

STATE OF VERMONT

SUPERIOR COURT  
RUTLAND UNIT

CIVIL DIVISION  
DOCKET NO.

RAYMOND LARRY BISHOP and  
CHRISTOPHER SHELDRIK,  
Plaintiffs

v.

TOWN OF WEST HAVEN,  
Defendant

AMENDED COMPLAINT AND DEMAND FOR TRIAL BY JURY

Now come Plaintiffs herein, by and through their attorney, Lisa Chalidze, Esq., and hereby complain as follows.

1. Plaintiff Raymond Larry Bishop is a resident of the Town of West Haven, County of Rutland, State of Vermont.
2. Plaintiff Christopher Sheldrick is a resident of the Town of West Haven, County of Rutland, State of Vermont.
3. Defendant Town of West Haven is, upon information and belief, a municipal corporation organized and existing pursuant to the laws of the State of Vermont, and is located within Rutland County.
4. Plaintiffs are legal title owners in fee simple absolute to certain lands and premises located within the Town of West Haven, located between Hackadam Road and that portion of River Road lying roughly parallel to the Hubbardton River.
5. Plaintiffs are also legal title owners to a certain private lane running roughly perpendicular to, and connecting, River Road and Hackadam Road.
6. Upon information and belief, Defendant Town has never legally and formally established a town highway over the lands and premises of Plaintiffs herein.
7. Upon information and belief, Defendant Town has never condemned nor legally taken any right or interest in any roadway or purported roadway over the lands and premises of Plaintiffs herein.
8. Over the years Plaintiff Bishop has permitted and allowed the Town of West Haven to utilize his private lane intermittently and within certain strict limits, including allowing surface work on said private lane. Such permission was limited to and contingent upon Defendant Town

limiting its use to the existing width, condition, grade, culverting, and other parameters of the lane, and never extended beyond that, and Defendant Town accepted and implicitly agreed to its use of the private lane on these terms, without expansion except by additional permission of Plaintiffs, which additional permission has never been granted. During this time, the private lane has been popularly referred to as Upper River Road, though it is actually a private lane connecting with said road.

9. Upon information and belief, the Town of West Haven has charged taxes to Plaintiffs for ownership of said private lane historically and for many years, and Plaintiff has paid said taxes.
10. Upon information and belief, a member of the Town of West Haven Select Board and/or an affiliated person thereof acquired real estate on said private lane, with public access from Hackadam Road.
11. Upon information and belief, the intent of the Select Board Member in regard to this real estate acquisition was to divide the parcel into several building lots for eventual use or sale.
12. Upon information and belief, use of the parcel as individual building lots would be enhanced by direct access onto the private lane described above, rather than via easement over other lots to Hackadam Road, if such private lane were significantly expanded, upgraded, re-engineered and reconstructed.
13. Upon information and belief, one building lot already placed into residential use has established access onto the private lane, causing and/or worsening erosion problems on the private lane.
14. In or about 2009, Defendant Town of West Haven applied to the State of Vermont through the "Better Back Roads Project" for grant funds toward a so-called "erosion control project" on the private lane of Plaintiffs. The grant application was later approved and funds committed to the Town of West Haven for said project, which is to include substantial invasion of Plaintiffs' property, including diversion of water onto large areas of Plaintiffs' property via planned ditching and culverting; cutting of valuable trees belonging to Plaintiffs; and other trespasses upon Plaintiffs' property.
15. Defendant provided no notice to Plaintiffs of this application, or other contemplated work on or making use of their land. However, Plaintiffs came to learn of the contemplated work and promptly and repeatedly protested the contemplated use of and trespasses upon their property.
16. Upon information and belief, Defendant Town of West Haven is required to obtain written easements from involved landowners to comply with the requirements of the grant funding.
17. Defendant Town of West Haven failed to obtain such easements from Plaintiffs herein, despite actual knowledge that Plaintiffs were opposed to the work in question.

18. Without permission of Plaintiffs, Defendant Town of West Haven has commenced surveying and other work preparatory to converting Plaintiffs' private property to public use without just compensation, which use upon information and belief includes deeming the private lane to be a three-rod public road, a width far in excess of that ever intended or permitted by Plaintiffs in initially permitting the Town of West Haven to use the existing private lane within its existing perimeter; installing several culverts and ditches designed to divert water and silt onto the premises of Plaintiffs; cutting down trees belonging to Plaintiffs and on their property; and other related work.
19. When challenged by Plaintiffs about the work involving their property without their permission, Defendant Town of West Haven, upon information and belief, knowingly misrepresented the ownership of the lane in question, specifically, by falsely stating that the lane and additional areas adjacent it to it were owned by the Town when in fact they were not. Said representations were made by and through the three members of the Select Board to Plaintiffs on or about August 19, 2010 on the private lane described above, and in preceding weeks at various locations in the Town of West Haven.
20. Thereafter, Plaintiffs repeatedly requested from Defendant Town of West Haven whatever documentation it possessed establishing or purporting to establish the private lane as an established Town roadway, such as minutes of meeting, notice of acceptance, certificate of opening, survey, description, and the like.
21. Plaintiffs repeatedly advised Defendant Town of West Haven, including every member of the Select Board, that the road was in fact a private lane used permissively in the past only to the extent of the existing dimensions, and that permission had not been given to widen, ditch and otherwise alter the private lane as now contemplated by Defendant Town, to upgrade and generally convert the private lane to a so-called "three-rod road".
22. Notwithstanding Plaintiffs' information to Town, and requests for information from Town, Defendant Town is upon information and belief proceeding with its project against the wishes of the Plaintiffs who own the property in question, in violation of the rights of Plaintiffs and in violation of the conditions of the grant of public funds.
23. Defendant Town has stated to Plaintiffs that it will not provide the public documentation supporting establishment of a public roadway unless Plaintiffs sue the Town to get such documentation.
24. Upon information and belief, without Court assistance, the Town will continue their trespasses upon Plaintiffs' property, and trespass further to effectuate the cutting of trees, placing of culverts, diversion of water, and other acts as generally described above, and in violation of the legal rights of Plaintiffs.

COUNT I: DECLARATORY RELIEF

24. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if fully set forth herein.

25. Plaintiffs respectfully request that the Honorable Court declare the respective rights and liabilities of all parties hereto, including but not limited to the right of the the Town of West Haven to carry out such work.

#### COUNT II: TRESPASS

26. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if fully set forth herein.

27. Defendant Town of West Haven, its agents and employees, have entered upon the lands and premises of Plaintiffs without their permission and, upon information and belief, continue to do so and plan to do so in the future, including but not limited to walking, surveying, digging, installing culverts, ditching, and diverting surface water and particulate matter and other eroded solids onto the lands and premises of Plaintiffs, which constitutes past, continuing and future trespass in that it is a tangible invasion of Plaintiffs' interest in the exclusive possession of their land.

28. The trespass described above is a regular and continuing occurrence that has caused and continues to cause, and is expected to continue cause in the future, substantial damage to Plaintiffs' legally-protected interests in their lands and premises, which is and/or will become of a continuous nature and unabated to the date of this Complaint, as well as nominal and consequential damages of a pecuniary nature.

#### COUNT III: NUISANCE

29. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if fully set forth herein.

30. The conduct of Defendant Town of West Haven, as described above, constitutes nuisance in that it is an interference with Plaintiffs' use and enjoyment of their property.

31. The nuisance described above is a regular and continuing occurrence that has caused and continues to cause, and is expected to continue cause in the future, substantial damage to Plaintiffs' legally-protected interests in their lands and premises, of a continuous nature and unabated to the date of this Complaint.

#### COUNT IV: FRAUDULENT MISREPRESENTATION

32. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if fully set forth herein.

33. Upon information and belief, Defendant Town of West Haven knowingly and intentionally made false statements to Plaintiffs regarding purported Town ownership of the private lane described above, after reviewing Town documents and conducting other research sufficient to establish lack of ownership, right of way, easement or other right in the Town to use the lands of premises of Plaintiffs for the road work and related activity described above.

34. As a direct, proximate and foreseeable result of said misrepresentations, Plaintiffs have been caused to incur attorneys' fees and costs, utilize their time, and otherwise suffer pecuniary injury.

COUNT V: INJUNCTIVE RELIEF

38. Plaintiffs repeat and incorporate the allegations in the preceding paragraphs as if fully set forth herein.

39. Plaintiffs respectfully request that Defendant Town of West Haven be temporarily and permanently enjoined from entering onto the lands and premises of Plaintiffs, and from diverting surface water, eroded particulate matter, and any other substance onto their property.

PLAINTIFFS DEMAND TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Wherefore, Plaintiffs respectfully demand judgment in their favor on all issues in an amount sufficient to compensate them for their damages and costs, plus interest thereon; for a declaration of the rights and liabilities of all parties; and for temporary and permanent injunctive relief to prevent unauthorized entry onto their lands and premises.

Dated this 23<sup>rd</sup> day of September, 2010.

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Lisa Chalidze, Esq.