

# SUPREME COURT OF YUKON

Citation: *Ryan v. Grieco*, 2011 YKSC 23

Date: 20110208  
Docket No.: 10-AP006  
Registry: Whitehorse

BETWEEN:

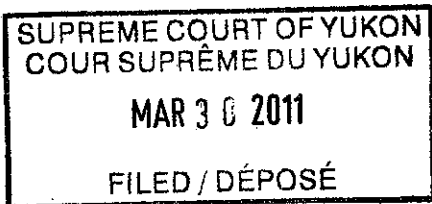
TERRY RYAN

APPELLANT

AND:

MIKE GRIECO

RESPONDENT



Before: Madam Justice S. Martin

Appearances:

Terry Ryan  
Mike Grieco

Appearing on his own behalf  
Appearing on his own behalf

## REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] MARTIN J. (Oral): This is an appeal from the decision of Judge Cozens given on June 10, 2010, in which it was found that Mr. Grieco was awarded judgment against Mr. Ryan in the amount of \$3,305, this being an amount that related to a construction project on Mr. Grieco's house undertaken by Mr. Ryan.

[2] The judge provided written reasons for judgment, and, in a 12-page judgment, outlines the facts as he finds them, the issues in the case, and comments about the credibility and reliability of the various witnesses that he heard before him. The trial judge concluded that there was a contract with a specified date, which provided that if

the work was not done by that date that all of the payments made in the progress of the work would be returned. He looked at the terms of the contract. He said that it was a contract. He accepted that it was a contract put forward by the Ryans, specifically Mrs. Ryan, and that there was a failure to perform the contract in a timely manner.

[3] The judge made findings about the job itself, the origins and terms of the contract, and decided that time was of the essence. The judge understood that there was other people contracted to work on the job site, and the judge heard evidence about how Mr. Ryan was working in that period, and did have some evidence before him concerning the difficulties that were being faced by the Ryans, but not, I do not think, all of the difficulties that could have been brought before them.

[4] Mr. Ryan appeals, on the basis of his Notice of Appeal, on various different grounds. No transcripts were ordered, and I refused to order them at the Court's expense. Therefore, the grounds of appeal that relate to findings of fact or misapplications in terms of evidence are not being addressed today, and that is to the knowledge of the parties who chose to proceed today.

[5] The issues before me relate to an allegation that Judge Cozens was biased and ought not to have presided because of a conflict of interest. On this matter, Mr. Ryan has filed an additional affidavit, which was sealed by order of Justice Veale and was available only to the parties and the Court, and will remain sealed on the court record. That was the understanding of all parties.

[6] I have opened and read that affidavit and have the following comments. For a

judge to be excused because of a conflict of interest, the test is based on whether a reasonable person would believe that there is an apprehension of bias such that there could not be an impartial hearing by that judge to the parties in the circumstances. That is the legal test.

[7] I note that Judge Cozens brought the matter of his relationship and knowledge of the parties to the parties at the time of the hearing, which was November 23, 2009. He explained that he has gone to church with both of the parties and that it is a small community, and that sometimes they meet each other. He brought this matter to the attention of the parties. Mr. Grieco, on the portion of the excerpt from proceedings in front of me, says that he is fine with that and that he is prepared to proceed. I do not have in this excerpt from the proceedings any agreement by Mr. Ryan to proceed. That may be because none was given, and that may be because the excerpt from the proceedings that I have received has stopped short of that. Nevertheless, Mr. Ryan takes the position before this Court that he was not confronted with any conflict of interest, and, with respect, the excerpts from the proceedings indicate that the potential conflict was in fact drawn to the attention of both parties at the beginning of the proceedings, and no party, before Judge Cozens made a decision, had any difficulty with his proceeding. It is only at this point in time that a conflict of interest is raised.

[8] Now, the basis of the conflict of interest relates to many different things. The first is that in 2003, Judge Cozens acted as a Crown prosecutor in a case that involved these parties. Nevertheless, in my view, this is not a ground that a reasonable person would say that there is an apprehension of bias. Mr. Cozens did not, at that time, cross-

examine Mr. Ryan. Mr. Ryan tells me that he pled guilty, and while there was a sentencing hearing, there was not the kind of interaction which may, and only may, give rise to any allegation of conflict. So the conflict on that basis is rejected.

[9] Conflict on a basis of an incident described in the affidavit is not accepted.

[10] The further proximity in terms of church and seeing around town is not sufficient in law to ground a reasonable apprehension of bias; especially in smaller communities, that is simply not sufficient.

[11] For those reasons, this Court rejects the claim that Judge Cozens had a disqualifying conflict of interest and ought not to have sat on this case.

[12] That leaves me with the arguments that were raised that may be seen to be in relation to an error of law or a misapplication of law to facts. I have read the judgment, and, from my vantage point, there is no error about the legal principles that he applied in terms of how he assessed this contract, how he interpreted its terms, the law he used to say that time was of the essence, or the law that he used to say that there was a breach that gave rise to the remedy in the contract that the parties themselves provided.

[13] With that, there are no further grounds of appeal, and the appeal is dismissed.



MARTIN J.