

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

CITY OF TORONTO

Applicant

- and -

KHALEEL SEIVWRIGHT

Respondent



APPLICATION PURSUANT TO S. 380 OF THE *CITY OF TORONTO ACT, 2006*
and RULE 14.05(3)(d) OF THE *RULES OF CIVIL PROCEDURE*

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing in a manner to be determined by the Court

- In person
- By telephone conference
- By video conference

at the following location: 361 University Avenue, Toronto, Ontario, on a day to be set by the registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or

your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Diane Rhoden

ISSUE Date FEBRUARY 12, 2021

Issued by

Local registrar

Address of
court office Superior Court of Justice
330 University Ave., 8th Floor
Toronto, Ont.
M5G 1R7

TO: **Community Justice Collective**
33 Prince Arthur Avenue
Toronto, Ontario
M5R 1B2

Sima Atri
Tel: (647) 819-2038

Lawyers for the Respondent

APPLICATION

1. The applicant makes application for:

- a) An order permanently restraining the respondent, Khaleel Seivwright, from placing and/or relocating structures on City-owned land or otherwise creating a nuisance or interfering with the City's rights as owner and occupier of its land, in violation of § 548-3, 548-4, 608-7, 608-9A, 608-14, and 743-9 of the City of Toronto Municipal Code;
- b) An order validating service of the notice of application on the respondent, if necessary; and
- c) An order granting it its costs of this proceeding, if opposed, on a partial indemnity basis.

2. The grounds for the application are:

- a) The City of Toronto (the "City") is a municipality incorporated pursuant to the *City of Toronto Act, 1997*, S.O. 1997, c. 2, and continued by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A ("*COTA*");

Installing Structures in City Parks is Prohibited

- b) The City operates a system of parks as shared recreational spaces for the benefit of the community;
- c) All members of the community are welcome to use the City's parks, so long as they abide by the terms of the City's Parks Bylaw, being chp. 608 of the City of Toronto Municipal Code (the "Parks Bylaw");
- d) The Parks Bylaw prohibits, *inter alia*:
 - i. encroaching upon or taking possession of a park by installing a structure on park land;
 - ii. occupying a park for non-recreational uses; and
 - iii. camping, tenting, or otherwise living in parks;
- e) As the owner and occupier of its parks, the City has the right to refuse permission to install structures on its land;

Installing Structures on Highway Rights of Way is Prohibited

- f) The City operates a road system for the benefit of the community;
- g) The City's Streets and Sidewalks Bylaw, being chp. 743 of the City of Toronto Municipal Code (the "Streets Bylaw"), prohibits, *inter alia*, obstructing a street or right of way;
- h) The City has a duty to maintain its streets in a reasonable state of repair;

The Respondent Has Violated and Continues to Violate the Parks and Streets Bylaws

- i) The respondent has built and placed on City-owned land without its permission several structures intended for human occupation;
- j) The respondent has indicated in public and private statements his intention to continue to maintain and relocate structures on City-owned land without the City's permission;
- k) The respondent has raised through GoFundMe.com in order to build those structures and place them on City-owned land without the City's permission;
- l) Sections 3(1) ("highway"), 42(1) and 380 *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sch. A;
- m) City of Toronto Municipal Code, § 608-7 (Encroachment), § 608-9A (Access), § 608-14 (Tents and Structures); § 743-9 (Fouling and obstructing streets); § 548-3 (Littering and depositing waste prohibited); § 548-4 (Waste dumping prohibited);
- n) Such further and other grounds as counsel may advise and this Court may accept.

3. The following documentary evidence will be used at the hearing of the application:

- a) The affidavit of Esther Afriat;
- b) The affidavit of Dan Breault;
- c) The affidavit of Lyne Kyle;
- d) The affidavit of a representative of the Transportation Services Division, to be sworn.

DATE: February 12, 2021

CITY SOLICITOR'S OFFICE
City of Toronto, Legal Services
Station 1260, Metro Hall
55 John Street, 26th Floor
Toronto, Ontario M5V 3C6

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Court File No.

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and

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Proceeding commenced at
TORONTO

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