

ONTARIO COURT OF JUSTICE

B E T W E E N :

HER MAJESTY THE QUEEN

— AND —

GEORGE VASTIS and 1255723 ONTARIO INC.

Before Justice of the Peace Woloschuk

Heard on June 3, 17, 24, October 7, 14, 21, December 12, 16, 2004, February 15, 24, March 23, May 17, April 5, June 7, 8, September 19, 23, October 26, 18, December 15, 2005.

Reasons for Judgment released on April 20, 2006.

Sentencing submissions, May 18, 2006, June 15, 2006

John A. Olah for the Regional Municipality of Halton.

David Crocker for the defendant George Vastis and 1255723 Ontario Inc.

JUSTICE OF THE PEACE Woloschuk, J. S.:

On June 15, 2006, I clarified my reasons for judgment that were released on April 20, 2006. I stated, "The first issue I will deal with is the number of counts I convicted Mr. Vastis and 1255723 Ontario Inc. on April 20, 2006. In my reasons, I stated five counts instead of 10 counts in regards to the charges dated April 2nd and April 11th of 2003. It was a typographical error, and in any event, the final paragraph of my reasons clearly states that the convictions are for all the charges before the court and therefore, I am satisfied the record will now clarify the issue that the conviction is for the 10 counts. The next issue is that I am satisfied that section 19 (1) (b) of the *Forestry Act* has been made out and that there was a finding by me that the by-law had been contravened. And since the by-law was passed under a predecessor of the *Forestry Act*, I'm therefore registering convictions under section 19 (1) (b) of the *Forestry Act*. And finally, to be in compliance with the principles of *Kienapple*, and since I am of the view that all the counts arise out of the same cause or matter, all charges against the defendants dealing with the destruction of trees in a woodlot are stayed."

The defendants have been convicted, with ten counts, that on or about the 2nd day of April to the 11th day of April 2003, at the Town of Milton, Part Lots 19 and 20, Concession II (NDS), 4237 Fourth Line, did commit the offence of destroying a tree located in an Environmentally

Sensitive Area contrary to s. 3 (a), Regional Municipality of Halton By-law 79-83 and s. 19 (1) (b) of the *Forestry Act*, R.S.O. 1990, c.F. 26 as amended.

The defendants have also been convicted, that on the 14th or 15th day of July 2003, at the Town of Milton, Part Lots 19 and 20, Concession II (NDS), 4237 Fourth Line, did commit the offence of destroying a tree located in an Environmentally Sensitive Area contrary to s. 3 (a), Regional Municipality of Halton By-law 79-83 and s. 19 (1) (b) of the *Forestry Act*, R.S.O. 1990, c.F. 26 as amended.

To summarize Mr. Vastis and 1255723 ONTARIO INC. in four informations, have been convicted of a total of 11 counts each.

Background

The property in question is located at 4237 Fourth Line in the Town of Milton on the border with the Town of Oakville. Fourth Line is on the west of the property and Lower Base Line is to the north. There is a creek running through the south of the property. The area just east of the Fourth Line is farmland and the area of the property just north of the 407 Highway and north of Sixteen Mile Creek is the forested area in question.

Mr. Vastis is the president, and his wife Helen Vastis is the secretary of 1255723 Ontario Inc. the corporate defendant and the owner of the said property. Mr. Vastis participated in these activities as an agent for the corporation.

Nine sites were cleared and the clearings and the configurations were, for the most part, long and narrow, and I have found that these nine long and narrow clearings were for the purpose of creating a golf course.

The destruction of trees totalled approximately 23 acres, about 10 hectares.

Offence and penalty provisions

Section 12 of the Regional Municipality of Halton By-law 79-83 provides:

12. (1) Every person who:

(a) by himself or through any other person contravenes any provision of this By-law:

is guilty of an offence and on summary conviction is liable to a fine of not more than five thousand (\$5,000.00) or to imprisonment for a term of not more than three (3) months or to both.

(2) Subsection (2) of Section 6 of *The Trees Act* R.S.O. 1980 c. 510 as amended, provides that where a person is convicted of an offence pursuant to Subsection (1) of Section 6 of

The Trees Act R.S.O. 1980 c. 510 as amended, the court shall consider all evidence given in respect of the necessity of replanting the area on which trees have been destroyed and may order the owner of the said area to replant or have replanted thereon, such trees in such manner and within such a period of time as the court considers just, and to adequately maintain the replanted trees in such manner as the court considers proper.

Section 19 of the *Forestry Act*, R.S.O. 1990, c.F. 26 as amended provides:

19. (1) Every person who,

(b) alone or through any other person, contravenes any provision of a by-law passed under this Act, or a predecessor of this Act:

is guilty of an offence and on conviction is liable to a fine of not more than twenty thousand (\$20,000) or to imprisonment for a term of not more than three months, or to both. 1998, c. 18, Sched. I, s. 21; 2002, c. 17, Sched. C, s. 12 (5).

(2) If a person is convicted of an offence under clause (1) (b), the court shall consider all evidence given in respect of the necessity of replanting the area on which trees have been destroyed and may order the owner of the area to,

(a) replant the trees, in the manner and within the time that the court considers appropriate; and

(b) adequately maintain the replanted trees in the manner the court considers proper.

(3) The penalty set out in subsection (1) applies despite any lower penalty set out in a by-law. 1998, c. 18, Sched. I, s.21.

All this means that the options to the court are as follows:

- to fine the defendants up to \$ 20,000.00 on each count;
- to imprison Mr. Vastis for a term of not more than three months;
- to make a probation order in regards to Mr. Vastis pursuant to Section 72 of the *Provincial Offences Act*;
- to issue an order to the corporate defendant, the owner of the area in question to replant the affected areas.

Mr. Olah, for the Crown, in his submission is not asking for any term of imprisonment for Mr. Vastis but asks for a probation order to ensure that he implements the replanting and maintenance order that he is requesting the court imposes on the corporate defendant.

The Crown provided a report prepared by Gartner Lee Limited, (exhibit 1, sentencing), indicating four separate options for replanting, ranging in price and restoration effort from low, \$78,760.00, to high \$464,800.00. The Crown has asked for the highest level of restoration effort totalling \$464,800.00.

As to fines, the Crown asks for a substantial fine be imposed and submits that the total fines available in this case are \$480,000.00.

In his submissions, the Crown concludes, “The facts of this case represent one of the most serious violations in the Region. The motive was for profit and the accused have shown no remorse. In fact, they attempted to conceal their activities. They have very seriously, adversely impacted an environmentally sensitive area..”

The Defendants submit that the court should either impose a monetary fine or make a replanting order but not both. They also submit that no probation order should be made.

They submit that an appropriate fine, and consistent with case law, would be \$1,500.00 per offence. Mr. Crocker also submits that it would be an error in law to order a separate fine for each day of the April charges, and that instead, each of the April and July cutting events be treated as a separate incident.

If a replanting order is ordered, Mr. Crocker submits that the restoration plan set out by Stantec Consulting Inc. (the Stantec Report) is to be preferred to any of the restoration scenarios discussed in the report by Gartner Lee Inc. (the Gartner Report). The *Stantec Report* indicates that the cost for option 2 would be \$62,463.00.

In his oral submissions, Mr. Crocker stated, “ Mr. Vastis came from Greece with nothing and through hard work and some creativity, has made himself successful. The evidence in front of you with respect to what that success is, is that he owns land on which five gas stations exist with partners; he owns a driving range; and a corporation owns this piece of property. ...I suggest with respect that if he has made a mistake here, and your findings are that he has, that your sentence, whether it be a replanting order or a penalty, shouldn't tear down all that success.”

In my reasons of April 20, 2006, I found that George Vastis directed the cutting of the trees and his testimony was not credible as to the material issues before this court.

To summarize, I found that he was a sophisticated, experienced businessman with varied business interests. He ignored warnings to contact Conservation Halton and continued to remove material from the clearings notwithstanding the stop work orders he received.

I also found that he cleared the lands intending to build a golf course, and that removal of the trees was for commercial purposes and not personal use. He did this in a calculated effort to evade regulations.

In my view, this type of behaviour deserves a strong sanction that stresses the need for deterrence as enunciated in the key case in Ontario concerning regulatory sentencing, the decision on the Ontario Court of Appeal in *R. v. Cotton Felts Ltd.* Though this case dealt with *the Oc-*

cupational Health and Safety Act, the Court stressed the need for deterrence as being the principle goal in regulatory sentencing. It does, however, touch on the issue before this court. It states: “Examples of this type of statute are legion and cover all facets of life ranging from safety and consumer protection to ecological conservation.”

In my view, there is a need to send a strong message to all, that destruction of environmentally sensitive areas will not be tolerated in the province of Ontario.

There must, therefore, be specific deterrence to Mr. Vastis and the Corporation as well as general deterrence for the rest of the population.

The Crown has not asked for imprisonment of Mr. Vastis and I concur. That leaves the issue of fines and probation order for Mr. Vastis, and fines and a replanting order in regards to the corporate defendant.

The evidence clearly indicates that the corporate defendant is a smaller corporation with George Vastis and his wife Helen Vastis as the only officers. Clearly any penalty directed at either defendant will affect Mr. Vastis directly, as it should.

The defendants submitted that the court should order either a monetary fine or make a replanting order, but not both. I disagree. Though *R. v. Iacobelli* appears to have treated the cost of reforestation as a fine itself, I find that this case is different. It is important that the needs of justice are met and one criterion, in my view, is the issue of specific deterrence as it relates to Mr. Vastis. It must be clearly indicated, through a fine, that he must take personal responsibility for his actions, pay it himself, and not hide behind the corporation.

His improper behaviour in this matter calls for this. Considering all the evidence, the additional sanctions that I will place on him, as well as the corporate defendant; the appropriate fine in this matter is \$3,000.00 per count, for a total of \$33,000.00, plus the appropriate victim surcharges.

Since a replanting order will be made against the corporate defendant, I am satisfied that a fine in addition to the replanting order is not necessary. The replanting order will send a strong message of general deterrence and at the same time meet the interest of justice in this matter.

I find that a replanting order is appropriate under all these circumstances. The owner of the property is the corporate defendant and therefore the order is directed at it.

I have considered both the *Stantec Report* prepared for the defendants, and the *Gartner Lee Report* prepared for the prosecution. There is a vast difference in costs in these plans. In the *Gartner Lee Report* the replanting proposal ranges from \$78,760 to \$ 464,800. In the *Stantec Report*, the replanting proposal costs \$62,463.00.

The *Stantec Report* also offers an option to allow for ongoing agricultural use on the property by creating buffering of the drainage swales in the areas where the forest buffer has been removed. I dismiss this option, as in my view there is a requirement to reforest the area for deterrence purposes and not allow the defendants to benefit financially by continuing to farm the affected area. It also is not in accordance with the requirement in section 19 (2) of the *Forestry Act*.

I am also rejecting the reforestation plan put forward by the *Stantec Report* as it proposes to replant only about 30 percent of the affected area. This, in my view, is not full restoration of destroyed trees and would only initiate a partial replanting which, in my view, is not in accordance with section 19 (2), nor would it be in the interest of justice to replant only some of the trees that were destroyed.

That leaves the court with the *Gartner Lee Report* and its options.

I am rejecting the “compost only” option, as in my view, it does not comply with section 19 (2), since in this option there is no replanting.

There is also conflicting evidence, from the expert witnesses, as to the requirement for composting the whole area affected with mulch. There is some issue as to how great of an effect the tilling of the affected land will have to the reforestation plan. I am satisfied however, that with mulch pads as proposed in the *Gartner Lee Report* that this issue would meet with some success.

Any plan chosen will not immediately bring back the area to its condition prior to the deforestation. It will take many years. This leaves me to consider the “Low” and “Medium Level” of reforestation as proposed by the *Gartner Lee Report*. Though both fulfill the requirements pursuant to section 19 (2) the medium level of reforestation effort in my view is the most appropriate in this case.

The “Medium Level” is a much more intensive plan than the, “Low Level” totalling \$78,760.00. Though both would meet the definition of woodland under the *Forestry Act* the “Low” effort proposal would take 10 years more to become a forest, there will be an increased opportunity for rapid colonization of non-native species and therefore though the “Medium Level” of restoration effort is not perfect, it is the most suitable considering all the circumstances of this case. It also to some degree satisfies four out of five objectives as enunciated in the *Gartner Lee Report*.

The cost \$ 122,260.00 is sufficiently high enough to satisfy the issue of general deterrence as well as specific deterrence. The corporate defendant is not a large corporation and therefore the imposition of penalty should not be such as to potentially cause it such extreme hardship that it could go out of business.

The pricing in the *Gartner Lee Report* is from 2003. In all probability, the cost now could be higher depending on the current market price. Therefore, in fairness to the defendant, the po-

tential increased cost of the replanting and monitoring is limited to 10 percent over the projected cost of \$122,260.00.

The “Medium Level” plan is appropriate and the replanting order is to conform to the list in Appendix A of the *Gartner Lee Report*, which includes the following:

Seedling @ 2500 /ha
Shrubs
50 conifers
1500 whips
500 branched bareroots
tree guards
mulch pads
watering
monitoring (3 visits over 1 year)
and planting labour

The area to be replanted is the area deforested as indicated in figure 1, of the *Gartner Lee Report* (exhibit 1, sentencing) and the survey, (exhibit 21, trial).

The reforestation effort should begin when and as directed by the Regional Municipality of Halton, or their designated monitoring agency.

The spirit of the “Medium Level” reforestation plan should be followed. In particular the plant list in Appendix B of the *Gartner Lee Report* should be adhered to when determining the particular species of trees and shrubs, which are to be planted.

Mr. Vastis is the principal of the defendant corporation that has just been ordered to replant the affected area. To make certain that this occurs in accordance to this order and that Mr. Vastis does not commit the same or related or similar offence, I hereby order that George Vastis, pursuant to Section 72 of the *Provincial Offences Act*, be placed on probation to comply with the statutory conditions in subsection (2) and in accordance with subsection (3) the court prescribes the following provisions:

1. Mr. Vastis implement the replanting and maintenance order as directed by this court.
2. Mr. Vastis will report to a probation officer appointed by the Region of Halton to ensure compliance.

This order is in effect for a period of two years.

Delivered orally and released: September 19, 2006

Signed: “Justice of the Peace J. S. Woloschuk”