

Citation: *Amos v. Yukon Tire*, 2004 YKSM 5

Date: 20040503
Docket: T.C. No. 03-S0015
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON

Before: His Honour Judge Barnett

Alan Amos

v.

Yukon Tire Centre Ltd.

Appearances:

Mr. Alan Amos

R. Grant Macdonald, Q.C.

Appearing on his own behalf

Counsel for Yukon Tire

REASONS FOR JUDGMENT

[1] BARNETT T.C.J. (Oral): Proceedings in Small Claims Court should be straightforward and not hung up on too many technicalities. In this matter, I sense some problems, some technicalities, they might be called. Perhaps those who can do so will wish to consider the question that this case raises.

[2] Mr. Amos is the owner or was the owner of a diesel truck. He had some dealings with the Yukon Tire Centre and in the course of those dealings, it is my

understanding that the Yukon Tire Centre people provided Mr. Amos with a fill-up, and it is Mr. Amos' belief that he got a tank full of so-called wet diesel. It was his view that the damage was to the injectors in his engine.

[3] The long and the short of it was that in May of 2003, he commenced proceedings in the Small Claims Court against the Yukon Tire Centre. The case came for trial before Judge Schmidt on the 7th of July 2003, and Judge Schmidt heard evidence from both parties and some witnesses also, as I understand the matter. Judge Schmidt said that Mr. Amos had not sufficiently proved his claim. There was an onus upon him and Judge Schmidt was not satisfied that Mr. Amos had met that onus, and so the case was dismissed.

[4] Mr. Amos was not satisfied with that decision and he decided to appeal it. There were no lawyers at the trial before Judge Schmidt and Mr. Amos understood that his appeal had to be filed within 30 days, but he presumed that that meant 30 working days. His appeal should, I believe, have been filed by the 6th of August 2003. In fact, Mr. Amos showed up in the Supreme Court Registry on the 11th of August 2003. It is clear that that day, if not before, Mr. Amos knew that he had a time problem. He says that he was advised that this sort of thing was not uncommon and that he would need to apply to a judge in the Supreme Court for an extension, and that in fact is what happened. The matter was placed on, I presume, the Chambers List for the 19th of August 2003. Mr. Amos notified Mr. Murdoch at the Yukon Tire Centre in a manner that was sufficient so

that on the 19th of August, both Mr. Amos and Mr. Murdoch appeared before the presiding judge in the Supreme Court of this territory. The presiding judge that day was Mr. Justice MacIntyre, a deputy judge, I believe, from Alberta. He granted an order extending the time in which Mr. Amos could appeal.

[4] The *Small Claims Court Act* says in s. 9 that an appeal lies to the Supreme Court and s. 5 of the *Act* may have some bearing on matters such as this also. To learn more about appeals, one looks to the Regulations which were filed in 1995. Section 75 of the Regulations says that:

An appeal shall be made by filing notice of appeal with the clerk of the court and with the clerk of the Supreme Court.

And it goes on to say that:

A notice of appeal must be filed within 30 days of the date of the judgment appealed from.

Also, one might look at the interpretation section of the Regulations which says that:

Where matters are not provided for in these regulations, the practice may be determined with reference to the Supreme Court Rules....

As things work out in the Yukon, that would take you, I believe, to the Rules of the Supreme Court of British Columbia, because there are no rules for the court in the Yukon Territory.

[5] I just pause to note that after getting the Order on the 19th of August from Mr. Justice MacIntyre, Mr. Amos got his appeal filed in the Supreme Court, but I do not believe that the Notice of Appeal was ever filed in the Territorial Court. I don't think a great deal turns on that, but it wasn't quite perfected, even after the 19th of August.

[6] As his appeal got underway, Mr. Amos consulted counsel and when the Yukon Tire Centre people realized that Mr. Amos was having a lawyer represent him upon the appeal, they retained Mr. MacDonald.

[7] Earlier this year, Mr. MacDonald filed an application in the Supreme Court to have the appeal struck on the grounds that it was filed out of time. Mr. MacDonald being, as usual, very careful, filed an outline of the reasons for his application and he filed a Book of Authorities also.

[8] The matter came before Mr. Justice Veale on the 30th of March 2004, and Mr. Justice Veale set aside Mr. Justice MacIntyre's Order and further ordered that Mr. Amos' appeal be struck out on the grounds that it was filed out of time. I have a copy of Mr. Justice Veale's Order. Mr. Justice Veale went on to say, during the course of the hearing before him on the 30th of March, that Mr. Amos, if he was to make an application for extension of the appeal period, would have to make it in the Territorial Court and not in the Supreme Court.

[9] Mr. MacDonald confirms to me today that it is his understanding that if there is any jurisdiction to grant the sort of order that Mr. Amos wants, the jurisdiction is in this Court and not in the Supreme Court of the Yukon.

[10] Mr. Amos, following Mr. Justice Veale's advice, did indeed file an application in this court to get the time extended. That application was filed by Mr. Amos on the 26th of April.

[11] Mr. MacDonald says that on the merits, this application should not succeed and in making that submission, I think Mr. MacDonald relies on the decision of Justice Campbell in *Dyce v. Aquarius Management Inc.*, [1995] B.C.J. 1056, particularly at page 7. There, quoting from the Court of Appeal's decision about these matters in a general sense, there are five tests: was there a *bona fide* intention to appeal; was the respondent informed of the intention; would the respondent be unduly prejudiced by an extension because of their merit in the appeal and; is it in the interests of justice that an extension be granted.

[12] It is clear to me that Mr. Amos seriously intended to appeal. He made a mistake, mistake he would not have made if he had had good counsel advising him or he had taken the time to look up and do things somewhat more carefully, but it was not a great mistake. I think Mr. Murdoch knew perfectly well that Mr. Amos was dissatisfied and intending to appeal. Mr. MacDonald concedes that while there may be some prejudice because a witness may now be in

Newfoundland, that can be overcome and there is no other real prejudice. The appeal may not succeed, but it is not a frivolous appeal. That is quite apparent to me and I believe that if I were to say that Mr. Amos loses today, that he would leave the courtroom with a feeling that justice had just not been done, that the system had failed him. If he felt that way, I think he would be entirely justified.

[13] The problem here is that appeals from Small Claims decisions in the Yukon are not provided for with an abundance of clarity. In Mr. MacDonald's materials placed before Mr. Justice Veale, there was reference to 1968 Small Debt Appeal Rules, and Mr. MacDonald tells me that he understands that judges presiding in the Supreme Court of the Yukon believe those Rules still to have some application. Well, if they do, that fact is lost on me. The 1968 Rules were made at a time when the *Judicature Act* of 1958 was the prevailing statute and it was (s.) 53 of that Act that talked about appeals and how one went about it. Then the 1968 Rules came in, but in 1986, (s.) 63 of the *Judicature Act* was repealed by the *Small Claims Court Act*, assented to on the 28th of May 1986. So I believe that if persons are still thinking that those old Rules still have some bearing in 2004, that is not quite correct, I don't believe, but maybe it is me that is confused.

[14] One source of confusion is that that old legislation refers to the Territorial Court of the Yukon Territory, but back in 1958 and indeed in 1968, the Territorial Court was the Superior Court. It wasn't until 1972 that that court got renamed to

become the Supreme Court of the Yukon Territory and the Territorial Court is a very different court than the one talked about in that old legislation. It seems to me anomalous at least to come up with the conclusion that in 2004, if somebody in Mr. Amos' position wishes to get an order extending his time to appeal, he gets that order in this Court rather than in the Supreme Court. Mr. Justice Veale has said that his Court has no jurisdiction to grant such orders and that Mr. Justice MacIntyre erred in granting such an order, and Mr. Justice Veale says that the jurisdiction lies here. Mr. MacDonald concedes that if the jurisdiction is anywhere, it is here and it was his proposition to Mr. Justice Veale that the jurisdiction is here.

[15] I am left in some grave doubt about this and it does seem to me that perhaps some legislative draft person could clarify matters for the benefit of people who appear in these courts for the benefit of everybody who may have some need to understand what is necessary.

[16] I think that the proper way to deal with this matter is to extend the time for Mr. Amos to get his appeal filed. Mr. Amos, you must file your appeal within one week from today. So that is before the close of court business on Monday, the 10th of May. To file your appeal, you must file it with the clerk of the court, that is the Territorial Court, and also with the clerk of the Supreme Court. Those are the things that you must do, and then you have got to get it served.

[17] Mr. MacDonald, the provisions in the old 1968 Rules and the old *Judicature Act*, I think that they very clearly don't have any bearing anymore. If s. 63 of the *Act* was repealed, I simply cannot imagine that the Small Debt Appeal Rules of 1968 continue to have any force.

[18] I have told you, Mr. Amos, that you must file in both registries.

[19] MR. AMOS: Yes. I was kind of hoping ---

[20] THE COURT: Just one minute, Sir.

[21] I have told you that you must serve the Yukon Tire Centre. The old 1968 Rules talked about serving the Notice of Appeal upon the Small Debt Official. That, I believe, would be Judge Schmidt, who is a deputy judge from British Columbia.

[22] I am making an order just in case that service on Judge Schmidt shall be deemed to have been accomplished by filing the Notice of Appeal with the clerk of the Territorial Court and I am also going to order, just in case it may be necessary, to strictly comply with these Rules that I think no longer apply, but just in case, I am going to say that when you file your Notice of Appeal, deposit with the clerk of the Territorial Court the sum of \$1 as security for costs.

[23] I have, Mr. MacDonald, considered the authorities that are in your book and there is, of course, lots of authority for the proposition that if a statute says that an appeal must be launched within a given period of time, absent another statutory provision of allowing an extension of that time, that it is a deadline and there is no power to extend, but in this case, the time limits for appeals are found in the 1995 Regulations, s. 75 of those Regulations. I believe that when one looks at s. 5 of the Act and when one looks at s. 1(2) of the Regulations, which takes you to the Rules of the Supreme Court of British Columbia, and when you look at I think it is Rule 3(2) of the Rules of the Supreme Court of British Columbia, that since the time periods are not mandated in the legislation but rather in Regulations, which allow, I believe, for time extensions, that there is the authority to grant Mr. Amos an extension of time in this case.

[24] I am, however, strongly suggesting that somebody take a careful look at this situation with a view to considering whether I am right in thinking that things are badly confused and, if so, getting the Act or the Regulations changed to make them clear. That is why I want a copy of the transcript delivered to Mr. Justice Veale and to Chief Judge Lilles.

[25] Mr. MacDonald, do you believe I have left anything out?

[26] MR. MacDONALD: No, Your Honour, I think you have covered it all.

[27] THE COURT: Mr. MacDonald, I think you have brought to the attention of people within the Registry and to my attention the fact that there is an issue here that needs to get cleared up.

[28] So, Mr. Amos, you know what you have to do now?

[29] MR. AMOS: Yes, Your Honour.

[30] THE COURT: Get it filed in both registries. The security is simply a nominal matter. You do understand, I am sure, that if this appeal proceeds and you are not successful, that it could have some financial implications.

[31] Do you know what you need to get it on the road?

[32] MR. AMOS: Yes.

[33] THE COURT: Thank you very much for coming in, Mr. MacDonald. Mr. MacDonald, before you go, would it be your expectation that the Court Registry would get this Order drawn up?

[34] MR. MacDONALD: I don't honestly know. I can't answer that.

[35] THE COURT: I am not expecting, Mr. MacDonald, that you will be here when that Order is drawn up.

[36] But, Mr. Amos, you need to go and talk with persons in the Court Registry. This Order is one that will need to be drawn up, partly because it will need to be filed in the Supreme Court and it needs to get drawn up. So if you go and talk to people in the Court Registry, I think you may get some assistance from them in getting it drawn up. It would not, I think, in the circumstances, be fair to burden Mr. MacDonald's client with getting an order drawn up in these circumstances.

[37] Thank you, Mr. MacDonald.

[38] MR. MacDONALD: Thank you.

[39] THE COURT: Mr. Murdoch, Mr. Amos.

BARNETT T.C.J.