

**IN THE SMALL CLAIMS COURT OF YUKON**  
Before: His Honour Chief Judge Cozens

Docket: 12-S0039  
Registry: Whitehorse

BETWEEN:

Evangeline Ramirez

Plaintiff

v.

Marivic de Guzman and  
Benjamin Toquero

Defendants

AND BETWEEN:

Docket: 12-S0070  
Registry: Whitehorse

Evangeline Ramirez

Plaintiff

v.

Benjamin Toquero

Defendant

Appearances:  
Evangeline Ramirez  
Marivic De Guzman  
Norah Mooney

Appearing on own behalf  
Appearing on own behalf  
Counsel for Benjamin Toquero

**REASONS FOR JUDGMENT**

[1] Evangeline Ramirez is the Plaintiff in Small Claims action number 12-S0070 (SC 12-0070). Benjamin Toquero is the Defendant.

[2] Ms. Ramirez is the Plaintiff in Small Claims action number 12-S0039 (SC 12-S0039). Mr. Toquero and Marivic De Guzman are the Defendants.

[3] In SC 12-S0070, Ms. Ramirez claims damages against Mr. Toquero for a share of rental income she states he owes her in regard to a residence they jointly owned, situated at 12 Peel Rd. in Whitehorse. The rental income claimed covered the period of time from October, 2010 to May 31, 2012. While the Claim states the damages as being \$25,000.00, it appears that Ms. Ramirez is seeking 50% of this amount as her share of the rental income.

[4] In SC 12-S0039, Ms. Ramirez is seeking damages in the amount of \$1,000.00, plus interest, in regard to a trailer that was purchased by Mr. Toquero from Ms. De Guzman and paid for by Ms. Ramirez.

[5] In her Reply filed in both these actions, counsel for Mr. Toquero relies on the defence of *res judicata*, on the basis that the issues of rental income and the trailer have been the subject of a decision by Justice L.F. Gower in *Toquero v. Ramirez*, 2011 YKSC 81, an amended order filed May 29, 2012 and a further order filed July 12, 2012.

[6] In Ms. De Guzman's Reply, she states that she sold the trailer to Mr. Toquero on or about June, 2010. Mr. Toquero took the trailer without paying the \$1,000.00 sale price at the time, or providing a Bill of Sale. Ms. Ramirez subsequently paid for the trailer in October, 2010. Ms. De Guzman either wishes to retain the \$1,000.00 or to have the trailer back, however, in the latter case, she is also seeking compensation for being without it since June, 2010.

[7] A Notice of Application was filed by counsel for Mr. Toquero on November 7, 2012, seeking that both these claims be struck out against her client on the basis that the claims are scandalous, frivolous or vexatious. Counsel relies upon s. 46(4) of the *Small Claims Court Regulations* (OIC 1995/152, as amended by 2011/04).

[8] This application to strike came before me for hearing on November 15, 2012.

[9] Ms. Ramirez and Ms. De Guzman represented themselves in the hearing of the application, while Mr. Toquero was represented by counsel. Ms. Ramirez opposed the application to strike. Ms. De Guzman supported Mr. Toquero's application with respect to SC 12-S0039 and also wished the Claim to be struck or dismissed as against her.

[10] I granted Mr. Toquero's Application in both Claims and ordered that the Claims be struck and that the Plaintiff not be allowed to file any further Claims against him in Small Claims Court, without leave of a judge of that court, for a period of sixty days.

[11] I also ordered that the Claim against Ms. De Guzman be dismissed as being without merit.

[12] In SC 12-S0039, I further ordered Ms. Ramirez to pay Mr. Toquero the amount of \$250.00 in costs, and to pay Ms. De Guzman the amount of \$25.00.

[13] Reasons were reserved at that time. These are my reasons.

[14] In his decision in *Toquero v. Ramirez*, Justice Gower presided over family proceedings involving the division of the business and family assets of Ms. Ramirez

and Mr. Toquero.

[15] In paragraphs 22, 90 and 126(5) of the decision, reference is made to the 1998 ATV trailer that is the subject matter of SC 12-S0039. That decision and the two orders referred to above stipulate that the trailer is to be sold. It is clear from the decision that the trailer, along with many of the assets belonging to Ms. Ramirez and Mr. Toquero, were to be sold and the proceeds divided between them.

[16] In paragraph 122 of *Ramirez*, reference is made to the rent payments Mr. Toquero received that are the subject matter of SC 12-S0070. Gower J. states that: "It is true that Mr. Toquero has been receiving the monthly rent from the tenants at 12 Peel Road in the approximate amount of \$1,200 per month. However, that seems a rather modest amount relative to the benefits enjoyed by Ms. Ramirez." No order was made with respect to the rent payments.

[17] In *Martelli v. Martelli* (1983) 148 D.L.R. (3d) 746 (BCCA), at para. 10, Hinkson J.A. adopted the following as being a correct statement of law on the application of the doctrines of *issue estoppel* and *res judicata*:

The doctrine of estoppel by matter of record or *res judicata* has been held to extend to any point whether by assumption or admission which was in substance the ratio of and fundamental to a previous decision. The doctrine applies not only to matters actually in dispute, but to every point which properly belonged to the subject of a litigation in which the parties by exercising reasonable diligence might have brought forward at the time of the previous hearing. This doctrine is based upon the principle that there must be an end to litigation and that on every triable issue the whole of the case must be put to the court and not be dealt with piece meal in action upon action.

See also *0713401 B.C. Ltd. v. Elgon Electrical Services Limited et al*, 2011

BCSC 20 at para. 6

[18] There is no question but that the very issues which are before this court in both actions not only properly should have been dealt with in the matter before Gower J., but that they were in fact litigated. Gower J. specifically considered the issue of the rental income Mr. Toquero received and I find that he factored the impact of this issue into his ultimate decision. With respect to the trailer, he made Orders that dealt with the division of this asset as between Ms. Ramirez and Mr. Toquero.

[19] While I have the discretion not to apply the doctrine of *res judicata* (see *MacDougall v. Lake Country (District)*, 2012 BCCA 408 at paras. 32, 33), I find that there is no basis to exercise my discretion to do so in this case. As such, the claims of the Plaintiff against Mr. Toquero in both proceedings are struck.

[20] The issue is not the same with respect to Ms. De Guzman, as there has not been any previous litigation between her and the Plaintiff in regard to the trailer. Subsection 46(4) of the *Small Claims Court Regulations* reads as follows:

(4) The court may strike out or amend a pleading, or anything in a pleading, on the ground that

- (a) It discloses no reasonable cause of action or defence
- (b) It is scandalous, frivolous or vexatious,
- (c) It may prejudice, embarrass or delay the fair trial of the action,  
or
- (d) It is otherwise an abuse of the court's process,

and may order the action to be stayed or dismissed or judgment to be

entered accordingly, or may impose such terms as are just.

[21] There is no question in my mind that the Plaintiff's claim against Ms. De Guzman is in reality an attempt to circumvent the Order made by Gower J. in respect of the trailer. There is no evidence that there was any defect in the trailer or any action by Ms. De Guzman in the sale of the trailer that exposes her to any claim by Ms. Ramirez. Ms. Ramirez' dispute is with Mr. Toquero and the matter has been dealt with in the Yukon Supreme Court. As such, I find that there is no reasonable cause of action against Ms. De Guzman, the action is frivolous and vexatious and is an abuse of the court's process (see also *Ken Greene Trucking Limited v. Greene*, 2012 BCPC 321 at para. 28). Thus, the claim is struck as against Ms. De Guzman.

[22] I award Mr. Toquero his counsel fee in the total amount of \$250.00, as I find that the application of Mr. Toquero should not have been opposed by the Plaintiff. I also award Ms. De Guzman costs in the amount of \$25.00, being her costs for filing a reply.

[23] Given the ongoing involvement of Ms. Ramirez and Mr. Toquero in the Supreme Court, and the apparent ongoing animosity and hostility by Ms. Ramirez towards him, I find that it is appropriate to order that Ms. Ramirez not file any actions against Mr. Toquero in the Yukon Small Claims Court for a period of 60 days, without first obtaining leave from a judge of the Court.

---

COZENS C.J.T.C.