

Citation: *Outcrop [Yukon] Limited v. Muktuk Adventures Ltd.*, 2013 YKSM 8

Date: 20130903
Docket: 13-S0020
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Luther

BETWEEN:

OUTCROP [YUKON] LIMITED

Plaintiff

AND:

MUKTUK ADVENTURES LTD.

Defendant

Appearances:

James Tucker
Rick Buchan

Counsel for the Plaintiff
Counsel for the Defendant

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral): The Small Claims Court of Yukon received a statement of claim from Outcrop [Yukon] Limited on the 22nd day of May 2013, for an unpaid account of \$25,000. It is to be noted that the amount in excess of \$25,000 was abandoned so that the plaintiff could proceed in the Small Claims Court. The amount abandoned was \$1,304.26. In its reply, filed June 11, 2013, the defendant denies many of the assertions put forward in the statement of claim, although it admits to some. In paragraph 13, it claims a set-off as the defendant's damages would substantially exceed \$25,000 and then again in para. 14, "reserve[s] the right to take appropriate proceedings in the Supreme Court of Yukon."

[2] The notice of application by the defendant for this particular proceeding was filed on August 20, 2013, seeking two things: one, to have the action stayed, and secondly, alternatively, as the defendant's damage may exceed \$25,000, that this action be transferred to the Supreme Court. To substantiate the notice of application, the defence further filed an affidavit of Ann Taylor, Director of the defendant company, on the same date.

[3] In the meantime, on August 8, 2013, there was filed in the Supreme Court of Yukon a statement of claim in which Muktuk Adventures Ltd. was the plaintiff, suing Outcrop [Yukon] Limited, the defendant, for an unspecified amount, which seems to be the practice in this jurisdiction. However, based on the Affidavit of Ann Taylor, it appears to be substantially in excess of the \$25,000 and may be in the vicinity of \$61,000. Furthermore, we have a response filed by Mr. Tucker, lawyer for the plaintiff Outcrop [Yukon] Limited, and this was filed on August 30, 2013. We come to find out that the defendant, Muktuk, is no longer seeking a transfer to the Supreme Court. In the response, Mr. Tucker filed the affidavit of Jason Rayner, a VP with Outcrop [Yukon] Limited.

[4] First of all, I want to say that a full and complete hearing into the plaintiff's claim, and the defence, filed by the defendant, can take place expeditiously in the Yukon Small Claims Court. There is really no prejudice to the defendant other than the time and the legal fees. The trial most likely would take less time than the suggested discovery period in the Yukon Supreme Court, as indicated this morning, which could in itself be five days.

[5] This is an application made by the defendant Muktuk Adventures Ltd. The defendant has failed to satisfy me that there is judicial authority for intervention by the issuance of a stay of proceedings, even with conditions. In my view, there is no abuse of process whatsoever here. It would also seem to me that a judge of the Supreme Court of Yukon has concurrent jurisdiction with the Territorial Court or Small Claims judge. Furthermore, a judge of the Supreme Court of Yukon has certain inherent jurisdiction as well. If it is strongly felt by the defendant, Muktuk Adventures Ltd., that this refusal of a stay is prejudicial to the defendant, options may include an appeal to the Supreme Court or perhaps a prerogative writ.

[6] I am inclined to follow the reasoning of Mr. Justice Del Frate in a 2008 Ontario case, *Market Leadership Inc. v. Nicolini*, [2008] O.J. No. 175 (S.C.), who considered similar issues to what we are looking at today. The judge there favoured the action going ahead in the Small Claims Court of Ontario. While I am inclined to follow the reasoning of Judge Del Frate, in that case, I would point out, in fairness to the defendant Muktuk Adventures Ltd., that the actions that they have taken here do not compare to the actions taken by Market Leadership Inc., and I think once counsel has the chance to read that case they will understand what I am saying, but nonetheless, the principle is there about having the trial take place in the Small Claims Court.

[7] The defendant's application is denied and the case will proceed in Small Claims Court, as we indicated before, in an expeditious fashion.

LUTHER T.C.J.