

SUPREME COURT OF YUKON

Citation: *Senft v. Vigneau*, 2018 YKSC 25

Date: 20180503
S.C. No.: 17-A0120
Registry: Whitehorse

BETWEEN:

ANGELA R. SENFT and MICHAEL E. SENFT

PLAINTIFFS

AND

AUDREY VIGNEAU and SUSAN HERRMANN

DEFENDANTS

Before Mr. Justice R.S. Veale

Appearances:

Gary W. Whittle

Counsel for the Plaintiffs

Audrey Vigneau (by telephone)

Appearing on her own behalf

No one

Appearing on behalf of the Defendant Susan Herrmann

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This is a case between Angela Senft and Michael Senft against Audrey Vigneau and Susan Herrmann, relating to defamation. The matter is set for a civil jury trial from July 18 to 20, 2018.

[2] The Senfts are represented by Mr. Whittle. The defendant, Susan Herrmann, is represented by Mr. Weigelt. Susan Herrmann and Mr. Weigelt are not part of this application.

[3] The defendant in this application is Audrey Vigneau. She has had some assistance in the past from John Cliffe, a lawyer from Vancouver. It is my

understanding that he has not been involved in assisting Ms. Vigneau in this application. She is essentially a self-represented litigant.

[4] The application before me that remains is the alternative application. I am going to dismiss the application set out in paras. 1, 2, and 3.

[5] With respect to para. 4, this is an application for Ms. Vigneau to file a further and better list of documents by May 9, 2018. It appears to me that that application should be granted, although I will put the date of May 11, 2018, for delivering the further list of documents to the plaintiffs.

[6] I make that order because of the possibility that other documents exist, perhaps as Facebook posts or perhaps as email messages. In any event, I am satisfied that there are other documents. It is a somewhat difficult situation for Ms. Vigneau, in the sense that she has indicated that some of the documents, as a result of an apology and retraction that she has given, have been removed from the Facebook posts and may not be available. If that is the situation then there would be no further documents of that kind.

[7] However, Mr. Whittle has indicated that a woman named Sarah Lenart of Dawson City has some involvement with Facebook that is used in that community. I have recommended strongly to Ms. Vigneau that she speak to Sarah Lenart to determine if there are copies of Facebook posts that involve her and the Senfts; and that if there are such copies, they should be produced in her further list of documents. I am recommending that she speak to Mr. Cliffe to assist her in that regard. I have already indicated to the Clerk that she should provide Ms. Vigneau with the form that is used for lists of documents to assist her in preparing a further list of documents.

[8] The next application at para. 5 of the notice of application applies for an order that the proceeding continues if no appearance has been entered or no defence filed by Ms. Vigneau, based on the fact that she has failed to file an affidavit to interrogatories. It is clear that that application is no longer before the Court because Ms. Vigneau has provided the answer on affidavit to interrogatories.

[9] The next application, para. 6, seeks an order that Ms. Vigneau not attend upon the discovery of the defendant, Susan Herrmann, on Wednesday, May 23, 2018. Ms. Vigneau has consented to that. The only addition I made to the order is that Ms. Herrmann not attend on the examination of Audrey Vigneau. I make this order apply to Angela Senft and Michael Senft, to the extent that they are ordered not to attend on the examination for discovery of each other, in the same fashion as Ms. Vigneau and Ms. Herrmann will not attend on the examination of each other.

[10] The next application, para. 7, is that Audrey Vigneau not disclose to any person the contents of her examination for discovery on Tuesday, May 22, 2018, until the completion of all discoveries or further order of this Honourable Court. Ms. Vigneau has consented to that as well. I am going to order that that apply to Ms. Herrmann and to Mr. and Mrs. Senft as well, but I am going to put the time limit of the completion of the discoveries on the dates of May 22 to 25, 2018, and that the order terminates on completion of those examinations for discovery.

[11] I am also going to indicate, for the record, that this is not the type of order that would be made in the ordinary course. There is a case, entitled *Sissons v. Olson* (1951), 1W.W.R. (N.S.) 507 (B.C.C.A.) which sets out at para. 6 a discussion of the right of parties to be present at examinations for discovery of any persons involved in

the proceedings and the right of any court to say otherwise should the circumstance occur. I am granting this order because Ms. Vigneau has consented to it. I am also granting it in the representations of Mr. Whittle that Mr. Weigelt has, agreed that similar order, upon consent, may be made between the Senfts and Ms. Herrmann.

[12] I wish to read a comment from a case called *Bronson v. Hewitt*, 2007 BCSC 1477, at para. 23, which is the decision of Goepel J., who stated:

[23] In this case, the plaintiffs seek to exclude the defendants from attending each others' discoveries because of concerns that the discoveries will cover the same ground and there is a risk that the defendants will tailor or marshal their evidence to fit the evidence given by other defendants. Such concerns are common in any multi-party litigation in which defendants may have an identity of interests and credibility is an issue. Those concerns are not, however, sufficient to displace a party's fundamental right to be present at an examination for discovery at which his or her interests may be affected. Otherwise exclusion of parties would follow as a matter of course in most proceedings. This is the very proposition the majority rejected in *Sissons*.

[13] I adopt that statement of Goepel J. as the appropriate test to be applied in these situations.

[14] The last application is for costs to be awarded to the plaintiffs in any event of cause. For the benefit of Ms. Vigneau, that means that on a tariff, in the *Rules*, the plaintiff is seeking an order that Ms. Vigneau pay a sum of money, to be ascertained, to the Senfts regardless of the outcome of this trial.

[15] I point out that Ms. Vigneau is self-represented at this application. She has certainly, in the past, had the benefit of Mr. Weigelt's advice and perhaps, as well, John Cliffe. It also appears to me that Ms. Vigneau — some of the application has not been proceeded on, as it being unnecessary, but Ms. Vigneau has also agreed to three parts

of the application. To that extent, she has indicated her willingness to have the matter proceed, as I assume she understands that the same rules will apply to the Senfts and to Ms. Herrmann as well.

[16] Nevertheless, the plaintiffs have had to bring the application, so there is a balancing of interests in an award of costs and my view, in the circumstances that I have just outlined, particularly given that Ms. Vigneau has apparently filed an apology and retraction, that, in all of the circumstances, I am going to order that the plaintiffs be paid a lump sum of \$500 as costs in the cause. That simply means that in the event that the plaintiffs succeed, they would be entitled to \$500 at that time. I am not going to award costs in any event of the cause for the reasons stated.

[DISCUSSIONS]

[17] Ms. Vigneau will not be required to sign the order. Mr. Whittle, you will, however, have to send a draft of the order to her and give her two days from receipt to respond, in case she has some submissions, and then you can proceed to file the order.

[DISCUSSIONS]

[18] On an expedited basis, a transcript of these proceedings, including the reasons for judgment, is ordered. Unfortunately, I will not be here but I will have Justice Campbell review and distribute copies to the parties.

[DISCUSSIONS]

VEALE J.