

SUPREME COURT OF YUKON

Citation: *Kwanlin Dün First Nation v Atlin*,
2022 YKSC 55

Date: 20221102
S.C. No. 22-A0057
Registry: Whitehorse

BETWEEN:

KWANLIN DÜN FIRST NATION

PETITIONER

AND

BRUCE ATLIN

RESPONDENT

Before Justice K. Wenckebach

Corrected Decision: The text of the decision was corrected at para. 15 where changes were made on November 15, 2022.

Counsel for the Petitioner

Mark Wallace

Appearing for the Respondent

No one

This decision was delivered in the form of Oral Reasons on November 2, 2022. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The petitioner, Kwanlin Dün First Nation (“KDFN”), filed a petition seeking an order requiring the respondent, Bruce Atlin, to vacate KDFN property and an order for a permanent injunction restraining him from occupying the property, as well as ancillary orders.

[2] This arose because Mr. Atlin was living in a house on KDFN settlement land without authorization. KDFN served Mr. Atlin with a notice to vacate the property but he

did not do so. On September 13, 2022, I granted all the relief sought except for the permanent injunction. This is my decision on the request for a permanent injunction.

[3] To be granted a permanent injunction, the applicant must show that:

- (i) the respondent is wrongly interfering with the applicant's property rights;
and
- (ii) the respondent intends to continue his wrongdoing.

[4] The first branch of the permanent injunction test is not at issue. Mr. Atlin was wrongly interfering with KDFN property rights and it was on that basis that I ordered that Mr. Atlin vacate the property.

[5] Thus, the only question I need to consider is whether Mr. Atlin intends to continue his wrongdoing. I conclude that there is insufficient evidence that Mr. Atlin intends to continue his wrongdoing.

[6] Counsel to KDFN submitted that a land steward officer and inspector for KDFN provided Mr. Atlin a notice to vacate, followed by notices of non-compliance, pursuant to s. 151 of the *Lands Act* of the Kwanlin Dün First Nation. Counsel says that these notices should be treated as orders. As Mr. Atlin has violated either an order or a direction equivalent to an order, the Court should order a permanent injunction.

[7] However, in my opinion, whether a notice to vacate or a notice of non-compliance are orders is not relevant to the question before me. A court order has been issued. Mr. Atlin has either willingly or been required to leave the property. A determination about the legal status of the order does not assist me in determining Mr. Atlin's future intentions. It is preferable to analyse legislation only where there is a factual basis for doing so. As well, the Court would benefit from a fulsome argument

about s. 151 and, in particular, its interaction with s. 152, which provides KDFN inspectors with the authority to make orders, before determining whether a notice issued pursuant to s. 151 is an order.

[8] I therefore leave that question to another day.

[9] Turning to whether Mr. Atlin intends to continue his wrongdoing, there is ample evidence that he intended to ignore the notice to vacate and notices of non-compliance.

[10] Bruce Wilson, a land steward officer and inspector for KDFN, attests that on February 5, 2021, he hand-delivered a letter requiring Mr. Atlin to vacate the property. When he delivered the letter, he spoke to Mr. Atlin and told him he was required to leave.

[11] He spoke to Mr. Atlin again on March 8, 2021, telling him again that he was required to leave.

[12] On November 4, 2021, he posted a notice of non-compliance on Mr. Atlin's door and on November 16, 2021, he gave Mr. Atlin the notice of non-compliance.

[13] Mr. Wilson attended the property again on January 19, 2022, where he spoke with Mr. Atlin and told him he had to vacate the property.

[14] I have no problem concluding that Mr. Atlin had no intention of complying with the notice to vacate and notices of non-compliance. However, Mr. Atlin could view a court order differently than a notice to vacate and notice of non-compliance. He could also view it differently after he has left the property. There is no evidence that Mr. Atlin, once off the property, would return and re-occupy it. There is no evidence that Mr. Atlin, in the face of a court-ordered eviction, intended on continuing his wrongdoing. If Mr. Atlin does

return to the property or there is evidence that he intends to return to the property, KDFN is free to return to court for a permanent injunction.

[15] At this point, though, a permanent injunction is not warranted.

WENCKEBACH J.