



Action No. 09 2750
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

RAVI BANSAL

PLAINTIFF

AND:

SIMON FRASER UNIVERSITY

DEFENDANT

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996 C. 50

STATEMENT OF CLAIM

1. The Plaintiff, RAVI BANSAL, resides at 7637 Imperial Street, Burnaby, British Columbia, V5E 1P3.
2. The Plaintiff brings this action pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
3. The Defendant, Simon Fraser University (the "University"), is a university continued pursuant to the *University Act*, R.S.B.C. 1996, c. 468 (the "Act"), and has an office at 8888 University Drive, Burnaby, British Columbia, V5A 1S6.
4. The Plaintiff brings this action on her own behalf and on behalf of all persons from whom the University collected fines and upon whom the University imposed costs in the enforcement of traffic and parking regulations (the "Fines") established by Simon Fraser University (the "University") up to and including April 1, 2009 (such persons herein and collectively referred to as "the Class").

BACKGROUND

Simon Fraser University Traffic and Parking Policies

5. On or about May 1, 1969, the Simon Fraser University Board of Governors implemented and, from time to time since then, amended regulations declared to be essential for the orderly movement and parking of vehicles on the University campus and governing the movement and parking of motor vehicles on the University premises (the "Regulations").
6. The Regulations are purported to be authorized by section 27 of the Act.
7. The Regulations purport to govern, *inter alia*, parking permits, parking areas, speed limits, traffic and parking signs, enforcement, offences, and appeals.
8. The Regulations also purport to give the University authority to issue forms indicating an alleged violation of the Regulations known as Traffic Offence Notices demanding payment of fines to anyone purportedly in contravention of the Regulations.
9. The Regulations purport to permit impoundment for violations and alleged violations of the Regulations.
10. The Regulations also purport to give the University the authority to impound or immobilize any vehicle at any time where it is deemed necessary by Campus Security.
11. At all material times, the University lacked legislative authority to create offences or penalties.
12. The University does not have the legislative authority to demand payment of the Fines.

COMPULSION OF PAYMENT OF FINES FROM THE PLAINTIFF

13. From 2002 through 2007, the Plaintiff received Traffic Offence Notices and was subject to the immobilization of her vehicle for alleged infractions of the Regulations (the "Alleged Infractions"). The conditions under which the Plaintiff's vehicle received those Traffic Offence Notices and was immobilized did not otherwise contravene any lawfully enacted parking rules or regulations in place at the University at that time.
14. Consequent to the Alleged Infractions, the Defendant demanded the Plaintiff pay fines and penalties as set out in the Regulations.
15. Subsequent to receiving the Traffic Offence Notices, the Plaintiff submitted full payment of the Defendant's demand.
16. Subsequent to the immobilization of her vehicle, the Plaintiff was made to pay and did pay additional fines before having the rightful use and control of her vehicle returned to her.

CAUSE OF ACTION AND REMEDIES

17. The Regulations are *ultra vires* the authority conferred to the University under the *University Act* or any powers possessed by the University through any other means. Particulars of the ways in which the Regulations are *ultra vires* the University include but are not limited to the following:
 - a. the Regulations purport to create offences and the University does not have the power to create offences;
 - b. the Regulations are penal in nature and the University does not have the power to enact penal regulations;
 - c. the Regulations purport to permit the University to levy the Fines without regard to whether they have committed an offence;
 - d. the Regulations purport to permit the University to interfere with the property of individuals;

- e. the University has attempted to appropriate enforcement authority through the *Motor Vehicle Act*, RSBC 1996, c. 318 and the *Highway Act*, RSBC 1996, c. 188 in the absence of any statutory authority for so doing; and
 - f. the Regulations were not enacted by the Lieutenant Governor in Council and regulations made under the *University Act* must be made by the Lieutenant Governor in Council.
18. Accordingly, all Traffic Offence issued under the Regulations are a nullity. The Fines must be repaid to the Plaintiff and the Class Members in restitution.

Restitution for Fines Unlawfully Collected

19. The Plaintiff and members of the Class paid the Fines by mistake because the Regulations are *ultra vires* the legislative authority of the University.
20. The Defendant holds monies collected to satisfy the Fines in a constructive trust to the benefit of the Plaintiff and members of the Class.
21. In the alternative, the Plaintiff and the Class Members have suffered damages in the amount of the fines charged under the Regulations and that amount must be returned to the Plaintiff and the Class Members in Restitution.

WHEREFORE THE PLAINTIFF CLAIMS:

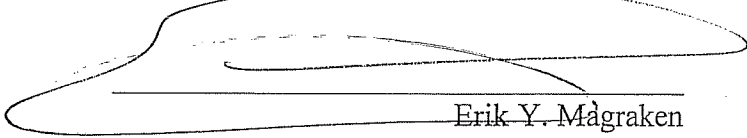
1. an order certifying this action as a class proceeding and appointing the Plaintiff as the representative plaintiff;
2. a declaration that the provisions of the Regulations which create offences and purport to authorize the University to levy fines for offences is *ultra vires* the legislative powers delegated to the University;
3. a declaration that any fines and other penalties collected as payment for offences under the Regulations or otherwise arising out of the Regulations were collected unlawfully;
4. a declaration that monies by the University for fines and other penalties collected as payment for offences under the Regulations or otherwise

arising out of the Regulations are held in a constructive trust by the University for the benefit of the Plaintiff and the members of the Class.

5. restitution by the University to the Plaintiff and members of the Class of all fines and other penalties collected as payment for offences under the Regulations;
6. general and special damages;
7. costs of this action;
8. interest pursuant to the *Court Ordered Interest Act* R.S.B.C. 1996, Chapter 79 and amendments thereto; and
9. such further and other relief as to this Honourable Court may deem just.

PLACE OF TRIAL: Victoria, British Columbia

DATED AT Victoria, British Columbia, this 22 day of June, 2009.



Erik Y. Magraken
Counsel for the Plaintiff,
RAVI BANSAL

This STATEMENT OF CLAIM is filed and served by **ERIK Y. MAGRAKEN** of the law firm MacIsaac & Company, whose place of business and address for service is 3rd Floor, 1117 Wharf Street, Victoria, BC, V8W 1T7; Phone 250-381-5353; Fax 250-380-7272.

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