SUPREME COURT OF YUKON

Citation: *Bemis* v. *Government of Yukon, et al,* 2010 YKSC 64

Date: 20101014
S.C. No.: 08-A0057
Registry: Whitehorse

BETWEEN:

GARY BEMIS

APPELANT

AND:

GOVERNMENT OF YUKON, DEPARTMENT OF ENERGY MINES & RESOURCES (LANDS BRANCH), LINDA ANDERSON, YUKON MUNICIPAL BOARD, CITY OF WHITEHORSE

RESPONDENTS

Before: Mr. Justice R. Foisy

Appearances:

Gary Bemis	Appearing on his own behalf
Michael Winstanley	Appearing for Government of Yukon
Linda Anderson	Appearing on her own behalf

REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH

[1] FOISY J. (Oral): This matter has proceeded as the trial of an issue ordered by Mr. Justice Ouellette, and which order was appealed to the Court of Appeal and dismissed, to determine whether the petitioner, Mr. Bemis, has an interest, legal or equitable, in a piece of land that lies between the easterly portion of his fence, on the east boundary of his land, and easterly therefrom, up to blazed or marked trees some 35 feet, more or less, to the east of the fence, herein described as the “disputed land.”

[2] At the outset, in answer to my enquiry, Mr. Bemis chose not to testify under oath and chose not to call any witnesses. He presented his oral argument from counsel

table, using three filed affidavits of his, and Ms. Anderson's two filed affidavits, as well as other letters and documents. While not marked as formal exhibits, all of this material forms part of the record of these proceedings.

[3] This action has been ongoing for some two years. A short history of these proceedings begins in or about 1987, when the Government of Yukon and the Government of Canada established a policy of legitimizing possession of government lands by squatters. Mr. Bemis was one of these squatters who applied under this policy to legitimize his possession to a piece of land upon which he resided. His application was accepted, subject to three conditions. The first dealt with the size of the parcel. The second, that the boundaries be set by negotiation, and thirdly, that he pay taxes on the property.

[4] Also, Mr. Bemis's application included a piece of land which overlapped a portion of land to the east of his residence, which included the residence of the neighbour to the east referred to as the Ionone and Chambers land. The acceptance of Mr. Bemis's application did not include the overlap area, of which the disputed land forms a part.

[5] In 1994, Mr. Bemis constructed a fence along the east border of his property and the west border of the Ionone/Chambers Property. Mr. Bemis did not pay his taxes, a condition of his land application, as approved. Because of non-payment of land taxes, the Government of Yukon sought and obtained a summary judgment in the Supreme Court of the Yukon Territory, which enjoined Mr. Bemis from occupying the land, and also, the Court issued a Writ of Possession for the land. The Supreme Court also concluded that Mr. Bemis had, as a result, acquired no better status than that of a

trespasser. Clearly, any rights that Mr. Bemis may have acquired in the 1987 application were terminated.

[6] Mr. Bemis takes the position that his 1987 application is still alive because the respondent Government continued to deal with him on land, which does not include the disputed land, rather than removing him from the property. Even if that were the case, which it is not, the condition that the boundaries be negotiated has never occurred. What the Government did, by attempting to negotiate a land agreement with Mr. Bemis rather than have him removed from the property was, in my view, an act of pure generosity. As the negotiation proceeded, Mr. Bemis requested a piece of property adjoining the west side of his residential site. This was agreed to, and the total piece now measures 0.66 hectares. The agreement was subject to Mr. Bemis arranging to have the land surveyed within a period of one year. From 1998 to 2007, Mr. Bemis obtained annual extensions with respect to the survey of the property.

[7] In October 2007, Mr. Bemis was advised that if the land was not surveyed within the ensuing year, the Lands Branch of the Government would withdraw the offer to sell the land. Apparently now, in 2010, the land, according to Mr. Bemis, will soon be surveyed.

[8] In 2004, the respondent Linda Anderson, who resides to the east of the disputed land, having met her application obligations, obtained title to her parcel of land. In 2005, her neighbours to the west, Ionone and Chambers, left their piece of land, which included the disputed lands.

[9] In 2007, Ms. Anderson applied for title to the disputed lands in order to enlarge

her lot. Mr. Bemis objected, stating that he had an interest in the disputed land pursuant to his 1987 application. Mr. Bemis was advised by the respondent Government that this was not the case; nothing could be found to indicate that he had any interest in the disputed land. The disputed land was deleted from the 1987 application, apparently because Mr. Bemis's neighbours to the east of his land, that is Ionone and Chambers, were residing on the land in question.

[10] Further, any rights that Mr. Bemis had under the application were lost in the 1996 Supreme Court Judgment of Mr. Justice Hudson for non-payment of taxes, also a condition of the 1987 application. In any event, the third condition under the 1987 application, that a boundary be negotiated, has never been met.

[11] The post-1996 Supreme Court Judgment negotiations initiated by the respondent Government with Mr. Bemis had nothing to do with the disputed land. There is not a shred of evidence that Mr. Bemis now has or ever had any interest in the disputed land other than his personal interest in trying to obtain this land. At the end of Mr. Bemis's representations, the respondent Government moved for a dismissal of the action on the ground that there was no evidence presented for the respondent Government to meet. I agree that there was no evidence from which a jury, acting reasonably, could find for the petitioner. I granted the application and dismissed the action with these reasons to follow.

[12] Before closing, I would be remiss if I did not deal with Mr. Bemis's complaints that he was dealt with procedurally unfairly by the respondent Government. I have concluded on all of the material before me that the Government has treated him fairly

and with a great deal of patience throughout. That a few minor administrative glitches have occurred over a period of 23 years is quite understandable.

[13] Because the issue relating to the disputed land is central to the entire action, and because I have concluded that Mr. Bemis has no interest in the disputed land, the entire action is dismissed.

[14] The issue of cost, Mr. Winstanley?

[15] MR. WINSTANLEY: Yes, My Lord, I ask that costs be awarded to all of the respondents in this matter. That includes Ms. Anderson and the City of Whitehorse, who made some initial appearances in the court back in 2008-2007.

[16] THE COURT: One set of costs for all?

[17] MR. WINSTANLEY: I guess each one will have a different amount, but they'll at least be supplying their --

[18] THE COURT: They will have to be taxed.

[19] MR. WINSTANLEY: Yes.

[20] THE COURT: Mr. Bemis, do you have anything to say with respect of the costs?

[21] THE APPELLANT: Yes, I do. My view is I had significant issues to bring to the attention of Court relative to my interest in the land, and that the Court findings that I haven't produced sufficient evidence doesn't mean that there weren't issues to be dealt with before the Court. And for that reason, I don't feel it's appropriate that Court

costs be okayed, and I respectfully submit that to the Court.

[22] THE COURT: All right, thank you. Well, unless there are circumstances which I do not feel apply here, normally to the victors go the spoils, including costs. I have no reason to decline the request for costs of all of the respondents, each to be taxed before the Clerk separately, and Mr. Bemis, of course, will be advised of that date and should be available to make any representations to the Clerk who will be taxing the costs.

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FOISY J.