

S-087866

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

GARY GAUTAM dba CAMBIE GENERAL STORE, 557856
B.C. LTD. dba SOFA SO GOOD, GEORGE KING and JANE
KING

PLAINTIFFS

AND:

CANADA LINE RAPID TRANSIT INC., INTRANSIT BC
LIMITED PARTNERSHIP, INTRANSIT BRITISH COLUMBIA
G.P. LTD. and SNC-LAVALIN INC.

DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

WRIT OF SUMMONS

Name and address of each Plaintiff:

Gary Gautam dba Cambie General Store
557856 B.C. Ltd. dba Sofa o Good
George King and Jane King
c/o Hordo & Bennett
Barristers and Solicitors
1801 – 808 Nelson Street
Vancouver, BC V6Z 2H2

Name and address of each Defendant:

Canada Line Rapid Transit Inc.
19th Floor, 885 West Georgia Street
Vancouver, BC

Intransit BC Limited Partnership
2800 Park Place
666 Burrard Street
Vancouver, BC

Intransit British Columbia G.P. Ltd.
2800 Park Place
666 Burrard Street
Vancouver, BC

SNC-Lavalin Inc.
1600, 925 West Georgia Street
Vancouver, BC

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the Defendants: Canada Line Rapid Transit Inc., Intransit BC Limited Partnership, Intransit British Columbia G.P. Ltd. and SNC-Lavalin Inc.

TAKE NOTICE that this action has been commenced against you by the Plaintiffs for the claims set out in this Writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this Court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiffs' address for delivery, which is set out in this Writ, and
- (b) if a Statement of Claim is provided with this Writ of Summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this Court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiffs' address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGEMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this Writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this Writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere, or, if the time for appearance has been set by order of the Court, within that time.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the Plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this Writ of Summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above, or

if the time for defence has been set by order of the Court, within that time.

- (1) The address of the registry is:

800 Smithe Street
Vancouver, B.C.

- (2) The Plaintiffs' ADDRESS FOR DELIVERY is:

1801 - 808 Nelson Street
Box 12146, Nelson Square
Vancouver, B.C.
V6Z 2H2

Fax number for delivery:
(604) 682-7872

(3) The name and office addresses of the Plaintiffs' solicitors are:

Hordo & Bennett
Barristers and Solicitors
1801 - 808 Nelson Street
Box 12146, Nelson Square
Vancouver, BC V6Z 2H2
Telephone: (604) 682-5250
Fax: (604) 682-7872
Counsel Reference: R.J. Randall Hordo, Q.C. and Paul R. Bennett

Arvay Finlay
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1300 - 355 Burrard Street
Vancouver, BC V5C 2G8
Telephone: (604) 689-4438
Fax: (604) 687-1941
Counsel Reference: Joseph J. Arvay, Q.C.

Ritchie Sandford
Barristers and Solicitors
1350 - 355 Burrard Street
Vancouver, BC V6C 2G8
Telephone: (604) 684-0778
Fax: (604) 684-0799
Counsel Reference: Marilyn E. Sandford

The Plaintiffs' claim is:

(SEE ATTACHED STATEMENT OF CLAIM)

DATED at Vancouver, British Columbia, this 10th day of November, 2008.



Solicitor for the Plaintiff

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STATEMENT OF CLAIM

1. The Plaintiff Gary Gautam is a resident of British Columbia and carries on business as Cambie General Store (“Cambie General Store”), which is a convenience store business operating from leased premises on property bordering Cambie Street in the City of Vancouver (“Cambie Street”), with a municipal address of 3399 Cambie Street. The Plaintiff Gautam has owned and operated the Cambie General Store at this location since June 1996.

2. The Plaintiff 557856 B.C. Ltd. is a company incorporated under the laws of British Columbia with a registered and records office at 230 – 133 East 8th Avenue, Vancouver, B.C. and carries on a furniture store business under the name Sofa So Good (“Sofa So Good”).

3. From October 1998 to April 2007, Sofa So Good operated its business from leased premises located at 2219 Cambie Street. In May 2007 Sofa So Good relocated its business to 1401 West 8th Avenue in the City of Vancouver, and has operated from those premises since that time to the present.

4. The Plaintiffs George King and Jane King (the "Kings") are residents of British Columbia and are joint owners of properties zoned for commercial use in the City of Vancouver with municipal addresses at 3010 Cambie Street ("3010 Cambie") and 472 West 15th Ave. in the City of Vancouver ("472 West 15th"), which latter property is joined with a building on Cambie Street.

5. At all material times, 472 West 15th has been leased by the Kings and occupied by G. King Photo-Colour Ltd. ("G King Photo"), which has operated a photo processing business from those premises. From September 2004 to December 2006, 3010 Cambie was leased by the Kings to and occupied by Little Blessings Children's Boutique ("Little Blessings"), a joint proprietorship which operated a children's clothing store business from those premises.

6. In December 2006, Little Blessings ceased its operations at and vacated the premises at 3010 Cambie. Those premises remained vacant until August 2008 (except for one short term tenant in November and December 2007), when 3010 Cambie was leased to and occupied by Green World Electric Vehicles Ltd., a business engaged in the sale of electric vehicles such as bicycles and scooters.

7. Each of the properties occupied by Cambie General Store and Sofa So Good, and the properties owned by the Kings, are located within the business improvement area established pursuant to the Cambie Village BIA Designation By-Law, City of Vancouver By-Law No. 9247, which business improvement area covers Cambie Street and its adjoining blocks between 2nd Avenue and King Edward Avenue, as set out in Schedule "A" to By-Law No. 9247, and which shall hereinafter be referred to as the "Cambie Village".

8. The Defendant Canada Line Rapid Transit Inc. ("Canada Line Inc.") is a corporation formed under the laws of British Columbia with a registered and records office at the 19th Floor, 885 West Georgia Street, Vancouver, B.C., and is responsible for overseeing the procurement, design, construction and implementation of a rapid transit rail link between downtown Vancouver, Richmond and the Vancouver International Airport known as the "Canada Line".

9. The Defendant Intransit BC Limited Partnership is a limited partnership formed under the laws of British Columbia with a registered office at 2800 Park Place, 666 Burrard Street, Vancouver, B.C.

10. The Defendant Intransit British Columbia G.P. Ltd. is a corporation formed under the laws of British Columbia and also has a registered office at 2800 Park Place, 666 Burrard Street, Vancouver, B.C. Intransit British Columbia G.P. Ltd. is the general partner of Intransit B.C. Limited Partnership (collectively "Intransit B.C.").

11. Intransit B.C. was formed for the single purpose of implementing and operating the Canada Line and in carrying out that purpose, has contracted with Canada Line Inc. to design, build, partially finance, operate and maintain the Canada Line for a 35 year period.

12. The Defendant SNC-Lavalin Inc. ("SNC") is a corporation formed under the laws of Canada and is registered in British Columbia as an extra-provincial corporation with an address for delivery at 1600, 925 West Georgia Street, Vancouver, B.C. SNC is a 50% limited partner in Intransit B.C. and is also the main construction contractor for the construction of the Canada Line.

13. The Plaintiffs bring this action on their own behalf and on behalf of other persons who have either:

- (a) owned a business which operated from premises in the Cambie Village (the "Business Owners"); or
- (b) owned one of the Cambie Village properties which has been occupied by a Business Owner (the "Business Landlords")

at any time from November 1, 2005 to the completion of the Canada Line construction in Cambie Village (collectively, the "Class").

The Construction of the Canada Line

14. From its inception, the Canada Line project has consisted of an underground rail tunnel running from the existing Waterfront Station in downtown Vancouver, under False Creek to Cambie Street and then under Cambie Street to 46th Avenue and subsequently, to 64th Avenue, and then above ground to Richmond and Vancouver International Airport.

15. The Defendants caused the tunnel portion of the Canada Line to be constructed using two different construction methods. From downtown Vancouver to Cambie Street at 2nd Avenue, the Canada Line tunnel has been constructed using a “bored tunnel” method of construction, which method involves using a tunnel boring machine to create a tunnel into which precast concrete tunnel segments are placed to form the tunnel. This method of construction involves no disturbance to the surface of the Canada Line route between stations.

16. In contrast, on Cambie Street, and in particular, in Cambie Village, the Defendants caused the Canada Line tunnel to be constructed using a “cut and cover” method of construction. The method employed to construct the tunnel on Cambie Street involves excavating a trench on the surface of the street, building a concrete tunnel in the trench, back-filling the trench and restoring the street surface.

17. Construction of the Canada Line tunnel along Cambie Street in Cambie Village began in November 2005. The restoration of Cambie Street in Cambie Village, and construction activity in Cambie Village associated with the Canada Line, is scheduled to be completed by July 2009.

18. During the period of construction of the Canada Line tunnel on Cambie Street in Cambie Village:

- (a) the trench for the tunnel in each block of Cambie Street in Cambie Village has stood open for at least 11 months and for longer for most of those blocks;

- (b) traffic flow along that part of Cambie Street has been significantly reduced since November, 2005, both by the active "cut and cover" construction of the Canada Line Tunnel and the utility and other work necessary to prepare for that construction;
- (c) all but a few intersections onto Cambie Street have been barricaded, and restrictions on vehicles turning onto and off Cambie Street have been imposed for those intersections which were not barricaded;
- (d) parking on or adjacent to Cambie Street in Cambie Village has been severely restricted or eliminated; and
- (e) pedestrian mobility along that part of Cambie Street has been limited by the narrowing of sidewalks and the inability of pedestrians to cross Cambie Street at all but a few intersections.

19. In particular, during the period of construction of the Canada Line tunnel, in relation to:

- (a) the 3300 block of Cambie Street, in which the property occupied by the Cambie General Store is located:
 - (i) the trench for the tunnel stood open from January through November, 2007;
 - (ii) traffic was disrupted since November 2005 and was restricted to the one lane in each direction from the Fall of 2006 until May 2008;
 - (iii) parking on Cambie Street was prohibited while traffic was so restricted;
 - (iv) from January through November 2007, the east intersections of 17th and 18th Avenue were barricaded and only right turns onto and off Cambie

Street were permitted at the west intersections of 17th and 18th Avenue;
and

- (v) for that same period, pedestrian mobility was limited by the significant narrowing of the sidewalks and by an inability to cross Cambie Street at the intersection of 17th Avenue, and for most of the time, at 18th Avenue.
- (b) the 3000 block of Cambie Street, in which 3010 Cambie is located, and which is intersected on the south side by the 700 block of West 15th Avenue in which 742 West 15th is located:
- (i) the trench for the tunnel stood open from January 2007 through April 2008;
 - (ii) traffic was disrupted since November 2005 and restricted to one lane in each direction from May 2006 through until May 2008;
 - (iii) parking on Cambie Street was prohibited while traffic was so restricted;
 - (iv) from January 2007 through April 2008 the East intersections between 13th and 15th Avenue on Cambie Street were barricaded, as was the access from Cambie Street to the front parking lot of 3010 Cambie Street, which was the only access to that parking lot;
 - (v) for that same period, pedestrian mobility was limited by a significant narrowing of the side walks and by an inability to cross Cambie Street at the intersections between 13th and 15th Avenues; and
- (c) the 2200 block of Cambie Street, in which the property that was occupied by Sofa So Good is located;
- (i) the trench for the tunnel stood open from March 2007 through September 2008;

- (ii) traffic was disrupted since November 2005 and in particular, from May 2006, traffic flow to the block was significantly reduced as a result of utility work and preparatory construction on Cambie Street between 2nd and 14th Avenues and access to the rear of the block, in which the parking for Sofa So Good was located, was also restricted from time to time;
- (iii) since January 2007, traffic has been continually and still is restricted to one lane in each direction and parking on Cambie Street has been prohibited;
- (iv) from January 2007 through September 2008, the east intersection of 7th Avenue was barricaded, as were all other east intersections of Cambie Street between 2nd Avenue and Broadway, and only right turns onto and off Cambie Street by south-bound traffic were permitted at the west intersection of 7th Avenue; and
- (v) for that same period, pedestrian mobility was limited by the significant narrowing of the sidewalks and by an inability to cross Cambie Street between 6th Avenue and Broadway.

20. The consequences of the “cut and cover” construction of the Canada Line tunnel on Cambie Street in Cambie Village, as set out in para. 18 and 19 above, significantly impaired the ability of the public to conveniently access the Cambie Village properties, including the properties occupied by the Cambie General Store and Sofa So Good and the properties owned by the Kings, and by doing so, discouraged patronage of the businesses operated on those properties during the period of construction and thereby caused those businesses to suffer reduced revenues.

21. As a result of the reduced revenues caused by the construction of the Canada Line tunnel on Cambie Street in Cambie Village, as set out in para. 20 above, some businesses in Cambie Village were unable to continue to operate with such reduced revenues and either ceased

operations or relocated their businesses from Cambie Street to another location in order to avoid the losses from the reduced revenues. In particular:

- (a) between April 2006 and April 2007, Sofa So Good suffered a reduction of sales of up to 75% and as a consequence, relocated its business to 1408 West 8th Avenue to avoid further losses resulting from the continued construction of the Canada Line which could not have been absorbed by the continued operation of the Sofa So Good at its Cambie Street location; and
- (b) Little Blessings, the tenant of the Kings at 3010 Cambie Street, suffered losses to such an extent that it was unable to pay full rent, in diminishing amounts, from May through December 2006 and thereafter ceased its business operations at 3010 Cambie Street and vacated the premises.

22. The Defendants constructed the Canada Line tunnel along Cambie Street in the Cambie Village using the “cut and cover” method of construction rather than the “bored-tunnel” method in order to reduce the cost of construction of the Canada Line and thereby increase the profits that will ultimately be earned by the operation of the Canada Line.

23. The Defendants chose to construct the Canada Line tunnel along Cambie Street in the Cambie Village using the “cut and cover” method of construction knowing that this construction method would significantly impair the ability of the public to conveniently access the Cambie Village properties during the period of construction and that businesses operating in the Cambie Village would be adversely effected as a result, in a manner and to an extent that could have been avoided had the “bored tunnel” method of construction been used to build the Canada Line tunnel under this portion of Cambie Street.

Nuisance

24. The significant impairment of the public’s ability to conveniently access the Cambie Village properties caused by the construction of the Canada Line tunnel, as set out in

para. 16 above, constitutes an unreasonable interference with the use and enjoyment of those properties for business purposes.

25. The unreasonable interference with the use and enjoyment of the Cambie Village properties for business purposes caused by the construction of the Canada Line tunnel could have been avoided by the Defendants had they used the “bored tunnel” method of construction to construct the Canada Line tunnel under Cambie Street in the Cambie Village which would not have involved any disturbance to the surface of Cambie Street between the stations of the Canada Line.

26. The construction of the tunnel for the Canada Line on Cambie Street in the Cambie Village using the “cut and cover” method of construction has caused the Business Owners to suffer loss and damage, which includes:

- (a) loss of revenue both during and subsequent to the period of the tunnel construction;
- (b) the additional cost of relocating incurred by those Business Owners which relocated their businesses from Cambie Street to avoid further loss of revenue during the period of the tunnel construction; and
- (c) for those Business Owners that ceased to operate their business as a result of the loss of revenue suffered during the construction of the Canada Line tunnel, the value of the future revenue that could have been earned from the business had it been able to continue to operate as a going concern.

27. In particular, the construction of the Canada Line tunnel on Cambie Street in the Cambie Village using the “cut and cover” method of construction has caused:

- (a) the Cambie General Store to suffer loss and damage, which includes the loss resulting from the reduction in sales revenue of more than \$154,000 for 2007,

based on revenue earned in 2006 prior to the commencement of construction of the Canada Line tunnel on the 3300 block of Cambie Street; and

- (b) Sofa So Good to suffer loss and damage, which includes:
 - (i) lost revenue in excess of \$200,000, both at its Cambie Street location and during its relocation to and start up of its business at 1401 West 8th Avenue, which relocation was reasonably made in mitigations of the losses that it would have otherwise suffered had Sofa So Good continued to operate at the Cambie Street location, as set out in para. 21(b) above;
 - (ii) the cost of the relocation to and start of its business at 1401 West 8th Avenue.

28. In addition, the Business Landlords have also suffered loss and damage as a result of the “cut and cover” construction of the Canada Line tunnel on Cambie Street in the Cambie Village, which loss and damage includes rent revenue lost as a result of:

- (a) rental reductions granted and rental increases foregone to assist tenants in absorbing the loss of revenue caused by the construction of the Canada Line tunnel using the “cut and cover” method of construction, so as to permit the tenants to continue to operate their businesses and the properties to remain leased; and
- (b) properties that have been vacated as a result of the tenant’s inability to absorb the loss of revenue caused by the “cut and cover” construction of the Canada Line tunnel.

29. In particular, the construction of the Canada Line tunnel on Cambie Street between 2nd Avenue and King Edward Avenue using the “cut and cover” method of construction has caused the Kings to suffer loss and damage, which includes a loss of rental income as a result of:

- (a) the default in rent for and the vacation of 3010 Cambie Street by the Little Blessings, as set out in para. 21(b) above, which property remained vacant from December 2006 until August 2008 when it was leased to Green World Electric Vehicles Ltd., as set out in para. 6 above, at substantially lower rents, all of which has resulted in a loss of revenue to date of more than \$87,000;
- (b) rent reductions granted to the tenant of West 15th property in order to permit that to continue to operate its business and the property to remain leased, which the rental reductions have resulted in a loss of revenue of more than \$190,000.

Waiver of Tort

30. As set out in para. 22 and 23 above, the nuisance inflicted on the Plaintiffs and other members of the Class by the Defendants through the construction of the Canada Line tunnel on Cambie Street in Cambie Village using the “cut and cover” method was done knowingly and deliberately by the Defendants, in order for the Defendants to minimize the cost of construction of the Canada Line and thereby increase the profits that the Defendants would ultimately enjoy from the operation of the Canada Line.

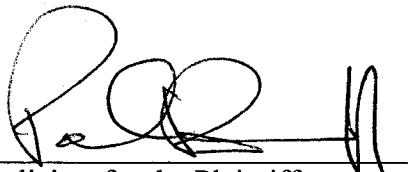
31. The Plaintiffs, on their own behalf and on behalf of the Class, reserve their right to waive the tort of nuisance and claim disgorgement of the benefit obtained by the Defendants through their wrongful conduct in inflicting the nuisance upon the Plaintiffs and the Class, which benefit is measured by the cost savings achieved by the Defendants by using the “cut and cover” method of construction they employed to construct the Canada Line tunnel on Cambie Street in Cambie Village rather than the “bored tunnel” method that would have avoided the interference with the use and enjoyment of the Cambie Village properties owned or occupied by the Plaintiffs and the Class resulting from the construction of the Canada Line tunnel on Cambie Street, as set out in para. 23 above.

WHEREFORE, the Plaintiffs claim on their own behalf and on behalf of the Class:

- (a) damages for nuisance; or
- (b) alternatively, restitution of the benefit received by the Defendants through their wrongful conduct in inflicting the nuisance;
- (c) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c.79; and
- (d) such further and other relief as this Honourable Court may deem just.

Place of trial: Vancouver, British Columbia

DATED at Vancouver, British Columbia, this 10th day of November, 2008.



Solicitor for the Plaintiffs

THIS STATEMENT OF CLAIM is filed by the firms of Hordo & Bennett, Arvay Finlay and Ritchie Sandford, Barristers and Solicitors, although the firm of Hordo & Bennett will be the solicitor of record and whose place of business and address for service is 1801 - 808 Nelson Street, Box 12146, Nelson Square, Vancouver, British Columbia, V6Z 2H2. Telephone: (604) 682-5250. Fax: (604) 682-7872. Counsel Reference: R. J. Randall Hordo, Q.C. and Paul R. Bennett, Joseph Arvay, Q.C. and Marilyn Sandford

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DEFENDANTS

STATEMENT OF CLAIM

#3491
PB/ca

HORDO & BENNETT
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**WRIT OF SUMMONS
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#3491
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