SUPREME COURT OF YUKON

Citation: *Yukon (Government of) v Tarka,* 2024 YKSC 40

Date: 20240904
S.C. No. 21-A0079
Registry: Whitehorse

BETWEEN:

GOVERNMENT OF YUKON

PLAINTIFF

AND

LEN TARKA and ERIC DeLONG

DEFENDANTS

Before Justice K. Wenckebach

Counsel for the Plaintiff — Kimberly Sova

Counsel for the Defendants — Vincent Larochelle

REASONS FOR DECISION

OVERVIEW

[1] On October 1, 1991, the plaintiff, Yukon Government ("Yukon"), leased to the defendant, Len Tarka, a piece of property (the "Property") at $100 per year for residential purposes, for a term of "30 years, or the life of the Lessee" (the "Lease Agreement").

[2] As the end of 30 years approached, the parties realized they disagreed about the meaning of the phrase "30 years, or the life of the Lessee". Yukon concluded that the term meant Mr. Tarka had a lease for a maximum of 30 years. The Lease Agreement therefore would end on September 30, 2021. Yukon informed Mr. Tarka that it would not

renew his lease. Mr. Tarka should therefore vacate the premises by September 30, 2021.

[3] Mr. Tarka, in turn, took the position that he had a life interest in the Property, and declined to vacate the premises.

[4] Mr. Tarka remained in possession of the Property after September 30, 2021. He does not live on the Property. He lives in British Columbia and rents the Property to a subtenant, the defendant Eric DeLong.

[5] Yukon commenced an action against Mr. Tarka and Mr. DeLong. It seeks vacant possession of the Property in favour of Yukon, amongst other things. Upon Yukon's application, the matter proceeded by way of summary trial.

Historical Background

[6] In the Yukon, up until the 1980s, there was a long-standing practice of squatting, that is, building and living in residences on federal and territorial land without legal rights to the land. In the mid-1980s, to address this issue, Yukon developed a process through which squatters could apply to legitimize their tenure to land, which it called the "Squatter Policy".

[7] Under the Squatter Policy, squatters could apply to relocate; or buy outright or lease, for a maximum period of 30 years, the land upon which they were squatting. A panel, called the "Review Panel", would then assess the application and recommend whether the squatter's tenure to the land should be legitimized, and if so, what form of tenure they should receive. Once the Review Panel provided its recommendations on an application, the squatter, if dissatisfied, could appeal the matter to the Minister of Community and Transportation Services. The Minister would then decide the appeal. If

the squatter did not appeal the recommendation, the recommendation was provided to the Minister, who had final decision-making authority over whether and what form of legal tenure to the land the applicant was eligible for.

[8] Mr. Tarka, who was squatting on the Property, applied under the Squatter Policy in an application dated August 24, 1987. The Review Panel recommended that Mr. Tarka be granted a "life estate lease" in a letter dated May 16, 1988. Mr. Tarka did not appeal the recommendation. The Minister approved Mr. Tarka's application. In his decision, dated July 6, 1988, the Minister informed Mr. Tarka he was eligible for a life estate lease, and referred to conditions Mr. Tarka would need to fulfill before the parties could enter an agreement (the "Minister's Letter").

[9] Mr. Tarka fulfilled all the conditions required under the legitimization process, and the parties entered into the Lease Agreement.

The Property

[10] The Property is located in downtown Whitehorse. Mr. Tarka purchased it, and a cabin sitting on the Property, from another squatter, in the early 70s.

[11] In 1990, as a part of the legitimization process, the Property was surveyed. It was discovered that a portion of the Property was titled to the City of Whitehorse. To permit Yukon and Mr. Tarka to enter into a lease, the City of Whitehorse transferred title of its portion of the Property to Yukon (called "Block 320"). Yukon registered its title to Block 320 with the Land Titles Office in October 1991.

[12] The other portion of the Property is Lot 467. Mr. Tarka disputes Yukon's title to this portion of the Property.

[13] Thus, the issues raised in this proceeding include whether Yukon has title to part of the Property, and whether Mr. Tarka has a life interest in the Property or a leasehold estate.

FINDINGS

[14] For the reasons provided below, I find that Yukon has title to the land. I also find that Mr. Tarka had a leasehold estate, which ended on September 30, 2021.

ISSUES

[15] In a summary trial, the court must determine if it is able to make the necessary findings of fact on affidavit and documentary evidence. If not, a full trial must be conducted. Here, however, this is not a genuine issue. The issues revolve principally around the interpretation of documents. Otherwise, the facts are generally uncontested. I am able to make the conclusions necessary to decide the case.

[16] The issues are:

A. Title

i. Does Yukon have title to Lot 467?

B. Mr. Tarka's Interest in the Property

i. Was the Minister's Letter a contract?

ii. Did the Minister's Letter give Mr. Tarka an interest in the Property through promissory or proprietary estoppel?

iii. What interest in the Property did Mr. Tarka acquire through the Lease Agreement?

C. Remedies

i. If Mr. Tarka does have an interest in land through proprietary estoppel, what remedy should he receive?

ii. Should Yukon be granted the other relief it is seeking?

TERMINOLOGY - LIFE ESTATE AND LEASEHOLD ESTATE

[17] At the core, these proceedings are about what interest Mr. Tarka has in the Property: whether it is a life interest or it was a leasehold interest.

[18] A life estate provides the estate holder (the "Life Tenant") rights and obligations to land for the duration of a person's life, usually, the Life Tenant's life. A life estate is not inheritable (*Peterson v Charboneau*, [1998] O.J. No. 6234 ("*Peterson*") at para. 12, citing A. Oosterhoff and W. Rayner, Anger and Honsberger, *Law of Real Property*, Vol 1 (2nd ed.) Canada law Book (1985: Aurora) at 149). When a life estate terminates, the rights to the land may revert to the original owner or to a third party (*Hurst v Soucoup*, 2010 NBQB 216 at para. 22, citing Alan Sinclair and Margaret McCallum, *An Introduction to Real Property Law*, Fifth Edition, Lexis Nexis at 15-6). A life tenancy is a freehold estate (at para. 20, citing Cheshire and Burns *Modern Law of Real Property,* 15th ed. Butterworth at 266-73). A freehold estate is the highest form of estate an individual can possess. One of the essential aspects of a freehold estate is the uncertainty of its duration (*Peterson* at para. 16).

[19] In a leasehold estate, generally, the owner in fee simple (the highest form of title within freehold estates) provides the right of possession of some or all of the freehold estate to the lessee for a period of time. When the leasehold interest ends, the interest reverts to the owner (*Carruthers v Tioga Holdings Ltd*., [1997] AJ No 142 at para. 32).

[20] One of the differences between a life tenancy and a leasehold estate is that, because life tenancy is a freehold estate, the interest a Life Tenant has in land is higher than a tenant has through a leasehold estate. Another essential difference is the duration of the interest. In a life tenancy, the duration of the interest is uncertain. In a

leasehold, the duration of the term is certain or is capable of being made certain (*Peterson* at para. 16).

ANALYSIS

[21] As a general comment, the parties' materials were not logically organized, making it more challenging to find information and documents. For instance, pinpoint citations were not always included in the Outlines and some of the legislation was attached to affidavits. It is a benefit to the parties, as well as the court, when materials are more easily accessed.

A. Title

i. Does Yukon have title to Lot 467?

[22] Mr. Tarka accepts that Yukon has title to Block 320 but submits that Yukon does not have title to Lot 467. He argues that in 1988 and 1991, Yukon was the beneficial owner of Lot 467, while the Government of Canada ("Canada") was the legal owner. Yukon, on the other hand, submits that it has legal title to Lot 467.

[23] I conclude that Yukon has title to the Property, including Lot 467.

[24] This issue involves examination of two subjects: first, Canada's transfer of land, including Lot 467, to Yukon; and second, the Certificates of Title issued on Lot 467.

Facts

[25] At the inception of the Yukon territory, Canada had the right of administration and control over the land within the geographical boundaries of the Yukon territory[1]. Over time, however, Canada transferred the right of administration and control over land in the Yukon territory to the Yukon government. One such transfer occurred in 1970,

[1] The facts and legal principles recited here are all subject to the history of Aboriginal peoples and Aboriginal rights and title to land. As Aboriginal law is not at issue, however, I will not refer to it.

when, through Privy Council Order, Canada made a “block land transfer” to the Yukon government (PC 1970-1448). This included substantially all the land within the boundaries of the City of Whitehorse, including what would eventually become Lot 467. Then, in 2003, Canada transferred administration and control to substantially all land in the Yukon territory to the Yukon government.

[26] In relation to certificates of title issued on Lot 467, the earliest certificate of title was issued in 1944. At that time the Registrar registered a certificate of title (“Certificate 168BB”), on a large swath of land, including Lot 467, to His Majesty the King in Right of Canada. In 1998, the Yukon government raised title to Lot 467 (“Certificate 98Y885”). Certificate 168BB was not cancelled at that time, however. In 2005, the Registrar of Land Titles cancelled Certificate 168BB.

Legal Principles

[27] Underlying the facts about the transfer of administration and control of the land from Canada to Yukon are the legal principles about governmental ownership of land in Canada, as well as what rights, precisely, Canada transferred to Yukon.

[28] In Canada, ownership of all land rests with the King. The Crown has allodial title to the land, meaning that the Crown is the absolute owner of the land. All other interests in land derive from this root interest.

[29] The federal government’s and the provinces’ titles to their land are derived from the Crown’s allodial title. Thus, they have a special, beneficial interest in their land. The federal and provincial governments have the authority to administer and control land for the benefit of their jurisdictions, but the land continues to be vested in the King. The

federal and provincial governments are, therefore, administrators of the King's property (*Osoyoos Indian Band v Oliver (Town)*, 2001 SCC 85 ("*Osoyoos*") at para. 181).

[30] At the inception of the Yukon territory, it was the federal government that had the beneficial interest in the land contained within the borders of the Yukon territory. However, when the federal government made transfers of land, such as the block transfer through the Privy Council Order in 1970, it transferred rights to land in the territory to Yukon.

[31] It seems there is no case law discussing the extent of the rights transferred to Yukon through the Privy Council Order of 1970. However, in *Osoyoos*, the Supreme Court of Canada did explain how governments generally transfer land between jurisdictions. Gonthier J., writing for the dissent (though not on this issue), stated that when federal and provincial governments transfer land to each other they use such language as "transfer the administration and control", rather than providing a conveyance of title. Moreover, the appropriate means for conveying property is through an order in council, and not through conveyance of property (at para. 181, citing Prof. G.V. LaForest's *Natural Resources and Public Property under the Canadian Constitution.* Toronto: University of Toronto Press, 1969 at 18-9). Gonthier J. concluded by stating: "… a transfer of administration of land between the Dominion and provincial governments is the equivalent of the conveyance of title." (at para. 181).

[32] In the case at bar, the Privy Council Order states, in the recitals, the Commissioner seeks "the administration" of the lands within the City of Whitehorse to permit for the disposal of land within the city. The Privy Council Order then states that it transfers: "to the Yukon Territory the administration of all right, title and interest of Her

Majesty in the lands described …". Constitutionally, the Privy Council Order may not have exactly the same effect as a transfer of land between provincial governments and the federal government would have. However, I conclude, based on the language used and the form of interest transferred, that it did have the effect of transferring title from the federal government to Yukon.

[33] The process through which the federal government transferred its interest in the land in most of the Yukon territory was completed in 2003, through devolution. It is likely that devolution provided Yukon with essentially the same authority over the lands in the Yukon as the provinces have over their land, the one difference being that, in the Yukon, the federal government can unilaterally take back the administration and control of the Yukon land.

[34] I now turn to the legal principles of land registration and title to land. The Yukon has enacted the *Land Titles Act*, *2015,* SY 2015, c 10, which uses a specific system of land registration, called the Torrens system. Under the Torrens system, title to land is determined through the land register. The purpose of the register is: "…to provide certainty of title and to protect persons who acquire an interest in land *bona fide*, for value and in reliance on the register from unregistered or hidden claims." (*Dunnison Estate v Dunnison*, 2017 SKCA 40 at para. 75). This means that a person interested in purchasing property can rely on the register and the certificate of title produced through the registry to establish who has title to the land in question, and whether there are any claims to the land.

[35] An important aspect of this regime is the rule that a certificate of title is indefeasible, meaning that production of a certificate of title is conclusive evidence in

court of the holder's interest in the land (s. 56(1)). Thus, for instance, if a person's title to land is challenged in court, they can defeat the challenge by providing the certificate of title naming them as title holder over the land.

[36] There are, however, three exceptions to the rule of indefeasibility: fraud (s. 56(2)(a)); "as against a person claiming under a prior certificate of titled issued under this *Act*" (s. 56(2)(b)); and misdescription of boundaries or parcels of the land described in the certificate (s. 56(2)(c)).

Submissions

[37] In this case, Yukon has produced a Certificate of Title to Lot 467. As I understand it, Mr. Tarka argues that Yukon cannot rely on the Certificate of Title because s. 56(2)(b) applies. Under s. 56(2)(b), where two certificates of title existed at the same time, the holder of the second certificate cannot rely solely on the certificate to prove title (*Canadian Pacific Railway v Turta*, [1954] SCR 427 ("*Turta*") at 448). Mr. Tarka submits that was precisely what occurred in the case at bar. Between 1998 and 2005, there were two certificates of title issued on Lot 467: Certificate 168BB, registered to Canada, and Certificate 98Y885, registered to Yukon. As the holder of the second certificate of title, Yukon cannot rely on the indefeasibility of title but must prove title in some other way. Mr. Tarka submits that Yukon has failed to do so. Thus, Canada has valid title over Lot 467. Mr. Tarka recognizes that Yukon has an interest in Lot 467, but states that it is a beneficial interest.

[38] Yukon submits that it holds valid title over the Property. It raised title in 1998, and Mr. Tarka has not demonstrated why it should not be treated as indefeasible. Additionally, the federal government transferred the legal interest in the land to Yukon,

first, through the Privy Council Order in 1970, and second, when it devolved the powers it had to the land in the Yukon in 2003. This is sufficient to establish Yukon's legal interest in Lot 467.

Analysis

[39] In my opinion, Yukon need not rely on a certificate of title to establish title to Lot 467. Neither Canada nor the provinces establish title to their land through registration; they have it by virtue of their beneficial interest in the land. Similarly, Yukon acquired title to land, including Lot 467, when the federal government transferred its interest to the land in Whitehorse to Yukon through the Privy Council Order in 1970. If there was any uncertainty left about the extent of Yukon's title after 1970, then devolution in 2003 erased that uncertainty completely. Yukon acquired title through the Privy Council Order and devolution: registration of title was not necessary to create it.

[40] Additionally, the Privy Council Order establishes the validity of Yukon's certificate of title to Lot 467. A court presented with two contemporaneous certificates of title must determine which is the valid certificate. In this case, the Privy Council Order proves that the federal government ceded its title to the Yukon government. It follows that the federal government's certificate of title cedes to the Yukon government's certificate of title.

[41] Mr. Tarka argues that there have been multiple, non-conforming certificates of title for Lot 467 in the name of Yukon. He also submits that the cancellation of the federal government's certificate of title does not conform with the requirements of the *Land Titles Act*[2] which was then in place. However, in *Turta* at 447-8, the Supreme

[2] RSY 1991, c 11

Court of Canada determined that a Registrar's errors do not render a certificate of title invalid, reasoning: "Nowhere throughout the statute is it provided that failure upon the part of the registrar to comply with these provisions, or that any omission, mistake or misfeasance on his part, in the preparation of a Certificate of Title, shall render that certificate a nullity." Mr. Tarka indicated that there were mistakes made in the issuance of Yukon's title, and in the cancellation of the federal government's title. Aside from the two contemporaneous certificates of title, Mr. Tarka has not pointed to any other errors that would be sufficient to render Yukon's certificate of title void.

[42] Thus, Yukon has title and its certificate of title is valid.

B. Mr. Tarka's Interest in the Property

i. Was the Minister's Letter a contract?

[43] Mr. Tarka submits that the Minister's Letter provided Mr. Tarka an interest in the Property in one of two ways. His first argument is that the letter is a contract granting Mr. Tarka a life interest in the Property. If there was no contract, the Minister's Letter provided Mr. Tarka a life interest in the Property through promissory estoppel or proprietary estoppel.

[44] I will therefore first address the argument that the Minister's Letter is a contract. I conclude that it was not a contract.

Facts

[45] The Minister's Letter contained the Minister's decision that Mr. Tarka's application for legal tenure had been accepted, and that he was eligible for a life estate lease. The letter, in part, states:

> I am pleased to inform you that your application for legitimization under the Yukon Squatter Policy is approved in

> accordance with the Squatter Panel recommendations as follows:
>
> Legitimize for residential use through life estate lease. …
>
> …
>
> You will find attached for reference purposes Section 10 and 11 of the Policy which outlines [as written] the simple steps involved in acquiring legal tenure to the land. You will note that your next step is to notify in writing within **sixty (60) days** … your acceptance of the conditions of approval.
>
> Once you have accepted the conditions you must submit a legal description of the parcel of land approved before an agreement can be entered into. … [emphasis in original]

[46] Mr. Tarka did write back and accepted the conditions of approval.

Analysis

[47] Mr. Tarka submits that the Minister's Letter, with ss. 10-11 of the Squatter Policy also incorporated, constitutes the contract. He argues that the Minister's Letter and Mr. Tarka's response contain all the necessary elements of the contract: there is an offer, acceptance, and consideration.

[48] While offer, acceptance, and consideration are all necessary elements of a contract, there is also another necessary element: a mutual intention to create a legal relationship and be bound by the terms (*Ethiopian Orthodox Tewahedo Church of Canada St Mary Cathedral v Aga*, 2021 SCC 22 at para. 35). Intention is determined by "how each party's conduct would appear to a reasonable person in the position of the other party" (*Owners, Strata Plan LMS 3905 v Crystal Square Parking Corp.*, 2020 SCC 29 at para. 33).

[49] In this case, the purpose of the Minister's Letter is explained by the Minister himself. It is to inform Mr. Tarka he has been accepted for legitimization and the interest

in the land he is eligible for. It is a decision letter, not a contract. In addition, the letter states that Mr. Tarka must fulfill certain conditions "before an agreement can be entered into." Viewed reasonably, there was no intention on the part of the Minister to enter into a contract.

ii. Did the Minister's Letter give Mr. Tarka an interest in the Property through promissory or proprietary estoppel?

[50] Turning to Mr. Tarka's second argument that he obtained an interest through promissory or proprietary estoppel, I conclude that Mr. Tarka did not acquire an interest in the Property through estoppel.

[51] In my opinion, promissory estoppel does not apply. For promissory estoppel to apply, the parties must be in a legal relationship at the time the promise is made (*Trial Lawyers Association of British Columbia v Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 at para. 15). Typically, promissory estoppel arises in a contractual relationship in which one party promises to change or not enforce parts of a contract, and the other party relies on the promise to their detriment. Mr. Tarka does not argue that the parties were in a contractual or other legal relationship at the time the Minister wrote the letter. I will therefore only consider whether Mr. Tarka has an interest through proprietary estoppel.

Legal Principles

[52] The requirements of proprietary estoppel are that a promisor makes:

> (1) a representation or assurance … to the claimant, on the basis of which the claimant expects that he will enjoy some right or benefit over property [the "representation"]; (2) the claimant relies on that expectation by doing or refraining from doing something, and his reliance is reasonable in all the circumstances; and (3) the claimant suffers a detriment as a result of his reasonable reliance, such that it would be

> unfair or unjust for the party responsible for the representation or assurance to go back on her word.

(*Cowper-Smith v Morgan*, 2017 SCC 61 ("*Cowper-Smith*") at para. 15

[53] In *Thorner v Majors*, [2009] UKHL 18 ("*Thorner*"), the court discussed how precise the representation must be to engage the principles of proprietary estoppel. Lord Walker (whose reasons on this issue were adopted by the Supreme Court of Canada in *Cowper-Smith* at para. 26) stated that the message communicated must be "clear enough" (at para. 56). The determination of whether the representation is clear enough is, moreover, driven by the facts. Viewed in context, it must be a promise that the claimant could have reasonably relied upon (at para. 56, citing *Walton v Walton*, EWCA, April 14, 1994 (unreported)).

[54] Reliance occurs when the claimant changes their course of conduct because of the representation. If the claimant does not change their course of conduct, then there is no reliance, and no estoppel (*Ryan v Moore*, 2005 SCC 38 ("*Ryan*") at para. 69). The claimant need not show that "but for" the representation, they would not have acted as they did; it is sufficient that the representation was a significant factor in their course of conduct (*Romfo v 1216393 Ontario Inc*., 2007 BCSC 1375 at para. 250, aff'd 2008 BCCA 179).

[55] The change in conduct must also result in detriment to the claimant; however, the detriment need not be serious. Moreover, demonstrating reliance may assist in proving detriment, because there is an element of injustice when a promise is made but not kept (*Ryan* at para. 73, citing S. Wilken, Wilken and Villier*; The Law of Waiver, Variation and Estoppel* (2nd ed 2002) at 228).

[56] However, if the detriment involves too many hypotheticals or speculation, it may not be possible to determine that detriment occurred.

[57] I now turn to my analysis. I will first address whether and what representation the Minister made to Mr. Tarka. I will then address the questions of Mr. Tarka's reliance and detriment together.

Analysis

The Minister's Representation

[58] Mr. Tarka bases his claim of proprietary estoppel on the statement in the Minister's Letter that Mr. Tarka was eligible for a "life estate lease". In examining the Minister's Letter, there is no question that the Minister told Mr. Tarka that if he fulfilled certain conditions, he would be entitled to some form of legal tenure to the land. Thus, he did intend Mr. Tarka to rely on his representation. The question here is really about what was contained in the Minister's representation to Mr. Tarka: did he represent that Mr. Tarka was eligible to obtain a life estate, or was he offering a leasehold estate?

[59] Yukon concedes that the use of the words "life estate lease" was unfortunate. It submits, however, that, in the context of the legitimization process, and reading the letter as a whole, it is clear that Mr. Tarka was entitled to a leasehold estate, with a maximum term of 30 years.

[60] Yukon submits that the Squatter Policy allowed for three options: relocation; sale of the land; or a lease, with a maximum tenure of 30 years, and possible renewal. No mention was made of the possibility of a life interest. Yukon argues that both the Review Panel and the Minister operated in accordance with the Squatter Policy. When the Review Panel and the Minister used the phrase "life estate lease", they meant a lease

as set out in the Squatter Policy. In addition, both the Review Panel and the Minister referred back to the Squatter Policy. The Minister specifically referred to s. 11 (which relates to leases) and attached ss. 10 and 11 of the Squatter Policy to the letter. Despite stating that Mr. Tarka had a "life estate lease" the overall intention was to offer Mr. Tarka a leasehold interest in the Property.

[61] Mr. Tarka submits that it is the Minister's promise of a life estate lease that is clear. Although the Squatter Policy provided only for a lease with a maximum term of 30 years, the Minister was not required to follow the Squatter Policy. He had the authority to grant a life estate. The inclusion of s. 10 could even have meant that the Minister had chosen to sell the life estate to Mr. Tarka. Ultimately, however, whether the Minister intended to sell or lease the Property to Mr. Tarka, the underlying representation was that he would have a life interest.

[62] I am not persuaded by Mr. Tarka's argument. The Minister's Letter does state that Mr. Tarka was eligible for a "life estate lease". On its own, this statement would be sufficient to promise a life estate to Mr. Tarka. However, there is more to the letter than this statement. The letter also attaches ss. 10 and 11 of the Squatter Policy. The difficulty is that s. 11 of the Squatter Policy not only refers to the conditions the applicant must fulfill in order to receive tenure to the land, but it also describes the nature of the land tenure an applicant can acquire. It states: "[a]ll lease agreements may extend up to thirty (30) years and may be renewed upon mutual agreement of the parties …". Thus, on the one hand, the Minister informs Mr. Tarka that he is eligible for a life estate lease, but on the other hand, the Squatter Policy he attaches to the letter states that lease agreements are for a maximum of 30 years. There is an inconsistency.

[63] Moreover, the context in which the Minister's Letter was written must be taken into consideration. Both counsel agree that the context is a factor in determining the meaning of the letter, but they describe the context differently. Mr. Tarka provides evidence about events further back in time than Yukon. Thus, he includes communications between Mr. Tarka and Yukon and media stories about the legitimization process before the Squatter Policy was finalized. For him, context includes discussions before the Squatter Policy was put in place as well as after it was instituted.

[64] For its part, Yukon focuses on the Squatter Policy and the legitimization process itself to establish the context.

[65] In my opinion, the context should not be as broadly drawn as Mr. Tarka suggests. At the time the letters between Mr. Tarka and Yukon were written and media stories were published, the contours of the legitimization process were still in flux. The context was formed by the reality of the Squatter Policy and the legitimization process, not the possibilities about what it could have been.

[66] The context here, then, is of a Review Panel and Minister acting within a formal process, and in which the forms of legal tenure to be offered were clearly defined: an applicant, once approved, would be eligible to relocate, buy the property or obtain a leasehold estate. I agree with Mr. Tarka that the Squatter Policy was not binding on the Review Panel or the Minister. Either or both could decide that Mr. Tarka should be eligible for a life estate rather than a leasehold interest. However, there is no indication that either the Review Panel or the Minister were intending on departing from the parameters set out by the Squatter Policy. Rather, the overall tenor of both letters was

that the recommendation and decision made were in accordance with the Squatter Policy.

[67] The contextual factors also include the parties themselves and their relationship. In this instance the parties were a government and an individual. On the one hand, it is expected that members of government will choose their words carefully and mean what they say. On the other hand, because the parties were involved in an arms' length transaction, clearer language will be required to constitute a representation than it would be in other, less formal circumstances.

[68] Taking this all together, reasonably, an individual in Mr. Tarka's circumstances would have made further inquiries about the inconsistency between the statement in the Minister's Letter and the policy attached to the letter. In coming to this conclusion, I have also considered that there was an inequality in bargaining power between Yukon and Mr. Tarka. On this issue, I do not find the inequality in bargaining power has much impact, because simply asking for clarification of the letter would not put Mr. Tarka's interests in jeopardy.

[69] It is difficult to determine what interest the Minister offered Mr. Tarka. However, for the purposes here, it is not necessary to come to a definitive answer. In my opinion, the reference to a life estate lease was too ambiguous and not "clear enough" to be a representation that Mr. Tarka could reasonably rely upon as promising a right to a life estate in the Property.

Detrimental Reliance

[70] Without a representation that could reasonably be relied upon, there is no proprietary estoppel. Thus, my conclusion is sufficient to dispose of Mr. Tarka's

argument. I will, however, also consider whether Mr. Tarka detrimentally relied on the representation that he would receive a life interest.

[71] I conclude that, if there were a representation that Mr. Tarka could reasonably rely on, then he relied on that representation to his detriment.

[72] Mr. Tarka submits that he relied on the Minister's representation to his detriment in three ways. First, he spent money to fulfill the conditions of the legitimization process. In addition, he argues that he missed his right to appeal the Review Panel's recommendation. Finally, he argues that he has made upgrades to his house on the Property that he would not have made, or would have expended less money on, if he had a 30-year lease.

[73] With regard to the payment of funds to take part in the legitimization process, I conclude that Mr. Tarka has failed to show reliance.

[74] Mr. Tarka attests that he spent significant funds to fulfill the conditions of the legitimization process, for instance, by paying back taxes owed to the City of Whitehorse, and paying to survey the land. To establish reliance, however, Mr. Tarka must not only show that he took actions, but that he changed his course of action at least in part because of the representation. Here, the expenditure of funds was a consequence of Mr. Tarka's decision to take part in the legitimization process. Thus, the change in his course of action must relate to his decision to take part in the legitimization process. He must demonstrate that Yukon's promise of a life estate was a significant factor in his decision to take part in the legitimization process.

[75] In his evidence, Mr. Tarka discusses the actions he would have taken had he understood that he was eligible for a 30-year lease rather than a life tenancy. He attests

that he would have appealed the Review Panel's recommendation and would have spent less money on repairs. He does not, however, state he would have declined the opportunity to take part in the legitimization process even if, in the end, he would receive a 30-year lease. Given the onus on him to demonstrate a change of course because of the representation, this is an important omission. Mr. Tarka would have expended the same funds whether he was granted a 30-year lease or a life estate. I therefore conclude that Mr. Tarka did not rely on the Minister's representation that he was eligible for a life estate when he fulfilled the conditions for legitimization.

[76] I also conclude that Mr. Tarka did not suffer a detriment because he lost the chance to appeal the Review Panel's recommendation. On this issue, he did rely on the representation: he attests that he decided a life interest would be sufficient for his needs, but that he would have appealed had he known that the Review Panel's recommendation was for a 30-year lease.

[77] However, detriment cannot be established because the result of the appeal is uncertain. The evidence Mr. Tarka provides to demonstrate what would have happened had he known that he was being offered a 30-year lease is evidence from a court case between Yukon and one of Mr. Tarka's neighbours, Robert McCallum, who was also, it seems, a squatter. The evidence provided about this conflict is not extensive. It consists principally of newspaper articles, correspondence between Yukon and Mr. McCallum, and some court documents. I cannot draw any parallels between Mr. McCallum's and Mr. Tarka's situations. Because the outcome of an appeal of the Review Panel's recommendation would be uncertain, I do not conclude that losing the chance to appeal constitutes a detriment.

[78] I do find, however, that Mr. Tarka suffered detriment through the money he spent on maintenance of the house on the Property. He provides evidence about the maintenance and upgrades he performed on the cabin on the Property, stating that he would have done the necessary work more cheaply had he known that he had a 30-year lease, rather than a life tenancy. His evidence is uncontested and is sufficient to establish detrimental reliance.

[79] Ultimately, however, I conclude that proprietary estoppel does not attach to Mr. Tarka's interest in the property, as Yukon did not make a sufficiently clear representation that Mr. Tarka was eligible to receive a life estate.

iii. What interest in the property did Mr. Tarka acquire through the Lease Agreement?

[80] This issue turns on the proper interpretation of the term of the contract that provides the lease would run: "for 30 years, or the life of the Lessee, from October 1, 1991".

[81] Yukon submits that Mr. Tarka had a lease of a maximum of 30 years, which terminated on September 30, 2021. Mr. Tarka submits that the contract provides him with a life estate lease.

[82] I conclude Mr. Tarka had a leasehold interest for a maximum of 30 years.

Legal Principles

[83] Interpreting a contract requires reading "the contract as a whole, giving the words used their ordinary and grammatical meaning" (*Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 ("*Sattva*") at para. 47). Every word and clause of the contract is assumed to have a purpose (*Blackmore Management Inc v Carmanah Management Corp*, 2022 BCCA 117 at para. 50). Thus, courts will "make considerable efforts to give

meaning to an apparently meaningless phrase" (*Khela v Clarke*, 2021 BCSC 503 at para. 72). However, a meaningless or self-contradictory clause may be ignored if it is simply verbiage or relates to an issue of minor importance (at para. 72).

[84] The surrounding circumstances are also a factor in determining the meaning of a contract. The surrounding circumstances are the objective, background facts that existed at the time the contract was executed, and which were known or reasonably ought to have been known by the parties (*Sattva* at para. 58).

Submissions

[85] Yukon submits that the only reasonable interpretation of the impugned term is that the duration of the contract was "30 years or the life of the Lessee, [whichever is less], from October 1, 1991".

[86] Yukon argues that the context of the contract should be taken into consideration. The lease occurred through the auspices of the Squatter Policy. Under the Squatter Policy, leases were for 30 years, not for life.

[87] In addition, Yukon submits that the *Lands Act*, RSY 1986, c 99, which was the version of the legislation in force at the time[3], and the *Territorial Lands Regulations*, CRC 1978, c 1525, prohibits Yukon from entering into a lease for more than 30 years. In accordance with the principle that contracts should be interpreted so as to be lawful, the application of the *Lands Act* and the *Territorial Lands (Yukon) Act* favour Yukon's interpretation.

[88] Yukon also argues that the terms of the contract, which include that Mr. Tarka will be responsible for the upkeep of the Property, and a termination clause, amongst

[3] All references to the *Lands Act* in this decision are to this version.

others, suggest that the intent of the parties was to give Mr. Tarka only the rights of lessee, and not of a life tenant.

[89] Finally, Yukon submits that, if the intention had been to give Mr. Tarka a life interest, then there would be no reason to include the words “30 years”. However, those words must have some significance. Taking all the factors together, the contract provided Mr. Tarka with a leasehold estate, which would end when he passed away or after 30 years, whichever was less.

[90] Mr. Tarka argues that properly interpreted, the phrase “whichever is greater” should be read in, such that the term would state: “To have and to hold, for 30 years, or life of the Lessee, [whichever is greater]”.

[91] Mr. Tarka submits that the surrounding circumstances of the legitimization process, other terms of the Lease Agreement, and the principle of *contra preferentem* lead to the conclusion that the parties intended that Mr. Tarka would have a life estate.

[92] Mr. Tarka argues that the Squatter Review Panel Process, including the letters from the Review Panel and from the Minister, show that the phrase “life of the Lessee” meant a life interest through a lease.

[93] He furthermore notes that one of the lease’s terms provides that the contract enures to the benefit of Mr. Tarka’s heirs and successors. He submits that this term can only have meaning if the interest granted to Mr. Tarka is the greater of 30 years or life.

[94] Finally, Mr. Tarka submits that if there is ambiguity in the contract, then the principles of *contra preferentem* should apply. *Contra preferentem* means that, where there is ambiguity in a contract, the ambiguity should be resolved in favour of the party who did not draft the contract. In this case, Mr. Tarka submits that it was Yukon that

drafted the contract. Thus, if the contract is ambiguous, I should interpret the contract in Mr. Tarka's favour.

Analysis

Ordinary and Grammatical Meaning

[95] I find that the ordinary and grammatical meaning of the impugned phrase is that the term of the lease is 30 years or for the duration of Mr. Tarka's life, whichever is less. If "[t]o have and to hold, for 30 years, or the life of the Lessee" is interpreted in this way, then both phrases "30 years" and "life of the Lessee" have meaning, as either event could mark the end of the agreement.

[96] On the other hand, Mr. Tarka's interpretation, which is that the lease would be for 30 years or for the duration of Mr. Tarka's life, whichever was more, does not create a life estate. In Mr. Tarka's interpretation of the phrase, the Lease Agreement would continue in effect if he had passed away before September 30, 2021 (30 years after the Lease Agreement took affect). Presumably his heirs would then benefit from the Lease Agreement until the 30 years had expired. That, however, is not a life estate. A life estate would, rather, have terminated upon Mr. Tarka's death. To establish a life estate, the term would have to state: "To have and to hold, for the life of the Lessee".

[97] In oral submissions, Mr. Tarka's counsel did argue that was the actual intent of the term, submitting essentially the words "30 years" were meaningless and should simply be ignored. This submission runs contrary to the principle that all words and phrases of a contract have a purpose. The exception that meaningless or self-contradictory terms may be ignored if they are mere verbiage or about an issue of minor importance does not apply here. The words are not meaningless in themselves, they

are not self-contradictory, and relate to an essential term of the contract. I therefore conclude that the words should not simply be ignored.

[98] The ordinary and grammatical sense of the phrase suggests that the term of the lease is 30 years or for the duration of Mr. Tarka's life, whichever is less.

The Context of the Entire Agreement

[99] For the most part, the other terms of the agreement do not assist in determining the length of the agreement or the interest granted to Mr. Tarka.

[100] Mr. Tarka submits that paragraph 17 of the Lease Agreement supports his interpretation. It states: "This Lease enures to the benefit of and is binding upon the Lessor, his successors, and the Lessee, his heirs, executors and administrators". Mr. Tarka submits that this provision is meaningless if Yukon's interpretation is accepted. However, if Mr. Tarka is suggesting that this term provides that the entirety of the Lease Agreement will apply equally to Mr. Tarka's estate as it would to Mr. Tarka, then that is once again inconsistent with the intention of granting a life estate.

[101] In my opinion, this term can be read with both Mr. Tarka's and Yukon's interpretations such that it applies to certain conditions of the Lease Agreement while not applying to others. For example, it requires Mr. Tarka's estate to comply with any obligations in the Lease Agreement that may remain outstanding after his death. Thus, a term of the contract provides that upon termination of the lease, Mr. Tarka will leave the Property in a condition satisfactory to Yukon. If Mr. Tarka died during the course of the Lease Agreement, and the Property was not in a condition suitable for Yukon, then Mr. Tarka's estate would be responsible to leave the Property in a condition satisfactory to Yukon. Paragraph 17 would be operable whether the Lease Agreement granted

Mr. Tarka a life estate or a leasehold interest. It does not help to understand the impugned term.

[102] Similarly, most of the other terms could apply either to life tenancies or leaseholds. Clauses requiring that the lessee be responsible for the upkeep of the property and payment of taxes, that they maintain a right of entry and that they pay periodic rent may apply to life tenancies as well as leaseholds.

[103] There is, however, one minor exception. The Lease Agreement contains a clause permitting Yukon to terminate the lease with cause. Termination for cause is a regular part of leasehold agreements. Under life tenancies, on the other hand, relief against a life tenant is achieved through tort actions (*Paulgaard v Hager Estate*, 1998 ABQB 824 at para. 15). This is not strongly indicative of the parties' intent, however, as I cannot dismiss the possibility that Yukon included this term as a creative way to permit easy enforcement of the Lease Agreement. The termination clause provides some support for the conclusion that the agreement is a leasehold, rather than a life tenancy, but its importance is limited.

[104] Thus, aside from the termination for cause clause, the Lease Agreement as a whole could support either a life tenancy or a leasehold estate.

Lands Act

[105] According to Yukon, a life tenancy lease is not permitted under the *Lands Act.*[4] Under s. 14 of the *Lands Act*, Yukon cannot enter leases for longer than 30 years. A lease granting a life interest would therefore be unlawful. Where a contract can be

[4] YG argues that both the *Territorial Lands Act*, RSC, 1985, c T-7, specifically s. 10 of the *Territorial Lands Regulations*, and the *Lands Act* applies to the Lease Agreement. Because it is unnecessary to do so, I will not consider whether the *Territorial Lands Act* apply.

interpreted in two ways, and one interpretation is unlawful, while the other is not, the lawful interpretation is to be preferred (*Unique Broadband Systems, Inc (Re)*, 2014 ONCA 538 at para. 87).

[106] Mr. Tarka submits that the *Lands Act* does not apply. He argues that Lot 467 was titled to the federal government and Block 320 was titled to the Commissioner. Section 2 of the *Lands Act*, on the other hand, provided that the *Act* applied to lands that were vested in the Queen but in which there was "the right to the beneficial use or to the proceeds of which is appropriated to the Government of the Yukon and is subject to the control of the Legislature." Mr. Tarka submits that the *Lands Act* does not apply to titled land.

[107] He also submits that the *Lands Act* does not prohibit life estates, stating that in Yukon's argument, it confuses leaseholds with life tenancies.

[108] Mr. Tarka also states s. 3 of the *Squatter Regulations*, OIC 1988/162, allowed the Minister to dispose of the land notwithstanding the *Lands Regulations*. Thus, the *Land Regulations* do not apply to contracts formed through the legitimization process.

[109] I will deal with Mr. Tarka's last argument first. The provisions in question here are contained in the *Lands Act*. Section 3 of the S*quatters Regulations* exempts the application of the *Lands Regulations,* not the *Lands Act*, to contracts formed pursuant to the legitimization process. Section 3 of the *Squatters Regulations* does not, therefore, apply.

[110] Turning to the argument that the *Lands Act* does not apply because it was either the King or the Commissioner that had title to the land, I agree with Yukon that the *Lands Act* does apply but come to my conclusion in a different way.

[111] As I determined above, the federal government transferred title to land, including Lot 467, to Yukon in 1970 through a Privy Council Order. Recalling the legal principles of governmental ownership of land in Canada, the land described in the Privy Council Order was vested in the Crown. When the federal government had control of the land, it had a beneficial interest in the land. When it transferred the control to Yukon, it transferred its beneficial interest to Yukon. Thus, it was land vested in the Queen, but in which Yukon had a beneficial interest. The result is that the *Lands Act* applies to the Lease Agreement as it pertains to Lot 467.

[112] Block 320, on the other hand, was titled to the Commissioner and had been transferred to it from the City of Whitehorse. This could put it on a different footing than Lot 467. The parties did not provide extensive submissions on this issue, so I will not make any determinations on the limits of the application of the *Lands Act*. It is, however, unsafe to proceed on the basis that the Lease Agreement, as it relates to Block 320, is subject by law to the *Lands Act*.

[113] At the same time, applying the *Lands Act* to one part of the Property but not to the other would result in absurdity. Additionally, the Lease Agreement makes itself subject to the *Lands Act*. I therefore conclude that the *Lands Act* applies to the Lease Agreement.

[114] The next question is whether the *Lands Act* permits Yukon to provide life estates. Turning to the relevant provisions, the two sections of the *Lands Act* pertinent here are ss. 3(1)(a) and 14. Section 3 states:

> (1) Subject to this Act and the regulations, the Executive Council Member may
>
> (a) sell or lease Yukon lands, or

> (b) grant a right-of-way or easement with respect to Yukon lands,
>
> to any individual who has attained the full age of 19 years or to any corporation.

[115] "Lease" is not a defined term in the *Lands Act* but does have as settled legal definition. When not defined in legislation, the courts presume that the legislators, in using words with settled definitions, understand their meanings and implications (*Will-Kare Paving & Contracting Ltd v Canada*, 2000 SCC 36 at para. 29). Under the common law, a lease is a contract in which the lessee is entitled to exclusive possession for a term. At the end of the term, the right of possession reverts to the lessor (*Peterson* at para. 17). Thus, the legislature, in enacting s. 3(1)(a), provided that Yukon was permitted to either sell land or enter contracts in which the other party would have exclusive possession of the land for a term, after which the land would revert back to Yukon.

[116] Section 3(1)(a) must then be read together with s. 14 of the *Lands Act.* Section 14 provides that Yukon may lease lands for terms not exceeding 30 years. Section 14 does not permit the granting of a life estate through a lease because a life estate may last for longer than 30 years. Under the *Lands Act*, then, Yukon can only enter leases that grant leasehold estates.

[117] In the case at bar, the parties entered into a lease as contemplated in the *Lands Act*. It is a contract in which Mr. Tarka was entitled to exclusive possession for a term; and at the end of the term, the interest reverted back to Yukon. Given that courts will avoid a contractual interpretation that renders the agreement unlawful, and the *Lands Act* does not permit Yukon to enter into leases which grant life estates, the interpretation

that, under the Lease Agreement, Mr. Tarka had a leasehold estate, with a maximum 30-year term, is preferred.

Surrounding Circumstances

[118] In the case at bar, the surrounding circumstances are that the parties entered into the Lease Agreement after Mr. Tarka took part in the legitimization process. As noted above, the Squatter Policy was clear about the tenure available to squatters, but the Review Panel's recommendation and the Minister's Letter were not clear. Because of this, the surrounding circumstances do not provide much insight into the parties' intentions with regard to the interest provided to Mr. Tarka.

[119] Even if I am wrong, however, and the Minister's Letter did provide a life interest to Mr. Tarka, I do not believe that the surrounding circumstances lead to the conclusion that the intent of the parties, in signing the contract, was to provide Mr. Tarka with a life interest.

[120] Surrounding circumstances are an important aspect of contract interpretation and assist in deepening the court's understanding of the written words of the contract. Nevertheless, the surrounding circumstances should not overwhelm the words contained in the agreement (*1001790 BC Ltd v 0996530 BC Ltd*, 2021 BCCA 321 at para. 42). The court's focus is always "grounded in the text and read in the light of the entire contract" (*Sattva* at para. 57).

[121] In my opinion, the phrase "30 years, or the life of the Lessee" is unambiguous. Relying on the surrounding circumstances to come to a different interpretation would emphasize the importance of the surrounding circumstances too much, at the expense of the words written in the Lease Agreement.

Contra Preferentem

[122] *Contra preferentem* applies only where the contract bears two reasonable constructions. It is a tool of last resort (*Jamel Metals Inc v Evraz Inc*, 2012 SKCA 116 at para. 52). It is therefore not applicable here.

C. Remedies

i. If Mr. Tarka does have an interest in the Property through proprietary estoppel, what remedy should he receive?

[123] Although I have determined that Mr. Tarka does not have an interest in the Property through proprietary estoppel, I will consider the remedy he would be entitled to if he had established proprietary estoppel.

[124] Mr. Tarka submits he should be awarded a life interest in the Property. Yukon argues that an appropriate remedy should be, at best, a small monetary award.

[125] I conclude that, if Mr. Tarka were to have an interest in the Property through proprietary estoppel, he should receive a monetary award equivalent to the anticipated rental profits he would receive if the Lease Agreement were renewed for a number of years.

Legal Principles

[126] When proprietary estoppel is established, although the court has considerable discretion, it must take a principled approach in determining the appropriate remedy (*Cowper-Smith* at paras. 46-47). The claimant is entitled only to the “minimum relief necessary to satisfy the equity” in the claimant’s favour (at para. 47). Because the focus of proprietary estoppel is to address the unjust detriment to the claimant if the owner were allowed to go back on their promise, the remedy must be proportionate to the detriment (at para. 47).

[127] The claimant's expectation and whether the estoppel arose out of a bargain is a factor in the court's analysis (*Idle-O Apartments Inc v Charlyn Investments Ltd*, 2014 BCCA 451 at para. 75). In England, a distinction is drawn between cases where the claimant's expectation is uncertain and those in which there is a "clear bargain". Where the nature of the assurances provided are sufficiently clear, the court has determined that it is often appropriate to satisfy the claimant's expectation as far as possible (at paras. 77-78).

[128] The approach in Canada, however, is less dichotomous. In *Idle-O*, the British Columbia Court of Appeal notes the case law from England, but rejects any analysis based on rigid categorizations (*Idle-O* at paras. 80-83). In *Idle-O*, the Court states that the claimant's reasonable expectations will be a very important factor, even, at times, the primary factor in determining the remedy. However, the claimant's expectations will not be the only factor in calculating the remedy (at paras. 75, 83).

[129] Other factors the court has considered include: whether the promisor acted in bad faith; the public interest; and whether the claimant has a personal attachment to the property. Ultimately, however, the factors the court considers arise out of the specific facts of the case (*Idle-O* at paras. 81-83).

Analysis

[130] In the case at bar I will consider whether there was clear bargain; the nature of Mr. Tarka's detriment; Mr. Tarka's attachment to the Property; and the public interest.

Whether There was a Clear Bargain

[131] If the statement that Mr. Tarka was eligible for a "life estate lease" was a representation, then, at first, it appears that this is a case of a clear bargain. As a

sophisticated party making this representation, Yukon knew or ought to have known what it was offering Mr. Tarka. While it was not acting in bad faith when it used the phrase “life estate lease”, it was careless. As a government, it should act to a higher standard.

[132] What makes the facts more complex, however, was that subsequently the parties entered into the Lease Agreement. As I have already determined, it provides for a leasehold estate of a maximum of 30 years, not a life estate. Mr. Tarka, moreover, testified that at the time he signed the lease, he understood the Lease Agreement provided a lease of 30 years, and not a life estate. He testified that, despite this, he signed the Lease Agreement because he trusted the government.

[133] Mr. Tarka argues that, as an individual signing an agreement with government, there was a large difference in bargaining power between the parties. Mr. Tarka was not in a position to hold Yukon to its promise of a life estate. For the purposes here, I do not take issue with Mr. Tarka’s decision to sign the agreement despite knowing, at the very least, that there may be disagreement about the duration of the Lease Agreement. However, the repairs to Mr. Tarka’s house, which I determined was the sole detrimental reliance that arose, were done after the Lease Agreement was signed. Thus, the equity arose only after Mr. Tarka had signed the Lease Agreement (*Cowper-Smith* at para. 15). This attenuates, to some extent, the notion that there was a clear bargain between Yukon and Mr. Tarka.

Nature of the Detriment

[134] The nature of the detriment also bears some examination. Mr. Tarka provided no evidence about his attempts to recoup the costs of repairs through the rent he charges

his subtenant. Mr. Tarka pays $100 per year to Yukon to rent the Property. Mr. Tarka could recoup much of the money he spent on the repairs to the house through rental payments from his tenant without charging him exorbitant rent. Absent evidence from Mr. Tarka stating otherwise, it is reasonable to conclude he did recoup much of those costs. This does not negate the conclusion that Mr. Tarka suffered detriment. However, as the remedy is to be proportionate to the detriment, it is a factor to consider in determining the nature and amount of the remedy.

Attachment to the Property

[135] Mr. Tarka has also benefited from the low rent he pays each year, and has displayed no personal attachment to the property, having left the Yukon in 1997. The Property, for him, at this point, is presumably an income generating property.

Public Interest

[136] Yukon submits that renewing the lease or granting Mr. Tarka a life estate would be contrary to the public interest. Yukon argues that there are safety concerns, as the Property is in an active slide area. I find, however, that Yukon has not filed sufficient evidence to support this contention.

[137] Yukon also submits that the Court should take into consideration that the Property does not comply with zoning requirements. Because the Lease Agreement includes Block 320 and Lot 467, rezoning may be required if Mr. Tarka continues to have tenure to the land. Moreover, Yukon submits, the City of Whitehorse is not in favour of renewing the lease. The information about rezoning and the City of Whitehorse's position, however, is contained in a letter Yukon sent to Mr. Tarka, and which was attached as an exhibit to an affidavit. It is not admissible evidence. On the

other hand, I do accept that the Property does not fully comply with all the City of Whitehorse's requirements for residential premises. I also accept that it is in the public interest that residential properties should comply with local laws.

[138] Given the above, a monetary remedy, rather than a life interest or renewal of the lease, would be appropriate. It seems to me that the award should reflect that Mr. Tarka's detrimental reliance was not significant, while at the same time giving effect to the principle that Yukon should not be permitted to resile from its promises. As Mr. Tarka sublets the Property, the award would be a monetary award in lieu of the profit Mr. Tarka would expect to receive on the rent he would charge if the Lease Agreement were to be renewed. This would require additional evidence, including supporting documentary evidence, about the profit Mr. Tarka would expect had the Lease Agreement been renewed. I would then be able to determine the amount of profit Mr. Tarka could reasonably expect to make on an annual basis, as well as the number of years that should be used to calculate the award.

ii. Should Yukon be granted the other relief it is seeking?

[139] Yukon seeks vacant possession of the Property as against Mr. Tarka and Mr. DeLong. The Lease Agreement provides that, upon termination of the lease, Mr. Tarka is to deliver up possession of the land in a condition satisfactory to Yukon. Starting in 2020, Yukon advised Mr. Tarka that he was to deliver up possession of the Property with all structures removed before the end of the Lease Agreement. I have determined that the Lease Agreement ended on September 30, 2021. Mr. Tarka remains in possession of the Property, and Mr. DeLong remains on the Property as his

subtenant. Mr. Tarka is overholding. I therefore grant Yukon's request for vacant possession of the Property.

[140] Yukon also submits that "vacant possession" requires Mr. Tarka to remove all chattels, including buildings. Mr. Tarka does not contest this submission. I therefore conclude that, "vacant possession" means that Mr. Tarka must remove all personal property, buildings, and structures on the Property. If Mr. Tarka does not remove the personal property as required, Yukon should be permitted to remove it at Mr. Tarka's cost.

[141] If necessary, I also grant Yukon's request for ejectment.

[142] Yukon seeks occupation rent from October 1, 2021, to the date of vacant possession, at a cost of $23.17 per day. Mr. Tarka and Mr. DeLong have remained in possession of the Property since the termination of the Lease Agreement without paying rent. The amount Yukon seeks is 10% of the appraised market value for lease purposes as of 2020. I grant Yukon's request.

CONCLUSION

[143] I grant judgment in favour of the plaintiff.

[144] My orders are as follows:

1. Against Mr. Tarka and Mr. DeLong:

    - the defendants shall deliver vacant possession within 90 days of this Order being made, for the approximately .158 hectares of land comprising of all of Block 320 and a portion of Lot 467 in Whitehorse, Yukon, which was the subject of a lease by Yukon to Len Tarka entered into on October 1, 1991 (the "Property"); and

- I grant the declaration that all personal property and buildings and structures remaining on the Property 90 days after this Order is made is abandoned and can be disposed of by Yukon.

2. Against Mr. Tarka:

- rent from October 1, 2021, to the date of vacant possession (90 days after this Order is made); or, if the defendants do not deliver up vacant possession as required by this Order, 180 days from the date this Order is made, or to the date the plaintiff removes all remaining personal property, buildings and structures, whichever is first, based on a per diem rate of $23.17;
- the cost of removing personal property and structures on the Property if not removed within 90 days of this Order being made; and
- pre-judgment and post-judgment interest under the *Judicature Act*.

[145] Costs may be spoken to in case management if the parties are unable to agree.

_____

WENCKEBACH J.