

CIBC v. Ross et al, 2015 NWTSC 41
Date: 2015 09 08
Docket: S-1-CV-2014-000156

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES
BETWEEN:

CIBC MORTGAGES INC.
Plaintiff
-and-

SUSAN ROSS AND HERBERT WAYNE AREY
Defendant

MEMORANDUM OF JUDGMENT
ON EX PARTE APPLICATION

[1] This is an Application for an Order for Substitutional Service. The Plaintiff seeks to serve one of the Defendants, Herbert Wayne Arey, by mailing documents, to his attention, to the address 15 Centennial Street, in Inuvik. This is the street address of the property that is the subject-matter of this action.

[2] A similar Application was submitted in May 2015. At that time, the evidence filed in support was an affidavit sworn by Chris Garven. In that affidavit Mr. Garven described efforts made to serve Mr. Arey personally, but he did not propose an alternate method of service that, in his opinion, would be effective or likely effective. The Application was dismissed and the documents were returned to the Plaintiff's counsel because the evidence submitted did not meet the requirements of the Rules of the Supreme Court of the Northwest Territories.

[3] The Application has now been resubmitted. The Memorandum in support of the Application signed by counsel is dated July 2, 2015. That Memorandum was filed on August 6, 2015, along with an affidavit sworn by Kristen Wiens on June 30, 2015.

[4] In her affidavit, Ms. Wiens indicates that it was confirmed that Mr. Arey resides at the property situated at 15 Centennial Drive in Inuvik, where the attempts to serve him were made by Mr. Garvin, and that he is "out of town for work". Ms. Wiens further deposes that as a result, she believes prompt personal service is impractical and that the most likely method to bring these proceedings to Mr. Arey's attention would be to mail the documents to him by registered courier, to the address 15 Centennial Drive.

[5] Ms. Wiens, however, swore another affidavit on June 30, 2015. That one was filed in support of an Application for a Preservation Order in this action. In that Affidavit, Ms. Wiens deposes that she believes that Mr. Arey and the other Defendant will be leaving that property, thereby making a Preservation Order necessary. On the basis of this evidence, a Preservation Order did issue on July 22, 2015.

[6] The two affidavits that Ms. Wiens swore on June 30, 2015, appear, on their face, to be contradictory: in one, she deposes that Mr. Arey will be vacating the property at 15 Centennial Drive, and in the other, she deposes that she believes mailing documents to 15 Centennial Drive will likely be an effective means to bring this action to his attention. The Memoranda signed by counsel in support of these two applications were signed a few days after the affidavits were sworn but they were also both signed on the same day.

[7] The apparent conflict in the evidence, and contradictory nature of the two orders sought, is disturbing to say the least, especially considering that the Application for the Order for Substitutional Service was filed after the Preservation Order issued.

[8] The Application for an Order for Substitutional Service is dismissed. Under the circumstances, it would be difficult for the Court to attach any weight to the affidavit sworn by Ms. Wiens in support of the Application. There is no basis to conclude that documents mailed to 15 Centennial Drive would come to the attention of Mr. Arey.

[9] Given what has transpired on this matter, if this Application is to be renewed, I direct that it be addressed in Court, in regular Civil Chambers, and that counsel be prepared to provide an explanation about the inconsistencies and contradictions in some of the materials filed to date.

[10] Under the circumstances, the Plaintiff shall not be entitled to any costs relating to any of the attempts to obtain an Order for Substitutional Order to date.

L.A. Charbonneau

J.S.C.

Dated at Yellowknife, NT, this
8th day of September, 2015

Counsel for the Plaintiff: Denise M. Hendrix

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THE HONOURABLE JUSTICE L.A. CHARBONNEAU