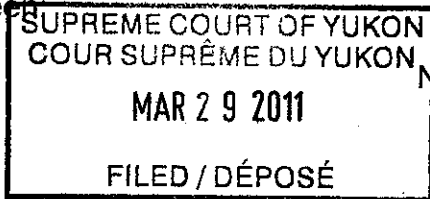


SUPREME COURT OF YUKON

Citation: *Ross v. Golden Hill Ventures
Limited Partnership et al.*, 2011
YKSC 30

Date: 20110325
S.C. No. 09-A0014
09-A0087
Registry: Whitehorse

Between



NORMAN ROSS

PLAINTIFF

And

ROSS MINING LIMITED, MACKENZIE PETROLEUMS LTD.
AND GOLDEN HILL VENTURES LIMITED PARTNERSHIP

DEFENDANTS

AND

Between:

GOLDEN HILL VENTURES LIMITED PARTNERSHIP

PETITIONER

And

ROSS MINING LIMITED AND NORMAN ROSS AND
MACKENZIE PETROLEUMS LTD.

RESPONDENTS

Before: Mr. Justice R.S. Veale

Appearances:

Murray Leitch
Michael Morgan

Counsel for Norman Ross
Counsel for Golden Hill Ventures Limited Partnership

**REASONS FOR JUDGMENT
(Security for Costs)**

INTRODUCTION

[1] Norman Ross applies to increase the security for costs granted by Consent Order dated January 27, 2010, in the amount of \$55,000. The Consent Order included a provision that Norman Ross was at liberty to apply to seek an increase in the amount of security as the matter proceeded. Norman Ross applies to increase the security for costs to \$120,000.

BACKGROUND

[2] The petition of Golden Hill Ventures Limited Partnership ("GHV") for a claim of lien in the amount for \$6.7 million was filed in October 2009. An amended petition reducing the claim of lien to \$2.9 million was filed on April 8, 2010.

[3] The draft Bill of Costs filed in the original application for security for costs estimated total costs at \$56,000 and \$75,000 for Scale B and C respectively. In the revised Bill of Costs, the estimates are \$71,000 and \$95,000 respectively.

[4] The difference between the two Bills of Costs are essentially one more day of discovery, one more day of trial and additional photocopying costs as the supporting documentation for the lien claim is substantial.

[5] Counsel for Norman Ross says that at the time of the Consent Order it was uncertain that the matter would proceed because GHV was in the process of submitting a proposal whose acceptance was not guaranteed. At that time, GHV was admittedly insolvent.

[6] The proposal was approved by the creditors of GHV on March 22, 2010 and this Court on March 25, 2010. GHV maintains that it is still operating but it has no revenue

during the winter months. There has been no disclosure of GHV's finances, contracts or future business and no statement that it can pay court costs.

[7] Counsel for Norman Ross indicates that legal fees will be in the neighbourhood of \$200,000 to the end of trial. He has also given notice that Norman Ross will be seeking special costs.

[8] The trial has been set for April 20, 2011 for six days since September 2, 2010. This application was filed March 10, 2011, although the request for an increase in security for costs was discussed at the Case Management Conference on March 1, 2011.

[9] Counsel for Norman Ross has raised four additional issues arising out of the discoveries.

[10] Counsel for GHV says it cannot post additional security in the amount of \$65,000 in 10 days as requested in the application, and it would require 30 days which would result in an adjournment of the trial.

ISSUES

[11] The first issue is whether a material change of circumstances is required. The second issue is whether the facts, material or not, support an increase in the security for costs and finally whether the application has been brought in a timely fashion.

ANALYSIS

[12] In the normal course, an order for security for costs should not be varied unless there has been a material change in circumstances. See *L-2176 Holding Ltd. v. 273925 B.C. Ltd.*, 2001 BCSC 1370 at paras. 13 – 14, followed by *Design Planning Co-*

ordination Services Co. v. Howe Sound School District No. 48, 2002 BCSC 1785, at para. 5.

[13] However, those cases can be distinguished from the present circumstances where a further application was provided for in the Consent Order.

[14] In any event, there have been additional costs incurred and the issues have been expanded subsequent to discovery.

[15] I am concerned about the delay in applying for this increase given that the trial has been set for six months. I am also aware of the fact that discoveries were not completed until later in the Fall and that the case is likely more rather than less complex. In all the circumstances, I am of the view that it is appropriate to increase the security for costs by an additional \$20,000, to a total of \$75,000. The additional security shall be cash or an irrevocable letter of credit no later than fourteen days from March 25, 2011. Costs of the application are costs in the cause.



VEALE J.