

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

Mr. W.H. LEARD
o/a Woodworks

Plaintiff
(Applicant)

- and -

CITY OF YELLOWKNIFE

Defendant
(Respondent)

- and -

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

Defendant

MEMORANDUM OF JUDGMENT

[1] This is an application by the Plaintiff Mr. W.H. Leard, for an interlocutory injunction against the Defendant, City of Yellowknife. This matter was heard in Chambers before me on June 12, 2015. For the reasons that follow, I have concluded that the application should be dismissed.

[2] The Plaintiff W.H. Leard o/a Woodworks (“Leard”) commenced an action against Real Property Management, Fisheries and Oceans Canada, Government of Canada (“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] In a decision dated December 8, 2014, I granted a summary judgment application brought by Canada and dismissed Leard's claim against Canada. The only remaining defendant is the City.

[4] Leard now seeks an interlocutory injunction against the City to prevent the City from installing any physical structure, metering device, signage and any other thing of a permanent or semi-permanent nature which might impede, obstruct or deny access to Lot 9, Blk A from Lot 10, Blk A. Leard's concern is that access to doors, stairs, ramps and loading bays on his Lot may be obstructed by the City's installation of signage and posts on Lot 10.

[5] The test for an interlocutory injunction was set out by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 and consists of a three part test:

- 1) Is there a serious issue to be tried?
- 2) Will the applicant suffer irreparable harm if the injunction is not granted?
- 3) Does the balance of convenience favour granting the injunction?

[6] In considering whether there is a serious issue to be tried, the Court must consider the positions advanced by each party and the evidence which has been presented. As noted in *Inuvik v. Shattler*, 2011 NWTSC 43, at para. 4:

But typically, at the interlocutory stage, the evidentiary record is not complete, the evidence is untested, and the legal submissions are not fully fleshed out. Hence, the Court must refrain from engaging in an in-depth analysis of the matter. The inquiry is limited to determining whether the moving party has an arguable case.

[7] In his statement of claim, Leard has sought the sale, long-term leasehold or an easement of Lot 10, Block A, Plan 3801 to himself. His position is that he has an equitable right of access to his property located on Lot 9, Block A, Plan 3801 which arises because of the historical relationship which existed between the Lots and which continues today.

[8] 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 3801 in Yellowknife. 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. The entrance or access to the building which is on Lot 9 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 the building on Lot 9.

[9] 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. The City, in 2013, leased Lot 10 from Canada. The City has plans to redevelop the government dock located on Lot 10 and has taken steps to do so which Leard claims have impeded his ability to access his lot and will, if the City continues with their redevelopment plan, result in Leard being unable to access his lot as he has done in the past.

[10] The City, in its Statement of Defence, acknowledges that it is the lessee of Lot 10 for a period of 20 years with an option to renew for an additional 30 years. The City claims that the terms of its lease limit the City's use of the lot to public use, public park and heritage preservation. The City denies that it has a legal or other duty to Leard to transfer land to him.

[11] In my decision granting summary judgment to Canada, I concluded that Leard did not have a registered interest in Lot 10. I also concluded that Leard did not have any contracts, caveats or easements which would give Leard a legal interest in Lot 10. Further, I concluded that despite Leard's historical access to Lot 9 through Lot 10, it did not create a right by easement, adverse possession or an equitable interest in Lot 10. *Leard v. Yellowknife (City) et al* 2014 NWTSC 82.cor1.

[12] On this application, Leard has filed an Affidavit which includes several exhibits consisting of e-mail exchanges and photographs.

[13] The first e-mail is between Leard and Ms. Penney, the lawyer for the City, regarding the conduct of the litigation. The second e-mail is from Leard to Ms. Penney regarding the City's installation of "heavy steel anchor pins" into the ground around the perimeter of Lot 9 which Leard alleges some are actually installed on Lot 9.

[14] There are also 6 photographs included which depict signage that has been apparently installed by the City in the area. Three of the photographs depict what appears to be the heavy steel anchor pins that Leard has referred to and which are in the ground.

[15] The third e-mail is from Leard and addressed to Mr. Kefalas, Senior Administrative Officer, City of Yellowknife and attaches photographs that Leard took of the area.

[16] It is not clear from the photographs exactly where the signs have been installed and whether they are on Lot 9 or Lot 10. If any of the signs are located on Lot 9, then they are on Leard's property and I would expect that the City would have to remove them as it is clear that Leard does not want the signs on his property. However, review of the photographs and the plans which have been previously filed in this matter do not assist in determining if that is the case. I cannot determine whether any of the signs are in fact installed or placed on Lot 9.

[17] Ultimately, I must determine whether Leard has an arguable case, that is a serious issue to be tried. Based on my decision of December 8, 2014, I cannot conclude that Leard has an arguable case. His claim against Canada was dismissed on this basis and as lessee, the City cannot convey or lease Lot 10 to Leard. Similarly, Leard does not have a right by easement, adverse possession or an equitable interest in Lot 10.

[18] As I have concluded that there is no serious issue to be tried, the application for an interlocutory injunction is dismissed.

S.H. Smallwood
J.S.C.

Dated at Yellowknife, NT this
1st day of September , 2015

Counsel for Applicant:
Counsel for Respondent, City of Yellowknife:

Self- Represented
K.Penney

S-1-CV-2013-000164

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