

FAX TRANSMISSION COVER SHEET

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DATE July 24, 2017

FILE NO: MAT2893

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TO: Ms. Jennifer Duff
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FROM: Charles L. Merovitz
RE: Brock Marshall et al. ats The Ottawa Hospital

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(COVER PAGE INCLUDED)

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Comments: Please find enclosed our Statement of Defence and Counterclaim
which is served upon you pursuant to the Rules of Civil Procedure.



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July 24, 2017

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Attention: Ms. Jennifer Duff

Dear Sirs/MadamL

**RE: Brock Marshall et al. ats The Ottawa Hospital
Court File No.: 16-67028**

Enclosed and served upon you pursuant to the *Rules of Civil Procedure* is a copy of our Statement of Defence and Counterclaim.

Yours very truly,
MEROVITZ POTECHIN LLP

Charles L. Merovitz
CLM/
Enclosure

Court File No. 16-67028

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE OTTAWA HOSPITAL

Plaintiff

and

**GERARD (GERRY) DUBE, 1436937 ONTARIO INC. (O/A D.R.S.
CONSTRUCTION, LARRY ST. PIERRE, FEDERAL ELECTRIC (1976) LIMITED,
GUY ADRIAN LAPIERRE, G.A.L. POWER SYSTEMS OTTAWA LTD., ROCH
ST-Louis, PRO MANAGEMENT CONSTRUCTION INC., OTTAWA
DIAMOND CONSTRUCTION INC., FRANK J. MEDWENITSCH
and BROCK MARSHALL**

Defendants

AND BETTWN:

BROCK MARSHALL

Plaintiff by Counterclaim

and

THE OTTAWA HOSPITAL

Defendant by Counterclaim

**STATEMENT OF DEFENCE AND COUNTERCLAIM
OF BROCK MARSHALL**

OVERVIEW

1. This Claim slanders the reputation of Brock Marshall ("Brock"), a dedicated, loyal and honest former employee of the Plaintiff. It is a series of generalizations that may apply to others but certainly does not apply to Brock. Brock started his career at the Civic Hospital in 1988 as the coordinator of mechanical projects and then became the director of engineering and operation for all three

campuses of The Ottawa Hospital when The Ottawa General Hospital, The Riverside Hospital and The Ottawa Civic Hospital (hereinafter collectively called "The Hospital") amalgamated in 1999.

2. Brock was a team player. All projects were prepared and tendered by others in his department and multiple bids were always obtained. Brock never permitted improper or inflated bids and all bids and tenders were reviewed by others in his department for final approval. Brock never limited competition on projects and the decisions of his team were only overrode by him if there was an opportunity to reduce the price. In over 99% of the time, these bids were always opened publicly as Brock always wanted to ensure transparency.

3. Brock never accepted gifts or kickbacks and never approved a payment that was improper. Whenever there was any doubt of whether an invoice ought to be paid, Brock conducted due diligence and consulted with others to determine whether payment was appropriate. On many occasions Brock denied payment to these contractors who are named as Defendants in this Claim, despite the urging of others in the Hospital. On many occasions, despite the urging of his superiors, Brock made sure that the bidding process was fair and transparent. Despite the fact that the senior executives in the Hospital only paid lip service to the gift policy, Brock complied with the gift policy.

4. Brock spent 28 years making sure the Hospital was run as efficiently as possible and found savings as every opportunity arose. Upon his departure, the

team that he led had accumulated in excess of \$30,000,000.00 in energy savings. During his employment, Brock and his family donated over \$20,000.00 to the Hospital Foundation, and he directly raised over \$50,000.00 through Race Weekend and The Ride. Brock has been unfairly vilified by the generalizations in this Claim. The scandalous allegations in this Claim have resulted in Brock's well-earned severance package being terminated and his inability to obtain employment or contracts as a consultant. Brock is entitled to the reinstatement of his severance package and an apology for these unwarranted accusations.

5. Brock admits the allegations contained in paragraphs 3, 4 and 5 (except for the allegation of participation in the fraudulent scheme), 6 (except for the first two sentences), 7 (except for the first two sentences), 8 (except for the first two sentences), 11 (except for the last sentence), 12-20, 21 (except the last sentence) and 22 of the Statement of Claim.

6. Brock denies the allegations contained in paragraphs 1, 2, 9, 23-28, 30, 32, 35-50 and 54-74 of the Statement of Claim.

7. Brock has no knowledge in respect of the allegations contained in paragraphs 6 (except for the last two sentences), 8 (except for the last sentence), 21 (except the last sentence), 27, 29, 31, 33, 34, 51, 52 and 53 of the Statement of Claim.

BACKGROUND

8. Brock started his career at the Civic Hospital in 1988 as the coordinator of mechanical projects. He later became the director of engineering and operation for all three campuses of The Hospital when The Ottawa General Hospital, The Riverside Hospital and The Ottawa Civic Hospital amalgamated in 1999.

9. Brock worked for the Hospital for 28 years, until his retirement in or about July 31, 2015.

10. With respect to the policies referred to in paragraphs 11 through 20 of the Statement of Claim, Brock states that many of these policies were ignored by the employees of the Hospital, including senior executives of the Hospital.

TRANSPARENT BID PROCESS

11. Brock wanted to ensure that his project managers were involved in every step of the tender process. In Brock's group, bids were always issued by team members who reported to Brock. The team worked with architects and engineers to develop plans and issue documentation simultaneously to all qualified bidders. The results were reviewed with architects and engineers, approved by the managers and then sent to Brock electronically for his approval, if required. The tendered documents would be opened at a meeting at which all tenderers were invited. Change Orders on all projects were reviewed by the consultants first and then approved by the manager. Only Change Orders that were above the

manager's approval limits were sent to Brock for approval. Documentation to prove all of the above can be found on the Hospital's computer drive(s). The documents are detailed minutes Brock had with his staff with respect to all construction activities. They include, but are not limited to, project description, tender issuance results and awards, regular updates, changes in scope, review of any change orders and final payment. Brock ensured that these were readily available to all parties especially his superiors, Cameron Love and Joanne Read.

BROCK ACTED HONOURABLY AND LAWFULLY

12. With regards to the allegations contained in paragraph 23 of the Statement of Claim, Brock specifically denies that he permitted any contractor to receive advance inside information that would assist them in their bidding. Brock states that all of his projects were prepared and tendered by others in his department.

13. With regards to the allegations contained in paragraph 24 of the Statement of Claim, Brock specifically denies that he ever limited the number of bidders or excluded competitors from bidding or allowed any contractor to have influence over tenders. In fact, Brock specifically recalls that at times he was requested by his superiors to give a project to the Defendant, 1436937 Ontario Inc. (o/a D.R.S Construction ("D.R.S.") and even then, he would get at least one additional quote.

14. With regards to the allegations contained in paragraph 25 of the Statement of Claim, Brock denies that he ever allowed improper or inflated bids and all bids were reviewed by others in his department for final approval. Brock denies that he allowed or approved improper invoices and states that he always ensured that the Hospital received fair value, prior to authorizing any payment for an invoice.

15. With regards to the allegations contained in paragraph 26 of the Statement of Claim, other than some lunches or dinners with contractors, Brock denies that he ever accepted any gifts of any nature that ought to have been disclosed to the Hospital that was not disclosed. In fact, Brock did declare many such lunches or dinners. Brock denies that he ever provided an improper procurement advantage to a contractor. Brock never accepted a kickback or went on a fishing trip.

16. With regards to the allegations contained in paragraph 32 of the Statement of Claim, Brock specifically denies participating in any transaction involving the purchase of a motor vehicle that provided a gift to him. Brock admits that he did purchase two vehicles but states that he paid a fair price for those two vehicles and any ongoing services.

17. With regards to the allegations contained in paragraph 35 of the Statement of Claim, Brock states that he did advise his superior, Cameron Love, that he was contemplating entering into a contract with the Defendant Ottawa Diamond

Construction Inc., ("Ottawa Diamond") for some renovations. Mr. Love did not seem to care and in fact, Mr. Love himself had work done on his own property by the same contractor. Brock states that he paid fair value for the work that was done on his property.

18. With regards to the allegations contained in paragraph 36 of the Statement of Claim, Brock admits accepting tickets to a couple of games over the years as did numerous other employees including senior executives of the Hospital. Brock thinks that he did appropriately declare these tickets as gifts.

ATTEMPTED COERCION FAILED

19. With regards to the allegations contained in paragraphs 44 to 49 of the Statement of Claim, Brock admits that while there was an attempt to coerce Brock to approve dubious invoices, he never agreed to process improper or overstated prices. Brock states that he paid fair value for all work done on his home and farm and ultimately Mr. St. Louis conceded to Brock that he did not owe anything additional for the work done on his home and farm.

20. Brock specifically denies the allegations contained in paragraphs 49 and 50 of the Statement of Claim, and states that he never agreed to process improper or overstated invoices. Brock created a team of people, including Fred Kendall (manager of electrical (civil)) and Bill Wright (trades supervisor) to review these invoices and some were rejected outright and others required more

investigation. Brock made sure that his boss, Joanne Read ("Read"), was provided with a copy of the entire batch of invoices and that no invoice would be paid unless it could be justified. Brock himself did not approve a single invoice for payment. It was Read who told Brock that the Hospital needed to pay these invoices, if the money was actually owed. The plan was that Brock's team would ensure that the invoiced work was actually done and once it was determined that it was done, it had to be determined whether it was done by D.R.S. After that was determined, it had to be determined that the costs were fair and reasonable and that the Hospital had not previously paid for the work. When Brock left the Hospital, all the invoices and whatever documentation that was found, was handed to Mr. Kendall and no invoices had yet been approved. Mr. Kendall was supposed to ensure that Read was given this information and Read said that she would take care of this and nothing would be paid until she reviewed the invoices and met with the Defendant, Gerard (Gerry) Dube ("Dube").

DAMAGES

21. Brock denies that the Hospital has suffered any damages as alleged or at all, and puts the Hospital to the strict proof thereof. In the event and to the extent that the Hospital may be found to have suffered any loss or damages, its Claim as against Brock is excessive and remote, and in any case the Hospital alone is the author of its own misfortune, if any.

22. At all material times, the Hospital had a senior management team, an Executive Vice-President and Chief Operating Officer, as well as a Board of Directors and Audit Commission review Brock's conduct. In addition, outside accountants performed a full audit on an annual basis. None of them gave any direction at all to change or adjust the process which Brock or others within his Department followed.

23. On the contrary, the Hospital's senior managers including, but not limited to, Cameron Love, regularly failed to respect directives and/or guidelines established by Ontario's Ministry of Health and Long-Term Care ("Ministry") in matters of procurement.

24. In cases where construction projects were approved through Ministry guidelines, Cameron Love at times directed Hospital staff to allocate the cost of other projects on the Ministry-funded project in question, without the Ministry's knowledge or consent.

25. In the event that there is found to be anything inappropriate in Brock's conduct, which is not admitted but expressly denied, the Hospital condoned Brock's conduct by failing to give him any direction to change, adjust or modify his conduct, despite having full knowledge of how he conducted himself in connection with the affairs of the Hospital. Accordingly, the Plaintiff has waived any complaint or has otherwise acquiesced in any such conduct, and is estopped from making this Claim.

-10-

26. Brock specifically denies the allegations in paragraph 72 with respect to the punitive damages. Brock states and the fact is that the basis for such an award, being that Brock acted fraudulently, and in a callous and deceitful manner, is without any merit and unsupported by any evidentiary foundation. Such baseless allegations justify the imposition of a cost award as against the Hospital on a full indemnity basis.

27. Brock submits that the Claim against him ought to be dismissed with costs on a full indemnity basis.

COUNTERCLAIM

28. The Plaintiff by Counterclaim, Brock Marshall ("Brock"), Claims from the Plaintiff/Defendant by Counterclaim, the Ottawa Hospital (hereinafter called "the Hospital"):

- (a) A declaration that his severance package was unlawfully terminated;
- (b) General damages for negligence in the amount of \$2,000,000.00;
- (c) Damages for defamation in the amount of \$2,000,000.00;
- (d) Punitive, exemplary and aggravated damages in the amount of \$500,000.00;
- (e) Prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) Postjudgment interest in accordance with section 129 of the *Courts of Justice Act*;
- (g) The costs of this proceeding on a full indemnity basis, plus all applicable taxes; and,
- (h) Such further and other Relief as to this Honourable Court may seem just.

29. The Plaintiff by Counterclaim, Brock Marshall ("Brock"), repeats and relies upon the allegations in the Statement of Defence in support of the Counterclaim.

30. Brock states that he has always been a loyal, honest and diligent employee of the Hospital.

31. Brock retired from the Hospital on or about July 31, 2015, and was given a severance package that included fifty-two (52) weeks of salary plus pension and benefits.

32. On or about the middle of August 2015, Cameron Love requested a meeting to discuss a confidential matter.

33. Brock agreed to meet and was surprised to see auditors from Deloitte at the meeting. He was never advised that he was under investigation.

34. On January 8, 2016, he was advised that his severance package was suspended.

The Defamation

35. On dates known to the Hospital but not to Brock, the Hospital made statements to persons unknown to Brock to the effect that:

a) Brock had engaged in a conspiracy with suppliers to the Hospital to give them improper procurement advantages and to allow them significant

influence over tenders, including limiting competition and manipulating the tender process;

- b) Approved improper invoices and inflated prices; and
- c) Received kickbacks.

36. The exact words used by the Hospital are known to the Hospital and not to Brock.

37. In their ordinary meaning and also in the particular context in which they were made, the statements made by the Hospital meant and would be understood to mean that Brock was dishonest;

38. None of the foregoing is true. Each statement is false, was made with the knowledge of the Hospital that it was false and is defamatory of Brock and led to Brock's inability to obtain suitable employment or contracts. Brock has suffered a loss of reputation as a result thereof, in addition to the monetary damages detailed below.

39. As a result of the foregoing statements, the baseless allegations in the Claim, the publicity surrounding this Claim, and as the intended result of such statements, Brock's life has been destroyed and his prior sterling reputation has been demolished.

40. Brock has suffered significant financial and emotional damages and will continue to suffer them for the rest of his life. Brock has been unable to obtain suitable employment or contracts and will likely continue to be unable to obtain suitable employment or contracts, hereafter.

41. Brock has been the victim of an incomplete, inadequate and negligent investigation.

42. Brock is being made the scapegoat for the failure of the Hospital's executives to require compliance with the written Hospital policies and to provide appropriate oversight and management.

43. As a result of the Defendant by Counterclaim's actions, negligent investigation and defamation referred to in the paragraphs above, Brock has suffered damage. The particulars of Brock's damages will be provided prior to trial.

44. The Plaintiff by Counterclaim pleads and relies upon the provisions of the Negligence Act, R.S.O. 1990 c. N.1, as amended.

45. The Plaintiff by Counterclaim asks that this counterclaim be heard at the same time as the main action.

-15-

July 21, 2017

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RCP-E 27A (July 1, 2007)

THE OTTAWA HOSPITAL
Plaintiff

V. **GERARD (GERRY) DUBE et al.**
Defendants

Court File No. 16-67028

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at
OTTAWA

STATEMENT OF DEFENCE AND COUNTERCLAIM

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RCP-E 4C (May 1, 2016)

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