

SUPREME COURT OF YUKON

Citation: *Ó Murchú v. DeWeert*, 2020 YKSC 32

Date: 20200811
S.C. No. 19-A0030
Registry: Whitehorse

BETWEEN

TRAOLACH Ó MURCHÚ and BRIONI CONNOLLY

PLAINTIFFS

AND

LEONARD LEE DEWEERT, SANDRA LYNN DEWEERT, INSITE HOME
INSPECTIONS and KEVIN NEUFELD

DEFENDANTS

Before Madam Justice S.M. Duncan

Appearances:

Traolach Ó Murchú and

Brioni Connolly

James R. Tucker

Lindsey Galvin and

Elizabeth Cordonier

Appearing on their own behalf

Counsel for the Defendants, Leonard Lee

DeWeert and Sandra Lynn DeWeert

Counsel for the Defendants, Insite Home

Inspections and Kevin Neufeld

RULING (On Costs)

[1] This is the decision on the plaintiffs' request for costs of \$5,748.50 payable on a party and party basis as a result of the dismissal of the summary trial application brought by the defendants Insite Home Inspections and Kevin Neufeld ("the defendants").

[2] The defendants request costs be awarded in the cause. Alternatively they request that i) each party bear their own costs; or ii) if the plaintiffs are to be awarded costs that they be in the amount of \$1,650.00, according to Appendix B.

[3] The summary trial application was brought by the defendants for a determination of the validity and enforceability of the third sentence in a limitation of liability clause in the home inspection agreement. If it were found to be valid, enforceable, and applicable, damages in the action may be limited to the cost of the inspection agreement, \$446.25. The plaintiffs did not oppose the suitability of the summary trial, but did raise several concerns about why a summary trial was inappropriate. They opposed the application on its merits.

[4] This Court found that a summary trial was not an adequate vehicle to resolve this dispute fairly. There were credibility and other evidentiary issues related to the signing of the agreement that needed to be explored; and the Court was unable to complete a full analysis of the interpretation of the third sentence of the clause, because more evidence about the rest of the agreement was required. As a result, the summary trial application of the defendants was dismissed, without prejudice to their ability to make the argument at trial, after *viva voce* evidence and argument.

[5] Despite this finding, I am of the view that the application for summary trial was a good faith attempt to resolve the determination of damages; to assist the parties in preparing for trial; and potentially to encourage settlement.

[6] The defendants submitted two recent decisions from the British Columbia Supreme Court and one from the British Columbia Court of Appeal, in which applications for summary trial were dismissed for reasons of unsuitability: *Edward*

Jones v. Mirminachi, 2011 BCCA 493; *Strata Plan LMS 4443 v. Travelers Guarantee Co. of Canada*, 2013 BCSC 296; and *Lougheed v. Lougheed*, 2019 BCSC 290

(“*Lougheed*”). In all three cases, costs were awarded in the cause. In *Lougheed*, the Court concluded:

[84] The application for a summary trial was a good faith attempt to narrow the issues in what is going to be a long trial. Preparation for the summary trial will assist the parties in preparing for the full trial.

[7] For the same reasons, I will grant costs in the cause in this case. The evidence and arguments gathered for the purpose of the summary trial will be useful at trial for matters beyond the issue litigated in the summary trial. It was a good faith attempt to narrow the issues for trial and the work done by both plaintiffs and defendants is likely to reduce trial preparation time.

DUNCAN J.