

Citation: *Presley v. MacCauley, et al.*, 2002 YKSC 73

Date: 20021212
Docket: S.C. 02-A0033
Registry: Whitehorse

IN THE SUPREME COURT OF THE YUKON TERRITORY

BETWEEN:

ELVIS A. PRESLEY

PLAINTIFF

AND:

LAWRENCE MacCAULEY (Solicitor General of Canada)
SHIRLEY HEAFEY (Chairman of R.C.M.P. Public Complaints Commission)
SIMON WALL (Analyst for R.C.M.P. Public Complaints Commission)
BERNIE AGG (Analyst for R.C.M.P. Public Complaints Commission)

DEFENDANTS

**REASONS FOR JUDGMENT OF
MR. JUSTICE VEALE**

INTRODUCTION

[1] Elvis Presley has filed a Writ of Summons and Statement of Claim against Lawrence MacCauley and others. Mr. Presley brought an application for default judgment against Mr. MacCauley on September 17, 2002. The application was dismissed as there had been no personal service on Mr. MacCauley. However, at the hearing on September 17, 2002, Mr. Radke, a lawyer at the Department of Justice Canada, Yukon Regional Office, was present. He advised the court that he would be filing an Appearance, so that Mr. Presley would not be required to personally serve

Mr. MacCauley. Mr. Radke was aware of Mr. Presley's desire to take out a default judgment. Mr. Radke filed an Appearance on behalf of Lawrence MacCauley on October 10, 2002.

[2] Mr. Presley filed another application for default judgment without notice on October 25, 2002, to be heard on November 5, 2002. He was advised by letter dated October 26, 2002 from Mr. Radke of the requirement to give 14 days clear notice to the Deputy Attorney General. This is found in s. 25 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. 50, as follows:

25. In any proceedings against the Crown, judgment shall not be entered against the Crown in default of appearance or pleading without leave of the court obtained on an application at least fourteen clear days notice of which has been given to the Deputy Attorney General of Canada.

[3] Mr. Radke filed the Statement of Defence of Mr. MacCauley on October 28, 2002.

[4] Mr. Presley's application was heard on November 5, 2002, and the court ruled that he had to follow the notice procedure in s. 25.

[5] Mr. Presley filed a further default application with the appropriate notice to the Deputy Attorney General of Canada. The application was filed on November 5, 2002, to be heard November 26, 2002.

DECISION

[6] I will first discuss the Rules of Court, assuming that they apply. Mr. Presley applies under Rule 25(2) of the Rules of Court, which states as follows:

25(2) A plaintiff may proceed against a defendant under this rule if

- (a) that defendant has not filed and delivered a statement of defence, and
- (b) the time for filing and delivering the statement of defence has expired.

[7] He relies on Rule 21(5) of the Rules of Court, which states as follows:

21(5) Where a defendant has entered an appearance the defendant shall file and deliver a statement of defence and any counterclaim to the plaintiff within 14 days from the time limited for appearance or from the delivery of the statement of claim, whichever is later.

[8] Rule 11(3) must also be considered. It states:

11(3) Where a writ of summons or petition has not been served on a person, but the person files an appearance or attends at the trial or hearing, the writ or petition shall be deemed to have been served on that person on the date the person files or attends.

[9] Pursuant to Rule 13(6), a person who resides in Canada, other than the Yukon Territory, has 21 days to file an Appearance. Mr. Presley submits that the attendance of Mr. Radke on September 17, 2002 is the date of deemed service, and consequently the date for appearance is October 8, 2002, thereby requiring the Statement of Defence to be filed on October 22, 2002. By this interpretation of the Rules of Court, the Appearance and the Statement of Defence have been filed out of time.

[10] Mr. Radke submits that the date of deemed service, according to Rule 11(3), is the date of filing the Appearance, i.e. October 10, 2002. This would mean that he had 21 days to file an Appearance from October 10, 2002, which would be October 31, 2002. Thus, Mr. Radke had until November 14, 2002, to file his Statement of Defence and he filed it in time.

[11] In my view, Rule 11(3) is clear that the date of deemed service is the date that the person files the Appearance. It cannot be the date of September 17, 2002 because Rule 11(3) says that the attendance must be for a trial or hearing to be deemed the date of service. Although Mr. Radke was in court on September 17, 2002, it was simply the date of Mr. Presley's interlocutory application and not a trial or hearing. The word "hearing" refers to petitions.

[12] In my view, the application for default judgment should be dismissed. This is particularly so based on Rule 1(5), which states that the object of the Rules of Court is to secure the just, speedy and inexpensive determination of every proceeding on its merits. It would be unjust in these circumstances to enter a default judgment given the courtesy Mr. Radke afforded to Mr. Presley by saving the time and expense of serving Mr. MacCauley.

[13] There is a further more compelling reason, and that is the application of Rule 25 of the *Crown Liability and Proceedings Act*. The *Crown Liability and Proceedings Act* is a federal statute and clearly overrides the Rules of Court, which derive their authority from the *Supreme Court Act of the Yukon Territory*, R.S.Y. 1985, c. 165. This is clearly stated in s. 27 of the *Crown Liability and Proceedings Act* as follows:

27. Except as otherwise provided by this Act or the regulations, the rules of practice and procedure of the court in which proceedings are taken apply in those proceedings.

[14] The case law indicates that the 14-day notice period in s. 25 is treated as a grace period to allow the Deputy Attorney General to file before the expiry of the 14 days notice (see *Caron v. Canada*, [1996] F.C.J. No. 1600 (F.C.A.) and *Sarraf v. Canada*, [1992] F.C.J. No. 1008 (F.C.T.D.)).

[15] Mr. MacCauley's Statement of Defence was filed on October 28, 2002, and the 14 days notice under s. 25 of the *Crown and Liability Proceedings Act* did not expire until November 19, 2002. In any event, the Statement of Defence was filed October 28, 2002, which made this entire proceeding unnecessary.

[16] In conclusion, the application of Mr. Presley for default judgment is dismissed. Costs shall be awarded to Mr. MacCauley against Mr. Presley.

VEALE J.

Appearances:

Elvis A. Presley

Self-Represented

Mark Radke

Counsel for Lawrence MacCauley