

Date: 2019 05 17
Docket: S-1-CV-2012-000139

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA and the COMMISSIONER OF
THE NORTHWEST TERRITORIES
Plaintiffs/ Defendants by Counterclaim**

- and -

**ALEX BEAULIEU
Defendant/Plaintiff by Counterclaim**

HEARD AT YELLOWKNIFE, NT ON SEPTEMBER 18, 2018

REASONS FOR JUDGMENT

INTRODUCTION

[1] On October 29, 2012, the original plaintiffs filed a statement of claim against Alex Beaulieu. Mr. Beaulieu filed a statement of defence and counterclaim on December 20, 2012. On April 14, 2014, responsibility for lands and resources devolved to the government of the Northwest Territories. An amended statement of claim was filed on July 24, 2014 and Mr. Beaulieu filed an amended statement of defence and counterclaim on September 30, 2014. The plaintiffs filed a reply and defence to counterclaim on August 27, 2015. The plaintiffs moved for summary judgment. The application for summary judgment was heard before me on September 17, 2018.

BACKGROUND

[2] Most of the facts are not in dispute or otherwise not challenged. I have therefore relied heavily on the pre-hearing brief of the Plaintiff Commissioner for the following background.

[3] Since early 2003, Mr. Beaulieu has occupied a parcel of land located just off Highway 3 approximately 22.5 kilometers west of Yellowknife, which I will refer to as the Site.

[4] Prior to April 1, 2014, the Site was under the administration and control of both the Commissioner and a Department of the federal government. Since then, administration and control has been the sole responsibility of the Commissioner.

[5] On July 2, 2002, the Yellowknives Dene First Nation (“YKDFN”) passed a council resolution granting Mr. Beaulieu “Permission to Occupy” the Site, subject to terms and conditions which included that the Site be used as a residence.

[6] On January 14, 2003, the Northwest Territories Housing Corporation (“NTHC”) entered into an agreement with Mr. Beaulieu to provide funding for the construction of a small dwelling through an “Elders on the Land Initiative”. This funding took the form a forgivable loan over a period of 5 years, provided that Mr. Beaulieu used the property as his primary residence throughout that time.

[7] On November 3, 2003, the NTHC wrote to Mr. Beaulieu to advise that they considered him in breach of their agreement because he was not using the Site as his principal residence.

[8] On September 28, 2004, the YKDFN Housing Division passed a motion to recommend the revocation of the council resolution allowing Mr. Beaulieu to occupy the Site because he was living in Ndilo and there were concerns about the use of the Site.

[9] As a result of a number of complaints, agents of the Department of Indian and Northern Affairs (“DIAND”) federal government conducted inspections of the Site on two occasions. On June 4, 2008, they found, along with a small cabin, approximately 35 inoperable vehicles and other waste items. A follow up inspection on April 28, 2010 found that the number of inoperable vehicles had increased to 49.

[10] On May 3, 2010, Mr. Beaulieu spoke with DIAND and acknowledged ownership of the vehicles. He was informed that his occupation as unauthorized and on May 5, 2010 DIAND posted a “Notice of Unauthorized Occupancy of Crown Land” at the Site.

[11] When I delivered a summary of this judgment in court, I stated that on September 9, 2010 the YKDFN Band Council denied Mr. Beaulieu’s application to

occupy the Site. This was a misunderstanding, which Mr. Beaulieu corrected. The denial was in relation to another plot of land that Mr. Beaulieu had applied to occupy. The action taken by the YKDFN was limited to a recommendation by the YKDFN Housing Division that the Band Council Resolution, made September 28, 2004, be revoked as a result of what Mr. Beaulieu was and was not doing with the Site. To my knowledge, no further action was taken by the YKDFN.

[12] Between October 2012 and August 2015, the statements of claim and defence and counterclaim referred to in the introduction were filed.

[13] On December 6, 2017, the GNWT Department of Lands conducted an inspection of the Site. There were at that time 72 inoperable vehicles.

[14] The Commissioner filed a motion for summary judgment on January 30, 2018.

THE POSITION OF THE PLAINTIFF COMMISSIONER

[15] The basic position of the Commissioner is an action in trespass. They say that they control the land in question, that the defendant is occupying the land, and this occupation is without permission or valid claim.

THE POSITION OF THE DEFENDANT IN RESPONSE AND COUNTERCLAIM

[16] Mr. Beaulieu makes three claims to occupancy of the Site:

[17] First, that the YKDFN gave him permission to occupy the Site by Band Council Resolution and that this gives him some degree of title which is not revocable by the YKDFN;

[18] Second, that his occupation of the Site is authorized by his agreement with the NTHC;

[19] Third, that he has an Aboriginal or treaty right through his use of the Site.

[20] Mr. Beaulieu also claims for damage that was caused to the dwelling on the Site by blasting during the expansion of Highway 3 in 2005.

THE RESPONSE OF THE PLAINTIFF COMMISSIONER TO THE ISSUES RAISED IN DEFENCE AND COUNTERCLAIM

[21] On the issue of YKDFN permission, Mr. Beaulieu's use of the Site is inconsistent with the original Band Council Resolution and contravenes their land use policy. Further, the YKDFN Resolution was never intended to or capable of conveying any right in land to Mr. Beaulieu.

[22] On the second issue, quoting from paragraph 48 of the pre-hearing brief of the Commissioner: "The Commissioner acknowledges that the NWT HC agreed to provide funding to Mr. Beaulieu for the construction of a dwelling...and that the dwelling was constructed on the Site in 2003; however Mr. Beaulieu did not comply with the terms of the Agreement and was notified...of his continuing breach." The Commissioner takes the position that any agreement or permission granted by the NWT HC is no longer in force.

[23] On the issue of the claimed Aboriginal or treaty right, Mr. Beaulieu is not using the Site for the purpose of any traditional activities on which such rights are based. Mr. Beaulieu is essentially operating a junkyard.

[24] Responding to the counterclaim for damages to the property during highway construction, the Commissioner points out the following: the blasting was conducted by a third party, a private company, NWT Rock Services, and thus does not disclose any cause of action against the Commissioner. Further, Mr. Beaulieu signed a liability waiver with NWT Rock Services, for which he was paid \$4,000.

APPLICABLE LAW

[25] The leading case on the test to be applied on an application for summary judgment is *Hryniak v Mauldin*, 2014 SCC 7. On appeal from Ontario Court of Appeal, the Supreme Court of Canada moved away from the "full appreciation" test as the appropriate test to determine if there is a genuine issue for trial that cannot be dealt with by way of summary judgment.

[26] While the issue on appeal in *Hryniak* related to the Ontario *Rules*, the direction given has been held to apply to applications for summary judgment generally. *Hryniak* was recently considered and followed by Shaner, J. of this Court in *Leishman v Hoechsman et al.*, 2016 NWTSC 27. I adopt the following reasons therein:

[39] Following the Supreme Court of Canada's decision in *Hryniak v Mauldin*,

[2014] SCC 7, [2014] 1 SCR 87, 2014 CarswellOnt 640, there has been a movement away from such a strict approach in recognition that a full-blown trial is not always necessary to ensure claims are adjudicated fairly. Indeed, Karakatsanis, J., suggested (at para 24) that in some cases, requiring a trial may actually *impede* access to justice by burdening litigants with disproportionately high costs, as well as increasing unnecessarily the time required for legal resolution of a claim. Summary judgment rules "must be interpreted broadly, favouring proportionality and fair access to the affordable, timely and just adjudication of claims." (*Hryniak*, at para 5).

[40] Taking the approach set out in *Hryniak*, the question is not whether there is a genuine issue for trial but rather, whether there is a genuine issue *requiring* trial - and tools such as cross-examination available in the trial process - to allow a court to reach a fair and just result.

[42] Although Karakatsanis J. rendered her judgment in the context of an appeal from a summary judgment order made under Rule 20 of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194, the rationale she articulated for the modern approach is equally applicable to litigants in the Northwest Territories. Like Ontario's Rule 20, Rules 175 and 176 of the *Rules of the Supreme Court of the Northwest Territories* are ultimately intended to allow the Court, in appropriate cases, to assess claims fairly and efficiently based on a record, rather than a formal trial. Thus, the test should be the same. The question for the Court in determining if a summary judgment application is appropriate [is] whether there is a genuine issue which requires a trial for fair and just resolution, rather than whether there is a triable issue.

APPLICATION OF THE LAW TO THE CASE AT BAR: ANALYSIS

[27] The burden is on the plaintiff applicant to establish that there is no genuine issue requiring a trial in this case. I will therefore deal with each of the issues raised by Mr. Beaulieu:

[28] ***Did the Order in Council by the YKDFN allowing Mr. Beaulieu to occupy the Site for the purpose of residing there give Mr. Beaulieu a right to use the Site for other purposes or any sort of title to it?***

[29] I do not have any evidence that Mr. Beaulieu ever actually resided at the Site. He has been occupying it in a manner contrary to the intention of the Order. His application to occupy another site was denied by Council in 2010. There is no indication that the original Order was either intended to or capable of conveying any form of title.

[30] *Did the Agreement entered into with the NWT HC for the construction of the cabin create an ongoing right to occupy either the land or the cabin?*

[31] The Agreement provided for funds for the construction of the cabin, by way of a forgivable loan upon the condition of continuous residence for a period of five years. It was never intended to convey any rights to the land the cabin was sitting on. As well, the key condition for the loan, that of residence, was never complied with.

[32] *Does Mr. Beaulieu have an Aboriginal or treaty right to the use of the Site?*

[33] Mr. Beaulieu's use of the Site, as a depository for a growing collection of derelict vehicles numbering over 70, can in no way be seen as the sort of traditional use from which rights of this sort flow.

[34] *Does Mr. Beaulieu have a claim against the Commissioner flowing from any damage caused by blasting during the work to Highway 3 in 2005?*

[35] During submissions, Mr. Beaulieu showed the Court numerous photographs of the Site and the damage to it caused by blasting in 2005. What I gathered was that the damage was far greater than he contemplated when he signed the liability waiver with NWT Rock Services and that he was heartbroken as a result. On the issue of damages, however, I must determine whether or not there is an actionable claim. The work was conducted by a private company, not the Commissioner. The limitation period lapsed long before the statement of defence and counterclaim was filed in 2012. Mr. Beaulieu's claim may well have been subrogated by the NWT HC on the basis that he was in default of the loan agreement that allowed the cabin to be built. I do not see how Mr. Beaulieu's counterclaim discloses an action against the Commissioner that has any hope of success at trial.

DECISION

[36] None of the issues raised by Mr. Beaulieu require a trial for a fair and just resolution. The application for summary judgment is granted in its entirety. I find for the plaintiff. I also dismiss the defendant's counterclaim.

[37] The relief will be as requested by the plaintiff, with some modifications:

[38] The Commissioner is given possession of the Site forthwith, with the following caveats;

[39] Mr. Beaulieu is given until the end of May, 2019, to remove any property he wishes to keep, including the cabin. Any chattels left on the Site afterward will be considered abandoned;

[40] As was Ordered in September, no further items are to be deposited on the Site by Mr. Beaulieu;

[41] Mr. Beaulieu is a pensioner on a limited income. I will not order that he pay for the cleanup of the Site or the remediation of any environmental damage;

[42] For the same reason, I will not order costs in this action.

A. M. Mahar
J.S.C.

Dated at Yellowknife, NT, this
17th day of May, 2019

Counsel for the Plaintiffs:
Counsel for the Defendant:

Hayley Fitzgerald
Self Represented

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**REASONS FOR JUDGMENT
OF
THE HONOURABLE JUSTICE A.M. MAHAR**
