

Date: 2014 12 08  
Docket: S-1-CV-2013-000164

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

Mr. W.H. LEARD  
o/a Woodworks

Plaintiff  
(Respondent)

- and -

CITY OF YELLOWKNIFE

Defendant

- and -

REAL PROPERTY MANAGEMENT,  
Fisheries and Oceans Canada, Government of Canada

Defendant  
(Applicant)

MEMORANDUM OF JUDGMENT

[1] This is an application by the Defendant Real Property Management, Fisheries and Oceans Canada, Government of Canada for an Order substituting the name of the Defendant as the Attorney General of Canada (“Canada”) and for summary judgment dismissing the Plaintiff’s claim against Canada. At the hearing, all parties consented to a change in the style of cause and I ordered that the change could occur forthwith. Therefore, this decision relates only to Canada’s application for summary judgment. For the reasons that follow, I have concluded that the application should be granted.

[2] The Plaintiff W.H. Leard o/a Woodworks (“Leard”) commenced an action against Real Property Management, Fisheries and Oceans Canada, Government of Canada and the City of Yellowknife (“City”) on October 29, 2013. In his

Statement of Claim, Leard seeks relief including an injunction, direction from the Court, and a Court ordered resolution of his dispute either through a sale, a long-term leasehold or easement of Lot 10, Block A, Plan 3801 to himself.

[3] Canada has brought a summary judgment application to dismiss Leard's claim on the basis that he has no reasonable cause of action. Canada claims that Leard does not have any legal or equitable interest in Lots 10 or 11 and any past use of the lots does not create any rights to the lots.

[4] Leard claims that he has a right of access to his lot through Lot 10 and that this right is an equitable right which arises because of the historical relationship which existed between the Lots in Block A and which continues today.

[5] Summary judgment applications are governed by Part 12 of the *Rules of the Supreme Court of the Northwest Territories*. Rule 175 permits a defendant to apply for summary judgment:

175. A defendant may, after delivering a statement of defence, apply with supporting affidavit material or other evidence for summary judgment dismissing all or part of the claim in the statement of claim.

[6] Once a party has applied for summary judgment, the respondent is obligated, pursuant to Rule 176, to file materials in response:

176.(1) In response to the affidavit material or other evidence supporting an application for summary judgment, the respondent may not rest on the mere allegations or denials in his or her pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

[7] On an application for summary judgment, the test is whether there is a genuine issue for trial and if the Court is not satisfied that there is a genuine issue for trial, it shall grant summary judgment: Rule 176(2).

[8] The applicant must show that its case is manifestly clear and beyond doubt. The application should not be granted if there is conflicting evidence on relevant facts. A summary judgment application should not involve the weighing and assessing of evidence or the resolving of conflicts in the evidence. *Paul's Aircraft Services Ltd. v. Kenn Borek Air Ltd.*, 2012 NWTSC 69 at para.10.

[9] In this case, it does not appear that there is any dispute regarding the relevant facts. The question is whether Leard has a right of access to his lot through Lot 10.

[10] Leard was the owner of Lot 2, Block A, Plan 70 and Lot 4, Block A, Plan 1909 which were combined in 1989 into what is now Lot 9, Block A, Plan 2145 in Yellowknife. Lot 9 is located in an area of Yellowknife commonly referred to as Old Town.

[11] Her Majesty the Queen in Right of Canada is the owner of Lots 10 and 11, Block A, Plan 3801, also in Yellowknife. Lot 10 surrounds Lot 9 on three sides while MacDonald Drive bounds the fourth side. Lot 11 is adjacent to Lot 10. A large building or warehouse is located on Lot 9 and takes up most of the lot. The entrance or access to the building is through Lot 10 as there is no entrance to the building on the MacDonald Drive side. The practical result is that Leard must cross Lot 10 to enter his building.

[12] Leard claims that he has repeatedly unsuccessfully sought to purchase or lease adjacent lands from Canada in order to own direct vehicular access to his building.

[13] Leard claims that his business requires the unrestricted and unhindered use of the public access road and laneways surrounding his property and that he has had the express and/or implied consent of Canada to do so. Until recently, his access and parking have not been hindered by Canada.

[14] Lot 10 is on Great Slave Lake and has been historically referred to as the government dock. It has been used by the public for many years to access Great Slave Lake and to store boats, vehicles and other items.

[15] Recent events, namely the leasing of Lot 10 to the City of Yellowknife (“Yellowknife”), have resulted in changes. Yellowknife has plans to redevelop the government dock located on Lot 10 and has taken steps to do so which have compromised Leard’s ability to access his lot and will, if Yellowknife continues with their 2013 redevelopment plan, result in Leard being unable to access his lot as he has done in the past.

[16] The Certificates of Title to Lots 10 and 11 do not reveal that Leard has any registered interest in either lot. Leard acknowledged at the application that he did not have a registered interest in the lots. He also acknowledged that he did not have any contracts, caveats or easements which would give him a legal interest in Lots 10 or 11. However, Leard argued that he has a right of access to his lot through Lot 10 and that this right is an equitable right which arises because of the

historical relationship which existed between the Lots in Block A and which continued until today.

[17] Section 14 of the *Federal Real Property and Federal Immovables Act*, S.C. 1991, c. 50 states that “no person acquires any federal real property or federal immovable by prescription.” What that means is that no one can acquire title in federal real property simply through the use or occupation of that property over a lengthy period of time. *R. v. Roch*, [1994] Y.J. No. 151 (S.C.); *McKinnon v. Canada (Attorney General)*, [2002] B.C.J. No. 1609 (S.C.).

[18] In my view, this means that Canada must succeed in its argument and that despite Leard’s historical access to his lot through Lot 10, it did not create a right by easement, adverse possession or an equitable interest in Lot 10. Leard’s ownership of Lot 9 and the need to cross Lot 10 regularly to access the entrance to his building did not create an interest in Lot 10. Given the historic use made of Lot 10, Leard enjoyed no more than what other members of the public enjoyed: public access to the government dock. It is unfortunate that recent developments have restricted Leard’s ability to access his lot as he has become accustomed to but Leard cannot legally require Canada to grant him an interest in Lot 10.

[19] For these reasons, the application for summary judgment is granted and the Plaintiff’s statement of claim against the Defendant Canada is dismissed.

[20] Costs were not addressed before me. If the parties wish to speak to costs, they should contact the Registry within 30 days of these reasons being filed and make arrangements to do so.

S.H. Smallwood  
J.S.C.

Dated at Yellowknife, NT this  
8th day of December , 2014

W.H. Leard Self-Represented

K. Penney Counsel for City of Yellowknife

A. Fox Counsel for Attorney General of Canada

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