Citation: *Hedmann v. Attorney General of Canada et al.*, 2014 YKSM 2

Date: 20140124
Docket: 12-S0142
Registry: Whitehorse

IN THE SMALL CLAIMS COURT OF YUKON
Before: His Honour Judge Luther

BETWEEN:

DAVID HEDMANN

Plaintiff

AND:

ATTORNEY GENERAL OF CANADA

TITUS WILLIAM CHARLIE

Defendants

AND:

YUKON GOVERNMENT (HEALTH AND SOCIAL SERVICES)

Third Party

Appearances:

Jonathan Gorton	Counsel for the Attorney General of Canada
Stephanie Schorr	Counsel for the Yukon Territorial Government
David Hedmann	Appearing on his own behalf

REASONS FOR JUDGMENT

[1] LUTHER T.C.J. (Oral): The Statement of Claim is dated March 7, 2013. The Amended Statement of Claim was filed on May 6, 2013. In the Amended Statement of Claim, the claim was raised from $8,933 to $12,890; and then of course it was reduced by $827 as the cost of the dentures was paid by Cindy Dixon, and she was thus removed as a party to this action.

[2] The plaintiff provided rental accommodation to Titus Charlie from late 2008 until November of 2012. Back in May of 2006, Judge Lilles of this Court had found Titus Charlie not fit to stand trial. Judge Lilles referred the case to the Yukon Review Board, which made an order that I will refer to later on in this decision.

[3] The plaintiff's claim, basically, is for unpaid rent for December 2012 and January 2013, plus a substantial amount of damages allegedly caused by Titus Charlie.

[4] Despite the paid care by the plaintiff for the defendant, Titus Charlie, from 2008, it was really only in 2011 that the plaintiff decided that he was going to sue to recover for the damages caused. The plaintiff asserts that the Federal Government, through Aboriginal Affairs and Northern Development Canada ("AANDC"), was the tenant due to Titus Charlie's incapacity to enter into a landlord and tenant agreement, either in writing or orally; and also because the Federal Government, and no one else, handled the payment of rent, unilateral reductions in rent, etcetera.

[5] The plaintiff, on numerous occasions, signed a rental report of the landlord. This was a monthly report, and while the form changed during this particular time frame, it always had in writing, right next to Mr. Hedmann's signature as landlord, a notice to the landlord which set out clearly that the federal department is not a party to the landlord/tenant agreement and accepts no responsibility for nonpayment of rent or for any damages to rental units, including furniture. That the plaintiff signed only because he was coerced is not accepted. Indeed, in some emails to government officials, the plaintiff referred to Titus Charlie as the tenant.

[6] AANDC provided income assistance to Titus Charlie since 2001 as a result of a program which provides for basic needs to individuals registered under the *Indian Act*, R.S.C. 1985, c. I-5. It was never the intention, express or implied, that the Federal Government would be the tenant. As to a landlord-tenant relationship between the plaintiff and the Federal Government, there was never a meeting of the minds in that regard.

[7] In a decision of Mr. Justice Veale, *Dana Naye Ventures v. Canada (Attorney General),* 2011 YKSC 20, at para. 10:

> The law on an application to strike is set out in *Hunt v. Carey Canada Inc*., [1990] 2 S.C.R. 959, and was summarized as follows:
>
> 1. it is only in plain and obvious cases where the case is absolutely beyond doubt that a claim should be struck out;
> 2. the mere fact that a case is weak or not likely to succeed are not grounds for striking it out;
> 3. if the action involves serious questions of law or if facts are to be known before rights are definitely decided, the rule should not be applied;
> 4. a statement of claim may be amended;
> 5. the allegations in the statement of claim are accepted as true for the purpose of the application;
> 6. the statement of claim should be struck out only if the action is certain to fail because it contains a radical defect;
> 7. if there is a chance that the plaintiff might succeed, the plaintiff "should not be driven from the judgment seat".

Hunt v. Carey Canada Inc. remains the law of the land. This was affirmed by the Supreme Court of Canada in *Sun-Rype Products Ltd. v. Archer Daniels Midland Company,* 2013 SCC 58, at para. 31.

[8] All seven aspects of this test have been established to my satisfaction. There are no serious questions of law; there are no additional facts to support the claim against the Federal Government. The Statement of Claim already has been amended. Even a further amendment would not assist the plaintiff. This is not a question of a weak case; there is no case for the Federal Government to meet. There is no chance of success, as the action is certain to fail, as neither the pleadings nor the affidavit has established in any way whatsoever that the Federal Government was a tenant of the plaintiff.

[9] I hereby order that the claim against the Attorney General of Canada be struck, as it discloses no reasonable cause of action. As there is no genuine issue for trial, the claim as against the Attorney General of Canada is hereby dismissed.

[10] I will hear the parties on the subject of costs after I make my ruling as it pertains to the third party.

[11] The third party was brought into this case by the defendant, Titus Charlie, through his counsel at the time, Karen Wenckebach, on June 12, 2013, as a result of one of the pre-trial settlement conferences. The letter from Mr. David Christie, filed on January 23, 2014, gives further explanation as to why Karen Wenckebach is no longer involved, and indeed confirms that Mr. Charlie is unrepresented.

[12] The Yukon Government (YG) had a duty of care to Titus Charlie as a result of the Yukon Review Board's order conditionally discharging him. The contents of that Order included the following:

> The Accused shall be subject to the general direction and supervision of the Government of Yukon, as represented by the Director of Health and Social Services ("the Director"). The Director shall develop, implement and modify from time to time, as necessary, a specific plan ("the Plan") for the Accused's assessment, counselling, treatment and rehabilitation, which shall be aimed at furthering the Accused's rehabilitation and reintegration into society. …

Further:

> The Director shall arrange a residential placement facility (the "Approved Residence") for the Accused according to conditions consistent with the Plan and this disposition. The Approved Residence shall provide 24-hour supervision in a secure, stable setting. The Director may arrange temporary placement…

[13] So while not the legal guardian for Titus Charlie, YG was responsible for the general direction and supervision and housing of Titus Charlie through the director of Health and Social Services. As to their duty to Titus Charlie, YG entered into a contract with the plaintiff which amounted to $210,000 per year for constant quality care. The contract was detailed and included comprehensive provisions relating to a number of concerns, including accountability, liability, indemnification, programming, budget, termination, et cetera. Of interest, the plaintiff, or the third party, had the right to terminate with 30 days notice.

[14] YG met their duty of care to Titus Charlie by providing the services of the plaintiff. The liability and indemnification clauses provide a total defence to the claims against the third party by the plaintiff and by Titus Charlie. The plaintiff freely and voluntarily entered into these annual contracts. There is nothing in the pleadings to suggest that the plaintiff was misled as to the extent of the care required by Titus Charlie.

[15] But, as the plaintiff was not represented by counsel, I did offer him considerable latitude in his submission, in which he claimed that YG was not forthright in its responses about Titus Charlie's criminal background, including violence and sexual offences. Even if true, it does not assist the plaintiff, as the plaintiff could have demanded more of YG in carrying out his own due diligence, and also because the plaintiff became more aware, indeed fully aware, of Titus Charlie's issues as time went on.

[16] Again, I have to emphasize that the plaintiff was not forced into signing these annual contracts. The challenges to caring for Titus Charlie were recognized by not only the substantial amount of the service contract, but also by the nature of the contract and the reviews carried out by the third party. The letter of Ms. McDonnell, on November 15, 2012, provided clear notice that the contract, which would have expired on December 31, 2012, was not being renewed. This also served as sufficient notice that Titus Charlie would no longer be housed there. Thus the plaintiff was given notice, both in his capacity as an independent contractor providing services, and also in his capacity as a landlord. Of note, the plaintiff was paid until the end of the year, despite not caring for Titus Charlie for the last five or six weeks.

[17] As to the case of *R. v. Phaneuf*, 2010 ONCA 901, and *Ontario v. Phaneuf,* [2009] O.J. No. 5618 (Div. Ct.), YG did owe a higher standard of care to Titus Charlie than the Ontario Government did to Sylvie Phaneuf. Sylvie Phaneuf was not entitled to a hospital bed immediately upon being ordered by a trial judge to undergo a mental health assessment pursuant to s. 672.11 of the *Criminal Code* of Canada. The Ontario Court

of Appeal made it abundantly clear that there was no judicial order in force by a previous ruling given by Desmarais J. in *R. v. Hussein*, [2004] O.J. No. 4594.

[18] Here, there was a determination by the Review Board requiring YG to provide services and housing to Titus Charlie. By expending considerable public funds to provide these services to the plaintiff, and, by entering into such a comprehensive contract, YG met its obligations to Titus Charlie and complied with the Review Board Order.

[19] In *Phaneuf*, *supra*, the Ontario Court of Appeal concluded that the claim was properly struck as failing to disclose a cause of action. While this government owed a greater care for Titus Charlie than Ontario did for Phaneuf, YG met its obligation by means of the contract it entered into with the plaintiff. YG was not ordered to become the guardian of Mr. Charlie.

[20] The plan ordered by the Review Board was carried out and the residence was provided. Furthermore, there is no vicarious liability on the part of YG as there would be with an employer, guardian or parent. The test in *Hunt v. Carey Canada Ltd*., *supra*, applies equally in this situation. In terms of the claim against the third party, the seven-fold test has been met. The comments made above with regard to the Federal Government equally apply in this instance; thus the third-party claim against YG is struck also.

[21] Two further notes: I would like to bring to the parties' attention a Supreme Court of Canada decision, which ironically was just released yesterday, called *Hryniak v. Mauldin,* 2014 SCC 7. That case specifically examines the Ontario rules for civil

procedure, and Rule 20 (summary judgments), which was amended in 2010. It also sets an overall tone for a balance between procedure and access struck by our justice system and must come to reflect modern reality and recognize that new models of adjudication can be fair and just. I would also draw attention to paras. 34, 49, 50, 57, and 69 of that decision.

[22] While sitting as a judge in the Small Claims Court, I do not have the inherent jurisdiction referred to in para. 69. Nonetheless, I make observation of the Supreme Court of Canada's tone towards access to justice, and balance and proportionality, such that the Court's resources are well utilized and that a reasonable degree of efficiency is achieved. On the last note, while Titus Charlie was not represented at yesterday's proceedings, I do note that he was well-behaved; he stayed throughout the entire proceeding and he answered my questions and really only complained about the boredom.

[23] Now then, as to the question of costs, what is the position of the Federal Government?

[SUBMISSIONS RE COSTS]

[24] THE COURT: The Court makes the following order with regard to costs. Under s. 38 of the *Regulations*, costs will be fixed at $125, as opposed to the $250 sought by the Federal Crown, in view of the state of Mr. Hedmann's health. As to s. 57 of the *Regulations*, the Court will make an order in the amount of $500 in costs for the Federal Government, and as it pertains to the Territorial Government, there will be costs awarded, $500, based on the indemnification clause. So the net result is

costs are awarded against Mr. Hedmann in the amount of $625 in favour of the Federal Government, and $500 for the Territorial Government, payable within 30 days.

[25] DAVID HEDMANN: I'm just wondering how I can be ordered to pay costs to a party that I did not add to a litigation?

[26] THE COURT: Because they incurred costs as a result of the indemnification clause in the contract which you signed with them.

[27] DAVID HEDMANN: Well, that's why I didn't sue them, because of the indemnification clause. It was Your Honour that added them, not me. So I don't know why I'm going to be asked to pay costs for adding them to the case, because I never sued them in the first place.

[28] THE COURT: Right. Do you wish to speak further on that, Ms. Schorr?

[FURTHER SUBMISSIONS RE COSTS]

[29] THE COURT: I am going to defer to Mr. Hedmann on that one, and I am going to reverse my ruling in terms of costs to the Territorial Government.

[30] With regard to the future of this action, the Territorial Government and the Federal Government are no longer involved. What do you propose to do next, then? Mr. Charlie is still there as the defendant. Do you intend to continue or do you want to withdraw the action?

[31] DAVID HEDMANN: I'm going to take some time to consider my course of action. Mr. Charlie, as the Court is aware, there is someone holding $5,000 for him. As well, in the same way that the damage deposit -- I was never able to claim the damage deposit because of the actions by the Federal Government. The damage deposit is simply funds advanced to Mr. Charlie by the Federal Government and then later clawed back on a monthly basis. If there was a judgment against Mr. Charlie, a similar arrangement could be made with the Federal Government. And I note that Mr. Charlie is now in the care of the Territorial Government, so Mr. Charlie doesn't need -- and that's neither here nor there; the point is I am undecided as of this afternoon.

[32] THE COURT: Okay, we will give you 30 days to sort that through and then you can approach the clerk of the Small Claims Court.

[33] DAVID HEDMANN: Thank you.

[34] THE COURT: Anything further for the Federal Government, and anything further for the Territorial Government?

[35] MS. SCHORR: Nothing further.

[36] THE COURT: Okay. That is all then for this afternoon.

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LUTHER T.C.J.