

SUPREME COURT OF YUKON

Citation: *Grove v. Arctic Colour Tours Inc*
2025 YKSC 54

Date: 20250730
S.C. No. 25-A0060
Registry: Whitehorse

BETWEEN

WAYNE GROVE

Applicant

AND

ARCTIC COLOUR TOURS INC.

Respondent

Before Justice K. Wenckebach

Counsel for the Applicant

Graham Lang

Counsel for the Respondent

David F. Sutherland, (by videoconference)

This decision was delivered in the form of Oral Reasons on July 30, 2025. The Reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] WENCKEBACH J. (Oral): The petitioner in this matter, Wayne Grove, had an agreement with the respondent, Arctic Colour Tours Inc., in which Arctic Colour Tours was permitted to use Mr. Grove's land as a base from which to run its business. Now, however, Mr. Grove wants Arctic Colour Tours to leave his property. His position is that Arctic Colour Tours had a lease which ended April 2025. Arctic Colour Tours did not, however, vacate the premises as required. Mr. Grove thus seeks a writ of possession in

his favour and against Arctic Colour Tours under the *Commercial Landlord and Tenant Act*, RSY 2002, c 131 (the “Act”).

[2] Arctic Colour Tours submits that the parties had a joint venture agreement. It also argues that although there is an agreement between the parties that terminated on April 30, 2025, Mr. Grove had promised that if Arctic Colour Tours proved it could be a good tenant, he would renew the agreement. Arctic Colour Tours relied on that statement to its detriment, so Mr. Grove should not be permitted to go back on his word. Alternatively, Arctic Colour Tours submits that Mr. Grove breached the duty to perform the contract honestly. It should, therefore, be entitled to a reasonable renewal period with an extended notice of termination provision or, alternatively, it seeks a stay in these proceedings to permit it to file a statement of claim against Mr. Grove.

[3] For the reasons which I will explain, I grant Mr. Grove the writ of possession.

[4] The facts in this matter are that Mr. Grove and Arctic Colour Tours have been in a business relationship for about nine years. Arctic Colour Tours provides aurora borealis tours for visitors to the Yukon. The company built accommodations on Mr. Grove's property where the visitors stay and from where they can see the northern lights. Because of the nature of the business, Arctic Colour Tours typically books tours six months to a year in advance.

[5] The business relationship between the two parties has been difficult. Mr. Grove has terminated the parties' agreement three times, twice through a court order. Despite this, the parties entered into another agreement to continue the relationship on November 1, 2024, with a termination date for April 30, 2025. This is in contrast to the parties' previous contracts, which were for yearly terms.

[6] At the time the agreement was renewed, Mr. Grove told the person associated with Arctic Colour Tours that if it was a good tenant, he would renew the agreement again. During the course of the renewed agreement, one of the buildings Arctic Colour Tours used was flooded because of plugged plumbing. Some time after that, but before March 28, 2025, Mr. Grove sent Arctic Colour Tours an email stating that he was not renewing the agreement in part because of the flood. Mr. Grove gave Arctic Colour Tours a formal demand for possession of the land and premises in a letter dated April 23, 2025. Arctic Colour Tours has not vacated the premises.

[7] There was no evidence that it has tours still booked for the future. For the purposes of this application, however, I am prepared to accept that it does and would be required to compensate customers if the company is forced to leave Mr. Grove's property.

[8] The issues on this application are:

- i. Do the parties have a tenancy agreement or a joint venture agreement ("JVA")?
- ii. Does estoppel apply such that the agreement should be renewed?
- iii. Did Mr. Grove breach the duty of honest performance of the agreement?
- iv. Should the Court determine if Arctic Colour Tours is wilfully overholding?

[9] I now turn to the first question. I conclude the agreement is a tenancy agreement. To explain this conclusion, I will first describe the differences between leases and joint venture agreements, and then I will determine whether the terms of the agreement are those of a lease or a JVA.

[10] In a lease of land, broadly, the owner of the land gives the lessee rights to the

land which revert back to the owner at the end of the lease. The provisions of a lease agreement therefore address the lessee's use of the land and division of responsibilities over the land during the tenancy. In a JVA, the parties pursue a project together. It will often deal with how decisions are to be made and the division of responsibilities over the project.

[11] In this case, the agreement is titled "Lease." At the beginning, it states that Mr. Grove owns the land and Arctic Colour Tours Inc. operates a tourist business. It then reads like a lease. The landlord agrees that he demises and leases the land in exchange for rent. It sets out who is to pay property taxes, utilities, and so on, and sets out terms for use of the premises.

[12] Counsel to Arctic Colour Tours submits that the agreement allows for the nature of the relationship to change. It does not include a clause that states the written agreement constitutes the complete understanding of the parties superseding other agreements and understandings. It also includes a paragraph that allows the landlord to impose rules on the tenant in addition to that contained in the agreement. Counsel argues that the parties decided that the nature of the relationship could change.

[13] He also points out that Mr. Grove became involved and helped Arctic Colour Tours when it was having difficulty building the accommodations. He states that this is evidence that the relationship was not simply that of a landlord and tenant, but was a JVA. The assistance Mr. Grove provided when Arctic Colour Tours was building accommodations did go beyond that of a regular landlord-tenant relationship. It is not conclusive evidence that the relationship changed to a JVA, however, as it is possible Mr. Grove was simply trying to be a helpful landlord. Moreover, Mr. Grove provided this

assistance in 2016 and 2017. If he did flirt with becoming more involved with Arctic Colour Tours' business, by the time the parties signed the lease agreement in 2024, the relationship was strictly that of landlord-tenant. Thus, the agreement explicitly states that nothing in the lease will create a relationship between the landlord and tenant except that of landlord and tenant. There is no basis upon which to conclude that the parties had anything other than a lease agreement.

[14] The second question is whether estoppel applies such that the agreement should be renewed. I conclude that promissory estoppel does not apply in this case.

[15] The elements of promissory estoppel are the promisor makes a clear and unambiguous promise that is intended to affect the legal relationships of the parties and is acted upon by the promisee, causing them to detrimentally change their position (*Maracle v Travellers Indemnity Co of Canada*, [1991] 2 SCR 50 at 57).

[16] Arctic Colour Tours argues that Mr. Grove promised to renew the lease agreement if it was a good tenant. It relied on this promise by continuing to book tours past the date of the termination of the agreement which will have to be recompensed if it is forced to cede possession of the property to Mr. Grove.

[17] Mr. Grove argues that under promissory estoppel, the right being asserted must be already existent in the contract. It does not act to create new rights. Where the issue is about the creation of a new right, the principles of contract formation and amendments to contracts apply. He cites *Brewers Retail Inc. v Hasty Market Corp.*, 2018 ONSC 6695, in support of his submission. In this case, Mr. Grove states there was no renewal clause. A promissory estoppel cannot create a new right. As a promissory estoppel cannot create a new right, it is not applicable here.

[18] While I agree with Mr. Grove that promissory estoppel does not apply in this case, my analysis is somewhat different than his. Generally, as Mr. Grove states, promissory estoppel arises where one party promises not to rely on its strict contractual rights (*Brown v Patnaude*, [1996] BCJ No 1550 (SC) at para. 66, citing *Prosper Homes Ltd v Hambros Bank Executor*, [1979] PCR 395 at 401). However, estoppel is a flexible doctrine. It may have a place in which the promisor made a promise that would create a new right, but the requirements of contract law are not fully met. I am therefore not prepared to conclude that promissory estoppel can never create new rights. Instead, I conclude that promissory estoppel does not apply because Mr. Grove's promise was not sufficiently precise; he did not intend to change the legal relationship with Arctic Colour Tours; and it was not reasonable for Arctic Colour Tours to rely on the promise.

[19] Firstly, I will speak of whether the promise was clear and unambiguous. In this case, the statement is vague. There is no clarity about what the agreement would be if it were renewed. There was no discussion about the terms, whether they would be the same or different, nor the length of the term. While the parties have been in a business relationship for years, most recently, some of the terms and the length of the agreement have changed. There could be no implicit understanding that the terms of the contract would stay the same.

[20] Moreover, there is no clarity about what a "good tenant" was. Arctic Colour Tours did not explain what it understood a good tenant was. The parties' history sheds some light. Previously, Mr. Grove terminated an agreement because the company failed to maintain and repair the buildings on the property. Thus, from the context, it can be concluded that being a good tenant would include that Arctic Colour Tours would

maintain and repair the buildings. However, whether it includes something other than that, and how to assess whether Arctic Colour Tours was a good tenant if things went wrong, as they did here, was not discussed.

[21] Moreover, Arctic Colour Tours has provided no context in which the statement was made. There is no basis to conclude, based on the statement alone, that Mr. Grove intended to affect the legal relationship of the parties.

[22] Finally, it was unreasonable for Arctic Colour Tours to rely on the statement. Given the parties' checkered history, given that Mr. Grove renewed only for a short term, and given his commitment was conditional, there was no reasonable basis upon which Arctic Colour Tours should have concluded that the agreement would be renewed. It could only conclude that it might be renewed. It was therefore imprudent to make contracts with customers past the termination date of the agreement. Mr. Grove's statement was not such that promissory estoppel should apply.

[23] Turning to the third question, that is whether the Court should stay these proceedings because Arctic Colour Tours alleges Mr. Grove breached the duty of honest performance, Arctic Colour Tours argues that Mr. Grove breached the duty to perform the contract honestly by promising to renew the agreement if Arctic Colour Tours was a good tenant, but then not following through. As a remedy, it asks that I stay these proceedings to permit it time to commence a statement of claim against Mr. Grove and seek a temporary injunction against him.

[24] Since hearing the application, Arctic Colour Tours has provided a statement of claim and an application for an interim injunction to the Registry at the Supreme Court of Yukon, which the Registry is now reviewing.

[25] I have determined that I should not stay these proceedings. In coming to this conclusion, I need not consider the merits of Arctic Colour Tours' argument that Mr. Grove breached the duty to perform the contract honestly. Rather, I have considered whether a stay in these circumstances would be a just remedy.

[26] Arctic Colour Tours' counsel submitted that a very large investment has been put into the company. If I were to grant the order sought, the company would cease operating and the money and time put into the building would be lost.

[27] Arctic Colour Tours is not in a unique situation. It is reasonable to conclude that in other applications for writ of possession under s. 45 of the *Act* some tenants, upon being forced to leave the premises they are renting, will also end up losing their businesses. The fact is that in a dispute such as this, one party or the other will be faced with potential losses. On the one hand, the tenant may lose its business if it is forced to leave quickly and without the chance to find new premises. On the other hand, if the proceedings are drawn out, the landlord may have to endure an overholding tenant on its property, thus also creating losses.

[28] The question is: Who is to bear this loss? In my opinion, the legislature has chosen to favour certainty and the interests of the landlord. Section 45 provides a summary process for the landlord to obtain a writ of possession from an overholding tenant. Evidence is provided by way of affidavit, and the court may order cross-examination as well (s. 49(2)). The *Act* does not have a mechanism in place for the court to extend the proceedings to assist the tenant other than providing the court with the authority to postpone the hearing (s. 46). The legislature has chosen an expedited process for the determination of the right to possession of the land as between

commercial landlords and tenants. In creating this expedited process, the legislature has given more weight to certainty and to the landlord's interest in using the land as it sees fit over that of the tenant's interest in continuing its business. Therefore, the fact that a tenant will likely go out of business is, without more, not a reason to grant a stay.

[29] Here, there is evidence that Arctic Colour Tours' situation is somewhat different than those of other commercial tenants. It appears Arctic Colour Tours funded or helped to fund the buildings it uses for the tourist accommodations. In leaving Mr. Grove's premises, it will also be leaving behind the buildings that it helped to build. In my opinion, however, this difference is not enough to warrant a stay. Arctic Colour Tours seeks the stay in order to start an action against Mr. Grove. Even if I grant Mr. Grove the writ of possession, Arctic Colour Tours can bring an action against him and can seek compensation not only for the loss of its business but the losses it incurred in putting money into the tourist accommodations.

[30] Finally, it is not clear to me that by granting the stay Arctic Colour Tours will have a reasonable prospect of success in achieving what it most seeks: the ability to stay on in the premises. The remedy for breach of the duty to perform a contract honestly is usually damages (*CM Callow Inc v Zollinger*, 2020 SCC 45 at para. 106). I have difficulty seeing how, even if Arctic Colour Tours is ultimately successful in its action, it will receive a remedy that would require Mr. Grove to enter into a new agreement with it.

[31] For all these reasons, I decline to grant a stay.

[32] The final question is whether the Court should determine if Arctic Colour Tours is wilfully overholding. Arctic Colour Tours seeks that I find it was not wilfully overholding. Under s. 42 of the *Act*, a wilfully overholding tenant is liable to pay double rent during

the time it overholds. Arctic Colour Tours seeks that I conclude that s. 42 does not apply, it is not liable to pay double rent and should not be required to leave the premises immediately.

[33] Mr. Grove submits that it is not seeking any relief with regard to payment after the termination of the agreement, and so I should not decide this issue.

[34] In response, Arctic Colour Tours relies on the decision in *Yukonstruct v Connolly*, 2019 YKSC 67 (“*Yukonstruct*”), in support of its position. In *Yukonstruct*, the Court determined that the tenant was not wilfully overholding, was not required to pay double rent, and had the right to overhold without paying double rent for a period of time (at paras. 31-32). The Court in *Yukonstruct* did not analyze the authority granted in s. 42. Little argument was provided on this issue here as well.

[35] I am not prepared on this application to make a determination about the scope of my authority, specifically about my authority to permit Arctic Colour Tours to continue to stay on the premises without paying double rent, or whether in this case Arctic Colour Tours is wilfully overholding.

[36] Arctic Colour Tours’ counsel has said everything he could on behalf of his client, but I grant Mr. Grove’s application. I therefore grant a writ of possession in favour of Wayne Grove in relation to Lot 1592, Quad 105 D/14, Yukon Territory, Plan No. 2018-0082.

[37] Would you like to make submissions on costs, or can that be discussed with counsel?

[DISCUSSIONS]

[38] MR. LANG: Mr. Sutherland, two things. One was I can attend to drafting the order in the matter, and I propose that we dispense with your signature on the order itself, but I will settle the form with you prior to submitting to court.

[39] MR. SUTHERLAND: Okay. That is fine.

[40] MR. LANG: And costs in relation to the application, we can do tariff costs, and I can settle that with Mr. Sutherland.

[41] THE COURT: All right, thank you. Okay, so I will waive the requirement that Mr. Sutherland sign the order upon his approval and wait for the order.

WENCKEBACH J.