

SUPREME COURT OF YUKON

Citation: *3752 Investments Ltd. et al. v. Argus Properties Ltd. et al.*, 2012 YKSC 90

Date: 20121009
Docket: S.C. No. 10-A0083
Registry: Whitehorse

BETWEEN:

3752 INVESTMENTS LTD. and 629582 B.C. LTD.

Plaintiffs

AND:

**ARGUS PROPERTIES LTD., EDWARD JAMES CALLAHAN
and MIDWEST VENTURES LTD.**

Defendants

AND:

ROBERT ALLAN CALLAHAN and BRUCE THOMAS CALLAHAN

Defendants by counterclaim

Before: Mr. Justice R.S. Veale

Appearances:

David Rush

Gib van Ert

Counsel for the Plaintiffs
and Defendants by counterclaim
Counsel for the Defendants

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an application by 3752 Investments Ltd. for costs in the amount of \$2,500 arising from an application that was filed on September

20, 2012. The application was opposed, but has now been resolved by agreement and the only outstanding issue is whether or not 3752 Investments Ltd. should be awarded costs of their application.

[2] The background of the matter is that there is an order of April 3, 2012, which required the defendants, Argus Properties Ltd., to pay the net rental revenue from the management of the Chilkoot Shopping Centre, into court, pending the hearing of a further application of 3752 Investments Ltd. Although the order itself does not express it as being a consent order, I agree with Mr. Van Ert's characterization that it was a consent order. The definition of net rental revenue was expressed specifically to mean:

...rental revenue net of mortgage payment obligations and other expenses relating to the Joint Properties and Trust Properties (the object being to pay into court that part of rental revenue which is not needed to meet obligations owing to tenants and lenders, and to pay ordinary operating expenses);

[3] The further background is that on August 15, which was the date of the July payment, Argus Properties Ltd. deducted \$58,693, representing legal fees paid by Argus to Hunter Litigation, the firm that is representing them in this court action. In other words, to be clear, the legal fees are the legal fees of this court action.

[4] Mr. Rush, acting on behalf of 3752 Investments Ltd., brought the matter to case management on September 17, 2012, in the hopes of having it resolved. Mr. McEwan, representing Argus Properties, declined to resolve the matter in case management and the matter was set down for a hearing on today's date. Some affidavit material has been filed regarding the matter, but the upshot of it all is that the parties have reached an

agreement, which I understand to be that the legal fees of Argus Properties Ltd. relating to this court action will not be deducted from the net rental revenue of the property.

[5] In my view, the court order of April 3, 2012, is very clear that the only deduction was to be ordinary operating expenses, and I think, quite frankly, that the argument that Argus Properties Ltd. should be allowed to deduct its legal fees for this court action is essentially a meritless claim. It was a matter that was raised at case management, which I think is quite appropriate because quite often disputes of this nature can be headed off and resolved, saving a lot of time and legal expenses on behalf of the parties. In any event, the *Rules of Court* make provision for this sort of situation in Rule 60(15), which is entitled "Costs arising from improper act or omission", and it says:

Where anything is done or omitted improperly or unnecessarily, by or on behalf of a party, the court or clerk may order

(a) that any costs arising from or associated with any matter related to the act or omission not be allowed to the party, or

(b) that the party pay the costs incurred by another party by reason of the act or omission.

[6] In my view, the request for fixed costs, which are permissible under Rule 60 as well, in the amount of \$2,500 is eminently reasonable. I make an order that the defendants pay the plaintiffs in this action the sum of \$2,500.

[7] Now, do you want that to be a forthwith order? I mean I want to get this resolved, and you did not indicate that, Mr. Rush.

[8] MR. RUSH: Yes, I would ask that it would be paid forthwith.

[9] THE COURT: Do you want to make a submission on that, Mr. Van Ert?

[10] MR. VAN ERT: No, Your Honour.

[11] THE COURT: Okay. I will make that payable forthwith.

VEALE J.