

Court File No. 07-CV-327484 PD

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

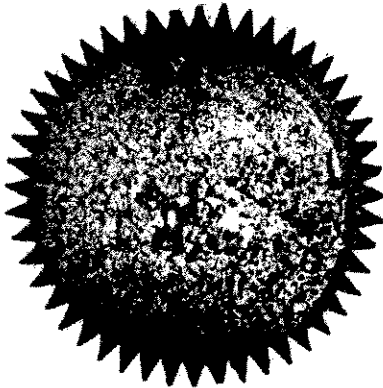
HEARTHMAKERS ENERGY COOPERATIVE INC.

Plaintiff

- and -

GAIA POWER INC.

Defendant



NOTICE OF ACTION

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this notice of action is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

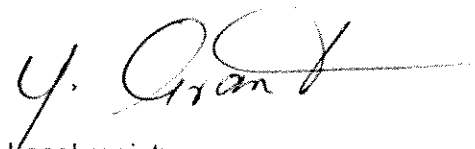
Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

(Where the claim made is for money only, include the following:)

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1000 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date February 9th 2007

Issued by 

Local registrar
393 University Ave.,
10th Floor
Toronto, Ontario
M5G 1E6

Address of
court office

TO: GAIA POWER INC.
574 Princess St.,
Suite 205
Kingston, Ontario
K7L 1C9

CLAIM

1. THE PLAINTIFF CLAIMS FOR

- a. Damages in the amount of \$10,000,000;
 - b. An accounting of the land lease options entered into on behalf of the Plaintiff;
 - c. Its costs on a substantial indemnity scale;
 - d. Pre and post-judgment interest pursuant to the *Courts of Justice Act*, and
 - e. Such further and other relief as may be just.
2. Damages arise from transactions related to the Joint Venture Option Agreement, dated April 14, 2004, entered into between the Plaintiff and Defendant Gaia Power Inc. (**Gaia**) and the August 4, 2004 Agreement between the Defendant and Plaintiff.
 3. On behalf of the Plaintiff, Gaia negotiated land lease option agreements (**Option Agreements**) with landowners on Wolfe Island, County of Frontenac, Ontario.
 4. Gaia assigned the Option Agreements without the knowledge or authority of the Plaintiff. Gaia did so in breach of its duties under a power of attorney from the Plaintiff, by failing to act solely for the principal's benefit in all matters connected with the agency. ^{Gaia}
 5. Gaia has breached the fiduciary duty it owed to the Plaintiff under the power of attorney.

February 9, 2007

ILER CAMPBELL LLP
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890 Yonge Street, Suite 700
Toronto, Ontario M4W 3P4

Telephone: (416) 598-0103
Facsimile: (416) 598-3484

Paula Boutis
LSUC #43875L
Solicitor for the Respondent/Co-operative

HEARTHMAKERS ENERGY CO-OPERATIVE INC.
(Plaintiff)

- and -

GAIA POWER INC.
(Defendant)

Court File No.
OT-CV-327484P03

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

NOTICE OF ACTION

ILER CAMPBELL LLP

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Paula Boutis
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Solicitor for the Plaintiff
Hearthmakers Energy Co-operative Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HEARTHMAKERS ENERGY COOPERATIVE INC.

Plaintiff

- and -

GAIA POWER INC.

Defendant

STATEMENT OF CLAIM

Notice of action issued on February 9, 2007

1. THE PLAINTIFF CLAIMS

- a. Damages in the amount of \$10,000,000;
- b. An accounting of the land lease options entered into on behalf of the Plaintiff;
- c. Its costs on a substantial indemnity scale;
- d. Pre and post-judgment interest pursuant to the *Courts of Justice Act*; and
- e. Such further and other relief as may be just.

The Parties

2. The Plaintiff, Hearthmakers Energy Cooperative Inc. (**Hearthmakers**), is a cooperative corporation incorporated under the laws of the Province of Ontario. Hearthmakers works to provide renewable energy and environmental services and products to members in the Southeastern Ontario region.

3. The Defendant, Gaia Power Inc. (**Gaia**), is a corporation incorporated under the laws of the Province of Ontario. Gaia carries on the business of building, installing and operating high reliability renewable electricity generating systems, with a strong focus on wind power development.

Greater Kingston Trade Winds Project

4. On or about May 1, 2002, Hearthmakers entered into a contract with Gaia to project manage and develop the Greater Kingston Trade Winds Project (**GKTW Project**).
5. The purposes of the GKTW Project included development of a wind power generation project in the Greater Kingston Area.
6. In pursuit of the GKTW Project, Gaia, on behalf of Hearthmakers, negotiated option to lease agreements with seven landowners on Wolfe Island, County of Frontenac (**Option to Lease Agreements**).
7. The total land area for the Option to Lease Agreements was approximately 1233 acres.
8. Gaia, on behalf of Hearthmakers, paid sums to landowners as required by the Option to Lease Agreements.
9. On or about April 15, 2004, Hearthmakers granted Gaia a power of attorney for the Option to Lease Agreements and Gaia granted Hearthmakers a joint venture agreement option (**Joint Venture Agreement Option**) in future wind development projects.

10. On or about August 4, 2004, Hearthmakers and Gaia entered into another agreement regarding assignment of the Option to Lease Agreements by Hearthmakers **(Assignment Agreement)**.
11. The Assignment Agreement recognized that Gaia had entered into an agreement with Ontario Wind Energy Partners Inc. (**OWEP**) as joint venturers for pursuing GKTWP **(Gaia-OWEP Joint Venture)**.
12. Under the Assignment Agreement, Hearthmakers agreed to assign its Option to Lease Agreements to the OWEP-Gaia Joint Venture if the OWEP-Gaia Joint Venture determined to proceed with the construction of wind turbines on the lands to which the Option to Lease Agreements related.
13. The Assignment Agreement did not revoke the power of attorney Hearthmakers granted to Gaia under the Joint Venture Agreement Option.
14. The OWEP-Gaia Joint Venture never proceeded.
15. Subsequently, Hearthmakers believes Gaia exercised its power of authority to assign the Option to Lease Agreements to Canadian Hydro.
16. Gaia made this assignment without the knowledge or authority of Hearthmakers.

Breach of Fiduciary Duty

17. The power of attorney granted to Gaia for the Option to Lease Agreements was for Gaia to help facilitate wind project development as part of the GKTW Project and to permit Gaia to enter into joint partnerships and agreement with other entities for the development of the GKTW Project.
18. Under the power of attorney, Gaia is the agent of its principal, Hearthmakers.
19. The power of attorney did not authorize Gaia to assign the Option to Lease Agreements to other entities.
20. In assigning the Option to Lease Agreements to Canadian Hydro, Gaia breached its fiduciary duties under the power of attorney granted to it by Hearthmakers.
21. Gaia, as agent to Hearthmakers in the power of attorney, made profits without the knowledge of Hearthmakers, the principal.
22. Hearthmakers has demanded full and fair disclosure of all of Gaia's dealings related to the assigned of Option to Lease Agreements to Canadian Hydro.
23. Gaia has failed to disclose to Hearthmakers its dealings with Canadian Hydro.
24. Gaia has not acted solely for Hearthmakers', its principal's, benefit in all matters connected with the agency.

Damages

25. Gaia's actions referred to in paragraphs 15, 16, 20, 21, 23, and 24 have resulted in damages to Hearthmakers.
26. Hearthmakers is entitled to a full accounting of the Option to Lease Agreements assigned to Canadian Hydro, including the price paid to Gaia for the assignment of Option to Lease Agreements.
27. Hearthmakers proposes this action be tried at Kingston, Ontario.

March 9, 2007

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Paula Boutis
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Solicitor for the Respondent/Co-operative

HEARTHMAKERS ENERGY CO-OPERATIVE INC.
(Plaintiff)

- and -

GAIA POWER INC.
(Defendant)

Court File No. 07-CV-327484 PD3

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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