

RETURN DATE: AUGUST 15, 2017 : SUPERIOR COURT  
JOHN DRABIK AND : J.D. OF NEW LONDON  
ANCIENT HIGHWAY TOWERS, LLC  
V. : AT NEW LONDON  
ELAINE THOMAS : JUNE 21, 2017

**COMPLAINT**

**COUNT ONE: (Tortious Interference with a Business Relationship)**

1. The plaintiff, John Drabik (hereinafter referred to as “Drabik”), owns 2 adjacent parcels of land located on Ancient Highway in East Lyme, Connecticut described on the Town of East Lyme assessors maps Map ID’s lots 1.2 and 3 Numbers 30.0/1, 7.73 AC, 30.0/2 3.31, 3.31 AC and 25.0/31, 20.03 AC that in the aggregate contain approximately 12.88 acres of undeveloped land (the “Drabik Property”). See Exhibit A entitled “Compilation Plan Showing Approximate Proposed Tower Location of Lands of John Drabik Ancient Highway” completed by Gerwick-Mereen, L.L.C., Civil Engineering & Land Surveying (“Plan”).

2. The plaintiff Ancient Highway Towers, LLC was and is a domestic limited liability company licensed to transact business in the State of Connecticut.

3. The defendant, Elaine Thomas, was at all times relevant herein a resident of Groton, Connecticut.

4. In early 2015, the Plaintiffs and New Cingular Wireless PCS, LLC d/b/a AT&T ("AT&T") entered into a business relationship in which AT&T would construct, own, operate, and maintain a Communication Facility (a cellular telecommunications tower) on a one hundred feet by one hundred feet square (100' x 100') parcel of land on the Drabik Property, together with a thirty foot (30') right of way and easement for access to the one hundred foot square parcel on the Drabik Property (hereinafter known as the "Subject Drabik Property").

5. Under this business relationship, AT&T would pay monthly rent payments that were to be apportioned between the Plaintiffs.

6. The proposed cellular telecommunications tower was to have the ability to be utilized by four (4) different telecommunications service companies including T-Mobile, who had a business relationship with the Plaintiffs to utilize the tower to be built on the Subject Drabik Property in exchange for monthly rental payments.

7. AT&T was to submit an application ("Application") to the Connecticut Siting Council proposing the placement of a new cellular telecommunications tower in East Lyme, Connecticut ("Tower").

8. In the process of preparing the Application, AT&T had evaluated two potential sites in the town of East Lyme, based upon geographic location and

topography: the Subject Drabik Property and 351-A Boston Post Road also in East Lyme. AT&T determined to construct the proposed tower on the Subject Drabik Property and signed a lease for the Subject Drabik Property for the construction of a cellular telecommunications tower.

9. As part of the Application process, AT&T utilized the Federal Communication Commission's Tower Construction Notification System ("TCNS"), to submit an electronic message to the Federal Communication Commission of AT&T's proposed tower construction. The Commission subsequently provides this information to Indian Tribes and other historical and cultural organizations that have expressed an interest in the relevant geographic area.

10. On or about July 1, 2015, AT&T received through the TCNS a reply from the Mohegan Indian Tribe in response to its proposed Tower on the Subject Drabik Property at Ancient Highway ("Response").

11. The Response was sent by the Defendant Elaine Thomas.
12. The Response makes reference to the following:
  - a. That "to date, no archaeological sites and/or National Register of Historic Places Properties have been identified within 0.8 km (0.5 mi) of the proposed project location";
  - b. That "no additional archaeological research is recommended for this project";

- c. That "a site walk" was conducted by the Ms. Thomas on June 10, 2015; and
- d. That "no visible cultural features were identified within the Area of Potential Effects-Direct Effects of the project property."

13. Despite these facts, the Response indicates that since there are "substantial stone groupings" on the property adjacent to Mr. Drabik's, the proposed new telecommunications facility would impact the "view shed" and possibly impact the "overall integrity of the landscape."

14. No view shed of cultural stone features or cultural landscapes exists that would be impacted by the proposed cellular telecommunications tower because no such stone features, cultural features or landscapes exist in the area.

15. The construction of the proposed tower on the Subject Drabik Property would not cause an adverse effect to properties of traditional religious and cultural significance to the Mohegan Tribe because no such properties exist in the area.

16. The Defendant knew at the time she made her statements regarding the impact on the view shed of cultural stone features or cultural landscapes contained in the Response that such statements were false because no such features or landscapes existed or exist in the area and therefore were outside the scope of her employment.

17. The Defendant knew at the time she issued her opinion regarding adverse effect to properties of traditional religious and cultural significance to the Mohegan Tribe contained in the Response that such statements were false because no such properties existed in the area and therefore outside the scope of her employment.

18. Seventeen (17) communications towers and power mounts as well as two (2) water tanks and two (2) roof top installations are located within approximately four miles of the subject Drabik Property. The Defendant made no response and/or raised no objection in the application process for these towers and installations despite her claim of properties of traditional religious and cultural significance to the Mohegan Tribe in this area.

19. The Defendant has filed no response and raised no objection in the application and construction process for these seventeen (17) communications towers and other facilities, which indicates that in fact no view shed of cultural stone features or cultural landscapes exist that would be impacted by these facilities and there would be no adverse effect to properties of traditional religious and cultural significance to the Mohegan Tribe in the area.

20. The other site for the cellular communications tower considered by AT&T, 351-A Boston Post Road, is in close proximity to the Drabik Property, and the

Defendant received notice of this other site, yet she has filed no response and raised no objection in the application process for this other site indicating that no view shed of cultural stone features, cultural landscapes or properties of traditional religious and cultural significance to the Mohegan Tribe exist that would be impacted by the proposed cellular telecommunications tower at 351-A Boston Post Road.

21. Upon receipt of the Response, Drabik, by and through his attorneys at that time, made several attempts to contact Elaine Thomas to discuss her findings and to set up a site walk so that she could identify the “substantial stone groupings” and other properties of traditional religious and cultural significance to the Mohegan Tribe and have them evaluated by an archaeologist. Namely, attempts have been as follows:

- a. Phone Call to Elaine Thomas on or about August 17, 2015, voicemail was left but not returned;
- b. Phone Call to Elaine Thomas on or about August 20, 2015, voicemail was left but not returned; and
- c. Letter to Elaine Thomas August 20, 2015

22. Ancient Highway Towers, LLC, through its attorney, also contacted the Defendant regarding identifying the “substantial stone groupings” and other properties of traditional religious and cultural significance to the Mohegan Tribe on the property

adjacent to the subject Drabik Property, but also received no response from the Defendant.

23. Despite representing to the FCC that she looked forward to working together with all parties to avoid potential destruction of properties of religious and cultural significance to our Tribe, to date, the Defendant has not responded to any request of the Plaintiffs and the Defendant has refused to work with all parties and refused to identify the location of the "stone groupings" or other properties of traditional religious and cultural significance to the Mohegan Tribe.

24. Due to the lack of response, Drabik brought a Petition for Bill of Discovery seeking to take the depositions of Elaine Thomas in the Connecticut Superior Court, judicial district of New London, Docket No. KNL-CV-15-6025021-S against the Tribe, Ms. Thomas and Mr. Quinn. While this action was not a lawsuit, the Tribe claimed sovereign immunity and the Petition for Bill of Discovery was denied.

25. Based upon the Defendant's Response filed through the TCNS, the Defendant's refusal to work with all parties, the Defendant's failure to respond to the Plaintiffs, Defendant's failure to cooperate with AT&T and the denial of the Petition for Bill of Discovery, AT&T abandoned the subject Drabik Property for the cellular

telecommunication tower and terminated the lease agreement and its business relationship with the Plaintiffs.

26. AT&T is now planning on constructing a cellular telecommunication tower at another site in East Lyme causing significant damages and loss to the Plaintiffs.

27. The Defendant's failure to notify Drabik of the site walk on his property in June and its failure to respond to his subsequent inquiries is working substantial hardship on the Plaintiff Drabik and has implicated his property rights as he is the owner of real property which may or may not be subject to further development restriction based upon the Mohegan Indian Tribe's claim that there are historically and culturally significant features on a nearby parcel.

28. Elaine Thomas had actual knowledge of the business relationship between the Plaintiffs and AT&T and the proposed tower's ability to be utilized by different telecommunications service companies in one or more of the following ways:

- a. By virtue of her receipt of the Notice via the TCNS;
- b. The multiple communications she has received from Plaintiffs' counsel;
- c. By virtue of her receipt of the AT&T application for the proposed cellular telecommunication tower before the Connecticut Siting Council;



- d. Public hearings and informal meetings held in East Lyme regarding the construction of the proposed cellular telecommunication tower on a portion of the Subject Drabik Property;
- e. Communications between East Lyme government officials and the Defendant;
- f. Communications including emails between residents of East Lyme and the Defendant;
- g. By virtue of her receipt of the Technical Report from AT&T about the proposed wireless telecommunications tower that specifically identifies that the subject parcel of land located off of Ancient Highway is owned by John H. Drabik and that the parcel which is the subject of an agreement with Ancient Highway Towers, LLC for construction of a replacement tower facility on the Parcels and AT&T would install and operate a wireless facility at the Subject Drabik Properties;
- h. Communications between AT&T and/or its representatives and the Defendant;
- i. Communications between Heritage Consultants, LLC and/or its representatives and the Defendant;
- j. Communications between All-Points Technology Corp., P.C. and/or its representatives and the Defendant;
- k. Receipt of information from AT&T, Heritage Consultants, LLC and All-Points Technology Corp., P.C. and/or their representatives; and
- l. Receipt of traditional media and social media reports.

29. Elaine Thomas, acting outside the scope of her employment, has intentionally interfered with the business relationship between the Plaintiffs and AT&T while knowing of the relationship's existence.

30. The Defendant's intentional interference has prevented the construction of the cellular communications tower on the Subject Drabik Property thereby preventing different telecommunications service companies from utilizing said tower causing further damage to the Plaintiffs.

31. Elaine Thomas misrepresented the existence of historically and culturally significant features on property adjacent to that of Drabik's that would allegedly be affected by the telecommunications tower because no view shed of cultural stone features, cultural landscapes or properties of traditional religious and cultural significance to the Mohegan Tribe exist that would be impacted by the proposed cellular telecommunications tower.

32. As a result of the defendant's interference, the Plaintiffs have suffered actual financial loss since AT&T has terminated the lease agreement and is no longer considering the Subject Drabik Property for the location of the telecommunications tower while this claim of the Mohegan Indian Tribe remains.

33. As a result of the defendant's interference, the Plaintiffs have suffered actual financial loss since, upon information and belief, T-Mobile among others will no longer be able to lease a portion of the telecommunications tower which was to be located on the Subject Drabik Property.

**COUNT TWO: (Negligence)**

1-33. Paragraphs One through Thirty Three of Count One are hereby re-incorporated as if fully stated below and made Paragraphs 1-37 of this Count Two.

34. The Defendant Elaine Thomas was negligent and careless in one or more of the following ways, in that:

- a. She misrepresented that the view shed of cultural stone features, cultural landscapes or properties of traditional religious and cultural significance to the Mohegan Tribe exist that would be impacted by the proposed cellular telecommunications tower.

35. As a direct and proximate result of the negligence and the carelessness of the Defendant, as aforesaid, the Plaintiffs suffered actual financial loss.

**COUNT THREE: (Trespass)**

1. The plaintiff, John Drabik (hereinafter referred to as "Drabik"), owns 2 adjacent parcels of land located on Ancient Highway in East Lyme, Connecticut

described on the Town of East Lyme assessors maps Map ID's lots 1.2 and 3 Numbers 30.0/1, 7.73 AC, 30.0/2 3.31, 3.31 AC and 25.0/31, 20.03 AC that in the aggregate contain approximately 12.88 acres of undeveloped land (the "Drabik Property").

2. On or about June 10, 2016, Elaine Thomas intentionally walked onto the Plaintiff Drabik's land without his consent.


3. As a result of the defendant's trespass, Drabik has suffered direct loss.

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JURIS # 10792

**WHEREFORE**, the Plaintiffs respectfully pray for:

1. Fair, just and reasonable compensatory damages;
2. The costs of this action; and
3. Such other relief as the Court may deem equitable.

THE PLAINTIFFS,

By:   
Eric J. Garofano, Esq.  
38 Huntington Street, New London CT  
Phone: 860-447-3171  
Their Attorneys

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**STATEMENT OF AMOUNT IN DEMAND**

The amount, legal interest or property in demand is greater than FIFTEEN THOUSAND (\$15,000.00) DOLLARS, exclusive of interest and costs.

THE PLAINTIFFS,

By: 

Eric J. Garofano, Esq.

38 Huntington Street, New London CT

Phone: 860-447-3171

Their Attorneys

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## Exhibit A



COMPILATION PLAN  
SHOWING APPROXIMATE PROPOSED TOWER LOCATION  
OF LANDS OF  
JOHN DEABIK  
ANCIENT HIGHWAY  
EAST LYME, CONNECTICUT

SCALE: 1" = 400'  
DATE: 1.27.2017

**JOB NO. 14-090**

[illegible]

GRAPHIC SCALE  
(in feet)

0 100 200 300 400 500 600 700 800 900 1000

0 0.5 1.0 1.5

1 inch = 400 ft.