



Court File No.: CV-22 - 00001939-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

HAWKMOUNT INVESTMENT INC.

Plaintiff

and

**NAVITAX PROPERTY TAX CONSULTING PARALEGAL PROFESSIONAL
CORPORATION**

Defendant

Proceeding under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

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 statement of claim 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$5,000 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: 13 Dec 22

Issued by: 
Local Registrar

Address of court office 80 Dundas Street
London, ON N6A 6A3

TO: NAVITAX PROPERTY TAX CONSULTING
PARALEGAL PROFESSIONAL CORPORATION
380 Wellington St., Tower B, 6th Floor
London, ON N6A 5B5

CLAIM

1. The Plaintiff, HAWKMOUNT INVESTMENT INC., on its own behalf and on behalf of all Class members, seeks:
 - a. an Order certifying this proceeding as a class proceeding and appointing the Plaintiff as the Representative Plaintiff;
 - b. general damages for breach of contract or unjust enrichment, or both, in the amount of \$15 million dollars, or any such amount that this Honourable Court deems appropriate;
 - c. special damages for breach of contract or unjust enrichment, or both, in the amount of \$2 million dollars, or any such amount that this Honourable Court deems appropriate;
 - d. punitive damages in the amount of \$2 million dollars;
 - e. injunctive relief prohibiting the Defendant from continuing to send invoices for taxation years beyond the original term of its fee agreements with Class members;
 - f. pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c C. 43, as amended;
 - g. costs of this action, plus applicable taxes;
 - h. the costs of notice and of administering the plan of distribution for the recovery in this action, plus applicable taxes, pursuant to s. 26 of the *Class Proceedings Act*, 1992, SO 1992, c. 6; and
 - i. such further and other relief as this Honourable Court may deem just.

The Parties

1. The plaintiff, Hawkmount Investment Inc. (“**Hawkmount**”), is an Ontario property holding company with a registered address in Cambridge, Ontario.
2. Hawkmount is the registered owner of 21-23 Kenyon St., Brantford Ontario (“**Kenyon St.**”). A related corporation, Hawkmount Development Co. Inc., owns 6580 Wellington Rd 34, Cambridge, Ontario (“**Wellington Rd.**”).
3. The defendant, Navitax Property Tax Consulting Paralegal Professional Corporation (“**Navitax**”), is an Ontario company with a registered address in London, Ontario.

The Class

4. This action is brought on behalf of all persons who:
 - (a) entered into a contingency fee agreement with Navitax for representation in property assessment and taxation proceedings on their behalf with respect to properties in Ontario (a “**Fee Agreement**”); and
 - (b) paid money to Navitax in satisfaction of one or more invoices sent by Navitax in relation to one or more taxation years after the end of the stated term of the original Fee Agreement (the “**Class**”) from January 1, 2021 to present (the “**Class Period**”).

The Fee Agreement with Navitax

5. Class members entered into Fee Agreements with Navitax between January 1, 2016 and December 31, 2020.
6. In or around October, 2017, Hawkmount entered into a Fee Agreement with Navitax on behalf of itself and Hawkmount Development Co. Inc. The Fee Agreement provided that Navitax would pursue property tax savings on Hawkmount’s behalf in relation to both the Kenyon St. and Wellington Rd. properties.
7. The Fee Agreements signed by Hawkmount and other Class members were drafted by Navitax and were presented to Hawkmount and the other Class members as standard terms.
8. The “**Term**” of the Fee Agreements, as provided for in the “Term” clause of the Fee Agreements was to end on the later of December 31, 2020 or the conclusions of any property tax appeals in progress.
9. The Class members and Navitax agreed that the rights and obligations under the Fee Agreements would exist for the Term of the Fee Agreements, as specified in the “Term” clause.
10. During the Term of the Fee Agreements, Navitax and Class members agreed:

- (a) Class members would appoint Navitax as its representative for all matters associated with the property assessment and taxation proceedings and issues associated with the properties subject to the Fee Agreement;
- (b) Navitax would use all reasonable efforts to achieve property tax liability savings for Class members with respect to the subject properties;
- (c) Class members would pay Navitax a percentage of all property tax savings realized as a result of Navitax's representation for each taxation year falling within the Term of the Fee Agreements, plus any applicable appeal filing fees; and
- (d) Navitax would invoice Class members annually for the contingency fee for each taxation year subject to the Fee Agreement.

Ontario's Property Assessment Cycle

- 11. Ontario property assessments for the purpose of municipal property taxes are performed by the Municipal Property Assessment Corporation (the "MPAC"). The MPAC then shares the assessments with municipalities, who determine municipal property taxes based on the assessments and other factors.
- 12. Historically, property assessments in Ontario have operated on a four-year cycle, meaning that the MPAC values all properties in Ontario once every four years. The valuation date, established by the Government of Ontario, is a fixed day to which all properties are valued.
- 13. A property may also be reassessed at times other than the province-wide valuation dates in cases of a change to the property.
- 14. The last province-wide valuation date was January 1, 2016. In 2016, MPAC sent property assessment notices to all property owners in the province of Ontario. The 2016 notices reflect MPAC's assessed value and classification of Ontario properties as of January 1, 2016.
- 15. In March 2020, the Government of Ontario announced that it was postponing the next property valuation date due to the COVID-19 pandemic. The next province-wide

valuations had been scheduled to be performed by MPAC in 2020 for the 2021 taxation year.

16. As a result, the Government of Ontario announced that property assessments for the 2021 taxation year would continue to be based on the same valuation date that was in effect for the 2020 taxation year.
17. Similarly, in 2021 and 2022, the Government of Ontario announced that the next province-wide valuation date would be postponed again due to the COVID-19 pandemic.
18. As a result, municipal property taxes for the 2021, 2022 and 2023 taxation years continue to be based on the January 1, 2016 valuation date, unless a property had been reassessed after that date due to a change in the property, in which case the most recent property reassessment will govern.

Navitax Breaches the Fee Agreements

19. After the Government of Ontario announced that the property assessments for the 2021 taxation year would continue to be based on the same valuation date that was in effect for the 2020 taxation year, Navitax sent notices to Class members purporting to unilaterally extend the Term of the Fee Agreements until the end of 2021.
20. After the Government of Ontario announced that there would also be no new province-wide valuation of properties in 2022, Navitax sent notices to Class members purporting to unilaterally extend the Term of the Fee Agreements until the end of 2022.
21. Starting in 2021, Navitax sent invoices to Class members for contingency fees in relation to taxation years beyond the Term of the Fee Agreements.
22. Class members paid money to Navitax in satisfaction of these contingency fees and associated taxes, interest and late fees.
23. Navitax breached the Fee Agreements by sending invoices after the expiry of the Term stated in the Fee Agreements.

24. In the alternative, Navitax breached the Fee Agreements when it accepted payment from Class members for the contingency fees that it charged in relation to taxation years after the end of the Term of the Fee Agreements.
25. Letters Navitax sent to Class members in which Navitax purported to unilaterally extend the agreed upon contractual term of the Fee Agreements are unenforceable and have no legal effect.
26. Class members did not agree to extend the agreed upon contractual term of the Fee Agreements.
27. Further, Navitax's purported unilateral extension of the agreed upon contractual term of the Fee Agreements lacks consideration.
28. Navitax is liable to Class members for damages for breach of contract, for the total amount of money paid by Class Members in satisfaction of invoices sent by Navitax for contingency fees in relation to taxation years beyond the Term of the Fee Agreements.

Unjust Enrichment

In the alternative, Class members suffered a deprivation by paying money to Navitax in satisfaction of invoices sent by Navitax in relation to taxation years beyond the Term of the Fee Agreements.

Navitax was enriched by the receipt of the money paid by Class members in satisfaction of invoices sent by Navitax in relation to years after the stated Term of the Fee Agreements.

Navitax was unjustly enriched by these payments, Class members suffered a corresponding deprivation and there is no juristic reason for the enrichment.

29. In particular:
 - (i) The Fee Agreements are not a juristic reason for the payment of contingency fees by Class members for years beyond the stated Term of the Fee Agreements;

- (ii) The letters sent by Navitax purporting to unilaterally extend the agreed upon Term of the Fee Agreements did not extend the contractual term of the Fee Agreements, have no legal effect and are not a juristic reason for Navitax's enrichment;
 - (iii) Navitax did not provide any further property tax services to Class members that would provide a juristic reason for the enrichment.
- 30. Navitax must disgorge and make restitution of the moneys paid by Class members in satisfaction of Post-Term invoices.

Factual Background relating to Hawkmount

- 31. After Hawkmount entered into a Fee Agreement with Navitax, Navitax succeeded in applying to change the zoning designations of the Kenyon St. and Wellington Rd. properties on Hawkmount's behalf. As a result, Hawkmount benefited from property tax savings during the Term of the Fee Agreement.
- 32. In 2018, 2019 and 2020, Navitax invoiced Hawkmount for the contingency fee associated with these savings. Hawkmount paid these invoices.
- 33. The Term of the Fee Agreement between Navitax and Hawkmount ended on December 31, 2020, as no appeals relating to the Kenyon St. and Wellington Rd. properties were in progress as of that date.
- 34. In or around July 13, 2021, Navitax sent Invoice 1147 to Hawkmount in relation to purported property tax savings for the 2021 taxation year for the Kenyon St. property. The invoice requested payment from Hawkmount of \$570.65.
- 35. Hawkmount paid the total invoice amount, on or around August 12, 2021. At the time that Hawkmount paid the invoice, it was not aware that the Term of the Fee Agreement had expired.

36. Navitax also sent an invoice to Hawkmount in relation to the Wellington Rd. property in 2021 and in 2022 in relation to the Wellington Rd. and Kenyon St. properties. Hawkmount has not paid these invoices.
37. Navitax has not undertaken any work on Hawkmount's behalf in relation to either property in either 2021 or 2022.

Navitax Breaches Obligations Under the Law Society of Ontario Rules

38. As a paralegal professional corporation providing legal services, paralegals working at Navitax owe duties to Class members under the *Solicitor's Act* and the Contingency Fee Agreements Regulation.
39. Navitax breached the *Solicitor's Act* or the Contingency Fee Agreements Regulation by:
 - (a) failing to disclose that it intended to charge Contingency Fees for taxation years beyond the Term of the Fee Agreements at the time Class members signed the Fee Agreements;
 - (b) failing to disclose to Class members that they retained the right to ask the Superior Court of Justice to review and approve invoices sent under the Fee Agreement; and
 - (c) purporting to unilaterally extend the Term of the Fee Agreements without written agreement from Class members, or consideration.

Aggregate Damages

40. The restitution and damages sought by Hawkmount and other Class members can be calculated on an aggregate basis for the Class as provided by s. 24 of the *Class Proceedings Act*.

Punitive Damages

41. Hawkmount pleads that Navitax's wrongful conduct, including its acts contrary to the *Solicitor's Act* and Contingency Fee Agreements Regulation, was high-handed, entirely without care, deliberate, wilful, without good faith, and an intentional disregard of the rights of the Class. Such conduct renders Navitax liable to pay punitive damages.

PLACE OF TRIAL

42. Hawkmount proposes that this action be tried at the City of London, Ontario.

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Lawyers for the Plaintiff

Date: December 9, 2022

Signature of lawyer for Plaintiffs

Jen Winstanley

HAWKMOUNT INVESTMENT INC. v. NAVITAX PROPERTY TAX
CONSULTING PARALEGAL PROFESSIONAL CORPORATION

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ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT LONDON

STATEMENT OF CLAIM

CAMP FIORANTE MATTHEWS MOGERMAN LLP
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