

SUPREME COURT OF YUKON

Citation: *Yukonstruct v. Connolly*, 2020 YKSC 20

Date: 20200515
S.C. No. 19-A0133
Registry: Whitehorse

BETWEEN:

YUKONSTRUCT SOCIETY

PETITIONER

AND

BRIONI CONNOLLY

RESPONDENT

Before Chief Justice R.S. Veale

Appearances:

James R. Tucker (by telephone)
Vincent Larochelle (by telephone)

Counsel for the Petitioner
Counsel for the Respondent

REASONS FOR JUDGMENT

[1] VEALE C.J. (Oral): This is an application for costs arising out of a two-day hearing in December 2019.

[2] Ms. Connolly applies for costs on a party-party basis.

[3] Yukonstruct applies for special costs, meaning solicitor and own client fees and disbursements of \$36,634.59 or alternatively party and party costs on tariff scale B in the amount of \$6,748.44.

[4] Costs applications are usually straightforward applications under Rule 60(9) which states that "costs . . . follow the event unless the court otherwise orders."

[5] Rule 60(3) also applies, as it sets out the factors that may be considered in assessing whether special costs should be awarded.

[6] This application has proceeded in a similar manner to the court application heard on December 2019, and I summarize it in two words: hotly contested.

[7] I will first briefly discuss my decision rendered in the Reasons for Judgment cited as *Yukonstruct v. Connolly*, 2019 YKSC 67. There were two issues. The primary issue was whether Yukonstruct was estopped by word or conduct from denying the renewal of Ms. Connolly's lease and having a termination of lease on October 31, 2019. The secondary issue was whether Ms. Connolly would be given additional time to vacate the premises after October 31, 2019.

[8] In the judgment, I granted Ms. Connolly the right to remain in the tenancy until January 31, 2020, as Yukonstruct had clearly promised additional time before October 31, 2019, to vacate the premises. And I might add that, on the part of Yukonstruct, was a reasonable attempt to resolve the dispute. However, I want to be clear that the primary issue was Ms. Connolly's belief that she had the right to renew the lease. I ruled against her on that issue. In my view, Yukonstruct had substantial success in the application.

[9] I am going to turn now to Rule 39(11), which applies in this case only to the extent that offers of settlement were made in the case. Rule 39(11) is only relevant in the sense that normally, offers to settlement are not discussed before the Court, but they can be once the matter has been resolved because they may have implications for the costs award that follows.

[10] The bulk of the time on this costs application surrounded the issue of whether one party or the other made a settlement offer that was close to my decision to allow Ms. Connolly to depart on January 31, 2020. And I must say that as that was not the primary issue at stake, it must be considered in that context.

[11] Without going into the lengthy and failed attempts to resolve this matter right up to the courtroom door, it is clear to me that the costs dispute is really about Yukonstruct's desire to end the litigation and Ms. Connolly's wish to keep the matter going before the Yukon Human Rights Commission. That impasse made settlement impossible, and in my view, Yukonstruct was quite entitled to insist on bringing the matter to a conclusion with appropriate releases. Suffice it to say that the Court prefers that these matters are brought to an end once and for all rather than simply continuing on in another forum.

[12] The failure to settle litigation is simply a reflection of the nature of this dispute, and I am not going to say that either party should be penalized for that. With respect to special costs, while I have a great deal of sympathy for Yukonstruct in the matter, I do not believe that the conduct of Ms. Connolly rises to the reprehensible status that is required for an order of special costs under Rule 60(3).

[13] I conclude that Ms. Connolly shall pay the costs of Yukonstruct in the amount of \$6,748.44 plus a lump sum of \$1,000 for the preparation and hearing this morning.

VEALE C.J.