

SUPREME COURT OF YUKON

Citation: *Freedom TV Inc. v Holland*,
2016 YKSC 60

Date: 20161123
S.C. No. 14-A0024
Registry: Whitehorse

Between:

DP1 INC., FREEDOM TV INC., MASTERWORKS 2011 TV INC., AARON
GOLDMAN and SYMPHONIC VISION INC.

Plaintiffs

And

JIM HOLLAND, GREEN NEEDLE RECORDS, SEAWEED STUDIOS,
CHRIS RODGERS, AVCR VIDEO PRODUCTION

Defendants

Before Mr. Justice R.S. Veale

Appearances:
Aaron Goldman
Lenore Morris

Appearing for the plaintiffs
Counsel for the defendants

REASONS FOR JUDGMENT (Requisition for Default Judgment)

INTRODUCTION

[1] The plaintiff Aaron Goldman has filed two separate requisitions for default judgment against the defendants. Both requisitions follow the filing of Mr. Goldman's Amended Statement of Claim on June 10, 2016.

[2] The defendants are represented by the same lawyer as of January 11, 2016. Jim Holland and Chris Rodgers filed Statements of Defence in June 2014. The defendants have not filed an Amended Statement of Defence.

[3] Mr. Goldman's requisition for the default judgment, filed September 8, 2016, ("the first requisition") relied upon Rule 17(11) which states that where a statement of

defence answers only part of the claim in the statement of claim, the plaintiff may apply for judgment on the unanswered part of the statement of claim as if no statement of defence were filed. Mr. Goldman's Amended Statement of Claim, consisting of 141 paragraphs, raises a number of new legal causes of action as well as claims relating to the alleged conduct of the lawyer for the defendants.

[4] In an Order dated September 12, 2016, and filed October 5, 2016, the Court dismissed the first requisition stating that Rule 24(8) applied. Rule 24 is the Amendment rule which governs amendments to pleadings. Rule 24(8) states that where a party does not deliver an amended statement of defence, "the party shall be deemed to rely upon their original statement of defence".

[5] Mr. Goldman requested a review of that dismissal based on the submission that "the defendants have not responded to a litany of causes of action that are pled in the Amended Statement of Claim".

[6] Mr. Goldman responded by again filing a requisition dated September 12, 2016 ("the second requisition"), elaborating on his first requisition as follows:

1. Notwithstanding Rule 24(8) the defendants' original statements of defence do not deny the facts pled or claims made in paragraphs of the Amended Statement of Claim.
2. Mr. Goldman repeats his submission that Rule 17(11) applies.
3. Mr. Goldman adds that Rule 20(21) should be applied so that an allegation of fact in a pleading, if not denied or stated to be admitted, shall be taken to be admitted and therefore permits the application of default under Rule 17(11).

[7] The defendants have not filed Amended Statements of Defence nor have they been served with either the first or second requisition for default.

DISPOSITION

[8] As stated in the Order dismissing Mr. Goldman's first requisition, Rule 24(8) applies and prevails as it is the Rule governing amendments.

[9] Rule 17 applies when a party defendant either does not appear or appears but does not file a statement of defence. Rule 17(11) is discretionary and not an automatic right to default.

[10] The Default rule does not apply to the present circumstance where the defendants have appeared and filed Statements of Defence. The defendants are entitled to rely upon Rule 24(8) so as not to be noted in default.

[11] The same analysis applies to Rule 20 which is entitled "Pleadings Generally". Arguably, Rule 20 and specifically Rule 20(21) apply to amended pleadings as much as they apply to statements of claim and statements of defence. However, it does not follow that the amending party may now resort to a default judgment procedure where the opposing party has appeared and filed pleadings. Once a party appears and responds by filing a statement of defence, it is generally inappropriate and an abuse of process to file default proceedings without notice to the party.

[12] I am supported in my conclusion by the observations on this issue made by Dawson J. in *Johnson v. Canada (Royal Canadian Mounted Police)*, 2002 FCT 917:

[19] Here the defendants did file a statement of defence to the claim, and that defence remains on file. In circumstances where a defence has been filed to a claim, I am not aware of any authority or rule to the effect that the failure to file a defence to an amended version of the claim entitles a

defendant to default judgment. No such rule or authority was cited.

[20] In any event, default judgment is never automatic. It is a discretionary order. ...

[13] Typically, a statement of defence contains a general denial of the facts alleged in a statement of claim. Where this general pleading has been omitted, it gives rise to an issue that might be raised at trial or on an application, with notice to the defendants, in which case the defendants would consider amending their statement of defence to comply with Rule 20(21) or (22).

[14] This Court has a generous Rule 24 permitting amendments without leave of the court at any time up to 90 days before trial in order to avoid expensive amendment applications. Its purpose is to ensure that all relevant matters in the court action are dealt with at trial.

[15] At this time, counsel for the defendants is content to rely upon Rule 24(8) and the original statements of defence filed. That view may change if the matter proceeds to trial in light of Rule 20(21).

[16] In case management, I indicated to Mr. Goldman that I would file another Order and Reasons for Judgment in response to his second requisition. In filing these Reasons for Judgment, it is not necessary to file a further Order. I dismiss Mr. Goldman's second requisition.

VEALE J.