

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *McCully Contracting Ltd v.
Art Osborne, et al.*, 2004 YKSC 28

Date: 20040317
Docket: S.C. No. 99-A0128
Registry: Whitehorse

BETWEEN:

MCCULLY CONTRACTING LTD.

Plaintiff

AND:

ART OSBORNE and 18183 YUKON INC.

Defendants

Before: Mr. Justice R.S. VEALE

Appearances:
James Tucker
Glen Thompson

For the Plaintiff
For the Defendant

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): As I indicated yesterday evening I am going to reserve my written reasons and give those in due course, but I am going to give you my bare bones decision this morning so that at least you can know the status.

[2] I do not find the Order of March 12, 2004 incorporating the settlement conference agreement to be void for uncertainty. The words "usual commercial terms" and "delivery of all permits" include an occupancy permit.

[3] I find that the lack of an occupancy permit prevented bank financing of the property in question.

[4] Thus, I am ordering that the plaintiff, McCully Contracting, be given an extension of time until March 16, 2004, when the plaintiff indicated they were able to arrange "suitable to self" financing on the plaintiff's own property.

[5] So to conclude, the defendants (vendor) will be required to produce an occupancy permit on the closing date April 1, 2004.

[6] Anything arising?

[7] MR. TUCKER: No, My Lord.

[8] THE COURT: Mr. Thompson?

[9] MR. THOMPSON: There will be issues about provision of the permit of April 1.

[10] THE COURT: Obviously that is an issue but I do not see how I can deal with that now. There is, I suppose, an anticipatory issue, but my understanding would be that you proceed to April 1 and see what happens at that point. There may be, indeed, negotiations between the parties. I do not know. If you have to come back to resolve issues there is time available then. You might want to even speak to the Trial Coordinator to set time up if it cannot be resolved.

[11] Thank you, Gentlemen, for your submissions.

[12] MR. TUCKER: Thank you, My Lord.

[13] MR. THOMPSON:

Thank you.

VEALE J.