

STATE OF NEW YORK  
SUPREME COURT COUNTY OF FULTON

MYRON KUCHARK, EVELYN KUCHARK,  
KIMBERLY CUMMINGS, SHAUNA TRASKOS,  
AND TRACIE KUCHARK,

Plaintiffs,

-against-

PEACOCK PROPERTIES, LLC AND MICHAEL  
BOGDAN,

Defendants.

**COMPLAINT**

Index No. \_\_\_\_\_

The plaintiffs, by and through their attorneys, Wood, Seward, McGuire & Sacco, LLP, complaining of the defendants, allege as follows:

**PARTIES**

1. Plaintiffs are individuals who each reside in Fulton County and are the owners of premises commonly known as 642 Union Mills Road in the Town of Broadalbin, Fulton County.

2. Defendant, Peacock Properties, LLC (hereafter Peacock), is a domestic limited liability company having a business address at 626 Union Mills Road in the Town of Broadalbin, Fulton County.

3. Defendant, Michael Bogdan, is an individual who resides in Fulton County, New York.

**FACTUAL ALLEGATIONS**

4. The Kuchark plaintiffs own land consisting of about 46.3 acres which includes both a residence and rural acreage and is described in their deed recorded as Instrument Number 2015-035569 in the Fulton County Clerk's Office.

5. Peacock owns premises in the Town of Broadalbin in Fulton County which is fully described on **Exhibit A**.

6. That before Peacock owned its premises, the portion thereof subject to this complaint was forested and in its natural state.

7. Before Peacock took title to its premises, the portion of Kucharks' land affected by the conduct complained of consisted of solid ground which supported numerous trees of various species.

8. Before Peacock took title to its premises, both plaintiffs' and defendants' lands were naturally draining woodlands which contained natural watercourses. Plaintiffs' land was not swamp, and neither was Peacock's at the area thereof subject to this complaint, however substantial wetlands exist in the southerly and southeastern portion of Peacock's lands, upon information and belief.

9. Upon taking title and as a course of conduct continuing to date, Peacock began clearcutting its forest.

10. Peacock is also in the process of developing its premises into an RV park or other type of recreational facility.

11. As part of Peacock's development project, it dug out a pond along a portion of its northeasterly common boundary with the Kucharks' land.

12. That the northeasterly edge of the pond directly abuts the Kucharks' land.

13. Although water drains into the pond, Peacock and Bogdan recklessly and negligently made no provisions for water to drain out of the pond.

14. As a direct and proximate result of Peacock's and Bogdan's actions and omissions, a substantial portion of plaintiffs' lands have become swamp and a great number of trees have died and the soil otherwise destroyed.

15. Plaintiff has requested the defendants remedy its damages and the request was ignored.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT  
PEACOCK – TRESPASS**

16. Plaintiffs repeat, reiterate and reallege all of the allegations herein set forth.

17. Peacock's negligently dug pond created an unnatural drainage course which destroyed plaintiffs' timber and turned dry land into swamp in violation of one or several common law obligations which neighboring landowners owe to each other.

18. Peacock also destroyed a portion of plaintiffs' fencing.

19. Peacock's conduct is a continuing trespass for which their remedy at law is insufficient.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST EACH DEFENDANT**

20. Plaintiffs repeat, reiterate and reallege all of the allegations herein set forth.

21. As neighboring landowners, Peacock owed a duty of care to the Kucharks.

22. That at all times relevant herein, Bogdan was acting as an agent of Peacock.

23. Bogdan dug the pond and destroyed Kucharks' fencing, soil and timber.

24. Bogdan and Peacock breached duties owed to Kucharks which caused Kucharks' land to become swamp and destroyed timber, together with other damages.

25. The Kuchark plaintiffs have been damaged.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST EACH DEFENDANT –  
RPAPL SECTION 861**

26. Plaintiffs repeat, reiterate and reallege all of the allegations herein set forth.

27. The defendants, and each of them, are jointly and severally liable to the Kuchark plaintiffs for treble the destroyed stumpage or \$250.00 per tree and for treble the

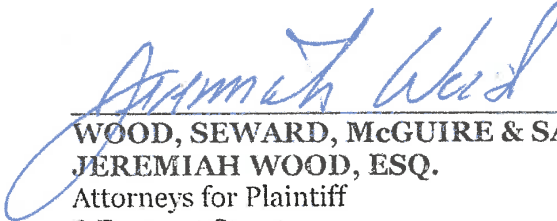
cost of soil remediation and any other remediation required to restore the plaintiffs' land to its condition before the defendants engaged in the conduct complained of herein.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:

1. On the first cause of action, money damages to be determined by the finder of fact together with punitive damages and injunctive relief to compel the defendants' installation of a ditching and drainage system which shall be approved by the plaintiff, New York State Department of Environmental Conservation, and/or the Adirondack Park Agency, or any other agencies having jurisdiction over wetlands in the Adirondack Park;
2. On the second cause of action money damages to be determined by the finder of fact;
3. On the third cause of action, treble the money damages determined to be owed by the finder of fact, which are believed to exceed \$75,000.00;

Together with the costs and disbursements of this action.

Dated: July 16, 2021



**WOOD, SEWARD, McGUIRE & SACCO, LLP**  
**JEREMIAH WOOD, ESQ.**

Attorneys for Plaintiff  
8 Fremont Street  
Gloversville, New York 12078  
518-725-0653