

ACTION NO.: 1003 11076

IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

**JABNEEL DEVELOPMENT INC. and  
CONSTRUCTION JABNEEL INC.**

Plaintiffs

- and -

**THE TOWN OF LAMONT and  
TOM MILLER**

Defendants

**STATEMENT OF CLAIM**

1. The Plaintiff Jabneel Development Inc. is a corporation duly incorporated pursuant to the laws of Alberta which carries on business as a land developer in the Province of Alberta.
2. The Plaintiff Construction Jabneel Inc. is a corporation registered federally pursuant to the laws of Canada and extra-provincially registered in the Province of Alberta. It carries on business as a residential and commercial builder in the Province of Alberta. The two corporate Plaintiffs are collectively referred to as "Jabneel" herein.
3. The Defendant, the Town of Lamont ("Lamont") is a Town located in the Province of Alberta and is incorporated as a municipality pursuant to the *Municipal Government Act* of Alberta. It is situated approximately 70 kms North East of the City of Edmonton in the Province of Alberta.
4. At all material times hereto Tom Miller is and was an employee of Lamont who resided and resides in or near the Town of Lamont in the Province of Alberta.

5. On or about December 12, 2006, Jabneel and Lamont entered into three separate Memorandums of Agreement prepared by Lamont ("the Development Agreements") which contemplated a large phased development of lands within Lamont.
6. The Development Agreements were on lands legally described as follows:
  - a) SW 21-55-19-W4 ("Edna Subdivision" or "Edna")
  - b) SW 20-55-19-W4 ("Westerly Subdivision" or "Westerly")
  - c) NW 21-55-19-W4 ("Northerly Subdivision" or "Northerly")
7. Jabneel and Lamont also entered into three related Master Sale Agreements prepared by Lamont ("the Master Sales Agreements") with respect to the Edna, Westerly and Northerly subdivisions with effective dates of December 1, 2006.
8. As a result of delays in commencing construction occasioned by Lamont, Jabneel and Lamont entered into certain amendments to some or all of the Development Agreements and Master Sales Agreements on or about September 25, 2007.
9. Jabneel states however that fundamental elements of both the Development Agreements and the Master Sales Agreements regarding the phased development and construction timetables remained incomplete at the time of execution and when brought to the attention of Lamont, through it's agents and employees it refused or neglected to complete contractual provisions that were necessary to give proper effect to these Agreements.
10. Since entering into the Development Agreements and the Master Sales Agreements, Jabneel has expended all or most of its financial resources in excess of 3.6 million dollars in efforts to attempt to develop the Edna, Westerly and Northerly Subdivisions in good faith and on a timely basis.
11. However, as a result of undue delay, negligence and the high-handed and improper conduct of Lamont (through its employees and agents) and in particular the conduct of Tom Miller which constitutes bad faith, Jabneel has been deprived of its opportunity to bring what was anticipated to be a 1200 unit, phased

residential development project with anticipated net profits of approximately \$120,000,000.00 to fruition.

12. Jabneel's valuation of the Edna, Westerly and Northerly Subdivision's lands alone as at March 2008 was \$35,000,000.00.
13. The conduct of Lamont and/or Miller as the case may be amounts to a substantial breach of legal and contractual duties to act in good faith and in timely manner with respect to matters within their control and discretion.
14. Particulars of negligence and breaches of the Agreements on the part of Lamont and/or Miller include but are not limited to:
  - a) failing to transfer land to Jabneel as required under the Agreements;
  - b) excessive delay in transferring land as required under the Agreements;
  - c) failing to take necessary steps in order to obtain Third Party approvals necessary to give Jabneel approvals as required under the Agreements;
  - d) issuing "Stop Work Orders" and levying excessive penalties for frivolous and unnecessary reasons;
  - e) failing and refusing to pay invoicing submitted to it by Jabneel for valuable services rendered to Lamont and pursuant to Lamont's obligation to do so under the Agreements;
  - f) repeatedly and arbitrarily refusing approvals for conceptual plans and subdivision plans without providing any valid reason or sufficient reasons whatsoever;
  - g) granting approvals immediately before pending deadlines under the Agreements when it knew or ought to have known that Jabneel would be unable to take necessary steps to meet its obligations under the Agreements thereafter;
  - h) deliberately sending important notices to incorrect addresses and addresses not contemplated or agreed upon under the Agreements;
  - i) wrongfully obtaining and withholding Jabneel's \$406,500.00 construction bond thereby causing Jabneel to be unable to meet certain Third Party liabilities on the Edna, Westerly and Northerly Subdivisions;
  - j) falsely and improperly accusing Jabneel of being in breach of the Agreements;

- k) refusing to submit to or attend to mediation or arbitration when requested to do so under the Agreements;
  - l) failing to give necessary extensions to Jabneel as required under the Agreements;
  - m) failing to take steps to have Miller removed from handling Jabneel's project;
  - n) wrongfully attempting to terminate the Agreements;
  - o) failing to fund advertising budgets as agreed upon;
  - p) interfering in third party contractual relations;
  - q) making racist comments to the Director(s) of Jabneel;
  - r) using intimidation tactics against the Director(s) of Jabneel;
  - s) such other breaches of contract or negligence as will be proven at trial.
15. Jabneel states that at a material time, Miller approached the President of Jabneel and asked for a 5% cash commission ("kickback") which he called fees on all sales that he would personally refer to Jabneel.
16. Miller stated at that time that payment of a kickback would "ensure the proper functioning" of Jabneel's projects in Lamont.
17. After having caused its legal counsel to perform research on the legality of such a kickback as proposed by Miller, Jabneel determined that this request was contrary to and in violation of sections 121 and 123 of the *Criminal Code of Canada*. Accordingly Jabneel communicated to Miller that it would not entertain this notion.
18. Miller assured Jabneel thereafter that he would personally see to it that their projects would be delayed to the point of failure in the Town of Lamont.
19. In conducting himself in this manner, Miller acted outside of the scope of his employment duties and exposed himself to personal liability for attempting to obtain kickbacks from Jabneel and for acting in bad faith thereafter.
20. Further improper conduct constituting bad faith on Miller's part which exposes him to personal liability include but are not limited to:

- a) unilaterally and wrongfully altering important contractual documents to have them then signed by Jabneel's Director(s);
  - b) threatening Jabneel, its officers and agents both verbally and in writing;
  - c) voluntarily delaying and refusing to sign transfers of land sent to him by Lamont's solicitors as required;
  - d) directly contacting actual buyers and potential buyers of Jabneel in order to discourage them from investing in its projects which conduct amounts to tortious interference with contracts;
  - e) interfering with Jabneel's contractual relations with other Third Party service providers and professionals;
  - f) influencing, controlling and or directing Lamont's conduct as described in the within Statement of Claim;
  - g) making racist comments toward the Director(s) of Jabneel;
  - h) such other improper conduct or elements of bad faith as will be proven at trial.
21. It is important and noteworthy that at the time Jabneel commenced development and other valuable work on Edna, Westerly and Northerly Subdivisions the economic conditions in and around the Town of Lamont were extremely favourable to Jabneel as it was being approached by several large companies to build long term housing for their employees. Sales statistics have also shown a substantial increase for the first quarter of 2010.
22. As a direct result of the conduct and breaches of Miller and Lamont as described herein, Jabneel lost its opportunity to sell or pre-sell large volumes of residential housing in Edna, Northerly and Westerly. Jabneel claims past damages in the amount of \$3,350,000.00 for loss of past profits to date. These losses continue to accrue on a daily basis.
23. Jabneel also lost actual confirmed sales in the amount of \$ 1,650,000.00 as a direct result of Lamont's and Miller's conduct as described herein.
24. As a direct result of the conduct of Miller and of Lamont as described herein, Jabneel has been unable to recover deposits it placed with third parties totalling \$33,000.00.

25. Furthermore Jabneel has injected shareholder loans in the amount of \$2,040,000.00 to date into infrastructure land development and related expenses. It has also raised investment capital in the amount of \$800,000.00 in an attempt to further development under the Agreements. These amounts of money may not be recoverable and are being claimed herein as damages.
26. Jabneel states that as a result of the conduct of Miller and of Lamont as described herein Jabneel has been unable to repay its shareholder loans and its investor loans and has had Judgement awarded against it in the principal amount of \$900,000.00. It has also incurred interest on loans totalling \$321,000.00 to date and has been forced to transfer land and lots totalling \$750,000.00.
27. Furthermore Jabneel has had to spend monies on legal fees, related lawsuits, out of pocket expenses and other special damages in the amount of \$81,000.00 or such amount as will be proven at trial.
28. Jabneel states that as a result of the conduct of Miller and of Lamont as described herein, it has unnecessarily spent monies on wages, contracts and related expenses in the amount of \$307,500.00 or such amount as will be proven at trial.
29. Jabneel states that as a result of the conduct of Miller and of Lamont as described herein, it is no longer able to obtain a construction bond, (which construction bond in the amount of \$406,500.00 was wrongfully seized by Lamont and /or Miller) or obtain credit or loans to continue its work. It will also require further funds that it cannot obtain to complete work on lots. It is claiming total losses and compensation under clause 29 herein in the amount of \$5,992,000.00 or such amount as will be proven at trial.
30. Jabneel states that as a result of the conduct of Miller and of Lamont as described herein, specifically placing a stop work order frivolously, vexatiously and without appropriate notice, Jabneel's losses totalled \$125,000.00.
31. Further losses include \$350,000.00 due and owing to unpaid suppliers and related third parties.

32. Pursuant to the Agreements between the parties Jabneel has rendered invoices to Lamont for which Lamont is responsible for payment in the amount of \$217,550.00 to date (inclusive of interest). Despite demand for payment, Lamont has refused to pay these to date. Miller wrote an official letter to Jabneel on Town letterhead stating that "the work done was bogus" and returned all or some of the invoices via fax with notation stating that the invoices "will never be paid" handwritten on them.
33. Based on its sales projections, Jabneel anticipates that over the next 3 years it would have made net profits on residential sales in the amount of \$10,500,000.00.
34. Furthermore, Lamont has unilaterally and without notice to Jabneel planned and built a water reservoir in the heart of the Westerly lands spanning over 2.5 hectares of land, resulting in a loss of opportunity to build residential housing thereon totalling a further \$1,550,000.00 in future lost opportunity.
35. As a direct result of Lamont's threats to terminate all Agreements between the parties, Jabneel has filed caveats of all of the lands to protect its interest thereon.
36. Jabneel proposes that a trial of this issue be held in the Court of Queen's Bench of Alberta, Judicial District of Edmonton.
37. The Plaintiffs propose that the trial of this action be held at the Law Courts Building, in the City of Edmonton, in the Province of Alberta. The Plaintiffs do not expect that the trial of this matter will take longer than 25 days.

**WHEREFORE THE PLAINTIFFS CLAIMS AGAINST TOM MILLER PERSONALLY:**

- a) a Declaration that Miller's conduct constitutes bad faith, abuse of power and tortious interference in contractual relations;
- b) punitive and exemplary damages in the amount of \$250,000.00;
- c) Interest on the above claimed awards pursuant to the terms of the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto;



- d) solicitor and own client costs;
- e) such further and other relief as this Honourable Court deems fit and just.

**WHEREFORE THE PLAINTIFFS CLAIMS AGAINST THE DEFENDANTS JOINTLY AND SEVERALLY:**

- a) a Declaration that the Plaintiffs' Caveats on the Edna, Westerly and Northerly lands are valid;
- b) damages and/or judgment in the amount of \$28,523,550.00;
- c) punitive damages in the amount of \$500,000.00;
- d) an Order directing that the Plaintiffs' construction bond in the principal amount of \$406,5000.00 be returned to it forthwith;
- e) a Declaration or Order that all Agreements between the parties are in full force and effect and have to be updated and completed accordingly;
- f) Order that Tom Miller is prohibited from having any further involvement directly or indirectly with the Plaintiffs and their project in Lamont;
- g) Interest on the above claimed awards pursuant to the terms of the *Judgment Interest Act*, R.S.A. 2000, c. J-1 and amendments thereto;
- h) solicitor and own client costs;
- i) such further and other relief as this Honourable Court deems fit and just.

DATED at the City of Edmonton, in the Province of Alberta, this 29 day of June, 2010  
AND DELIVERED by Messrs. Nickerson Roberts Holinski & Mercer, Barristers and Solicitors, 100, 7712 - 104<sup>th</sup> Street, Edmonton, Alberta, T6E 4C5, Solicitors for the Plaintiff herein, whose address for service is in care of the said solicitors.8

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Edmonton, at the City of Edmonton, in the Province of Alberta, this 29 day of June, 2010.

  
CLERK OF THE COURT OF  
QUEEN'S BENCH OF ALBERTA 

1003-1-115

**NOTICE TO THE DEFENDANTS:**

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Edmonton, Alberta.

You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

**WARNING:** If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court Judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by the solicitors for the Plaintiff whose name and address for service is:

Nickerson Roberts Holinski & Mercer  
Barristers and Solicitors  
100, 7712 – 104th Street  
Edmonton, Alberta T6E 4C5

Phone: 780-428-0041

The Defendants addresses are:

Action No.:

---

**IN THE COURT OF QUEEN'S BENCH OF ALBERTA**  
**JUDICIAL DISTRICT OF EDMONTON**

---

**BETWEEN:**

**JABNEEL DEVELOPMENT INC. and  
CONSTRUCTION JABNEEL INC.**

Plaintif

- and -

**THE TOWN OF LAMONT  
and  
TOM MILLER**

Defendants

---

**STATEMENT OF CLAIM**

---

**NICKERSON ROBERTS  
HOLINSKI & MERCER**  
Barristers and Solicitors  
100, 7712 – 104<sup>th</sup> Street  
Edmonton, Alberta T6E 4C5

**Solicitor: PAUL R. FOISY**  
T: 780-428-0041  
F: 780-425-0272

File No.: 61589PF

