

Court file no. 124/13

**ONTARIO
SUPERIOR COURT OF JUSTICE**

JAMES DANIEL BLACK and MARIAN ARLENE BLACK

Plaintiffs

- and -

**DUFFERIN WIND POWER INC.,
FARM OWNED POWER (MELANCTHON) LTD.,
SHIBLEY RIGHTON LLP and LESLIE MASON**

Defendants

(Court seal)

NOTICE OF ACTION

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

Date: April 12, 2013

Issued by: 
Local registrar

Address of court office
Dufferin County Courthouse
10 Louise Street
Orangeville, Ontario L9W 3P9

TO:

Dufferin Wind Power Inc.
161 Bay St, Suite 4550,
TD Canada Trust Tower
Toronto, ON M5J 2S1

Farm Owned Power (Melancthon) Ltd.
1 Valleywood Dr., Suite 3B
Markham, Ontario L3R 5L9

Shibley Righton LLP and Leslie Mason
250 University Ave, Suite 700
Toronto, Ontario, M5H 3E5

CLAIM

The plaintiffs' claim is for (set out a short statement of the nature of the plaintiff's claim).

1. (a) as against the defendants, Dufferin Wind Power Inc. and Farm Owned Power
(Melancthon) Ltd.

- (i) a declaration that certain contracts dated April 15, 2011 between the
plaintiffs and Farm Owned Power (Melancthon) Ltd. that have been assigned to
Dufferin Wind Power Inc. are null and void and unenforceable against the

plaintiffs, or in the alternative, rectification of the said contracts to reflect the true agreement between the plaintiffs and Farm Owned Power (Melancthon) Ltd.;

(ii) an interim and permanent injunction restraining the said defendants from taking any action pursuant to such contracts or entering upon the plaintiffs' lands for any purpose related to the said contracts;

(iii) an order as may be required rectifying the parcel register to delete the registrations of any documents registered on title pursuant to the said contracts;

(b) as against the defendants Shibley Righton LLP and Leslie Mason, damages in an amount to be determined for negligence in arising out of their representation of the plaintiffs in connection with the aforementioned contracts and the renewable wind energy being developed by the defendant, Dufferin Wind Power Inc.

(c) costs on a full or substantial indemnity scale;

(d) such further or other relief as may be just

2. The plaintiffs reside in the Township of Melancthon and are the owners of two farms and signed two contracts dated April 15, 2011 with Farm Owned Power (Melancthon) Ltd. that were subsequently assigned to Dufferin Wind Power Inc. in connection with the development of a renewable wind energy project.

3. The plaintiffs plead that such contracts are void on the grounds of unconscionability and misrepresentation and plead and rely on the doctrine of *non est factum* and in the alternative, that the said contract should be rectified to reflect the true agreement between

the plaintiffs and Farm Owned Power (Melancthon) Ltd. as assigned to Dufferin Wind Power Inc.

4. The defendant, Shibley Righton LLP is a law firm and the defendant, Leslie Mason, is a lawyer and a member of that firm, who represented the plaintiffs in connection with the aforementioned contracts and their dealings with Dufferin Wind Power Ltd.

5. The plaintiffs seek to recover damages caused by the conduct of the defendants, Shibley Righton LLP and Leslie Mason, as described below in a statement of claim to be filed:

(a) they were negligent in their representation of the plaintiffs in connection with the said contracts and failed to adequately advise the plaintiffs properly or at all of the consequences of entering into such contracts and in connection with their subsequent dealings with Dufferin Wind Power Inc.;

(b) they failed to disclose material fact in their possession relating to the said contracts and the plaintiffs' subsequent dealings with Dufferin Wind Power Inc.;

(c) they acted in a position of conflict of interest and should not have acted for the plaintiffs and should have ensured that the plaintiffs received proper legal representation and independent legal advice.

April 12, 2013

James Daniel Black and
Marian Arlene Black

518516 County Road 124
Melancthon, Ontario L9V 1V9
Telephone: (519) 925-6390

Plaintiffs

JAMES DANIEL BLACK and MARIAN ARLENE BLACK

and DUFFERIN WIND POWER INC. et al

Plaintiffs

Defendants

(Short title of proceeding)

Court file no. 124/13

SUPERIOR COURT OF JUSTICE
(Action commenced at Orangeville)

NOTICE OF ACTION

Name, address and telephone number of plaintiff's solicitor or plaintiff

James Daniel Black and
Marian Arlene Black
518156 County Road 124
Melancthon, Ontario
L9V 1V9

Telephone: (519) 925-6390

Plaintiffs