Citation: *Downes v. Trautwein*, 2021 YKSM 4

Date: 20210514
Docket: 17-S0035
Registry: Whitehorse

SMALL CLAIMS COURT OF YUKON
Before His Honour Judge Faulkner

LAURIE DOWNES

Plaintiff

v.

ANDREAS TRAUTWEIN and
X MINING

Defendants

Appearances:

Laurie Downes	Appearing on her own behalf
Andreas Trautwein	Appearing on his own behalf and on behalf of X Mining

REASONS FOR JUDGMENT

[1] FAULKNER T.C.J. (Oral): The plaintiff, Laurie Downes, owns several placer gold claims in the Sixty Mile area. In 2007, the defendant, Andreas Trautwein, came to the Yukon from Germany to pursue an interest in gold mining. By 2009, he had become friends with the plaintiff and involved in mining on Ms. Downes' claims. By 2010 or 2011, the defendant had leased the claims. However, by 2013, the parties had a falling out leading to a rather tangled web of rancour, accusations and lawsuits.

[2] The present claim relates to a Caterpillar excavator jointly purchased for $30,000 in 2009 by the plaintiff, the defendant, and one Joerg Meissner, who was then the defendant's partner. Each contributed $10,000 toward the purchase. The machine was subsequently used on the plaintiff's claims and later, after the rift between the parties, on other claims leased by the defendant.

[3] In 2014, the defendant purported to sell the excavator.

[4] Ms. Downes claims that she has never been repaid her $10,000. She also claims additional damages because she says she was never allowed use of the machine for her own purposes.

[5] The second part of the claim, for lack of access, can be quickly disposed of. There is no evidence that the plaintiff incurred any costs arising from the lack of access to the excavator. She did provide some quotes from suppliers showing what it would have cost to rent a similar piece of equipment but there is no evidence that she did so. Moreover, since the claims were leased to the defendant, it is not clear what work would have been done that was not already being performed by the defendant; nor is there any evidence that she would not have benefited from the work being done by the defendant on the excavator because she was entitled to a royalty on production.

[6] That leaves the matter of Ms. Downes' $10,000 contribution to the purchase of the excavator back in 2009.

[7] The defendant concedes that he has never fully repaid Ms. Downes, although he did give her some cash and several ounces of gold worth, it would seem, around $7,000

or $8,000 in total. Unfortunately, it is extremely difficult to assess how much, if any, of these payments can be credited to the excavator purchase since there were many intertwined dealings between the parties and the defendant was, amongst other things, to pay a royalty on gold recovered from the claims.

[8] On the other hand, the plaintiff, Ms. Downes, claims that the payments were for fuel used. However, in that regard, it must be noted that the plaintiff separately sued for the fuel costs and recovered judgment for them in 2017.

[9] In order to bring some settlement to this matter, which has been ongoing for far too long, I assess the amount outstanding in respect of the Caterpillar purchase at $5,000 and award judgment for the plaintiff in that amount. Each party will bear their own costs.

[10] I note that the events in dispute occurred 10 to 12 years ago and the limitation period has run, but the defendant acknowledges his debt in respect to the excavator purchase.

[11] The plaintiff has sued the defendant twice that I am aware of. Both these claims related to the same thing; the now ended mining partnership between the parties.

[12] In today's hearing, the plaintiff advanced many other allegations not pleaded in either of the claims that have been adjudicated so far. In my view, she should not be allowed to divide her claims any further. To do so would be a transparent attempt to avoid the monetary limitations of the Court and would, in any event, amount to an abuse of process.

[13] This particular claim was filed in 2017 and has consumed more than its fair share of judicial resources. It should at least serve as a final accounting of all claims by the plaintiff against Mr. Trautwein.

[14] I direct that any further claims by the plaintiff against this defendant should only be filed with leave of the Court.

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FAULKNER T.C.J.