proceeding without prejudice, after plaintiffs filed a motion alleging violations of Public Officers Law §74 and applicable ex parte rules and alleging collusion between the APA and Ruder and The Adk Council in the prosecution of plaintiffs for alleged violations that had been resolved by the Contract.

THE CAUSE OF ACTION
Tortious Interference with a Contract

85. Plaintiffs repeat, reallege and reiterate the allegations contained in paragraphs 1 through 84 above as if more fully set forth anew herein.

86. That a valid contract existed between the APA and plaintiffs.

87. That defendants had knowledge of the Contract between the APA and

plaintiffs.

88. That defendants intentionally and improperly procured the breach of the Contract by the APA.

89. That the breach of the Contract by the APA resulted in damages to plaintiffs.

90. That plaintiffs are entitled to a monetary judgment for all damages incurred in an amount no less than \$2,100,000.00.

91. That, in addition to compensatory, actual or real damages incurred as alleged above, plaintiffs are entitled to a judgment awarding them punitive damages on grounds that defendants' conduct complained of herein was gross, wanton or willful fraud and/or was morally culpable conduct warranting the imposition of punitive damages, and directed not only to plaintiffs, but also to the general public, having manipulated and influenced public officers to breach a settlement agreement and having improperly manipulated and influenced a State agency's administrative enforcement process.

92. That, in addition to compensatory, actual or real damages incurred as alleged above, plaintiffs are entitled to at least \$1,000,000.00 in punitive damages and attorneys' fees, costs and expenses incurred in prosecuting the above-captioned action.

WHEREFORE, plaintiffs demand judgment in the sum of no less than \$3,100,000.00, together with attorneys' fees, costs and disbursements, and such other and further relief as may be just and proper.

Dated: Lake Placid, New York
February 5, 2010

