SUPREME COURT OF YUKON

Citation: *Sabo v. Attorney General of Canada et al.*, 2011 YKSC 40

Date: 20101018
Docket S.C. No.: 01-A0226
Registry: Whitehorse

BETWEEN:

DANIEL SABO

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA, MARCEL CLEMENT, RICHARD HERD, GINA LECHEMINANT, CPL. DAN PARLEE, CHARLES F. ROOTS, BILL SCHNECK, JOHN WOOD

DEFENDANTS

Before: Mr. Justice A.W. Germain

Appearances:

Daniel Sabo	Appearing on his own behalf
Alexander Benitah, and Suzanne M. Duncan	Counsel for the defendants The Attorney General of Canada, Marcel Clement, Richard Herd, Gina Lecheminant, Cpl. Dan Parlee, Charles F. Roots and John Wood
Daniel Shier	Counsel for the defendant, Bill Schneck

RULING ON APPLICATION
DELIVERED FROM THE BENCH

[1] GERMAIN J. (Oral): The case that is before us today is Supreme Court of the Yukon case number 01-A0226. It is a case and today starts with an application by Mr. Daniel Sabo to adjourn a matter that has been longstanding in the Yukon courts. It

has been case managed for many years by the senior judge here, The Honourable Mr. Justice Veale.

[2] In his role as case manager, Justice Veale has had to tackle many applications. It would not be useful for me to review all of them today, but the reality is that this case has been before the courts since at least 2001, if not perhaps earlier. Thus, we are almost ten years into a litigation which, in a northern territory such as the Yukon, should not take that long. Some of the bumps and twists in the road along the way were disputes about experts, disputes about whether people who should not have been named as defendants would be named, and other disputes.

[3] A few years back, there was an application where Justice Veale, the senior judge of this territory, was asked to recuse himself on the basis of apparent and actually proven bias. The Honourable Mr. Justice Veale, as a senior judge, reviewed the law carefully and concluded that Mr. Sabo had not hit the threshold for that type of application. Despite that, in his wisdom, Justice Veale saw an opportunity to give Mr. Sabo his wish, in fact, to get him to eat his cake and have it too, because Justice Veale, of his own accord, saw an opportunity to assign this case to a trial judge who does not reside in the Territory, who has no biases against or for Mr. Sabo other than, I can say from the pleadings, he appears to be a colourful guy who found a meteorite while, I think, mining for gold or other minerals.

[4] So the senior judge had an opportunity to assign this trial to a visiting judge, to take completely off the table one of Mr. Sabo's concerns, that in the small territory in which he worked, lived and found his alleged meteorite, he would not get a fair trial. So the trial was assigned to me on a purely random basis.

[5] Last Thursday, I had an opportunity to hear from Mr. Sabo about his requirement that he needed an adjournment because his computer had broken down. Mr. Sabo appears to be very competent with a computer because I have had the opportunity to review three affidavits which, by court order, were going to assist him in providing his evidence today: affidavits number 33, 34 and 35. These are amazing affidavits to be prepared by a self-represented litigant. Affidavit 34, for example, is a total of 139 paragraphs. It relates itself to references; it utilizes and reflects a strong and powerful command of the English language; it outlines matters in a cogent, logical and chronological detail, almost as if a suspicious lawyer or judge would conclude that somebody was ghost-writing some or all of these affidavits for Mr. Sabo. But if he has composed and written these and drafted them himself, it is clear that he has an amazing understanding of the rules of civil practice for the Yukon Territory, and an amazing and accurate understanding of some of the things that are necessary to advance a case.

[6] In any event, Mr. Sabo elected to be a self-represented litigant in this very complex case, in which he is claiming from the government, I believe, if memory serves, $12.5 million U.S., if I have got that right. And this is the day that the case has been set to start for trial.

[7] I have to be fair to both parties. Mr. Sabo, I have to be fair to you, and I also have to be fair to your opponents. With the passage of time, the years are drifting away. All of us are getting older. Judges of the Yukon Court, and of courts elsewhere, have been given many powers, but we cannot rearrange science; we cannot turn back time; we cannot stop time; we cannot restore frail memories; we cannot bring people back if they have in fact passed away during the course of litigation. And when you have litigation

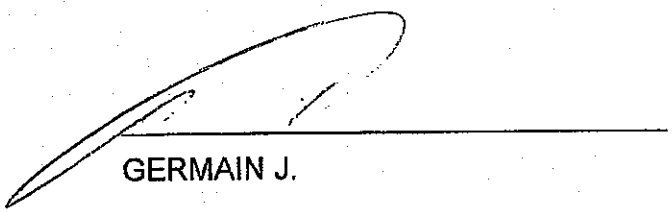
such as this, that gets long in the tooth, and that is a fair and easily understood phrase, not very legal, but clearly understood on the street, that when you have a trial like this, it gets long in the tooth. At some point, it has to come to closure.

[8] Much of the evidence that you are going to adduce has already been adduced through affidavits, and additional evidence that you are going to adduce is from the lips of witnesses who have travelled here on your behalf, and presumably at your expense, to give evidence today for you. Likewise, the Crown has brought a witness all the way from Ottawa to give evidence in this matter.

[9] Under Civil Practice Rule 41(8), it is clear that I do have the power to adjourn this trial. The issue is, should I? I also have to be mindful that this was case managed by the senior judge who, after years of faithful case management, directed that the trial would go ahead last May. At your behest, and solely at your behest then, an adjournment was achieved to allow you to firm up an expert witness, but in exchange for that, every adjournment comes with a price. One of the implicit prices is it becomes very hard to get another one, and often, as in this case, the trial is directed to be peremptory, not just against you, but peremptory as well against the defendants. So they have prepared for a trial that they understood by Justice Veale's order would go ahead.

[10] There was a long delay in filing that order, all the way until October 5th, even though it related to a trial in May, and through coincidence, somewhere between October 5th and the time you addressed me last Thursday, your computer fried or broke down in such a way that you had lost material. I have a lot of sympathy for a self-represented litigant. I have a lot of sympathy for a self-represented litigant that goes against the powerhouse that the Government and the other defendant have assembled

against you, and I can understand nervousness, and I can understand computer breakdown. But I have concluded in this case that the peremptory direction of the senior Judge Veale must be given its plain and ordinary meaning and, in this particular case, what discretion that I have to grant or not grant an adjournment, I exercise by not granting the adjournment today. This trial will proceed. If you need a few minutes to collect your thoughts to prepare your opening statement and line up your witnesses in the order that you would like to have them give evidence, I will give you that time, but the trial will proceed today.



GERMAIN J.