

ANNEX 4

CANADA

SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No.: 500-05-015428-020

FBT DORVAL INC., a legal person recently amalgamated with FBT Properties Inc., having its head office at 5905 Campus Road, Mississauga, Province of Ontario, L4V 1P9

-and-

GROUPE PACKAGING INC., a legal person having its head office at 5905 Campus Road, Mississauga, Province of Ontario, L4V 1P9

Plaintiffs

vs.

CITY OF MONTREAL, more specifically the Borough of Dorval, a legal person having its head office at 275 Notre-Dame St. East, in the City of Montreal, Province of Quebec, H2Y 1C6

-and-

PETER YEOMANS, chairman of the Borough of Dorval, domiciled and residing at 315 Cloverdale Avenue, City of Montreal (Borough of Dorval), Province of Quebec, H9S 3J6

Defendants

DECLARATION

IN SUPPORT OF THEIR ACTION, PLAINTIFFS ALLEGE THE FOLLOWING:

I. THE FACTS

A) The Parties

1. Plaintiffs are associated companies of the Company Budget Car Rentals Toronto Limited (hereinafter "**Budget**"), all having the head office at 5905 Campus Road, Mississauga, Ontario;
2. Associated companies of Plaintiffs are currently operating parking facilities under the registered name "**Park'N Fly**" in numerous cities in Canada, namely Toronto, Ottawa, Vancouver and Edmonton;

3. Such parking operations of Plaintiffs and Budget involve parking of cars, shuttle service to and from the airport and valet service whereby the car is brought to the office building of the parking lot upon a call of the customer from the airport after his or her arrival;
4. The City of Montreal is a Defendant in the present action having succeeded to the rights, obligations and charges of the City of Dorval, in conformity with the *Charter of Ville de Montréal*, R.S.Q., c. C-11.4;
5. The City of Dorval, known as the Borough of Dorval since the Montreal merger, was a city constituted pursuant to the *Cities and Towns Act*, R.S.Q. c. C-19 (hereinafter the "**City of Dorval**");
6. Defendant, Peter Yeomans, was the Mayor of the City of Dorval and had been acting as such from the early 1990s up to the merger (the "**Mayor**");
7. The Mayor is also a lawyer and has been acting as Chairman of the Borough of Dorval since said merger;

B) The Sites

8. On or about July 17, 1989, in view of expanding its activities to the Montreal area, Plaintiff, FBT Dorval Inc. purchased from Marathon Realty Company Ltd. (hereinafter "Marathon") a property located on Michel-Jasmin Blvd. in the City of Dorval (hereinafter the "**Michel-Jasmin site**") designated as follows:

DESCRIPTION

FIRST:

That certain vacant emplacement situated in the City of Dorval, District of Montreal, as shown on the Plan within the letters "C-D-E-F-G-C" and dated the fourteenth day of September, One thousand nine hundred and eighty-eight, and revised on the eighteenth day of May, One thousand nine hundred and eighty-nine, being Plan Number L-17-2103-1, as confirmed on the Plan prepared by David A. R. Rabin, Quebec Land Surveyor, dated the ninth day of May, One thousand nine hundred and eighty-nine and bearing his dossier number 32935, being of irregular figure, and comprising an unsubdivided part of original lot eight hundred and sixty-five (Pt. 865) on the Official Cadastre for the Parish of Lachine, Registration Division of Montreal, bounded in front to the north-west by Michel Jasmin Street (Pt. Lot 865), in rear, to the south-east, by lot 865-465, on one side to the north-east by the said lot 865-465 and on the other side, to the south-west, by another unsubdivided part of lot 865 sold this day by the Vendor or to the Purchaser, and measuring: eighty-four feet and thirty-one hundredths of a foot (84.31') in one of its north-west front lines, and one hundred and fifty-six feet (156') in its other north-west front line; one hundred and ninety-nine feet and thirty-four hundredths of a foot (199.34') in its rear south-east line; five hundred and seventeen feet and eighty-eight hundredths of a foot (517.88') in its north-east line; and three hundred and eighty feet and forty hundredths of a foot (380.40') in its south-west line, and containing a total superficial area of a eighty-nine thousand six hundred and thirty-eight square feet (89,638 sq. ft.), English Measure and more or less.

With and subject to the Montreal-Dorval Airport Zoning Regulations governing the heights of buildings which may be erected thereon as created in virtue of Notices deposited at the Montreal Registry Office under the numbers 1128231 and 1270629 respectively.

As the said property now subsists with all its rights, members and appurtenances, the whole without exception or reserve of any kind.

SECOND:

That certain vacant emplacement situated in the City of Dorval, District of Montreal, as shown within the letters "A-B-C-F-A" on the Plan and dated the fourteenth day of September, One thousand nine hundred and eighty-eight and revised on the eighteenth day of May, One thousand nine hundred and eighty-nine, being Plan Number L-17-2103-1, as confirmed on the Plan prepared by David A. R. Rabin, Quebec Land Surveyor, dated the ninth day of May, One thousand nine hundred and eighty-nine and bearing his dossier number 32935, being of irregular figure, and comprising an unsubdivided part of original lot eight hundred and sixty-five (Pt. 865) on the Official Cadastre for the Parish of Lachine, Registration Division of Montreal, bounded in front, to the north-west, by Michel Jasmin Street (Pt. Lot 865), in rear, to the south-east, by another unsubdivided part of said lot 865, on one side, to the north-east, by an unsubdivided part of lot 865 sold this day by the Vendor to the Purchaser, and on the other side, to the south-west, by lot 865-394 on said Official Plan and Book of Reference, and measuring: twenty-nine feet and seventy-eight hundredths of a foot (29.78') in its front north-west line; twenty-five feet (25') in its rear south-east line; three hundred and eighty feet and forty hundredths of a foot (380.40') in its north-east line, and three hundred and sixty-three feet and fifty-seven hundredths of a foot (363.57') in its south-west line, and containing a total superficial area of nine thousand three hundred and one square feet (9.301 sq. ft.), English Measure and more or less.

With and subject to the Montreal-Dorval Airport Zoning Regulations governing the heights of buildings which may be erected thereon as created in virtue of Notices deposited at the Montreal Registry Office under the numbers 1128231 and 1270629 and to the servitude in favour of Canadian Pacific Limited.

As the said property now subsists with all its rights, members and appurtenances, the whole without exception or reserve of any kind.

9. On or about November 24, 1999, following a sale by auction which took place on February 26, 1997, Plaintiff, Group Packaging Inc., in view of expanding its activities to the Montreal area, purchased from the City of Dorval, a property located on chemin Côte-de-Liesse in the City of Dorval (hereinafter the "**Côte-de-Liesse site**") designated as follows:

DESCRIPTION

- 9.1. Part of the original lot FIVE HUNDRED AND THIRTY-ONE (Pt. 531) on the Official Cadastre of the Parish of Saint-Laurent, Registration Division of Montreal, measuring thirty metres and forty-eight centimeters (30,48 m) in the south-east line, two hundred and nine meters and sixty-two centimeters (209,62 m) in the south-west line, thirty meters and forty-eight centimeters (30,48 m) in the north-west line, two hundred and ten meters and forty-seven centimeters (210,47 m) in the north-east line, having a total superficial area of six thousand four hundred and one square meters (6,401 m²); bounded to the south-east by lot 531-6 (Street), to the south-west by a part of lot 531-2, to the north-west by another part of lot 531, and to the north-east by part of lot 530, all on said Official Cadastre;
 - a) Part of subdivision number TWO of original lot number FIVE HUNDRED AND THIRTY-ONE (531 Pt. 2) on the said Official Cadastre measuring one hundred and forty-nine meters and fifty-six centimeters (149,56 m) in the south-east line, two hundred and five meters and forty-four centimeters (205,44 m) in the south-west line, one hundred and fifty meters and fifty-four centimeters (150,44 m) in the north-west line, and two hundred and nine

meters and sixty-two centimeters (209,62 m) in the north-east line, having a total superficial area of thirty-one thousand and thirty-five square meters (31,135 m²); bounded to the south-east by lot 531-6 (Street), to the south-west by a part of lot 532-2, to the north-west by a part of lot 531, and to the north-east by a part of lot 531, all on said Official Cadastre; and

- 9.2. Part of subdivision number TWO of original lot number FIVE HUNDRED AND THIRTY-TWO (532 Pt. 2) on the said Official Cadastre measuring twenty-eight meters and forty-two centimeters (28,42 m) in the south-east line, two hundred and four meters and sixty-five centimeters (204,65 m) in the south-west line, twenty-eight meters and fifty-three centimeters (28,53 m) in the north-west line, and two hundred and five meters and forty-four centimeters (205,44 m) in the north-east line, having a total superficial area of five thousand eight hundred and thirty-seven square meters and seven tenths of a square meter (5,837.7 m²); bounded to the south-east by lot 532-6 (Street), to the south-west by lot 533-4 and lot 533-3, to the north-west by a part of lot 532, and to the north-east by a part of lot 531-2, all on said Official Cadastre.
10. As part of this sale, Plaintiff, Group Packaging Inc., also purchased a property located on Marshall Street in the City of Dorval, across the street from the Côte-de-Liesse Street designated as follows:

DESCRIPTION

Un emplacement vacant situé en la Cité de Dorval connu et désigné comme étant la subdivision numéro CINQ du lot originaire numéro CINQ CENT TRENTE-ET-UN (531-5) au cadastre officiel de la Paroisse de Saint-Laurent, circonscription foncière de Montréal;

11. In addition to the property located on Marshall Street and more fully described above, on or about September 13, 1999, Plaintiff, Group Packaging Inc., purchased from the Trustee of the Estate of Belcourt Inc. and the Trustee of Les Investissements Renary Inc., a property located on Marshall Street in the City of Dorval (hereinafter collectively the "**Marshall site**") designated as follows:

DESCRIPTION

A vacant emplacement situated in the City of Dorval, Province of Quebec, composed of:

- a) subdivision number FOUR of original lot number FIVE HUNDRED AND THIRTY-ONE (531-4) on the Official Cadastre of the parish of Saint-Laurent, Registration Division of Montreal; and
- b) subdivision number FOUR of original lot number FIVE HUNDRED AND THIRTY-TWO (532-4) on the said Official Cadastre.

C) Respondent's representations

12. Prior to purchasing the Michel-Jasmin site in 1989 and in view of ensuring that it could be used to operate parking facilities, Plaintiff FBT Dorval Inc., verified with the Mayor that the anticipated use of the premises as a ParK'N Fly was authorized by the existing By-Law and was in compliance with Dorval's urban planning;
13. At that time, the Michel-Jasmin site was leased to Texaco and used to store petroleum products;
14. On or about March 21, 1989, the Mayor confirmed that the By-Law authorized the use of the Michel-Jasmin site as a ParK'N Fly;

15. In light of the mayor's representations, Plaintiff FBT Dorval Inc. proceeded to the purchase of the Michel-Jasmin site for an amount of \$1,137,799.50;
16. On or about August 10, 1989, the Mayor, reiterated that the use of the Michel-Jasmin site as a ParK'N Fly was in compliance with City of Dorval's Zoning By-Law, adding that he preferred said use to the historical activities by Texaco because of the environmental hazards associated therewith;
17. On that occasion, the Mayor was informed by the Plaintiff FBT Dorval Inc. of its intention to undertake its operations at the expiry of the lease with Texaco, namely in September 1993;
18. Until January 1994, Defendants reiterated its support to Plaintiffs' project at various occasions such as:
 - a) In 1991, the Mayor and representatives of the City of Dorval communicated with Plaintiff FBT Dorval Inc. to enquire on its preference concerning the location of a planned overpass in the vicinity of the Michel-Jasmin site, to ensure that said overpass would serve Plaintiff's anticipated activities;
 - b) After completion of decontamination work by the former Tenant, Texaco, several months after the termination of the Lease, Defendant required additional works in order to issue a permit for the use of the Michel-Jasmin site by Plaintiff as a ParK'N Fly;
19. Although Plaintiffs had no liability regarding the environmental quality of the site and no legal obligation to proceed to its decontamination, they proceeded to the additional work required by the Defendants hoping that it would facilitate the rapid issuance of its construction permit;
20. Despite the representations of Defendants the Zoning By-Law had been changed in June 1991 to specifically prohibit parking as a main use within the City's boundaries, the whole as it appears from the Zoning By-Law, disclosed to Defendants as **Exhibit P-1**;
21. It is only after the completion of the requested additional work which ended on January 1994 that the Mayor informed Plaintiff FBT Dorval Inc. that the Zoning By-Law no longer allowed Plaintiff's anticipated activities on the Michel-Jasmin site;
22. Prior to that day, Plaintiffs never heard about the June 1991 modification and Defendants never informed them in any way, although they were fully aware of the impact of the modification of the Zoning By-Law on Plaintiffs' project;
23. Plaintiffs were informed that this specific modification of the zoning By-Law, i.e. prohibiting parking lot, was orchestrated by the Mayor and a former representative of Aéroports de Montréal ("ADM") and/or discussed between them in order to prevent Plaintiffs from implementing their project in the City of Dorval;
24. Said former representative of ADM even had knowledge of the prohibition of the zoning By-Law before Plaintiffs and used it as an argument to put an end to the discussions undertaken by Plaintiffs concerning their proposed Park'N Fly;
25. Plaintiffs, directly or through their attorneys, made various attempts with the Mayor and various representatives of the City of Dorval in order to find a solution which would allow them to operate a parking in the vicinity of the Dorval Airport;
26. At each of these occasions, the Mayor personally repeated that the Zoning By-Law no longer allowed the operation of a parking in the City of Dorval and frequently mentioned that "there will be no ParK'N Fly in Dorval";
27. In order to find a solution to this problem, Plaintiffs proceeded to the purchase of the Marshall and Côte-de-Liesse sites, hoping that these two sites would be suitable for their projected use;

28. The Mayor personally intervened to prevent the sale from happening and repeated that as long as he was the mayor of the City of Dorval, there would be no ParK'N Fly in his city;
29. Having failed to prevent the purchase of the Marshall and Côte-de-Liesse sites, the City of Dorval, upon specific request from the Mayor, even made an unsuccessful attempt to expropriate the Marshall site from allegedly using it as a snow dump;
30. All representatives of the City of Dorval that were approached by Plaintiffs and/or their representatives since the announcement of the modification in 1994 have repeated that the operation of parking lots was not allowed anywhere in the City of Dorval over and over again;

D) Applications for Permits

31. On May 18, 2000, Plaintiff FBT Dorval Inc. filed to the City of Dorval a Construction Permit Request for the implementation of a parking lot open 24 hours a day and offering a shuttle service to the Dorval airport, as well as a Certificate of Authorization Request for the construction and installation of a sign on the Michel-Jasmin site, the whole as more fully appears from extracts of the Construction Permit and Certificate of Authorization Requests, disclosed to Defendants, in bundle, as **Exhibit P-2**;
32. On May 18, 2000, Plaintiff FBT Dorval Inc. also filed to the City of Dorval a Construction Permit Request for the implementation of a parking lot open 24 hours a day and offering a shuttle service to the Dorval airport, as well as a Certificate of Authorization Request for the construction and installation of a sign on the Marshall site, the whole as more fully appears from extracts of the Construction Permit and Certificate of Authorization Requests, disclosed to Defendants, in bundle, as **Exhibit P-3**;
33. On May 18, 2000, Plaintiff Group Packaging Inc. filed to the City of Dorval a Construction Permit Request for the implementation of a parking lot open 24 hours a day and offering a shuttle service to the Dorval airport, as well as a Certificate of Authorization Request for the construction and installation of a sign on the Côte-de-Liesse site, the whole as more fully appears from extracts of the Construction Permit and Certificate of Authorization Requests, disclosed to Defendants, in bundle, as **Exhibit P-4**;
34. The Construction Permit and Certificate of Authorization Requests for the Michel Jasmin, Marshall and Côte-de-Liesse sites (P-2, P-3 and P-4) have been duly filed and received by the City of Dorval, the whole as more fully appears from the bailiff's Report on findings, disclosed to Defendants as **Exhibit P-5**;
35. Upon the filing of the three requests for the Construction Permit and Certificate of Authorization, the representative of the Mayor that received them, without even reviewing any details of the requests, immediately explained that the requests were to be refused since the operation of parking lots was prohibited in the City of Dorval, as more fully appears from the bailiff's Report (P-5);
36. At that moment, the Mayor personally intervened and inquired about the nature of the discussion;
37. Upon reception of the information pertaining to the nature of the discussion, the Mayor immediately answered that "there will be no ParK'N Fly in the City of Dorval" as more fully appears from bailiff's report (P-5);

E) The City of Dorval's Refusal

38. On or about May 29, 2000, the City of Dorval refused to issue all the requested Construction Permits and Certificates of Authorization (P-2, P-3 and P-4) on the basis that the anticipated use of said properties by Plaintiffs, as well as the size of the requested signs, were not allowed by the Zoning By-Law, the whole as more fully appears from a letter, disclosed to Defendants as **Exhibit P-6**;

39. On June 9, 2000, Plaintiffs, through their solicitors, served to City of Dorval a formal notice requesting that City of Dorval's refusal to emit the requested Construction Permits and Certificates of Authorization be reconsidered within ten (10) days, the whole as more fully appears from letter and bailiff's report, disclosed to Defendants, in bundle, as **Exhibit P-7**;

F) The Mandamus

40. Upon the City of Dorval's refusal and negligence to reconsider its refusal, Plaintiffs filed a Motion in Declaratory Judgment and Issuance of a Writ of Mandamus, the whole as more fully appears from the motion, disclosed to Defendants as **Exhibit P-8**;
41. In this motion (P-8), Plaintiffs submitted that the Zoning By-Law at the basis of the City of Dorval's refusal to issue the Construction Permits and Certificates of Authorization was prohibitive since the City of Dorval was in fact completely prohibiting any use within its boundaries without any express authorization to do so;
42. It is well established in municipal law that a city cannot completely prohibit a use within its boundaries unless it is expressly authorized by law or complies with the working scheme;
43. Plaintiffs further submitted in their motion that the Zoning By-Law was discriminatory since it created a monopoly for the City of Dorval and since it had been modified for the sole purpose of preventing Plaintiffs from operating a ParK'N Fly in the City of Dorval;
44. During the hearing, the Mayor personally testified on his various discussions with Plaintiffs and their representatives over the years and admitted that he personally repeated to them that the operation of parking lots was prohibited everywhere within the City of Dorval's boundaries, explaining that he felt that there was enough parking lots in Dorval and that he had higher expectations for the lands located around the Dorval Airport;
45. The Mayor during his testimony even admitted that to his knowledge there was no place where a parking lot similar to the one proposed by Plaintiffs could be implemented pursuant to the new zoning By-Law;
46. On January 30, 2001 the Honorable Pierre Jasmin rendered a judgment in favor of Plaintiffs, the whole as more fully appears from the judgment, disclosed to Defendants as **Exhibit P-9**;
47. In this judgment (P-9), Justice Pierre Jasmin, after reviewing the Zoning By-Law in great details, declares the Zoning By-Law prohibitive:

“Cette analyse du chapitre 4 et de tous les autres articles pertinents du règlement 13.91-A-91 amène le tribunal à la conclusion que ce règlement de zonage interdit tout stationnement privé et payant à l'intérieur des limites de la Ville de Dorval. Il s'agit donc d'une prohibition totale d'une activité licite. La Ville n'avait aucune obligation législative ou administrative de procéder à une telle interdiction. Tout au contraire, rien dans le schéma d'aménagement de la Communauté urbaine de Montréal ne lui permettait une telle interdiction.”

48. Justice Pierre Jasmin also found illegal and unfounded the refusal of the Defendant City of Dorval to issue a permit for the construction and installation of signs in light of the liberty of commerce and of the freedom of expression as it appears from the judgment (P-9);
49. In the judgment rendered on January 30, 2001 (P-9), Justice Pierre Jasmin further concluded that the Zoning By-Law was discriminatory since it created a monopoly for the City of Dorval:

“Si la Ville décidait d'exploiter des stationnements payants à l'intérieur de ses limites, le règlement serait illégal puisqu'il aurait un caractère discriminatoire en lui accordant un monopole municipal sur les

stationnements payants, au détriment des requérantes ou de tout autre citoyen.”;

50. Furthermore, Justice Pierre Jasmin commented the actions of Defendants as follows :

“[53] On peut cependant se poser de sérieuses questions sur l’attitude de la Ville dans tout ce dossier. Selon une preuve prépondérante, les représentants des requérantes ont rencontré le maire de la Ville en mars 1989 pour l’informer de leur projet. Ce dernier n’a alors aucunement indiqué que ce genre d’activités prévues par les requérantes pouvait causer un problème à la Ville. Quelque mois plus tard, lors d’une autre réunion, le maire n’a soulevé aucune difficulté particulière.

[54] Plus tard, lorsque la Ville était sur le point de construire un viaduc près d’un des terrains des requérantes, on leur a suggéré une rencontre avec les autorités de la Ville pour s’assurer que le projet de la Ville ne nuirait pas à leurs opérations.

[55] Plus encore, on a obligé les requérantes à procéder à la décontamination du site « Michel-Jasmin » au départ de la compagnie Texaco.

[56] On peut également se poser de sérieuses questions sur la position officielle de la Ville à l’effet que les requérantes pouvaient opérer leur commerce dans d’autres zones que celles où sont situées leurs trois sites, alors que la position de certains représentants de la Ville et notamment celle du maire a toujours été, selon une preuve prépondérante, que les requérantes ne pourraient jamais opérer leur activité « ParK’N Fly » à l’intérieur des limites de la Ville. Le procès-verbal de constat de l’huissier Jean Jobin, produit en preuve, corrobore en quelque sorte cette prise de position puisqu’on y constate que monsieur Mario St-Jean, responsable des permis, a immédiatement informé les représentants des requérantes au moment où ils déposaient les demandes de permis, que ceux-ci seraient refusés vu le zonage de la Ville, avant même d’avoir examiné ces demandes. Quant au maire, il a réaffirmé que la Ville refuserait les permis et qu’il n’y aurait pas de « ParK’N Fly » à Dorval.

[57] Il semble donc que le maire et la Ville, n’étaient aucunement intéressés à ce que les requérantes opèrent leur activité « ParK’N Fly » à l’intérieur de la Ville. Une telle attitude s’explique mal, d’autant plus que les activités projetées n’étaient aucunement incompatibles avec le caractère industriel et commercial des zones où sont situés les trois sites des requérantes. »

51. Plaintiffs were not able to begin their operations of Park’N Fly in 2001 since the City of Dorval had filed an Inscription in Appeal, the whole as more fully appears from a copy of said Inscription, disclosed to Defendants as **Exhibit P-10**;
52. On June 28, 2002, the Court of Appeal rejected the City of Dorval’s appeal, the whole as more fully appears from judgment, disclosed to Defendants as **Exhibit P-11**;
53. Despite the judgment rendered by the Court of Appeal on June 28, 2002, the City of Montreal assisted by the Mayor, voluntarily delayed the issuance of the construction permits and certificates of authorization without any valid grounds for doing so;
54. Plaintiffs had to formally request the issuance of the permits and certificates and forced to take appropriate recourses to finally obtain the permits and certificates on or about August 16, 2002, the whole as more fully appears from the correspondence, disclosed to Defendants in bundle as **Exhibit P-12**;
55. By doing so, Defendants knowingly and voluntarily prevented Plaintiffs from constructing their parking lot in time before the winter season, despite their best efforts to do so and consequently reporting the opening of the parking lot at the earliest in the Spring of 2003;

56. In addition, Defendants refused to cooperate with Plaintiffs to ensure that the construction of the site is done in an efficient manner and unlawfully refused any modifications to the permits, although the requested modifications are in conformity with a zoning By-Law that was declared inapplicable to Plaintiffs;

II. THE LAW

57. Since their purchase of the sites in 1989 and as of today, Defendants repeated actions and representations preventing or unlawfully delaying Plaintiffs from operating a lawful and renowned commercial business in the City of Dorval ;
58. Plaintiffs duly bought the sites located in the vicinity of the Dorval Airport, planned their ParK’N Fly operations taking into careful consideration the requirements of the City of Dorval and incorporating them in their plans, except for a few exceptions where it was impossible, and filed complete Construction Permit and Certificate of Authorization Requests for the Michel-Jasmin, Marshall and Côte-de-Liesse sites, which were duly received by the Defendant, City of Dorval as appears from the bailiff’s Report on findings (P-5);
59. Nevertheless, the City of Dorval refused to issue the requested permits based on illegal grounds and continues to do so in order to postpone, as much as possible, the issuance of said permits and certificates;
60. The grounds upon which the City of Dorval is basing its refusal is obviously illegal since it is based on a by-law that prohibits those kinds of commercial activities everywhere within the boundaries of the City;
61. It is well established in municipal law that a prohibitive municipal regulation is illegal and both Defendants were well aware of this rule;
62. In addition, the Zoning By-Law upon which the City of Dorval is basing its refusal has been modified in that regard in 1991, after Plaintiff FBT Dorval Inc. already informed both Defendants of its intention to operate such a business;
63. In communicating with the Defendants, Plaintiffs never expected them to use an information provided in good faith in order to modify the Zoning By-Law without Plaintiffs’ knowledge in a view to prevent them from implementing their business;
64. In doing so, Defendants knew or had to know that the Zoning By-Law as modified was prohibitive and discriminatory, as concluded in Justice Pierre Jasmin’s judgment (P-9);
65. The bad faith of the Defendants clearly transpires from the fact that, although they knew that the Zoning By-Law had been modified in such a way that the operation of parking lots was no longer authorized, they knowingly kept this information from Plaintiffs and continued to have discussions with them leading Plaintiffs to believe that the situation was unchanged and that they would still be authorized to operate a ParK’N Fly on their site;
66. In doing so, Defendants ensure that Plaintiffs would undertake costly decontamination work that went above and beyond the legal requirements, hoping that their collaboration would facilitate the issue of their construction permits;
67. The truth eventually came out, but only when the Defendants were satisfied with the restoration of the site previously used by Texaco;
68. Plaintiffs were knowingly misled to believe that their intended use of the premises was duly authorized and in compliance with the Zoning By-Law of the City of Dorval by the numerous and continuous misrepresentations of Defendants, the Mayor and the City of Dorval’ representatives;

69. Furthermore, Defendants pending the action and since the judgment of the Court of Appeal acted and still act in bad faith, which increases the damages suffered by Plaintiffs;
70. The Defendants, the Mayor and the City of Dorval through its representatives, acted in bad faith by:
- a) mentioning and reiterating their support for Plaintiffs' implementation of its ParK'N Fly operations up until January 1994 even after the modification of the Zoning By-Law in June 1991;
 - b) supporting the modification of and/or modifying the Zoning By-Law to prevent the anticipated operations of the Plaintiffs, knowing that a prohibitive by-law is illegal and given the representations made by the Plaintiffs concerning their project;
 - c) not informing the Plaintiffs of the pending or occurred modification of the Zoning By-Law and even pretending that, or acting as if, Plaintiffs' projected use was still authorized;
 - d) insisting that Plaintiffs decontaminate a site they did not contaminate, knowing that the work was done by the Plaintiffs solely to ensure the implementation of their operations, which Defendants knew was no longer permitted;
 - e) intervening in order to prevent Plaintiffs to acquire additional sites in the City of Dorval or to expropriate to acquired sites;
 - f) refusing or allowing to refuse to issue the requested Construction Permits and Certificates of Authorization on grounds that they knew were illegal;
 - g) doing anything they can to postpone the issuance of the Construction Permits and Certificates of Authorization or refuse any modifications thereto that would allow Plaintiffs to operate ParK'N Fly within the City of Dorval boundaries;
71. As a result of the actions, misrepresentations and bad faith of the Defendants, Plaintiffs have suffered loss and/or damages in the amount detailed as follows:
- a) loss of profits:..... \$ 12,750,000.00
 - b) maintenance costs of vacant lots:..... \$ 2,800,000.00
 - c) attempt to reputation: \$ 10,000,000.00
- TOTAL: \$ 25,550,000.00**
72. As a result of the actions, the misrepresentations and the bad faith of the Defendants, Plaintiffs continue to suffer daily losses and/or damages due to the unlawful delay of the opening of their business estimated at \$ 10,000.00 per day;
73. Given all of the above, Plaintiffs are well founded to jointly and severally claim from Defendants the sum of \$ 25,550,000.00 as damages;
74. The Defendants, the City of Montreal, having succeeded to the rights, obligations and charges of the City of Dorval, and the Mayor personally, are solidarily liable for the losses and damages incurred by the Plaintiffs as a result of their fault;
75. The present action is well-founded both in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO :

GRANT Plaintiffs' action;

CONDEMN AND ORDER the Defendants to pay jointly and severally to Plaintiffs the amount of \$ 25,550,000.00 with interest at the legal rate, plus the additional indemnity provided for by Section 1619 C.C.Q., to accrue from the date of the institution of this action;

RESERVE Plaintiffs' right to seek additional remedies;

THE WHOLE with costs against each Defendants.

Montreal, December 24, 2002

(S) BORDEN LADNER GERVAIS

BORDEN LADNER GERVAIS LLP
Attorneys for Plaintiffs