

LAW OFFICE OF RICHARD T. ROZNOY,
School Street • P.O. Box 850 • East Granby, Connecticut 06026 • Tel: 860-844-8769 • Fax: 860-653-2221
juris no. 410169

DOCKET NO: LLI-CV-10-6003476

RETURN DATE: DECEMBER 7, 2010 SUPERIOR COURT

ROBIN L. HIRTLE
PLAINTIFF

J. D. OF LITCHFIELD

V.

AT LITCHFIELD

GREGORY J. ZUPKUS, PAUL J. COREY and
BNE ENERGY, Inc.

NOVEMBER 2, 2010

DEFENDANTS

**COMPLAINT AND ATTACHED APPLICATION FOR TEMPORARY
INJUNCTION AND ORDER TO SHOW CAUSE**

FIRST COUNT: VIOLATION OF EASEMENT

1. The plaintiff ROBIN L. HIRTLE, by her prior married name Robin L. Dziedzic, is fee interest owner and in possession of certain real property in the Town of Colebrook, County of Litchfield and State of Connecticut known as 29-A Flagg Hill Road and resides at said address.¹
See attached Exhibit A.

2. The defendant GREGORY J. ZUPKUS resides at 38 Colonial Drive in the Town of Prospect, County of New Haven, State of Connecticut.

3. The defendant PAUL J. COREY resides at 12 Fernwood Road in the Town of West Hartford, County of Hartford, State of Connecticut.

4. The defendants PAUL J. COREY ("COREY") and GREGORY J. ZUPKUS ("ZUPKUS") are, at all times relevant hereto, fee interest owners of certain real property in the Town of Colebrook, County of Litchfield and State of Connecticut known as 29 Flagg Hill Road.
See attached Exhibit B.

5. The defendant BNE ENERGY, INC. ("BNE ENERGY") is, at all times relevant hereto, a corporation licensed under the laws of the State of Delaware with a Connecticut business address of 29 South Main Street, Suite 200, West Hartford, Connecticut 06107.

¹ The property is physically within the Town of Colebrook but has a Town of Winsted mailing address, hence the Winsted address on the Summons.

6. The defendants COREY and ZUPKUS, at all times relevant hereto, are the only Principals of BNE ENERGY. The defendant ZUPKUS is President and CEO of BNE ENERGY, for which purpose the business address of 38 Colonial Drive, Prospect, Connecticut 06712 is used.

7. The defendants COREY and ZUPKUS, as fee interest owners of the real property at 29 Flagg Hill Road, Colebrook, Connecticut are successors in interest to Theodore V. Wilber for a driveway and utility easement agreement (the "Easement") dated December 20, 2002 and recorded February 11, 2003 in volume 68 at pages 286-289 of the Colebrook land records and also recorded as survey or map number 269 in the Colebrook land records. *See attached Exhibit C.*

8. The plaintiff ROBIN L. HIRTLE is a signatory, under a prior name, and party in interest to the Easement identified in Paragraph 7, *supra*.

9. Said Easement includes a common driveway for the plaintiff HIRTLE and the defendants COREY and ZUPKUS to their respective properties to the rear of Flagg Hill Road in Colebrook, Connecticut.

10. The driveway on said Easement traverses the property of the defendants COREY and ZUPKUS AT 29 Flagg Hill Road, Colebrook, Connecticut providing access to their property from Flagg Hill Road.

11. The driveway on said Easement traverses the property of the defendants COREY and ZUPKUS at 29 Flagg Hill Road, Colebrook, Connecticut providing access to the property of plaintiff ROBIN L. HIRTLE at 29-A Flagg Hill Road, Colebrook, Connecticut.

12. The language of the Easement provides, in paragraph number 7, in its entirety, "The easement herein granted shall be limited to residential use exclusively." *See attached Exhibit C.*

13. In or about the month of February 2009 BNE ENERGY erected a 180-foot high "MET-tower" (wind tower) on the property of the defendants COREY and ZUPKUS at 29 Flagg Hill Road, Colebrook, Connecticut.

14. BNE ENERGY used the Easement for access to the property of the defendants COREY and ZUPKUS at 29 Flagg Hill Road, Colebrook, Connecticut for erection and construction of the 180-foot high wind tower on said property.

15. BNE ENERGY has used and is using the Easement for access to the property of the defendants COREY and ZUPKUS at 29 Flagg Hill Road, Colebrook, Connecticut for maintenance of and access to the 180-foot high wind tower on said property.

16. Establishing a 180-foot high wind tower on the property of the defendants COREY and ZUPKUS at 29 Flagg Hill Road, Colebrook, Connecticut and use of the Easement for such purpose is not a residential endeavor and therefore is in violation of express terms of the Easement.

17. Commercial and construction vehicles owned by or under the control of the defendants, variously, COREY, ZUPKUS, or BNE ENERGY are utilizing the Easement to gain access to the property at 29 Flagg Hill Road, Colebrook, Connecticut for purposes of maintaining the existing 180-foot high wind tower and to determine the feasibility of developing a commercial wind farm.

18. The use of the Easement by the defendants for purposes of maintenance and development of a wind farm is a commercial activity.

19. The use of the Easement by the defendants for commercial purposes is in violation of the terms of the Easement, which is "...limited to residential use exclusively." *See attached Exhibit C.*

20. The Easement, as used by the defendants, variously, COREY, ZUPKUS, or BNE ENERGY, is along the same driveway as that defined in the Easement identified in paragraph 7, *supra*, which is of public record in the Town of Colebrook land records.

21. The plaintiff, HIRTLE, has advised the defendants, COREY and ZUPKUS, of the prohibition against use of the Easement and driveway for other than residential purposes, but said defendants, individually and as BNE ENERGY, have rejected plaintiff's concerns and continue their use of the Easement for commercial purposes.

22. The plaintiff has suffered and will suffer substantial and irreparable injury and damage because the above-described conduct of the defendants has created damage to the driveway identified on the Easement by use of defendants' commercial vehicles and a loss in value to plaintiff's property due to commercial use of the driveway and easement in excess of Ten Thousand (\$10,000) Dollars.

23. The use of the driveway and easement by the defendants for commercial purposes will cause a serious reduction in the fair market value of the plaintiff's property at 29-A Flagg Hill Road.

24. The erosion, noise, pollution and visual nuisance created by defendants' use of the driveway and easement for commercial purposes will result in a serious deprivation of the use and

enjoyment by the plaintiff of her property at 29-A Flagg Hill Road, as well as a risk to the safety of the plaintiff.

25. Substantial and irreparable injury to the plaintiff is imminent if the defendants, their agents and assigns, are allowed to continue to use the driveway and easement for commercial purposes as described above.

26. The defendants' actions are an intentional violation of the terms and conditions of the easement in that they have had actual notice of the prohibition against use of the driveway for other than residential purposes, have been contacted by plaintiff and her representatives as to the need to discontinue their commercial use of the driveway, yet they continue to violate the express terms of the easement for use of the driveway.

SECOND COUNT: OVERBURDENING OF EASEMENT

1. - 26. Paragraphs 1 through 26 of the First Count are incorporated by reference herein as paragraphs 1 through 26 of this Second Count as if separately enumerated.

27. The defendants' conduct overburdens the driveway and Easement by intensification of the type and volume of vehicle traffic permitted by the intended use of the driveway under the express language of the Easement.

28. The defendants' conduct overburdens the driveway and Easement by impermissibly widely expanding the intended scope of the use of the driveway as defined in the Easement.

THIRD COUNT: INJUNCTION

1. - 26. Paragraphs 1 through 26 of the First Count are incorporated by reference herein as paragraphs 1 through 26 of this Third Count as if separately enumerated.

27. The defendants' non-residential use of the driveway in contravention of the express terms of the Easement, their conduct overburdening the driveway and Easement, the noise, pollution and visual nuisance created by defendants' use of the driveway, risk of danger to the plaintiff, and loss of the value in plaintiff's property at 29-A Flagg Hill Road all unreasonably interfere with the plaintiff's peaceful enjoyment and use of her property.

28. The acts complained of are in violation of the express terms of the Easement and have caused and will cause the plaintiff irreparable injury, in that they are continuous and recurrent,

and defendants have intentions to expand them, and unless restrained they will continue and expand.

29. The defendants are in violation of Conn. Gen. Stat. § 52-480 in that they have maliciously erected a structure upon their land, intended to annoy and injure the plaintiff as owner of adjacent land in respect to the residential use of her land, and have used the driveway set out in the Easement to do so, for which injunctive relief is the remedy.

30. The plaintiff has no adequate remedy at law.

FOURTH COUNT: FAILURE TO COMPLY WITH TERMS OF EASEMENT

1. --28. Paragraphs 1 through 28 of the Second Count are incorporated by reference herein as paragraphs 1 through 28 of this Fourth Count as if separately enumerated.

29. The Easement requires that “[a]ny damage to the Driveway cause by the negligence of either party shall be repaired at that party’s expense.” *See attached Exhibit C, ¶ 6.*

30. The Easement requires that “[e]ach party shall be fully responsible for the maintenance, repairs and replacement of the Driveway located on its property.” *See attached Exhibit C, ¶ 6.*

31. The use of the driveway by the commercial vehicles of the defendants has caused erosion, washout, loss of grading material and other damage to the driveway on the property of the defendants, making access to plaintiff’s property by plaintiff difficult or at times impossible.

32. As plaintiff must use the portion of the driveway which is on the property of the defendants, as of September 2010 she and her agents have occasionally not been able to access her property while the driveway has been deteriorated on the property of defendants.

33. Plaintiff has directly requested the defendants ZUPKUS and COREY make repairs to the portion of the driveway which is on their property, but said defendants disclaim any responsibility to do so.

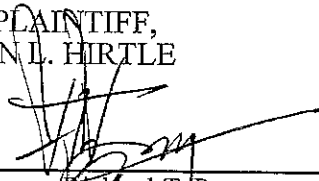
34. Plaintiff has been required to perform maintenance on the driveway due to the damage caused by defendants’ vehicles and the refusal of defendants ZUPKUS and COREY to make repairs, and she has incurred damage in doing so.

WHEREFORE, THE PLAINTIFF CLAIMS AND PRAYS FOR RELIEF:

1. A temporary and permanent injunction prohibiting and restraining the defendants from using the driveway identified in the Easement for other than residential purposes except for express use of the driveway to accommodate vehicles for the dismantling of the 180-foot tall wind tower currently on the property of defendants, for a limited time certain;
2. An order that defendants remove the existing 180-foot tall tower;
3. A temporary and permanent injunction prohibiting and restraining the defendants from erecting any other such towers.
4. Damages.
5. Reasonable plaintiff's attorneys' fees and costs of this action from all defendants jointly and severally.
6. Such other and further relief at law or in equity as may apply.

THE PLAINTIFF,
ROBIN L. HIRTLE

By: _____


Richard T. Roznoy
Her Attorney
School Street
P.O. Box 850
East Granby, CT 06026
tel. 860-844-8769
fax. 860-653-2221
juris: 410169
email: RTR@RoznoyLaw.com

TO THE CLERK:

Please enter the appearance, for the Plaintiff, of:

Richard T. Roznoy, Esq.
Law Office of Richard T. Roznoy
School Street, P.O. Box 850
East Granby, CT 06026
tel: 860-844-8769
fax: 860-653-2221
email: RTR@RoznoyLaw.com
juris no. 410169

DOCKET NO: LLI-CV-10-6003476 :
 RETURN DATE: DECEMBER 7, 2010 : SUPERIOR COURT
 ROBIN L. HIRTLE : J. D. OF LITCHFIELD
 V. : AT LITCHFIELD
 GREGORY J. ZUPKUS, PAUL J. COREY and :
 BNE ENERGY, Inc. : NOVEMBER 2 2010

VERIFICATION / AFFIDAVIT

STATE OF CONNECTICUT :
 COUNTY OF HARTFORD : ss. EAST GRANBY: November 2 2010

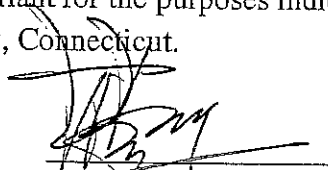
I, the undersigned, ROBIN L. HIRTLE, being duly sworn, hereby depose and say:

1. I am over the age of eighteen, believe in the obligation of an oath, and am competent to attest to the matters stated herein.
2. I am the plaintiff in the above-captioned cause of action and applicant seeking an injunction against the defendants.
3. I have read the foregoing Complaint and Application for Temporary Injunction. The statements contained therein are true and accurate to the best of my knowledge, information and belief.
4. I have undertaken independent investigation, incurring expense, to verify that the defendants have been utilizing the driveway identified in the Easement for purposes of erecting, maintaining and repairing the 180-foot tall wind tower currently on their property.

The undersigned, having been duly sworn, makes oath to the truth of the foregoing under pain of perjury:


 ROBIN L. HIRTLE

Subscribed and sworn to before me by the affiant for the purposes indicated this 2nd day of the month of November 2010 at East Granby, Connecticut.


 Richard T. Roznoy
 Commissioner of the Superior Court

DOCKET NO: CV10-6003476

RETURN DATE: DECEMBER 7, 2010

SUPERIOR COURT

ROBIN L. HIRTLE

I. D. OF LITCHFIELD

V.

AT LITCHFIELD

GREGORY I. ZUPKUS, PAUL I. COREY and
BNE ENERGY, Inc.

NOVEMBER 2, 2010

APPLICATION FOR TEMPORARY INJUNCTION
AND ORDER TO SHOW CAUSE

The Plaintiff in the above-entitled action hereby makes application for a temporary injunction in accordance with her prayer for relief and respectfully requests that an injunction be entered forthwith OR that the defendants be ordered to appear at an early date to show cause why the prayer for an injunction should not be granted.

ORDER TO SHOW CAUSE

Whereas, the foregoing complaint with prayer for relief and an application for a temporary injunction, duly verified, has been presented to the court; and

Whereas, upon application of the plaintiff, it appears that an order should be issued directing the defendants in this action to appear before the court to show cause why a temporary injunction should not issue.

Now, THEREFORE, IT IS HEREBY ORDERED, that the defendants be summoned to appear before the Superior Court for the Judicial District of Litchfield ~~in Court Room~~

at Connecticut Superior Court, 15 West Street, Litchfield, Connecticut on

STATE OF CONNECTICUT
SUPERIOR COURT
JUDICIAL DISTRICT
OF LITCHFIELD

NOV. 05 2010

CERTIFIED COPY
SEAL AFFIXED

BY: *[Signature]*
CLERK / ASSISTANT CLERK 100.3

LAW OFFICE OF RICHARD T. ROZNOY
East Granby, Connecticut 06026 • Tel: 860-874-4131 Fax: 860-653-2221
Massachusetts BBO # 677510
School Street P.O. Box 820

December 13, 2010 at 9:30 ~~A.M.~~ P.M. then and there to show cause why a temporary injunction should not issue against them as prayed for in the foregoing application.

Dated at Litchfield, Connecticut this 5th day of the month of November in the year 2010.

BY THE COURT:

(Richard J.)
Michael J. Murphy
Judge ¹ Clerk/Asst Clerk ~~date~~
Chief

SUMMONS FOR HEARING

TO ANY PROPER OFFICER:

By authority of the State of Connecticut you are hereby commanded to summon the defendants, GREGORY J. ZUPKUS, PAUL I. COREY and BNE ENERGY, Inc. in the foregoing action to appear before the Superior Court for the Judicial District of Litchfield at Litchfield, 15 West Street, Litchfield, Connecticut at the place and time specified in the foregoing Order, then and there to show cause why a permanent injunction should not be issued against said defendants as prayed for in the foregoing complaint and application, by serving upon them in the manner provided by the statute for service of process a true and attested copy of the foregoing writ, summons and verified complaint, application for temporary injunction, verification, order to show cause, notice of lis pendens and this summons on said defendants on or before *November 30*, 2010.

Hereof fail not, but due service and return make.

Dated at East Granby, Connecticut, this day of the month of
November in the year 2010.

Richard T. Roznoy
Commissioner of the Superior Court

P.O. BOX 247
15 WEST STREET
LITCHFIELD, CONNECTICUT 06759

11-03-2010

DOC NO LLI-CV-10-6003476S HAS
BEEN ASSIGNED TO THE CASE OF
HIRTLE, ROBIN
VS.
ZUPKUS, GREGORY ETAL

RICHARD THOMAS ROZNOY
11 SCHOOL STREET
P.O. BOX 850

EAST GRANBY CT
06026

WHICH IS RETURNABLE TO
LITCHFIELD JUD DISTRICT.
PLEASE USE LLI-CV-10-6003476S
ON ALL FUTURE PLEADINGS,
MOTIONS AND CLAIM SLIPS.

CLERKS OFFICE, JUDICIAL DISTRICT
SUPERIOR COURT
P.O. BOX 247
15 WEST STREET
LITCHFIELD, CONNECTICUT 06759