

STATE OF NEW YORK
SUPREME COURT : COUNTY OF WYOMING

MARK ANDRE and DONNA ANDRE; RICHARD and DEBRAH AYERS; MICHAEL and JULIE BECK; RICHARD and SUSAN BORYCKI; JOSHUA and LAURA BORYCKI; MICHAEL and HELENE BURGIO; RALPH and CYNTHIA EVANS; NICHOLAS FISHER; MICHAEL GREVELDING and MARY PERRY; SHEILA GROFF; STUART and JANIS HEMPEL; PAUL and KATHLEEN JENSEN; JAMES and JILL KESSLER; BLAINE and KAY LILAC; RON and LYNN LOMANTO; JAMES MAZUR; DAVE and MATILDA MACIEKEWSKI; DICK and ALICE MALICKI; PAUL and LINDA MAKSON; TERRENCE and JOAN MCCONNELL; JAMES and MARY NEVINGER; PHIL and PATRICIA NIEDERHAUSER; JOE and PAULA ORLOWSKI; CATHI ORR; HELEN PREMO and RODNEY RICK; GERALD and DONNA RAMSEY; REO ROOD; JEFFREY and DEBORAH WILLIAMS; TED and NYLA WILKINSON; JOHN WILSON and SHARON RICOTTA; and PETER and JANETT WINSTEL.

2014 AUG -5 PM 3:32
WYOMING COUNTY CLERK
WARSAW, N.Y.

Plaintiffs,

vs.

COMPLAINT

INVENERGY LLC
One South Wacker Drive
Suite 1900
Chicago, IL 60606

Index No. 46912

Defendant.

Plaintiffs, complaining of the Defendant, by Lippes & Lippes, their attorneys, allege the following:

PARTIES

1. That at all times herein after mentioned, the Plaintiffs Mark and Donna Andre reside at 101 Prospect Street, Town of Attica, County of Wyoming, and State of New York.

2. That at all times herein after mentioned, the Plaintiffs Richard and Debrah Ayers reside at 1828 Halls Corners Road, Town of Attica, County of Wyoming, and State of New York.

3. That at all times herein after mentioned, the Plaintiffs Michael and Julie Beck reside at 2129 Krotz Street, Town of Warsaw, County of Wyoming, and State of New York.

4. That at all times herein after mentioned, the Plaintiffs Richard and Susan Borycki and Joshua and Laura Borycki reside at 1995 Gassman Road, Town of Attica, County of Wyoming, and State of New York.

5. That at all times herein after mentioned, the Plaintiffs Helene and Michael Burgio reside at 3570 Syler Road, Town of Varysburg, County of Wyoming, and State of New York. Plaintiffs also reside at 39 Bannard Avenue, Town of Tonawanda, County of Erie, State of New York.

6. That at all times herein after mentioned, the Plaintiffs Ralph and Cynthia Evans reside at 3628 Quakertown Road, Town of Warsaw, County of Wyoming, and State of New York.

7. That at all times herein after mentioned, the Plaintiff Nicholas Fisher resides at 2855 Route 20A, Town of Varysburg, County of Wyoming, and State of New York.

8. That at all times herein after mentioned, the Plaintiffs Michael Grevelding and Mary Perry reside at 3752 Buffalo Road, Town of Orangeville, County of Wyoming, and State of New York.

9. That at all times herein after mentioned, the Plaintiff Sheila Groff resides at 3617 Buffalo Road, Town of Attica, County of Wyoming, and State of New York.

10. That at all times herein after mentioned, the Plaintiffs Stuart and Janis Hempel reside at 1335 Werner Road, Town of Warsaw, County of Wyoming, and State of New York.

11. That at all times herein after mentioned, the Plaintiffs Paul and Kathleen Jensen reside at 2422 Snyder Road, Town of Varysburg, County of Wyoming, and State of New York.

12. That at all times herein after mentioned, the Plaintiffs James and Jill Kessler reside at 1796 Bank Road Street, Town of Wyoming, County of Wyoming, and State of New York.

13. That at all times herein after mentioned, the Plaintiffs Blaine and Kay Lilac reside at 1961 Standish Road, Town of Attica, County of Wyoming, and State of New York.

14. That at all times herein after mentioned, the Plaintiffs Ron and Lynn Lomanto reside at 2152 Standish Road, Town of Attica, County of Wyoming, and State of New York.

15. That at all times herein after mentioned, the Plaintiff James Mazur resides at 2470 Nesbitt Road, Town of Warsaw, County of Wyoming, and State of New York.

16. That at all times herein after mentioned, the Plaintiffs Dave and Matilda Maciejewski reside at 2045 Standish Road, Town of Varysburg, County of Wyoming, and State of New York.

17. That at all times herein after mentioned, the Plaintiffs Dick and Alice Malicki reside at 3333 Centerline Road, Town of Varysburg, County of Wyoming, and State of New York.

18. That at all times herein after mentioned, the Plaintiffs Paul and Linda Makson reside at 2419 Krotz Road, Town of Warsaw, County of Wyoming, and State of New York.

19. That at all times herein after mentioned, the Plaintiffs Terrence and Joan McConnell reside at 3128 Syler Road, Town of Varysburg, County of Wyoming, and State of New York.

20. That at all times herein after mentioned, the Plaintiffs James and Mary Nevinger reside at 2830 Attica Center Road, Town of Warsaw, County of Wyoming, and State of New York.

21. That at all times herein after mentioned, the Plaintiffs Phil and Patricia Niederhauser reside at 2053 Standish Road, Town of Attica, County of Wyoming, and State of New York. The Plaintiffs formerly resided at 4482 Crestridge Drive, Town of Hamburg, County of Erie, and State of New York.

22. That at all times herein after mentioned, the Plaintiffs Joe and Paula Orlowski reside at 1856 Standish Road, Town of Attica, County of Wyoming, and State of New York.

23. That at all times herein after mentioned, the Plaintiff Cathi Orr resides at 1953 Johnson Creek Road, Town of Barker, County of Niagara, and State of New York. The Plaintiff formerly resided at 2621 Knotz Road, Town of Warsaw, County of Wyoming, and State of New York.

24. That at all times herein after mentioned, the Plaintiffs Helen Premo and Rodney Rick reside at 3197 Syler Road, Town of Varysburg, County of Wyoming, and State of New York.

25. That at all times herein after mentioned, the Plaintiffs Donna and Gerald Ramsey reside at 2240 State Route 238, Town of Warsaw, County of Wyoming, and State of New York.

26. That at all times herein after mentioned, the Plaintiff Reo Rood resides at 4497 Liberty Street, Town of Warsaw, County of Wyoming, and State of New York.

27. That at all times herein after mentioned, the Plaintiffs Jeffrey and Deborah Williams reside at 4184 Buffalo Road, Town of Warsaw, County of Wyoming, and State of New York.

28. That at all times herein after mentioned, the Plaintiffs Ted and Nyla Wilkinson reside at 2975 Orangeville Center Road, Town of Warsaw, County of Wyoming, and State of New York.

29. That at all times herein after mentioned, the Plaintiffs John Wilson and Sharon Ricotta reside at 4011 Quakertown Road, Town of Warsaw, County of Wyoming, and State of New York.

30. That at all times herein after mentioned, the Plaintiffs Peter and Janett Winstel reside at 4216 Buffalo Road, Town of Warsaw, County of Wyoming, and State of New York.

31. Upon information and belief, Defendant Invenergy LLC (“Invenergy”), was and is a domestic corporation, authorized to do business in the State of New York.

32. Upon information and belief, the Defendant Invenergy, has its primary office located at One South Wacker Drive, Suite 1900, City of Chicago, State of Illinois.

FACTS

33. Upon information and belief, Defendant Invenergy created and owns a wind energy operation, including wind turbines on property located within 800-1500 feet from the properties owned by Plaintiffs.

34. Upon the construction of and operation of the wind turbines, Defendant has destroyed Plaintiffs’ rural viewshed from their property.

35. Upon the construction of and operation of the wind turbines, Defendant has caused constant noise, vibrations and flicker to enter Plaintiffs’ property, significantly impacting the health and wellbeing of the Plaintiffs and causing them to become sick, sore, lame and disabled.

36. Upon the construction of and operation of the wind turbines, Defendant has caused constant noise and vibrations significantly diminishing the value of Plaintiffs’ property and home.

37. Upon information and belief, Defendant's wind turbines have violated, on a regular basis, town noise ordinances that restrict the noise levels to 50 decibels.

38. Moreover, Defendant's operation of such wind turbines caused noise pollution, vibrations, and flicker to occur, creating a nuisance and interfering with Plaintiffs' exclusive possessory interest in their property, and causing Plaintiffs' quality of life to be significantly diminished.

39. In spite of being informed of the nuisance condition created by the Defendant, the Defendant has refused to either abate the nuisance or otherwise engage in any mitigating measures, intentionally continuing the nuisance that they have created, causing a significant diminishment of the Plaintiffs' use and enjoyment of their property, quality of life, health, value of Plaintiffs' property and economic wellbeing.

AS AND FOR A FIRST CAUSE OF ACTION:
TRESPASS

40. Plaintiffs repeat and reallege each and every allegation set forth in paragraph "1" through "39" inclusive of this Complaint with the same force and effect as set forth in total herein.

41. Defendant has intentionally caused noise pollution, vibrations, and flicker to enter Plaintiffs' property, causing Plaintiffs to become sore, sick, lame and disabled, diminishing Plaintiffs' property value, and interfering with Plaintiffs' exclusive possessory interests in their property.

42. By reason of the foregoing, Defendant has caused and continues to cause a trespass upon Plaintiffs' property and has interfered and continues to interfere with Plaintiffs' exclusive possessory interests in their property.

43. By reason of the foregoing, Defendant has caused damage to Plaintiffs' real property as well as causing a loss in value of Plaintiffs' property and has adversely affected Plaintiffs' health, wellbeing, and quality of life.

44. Wherefore, Plaintiffs seek damages as indicated in the Ad Damnum Clause of this Complaint.

AS AND FOR A SECOND CAUSE OF ACTION:
NUISANCE

45. Plaintiffs repeat and reallege each and every allegation set forth in paragraph "1" through "44" inclusive of this Complaint with the same force and effect as set forth in total herein.

46. By reason of the actions and omissions of the Defendant alleged herein, Defendant has created a nuisance that has substantially interfered with the use, enjoyment and value which Plaintiffs are entitled to in their property and has diminished Plaintiffs' health, wellbeing, and quality of life.

47. Defendant's interference with the property of Plaintiffs continues to this day.

48. Defendant's interference with the property of the Plaintiffs was and is unreasonable in character.

49. Wherefore, Plaintiffs seek damages as indicated in the Ad Damnum Clause of this Complaint.

AS AND FOR A THIRD CAUSE OF ACTION:
NEGLIGENCE

50. Plaintiffs repeat and reallege each and every allegation set forth in paragraph "1" through "49" inclusive of this Complaint with the same force and effect as set forth in total herein.

51. At all times herein mentioned, Defendant knew or in the exercise of reasonable care should have known that its actions and activities were done in such a manner to cause damage to the Plaintiffs' health, quality of life, and property.

52. At all times herein mentioned, Defendant knew or in the exercise of reasonable care should have known, the actions and activities carried out on its property or during its business operation would cause excessive noise, vibration, and flicker effect to surrounding homes and properties.

53. Defendant has a duty to conduct its activities in a manner as to not cause material and substantial annoyance and harm to its neighboring properties and their persons and in their enjoyment of their properties.

54. Defendants, by its methods and use of operations of its business, did materially breach that duty, which continues to this day.

55. The aforesaid occurrence was not caused or due to the carelessness or negligence on the part of the Plaintiffs.

56. Defendant owed Plaintiffs a duty of reasonable care in the manner in which it operated its wind energy activities, fell below such standard of reasonable care, and as a result of the foregoing Plaintiffs sustained damage to their health, property, and their quality of life has been diminished.

57. Moreover, as a result of the foregoing, Plaintiffs have sustained a diminution in their real property value.

58. Wherefore, Plaintiffs seek damages as indicated in the Ad Damnum Clause of this Complaint.

AS AND FOR A FOURTH CAUSE OF ACTION:
RES IPSA LOQUITUR

59. Plaintiffs repeat and reallege each and every allegation set forth in paragraph “1” through “58” inclusive of this Complaint with the same force and effect as set forth in total herein.

60. At all times herein mentioned, Defendant knew that its actions and activities in installing and operating wind turbines adjacent to the properties of Plaintiffs would cause damage to Plaintiffs and their properties.

61. The wind turbines were and are under the exclusive care and control of the Defendant.

62. The aforesaid occurrence did in fact result in Plaintiffs’ diminished value in property, and adversely affected Plaintiffs’ health, wellbeing, and quality of life.

63. As a direct and proximate result of Defendant’s negligent, careless and reckless actions, Plaintiffs sustained damage to their real property, economic wellbeing, and their quality of life has been diminished.

64. Wherefore, Plaintiffs seek damages as indicated in the Ad Damnum Clause of this Complaint.

AD DAMNUM CLAUSE

WHEREFORE, Plaintiffs demand judgment against the Defendant as follows:

1. The sum of \$20,000,000.00 to compensate the Plaintiffs for their personal injuries, lost quality of life and loss in property value;
2. The sum of \$20,000,000.00 as punitive damages;
3. The costs of this action;
4. Any such further and other relief that the Court may deem just and proper.

Dated: Buffalo, New York
August 7, 2014



RICHARD J. LIPPES, ESQ.
LIPPES & LIPPES
1109 Delaware Avenue
Buffalo, New York 14209
(716) 884-4800
Attorneys for Plaintiffs