COURT OF APPEAL FOR THE YUKON TERRITORY

Citation: ***Versluce Estate v. Knol***,
2008 YKCA 3

Date: 20080214
Docket: YU577

Between:

Genevieve Piper, Executrix
The Estate of Harry Versluce, Deceased

Respondent
(Plaintiff)

And

Lucas Knol

Appellant
(Defendant)

Before: The Honourable Mr. Justice Hall
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Tysoe

Lucas Knol	Appellant in person
G.W. Whittle	Counsel for the Respondent
Place and Date of Hearing:	Vancouver, British Columbia 6 December 2007
Place and Date of Judgment:	Vancouver, British Columbia 14 February 2008

Written Reasons by:
The Honourable Mr. Justice Hall

Concurred in by:
The Honourable Madam Justice Saunders
The Honourable Mr. Justice Tysoe

Reasons for Judgment of the Honourable Mr. Justice Hall:

[1] This case arises in the context of an appeal from a decision of Mr. Justice Gower rendered on February 6, 2007. The issue in the case concerned real property in Whitehorse owned by the estate of Harry Versluce. Mr. Versluce died aged 92 on August 15, 2002. Under the terms of a will dated October 30, 2001, Mr. Versluce left the property to Ms. Piper. She had known Mr. Versluce for many years and had assisted him in collecting rent and doing bookkeeping and related business matters. She is a co-executrix of the will of Mr. Versluce.

[2] The appellant, Lucas Knol, met Mr. Versluce in the Yukon in the 1970s. From approximately the 1980s, he occupied a trailer on the Versluce property, usually in spring and fall before and after the mining season but also, at times, for a period in the summer. He worked claims in the Dawson City area in the summer and his practice was to come out of the Yukon to warmer climates for the winter. The occupation of the trailer was an informal arrangement; Mr. Knol not paying rent but helping Mr. Versluce with minor services. The appellant says Mr. Versluce told him around 1999 he would give him the trailer and a portion of the property. In 2001, the men signed a hand-drawn option to purchase agreement with a sketch attached. The sketch was, the trial judge found, not entirely easy to interpret.

[3] Mr. Versluce was diagnosed with cancer in early 2002 and died on August 15, 2002. It appears Mr. Versluce suggested that Mr. Knol vacate the trailer in summer 2002 so it could be moved. Mr. Knol wrote a letter reminding Mr. Versluce of the agreement and caused a caveat to be filed against the property.

[4] Ms. Piper commenced this action seeking a declaration that Mr. Knol had no interest in the property. Mr. Knol counterclaimed asserting a claim to the property under the option agreement. He also claimed entitlement by gift or adverse possession. His counterclaim was dismissed at trial and he filed an appeal. Steps have been taken by the executrix to subdivide the property and the property is now subdivided in two lots. There appears to be a sale of one lot in prospect which has not fully completed due to this lawsuit.

[5] Mr. Knol made an application in the appeal proceedings before Mr. Justice Veale. He sought indigent status, the appointment of an *amicus curiae* and an order for interim costs. He claimed that he ought to be excused from paying transcript fees. On July 5, 2007, Mr. Justice Veale dismissed the applications for interim costs and the appointment of an *amicus curiae*. The application for indigent status was adjourned to give him time to file additional information. On August 9, 2007, Mr. Justice Veale dismissed the claim for indigent status finding that Mr. Knol had failed to establish that he should be found to be indigent. The judge said he was unable to find that paying filing fees would deprive the appellant of the necessities of life and he also was of the view that the appeal was not of sufficient merit to warrant such an order. An extension of time had been granted to Mr. Knol in July by Mr. Justice Veale to file necessary material for the appeal and timelines for filing were established. Ms. Piper was advised that she could bring on an application to dismiss the appeal if the timeline was not met. In October 2007, Ms. Piper brought on an application to dismiss the appeal on the basis that the timelines had not been met. On October 31, 2007, Mr. Justice Veale dismissed Ms. Piper's application. He said

that because Mr. Knol was seeking a review of his earlier decisions, it would be appropriate to await the decision of the review panel.

[6] The trial judge said this in his judgment about the form of agreement (the decision is indexed as 2007 YKSC 09):

> [14] The agreement is a two-page document. The first page sets out the text of the agreement, and the second page attaches a diagram (or map) of the Versluce property, depicting the location of Lot 1596-1 relative to other properties in the area, including the smaller adjacent Lot 1596-2 on the northeast corner, purchased earlier by the Pipers. (Although there is no directional arrow on the diagram, other evidence was led to establish the orientation of the properties.)
>
> [15] Because of the importance of the agreement to Mr. Knol's counterclaim, I will set out the text:
>
> > "This is an agreement between Harry Versluce (owner) and Lucas Knol (purchaser).
> >
> > In consideration of $1.00 and other good and valuable consideration, Harry Versluce agrees that Lucas Knol has the right to occupy the trailer located at #4 - 1211 Birch Street in the City of Whitehorse and the lands immediately adjoining the said trailer. Lucas Knol shall have this right until such time as the lands, outlined in blue on the map attached, and form part of this agreement, or any part of those lands, may be offered for sale or subdivided. If the lands or any part of them are offered for sale or subdivided, Lucas Knol shall have the first option to purchase that part of the said lands as outlined in red on the above sketch. The purchase price to be paid by the purchaser to the owner, his heirs, executors and assigns, shall be the fair marked [as written] value of the said lands as determined at that time by an independent third party.
> >
> > This agreement shall continue to be binding to the benefit of the parties here to [as written] and their heirs executors, administrators and assigns."
>
> The attached "map"/"sketch" seems to be a reduced photocopy of a planned drawing of the neighbourhood in which the property is located.

> However, there is no indication of scale or any other survey information indicating the dimensions of the various lots depicted. The blue and red markings appear to have been drawn in by hand by the parties, or either of them. The land "outlined in blue" is identified as Lot 1596-1. The land "outlined in red" includes the southern portion of Lot 1596-1, with an east/west boundary line indicated by a red broken line. This is the only hand drawn line which does not track the boundaries of Lot 1596-1 shown on the photocopy. On either side of the red broken line are two symbols, also drawn in by hand in blue ink, apparently indicating structures on the property. The structure on the north side of the red broken line apparently indicates the home in which Harry Versluce originally lived until the late 1980's (at which point he moved into a new modular home on the northern portion of Lot 1596-1). The structure on the south side of the red broken line apparently indicates the trailer which Mr. Knol occupied over the years. I repeat that the photocopied diagram is not to scale, nor, in particular, is that portion of Lot 1596-1 outlined in red.

[7] The trial judge found that this agreement was void for uncertainty, and further, was invalid for lack of consideration. He held there was no gift of the property to Mr. Knol, nor did he have a right to ownership by adverse possession. He held, alternatively, that even if there had been a valid option contract, Mr. Knol, having had an opportunity to exercise the option to purchase the lands (just which land was uncertain), he had taken no steps to do so. He therefore dismissed the counterclaim of the appellant and, as well, dismissed a claim for damages alleged to have occurred because Mr. Knol was not able to access the property. It appeared from the evidence that Mr. Knol had been given some access to the property to remove items.

[8] On this review, the appellant sought the following relief:

> 1. a declaration that Rule 20 (1) (2) of the Court of Appeal Rules of the Court of Appeal Act/R.S.B.C., *Court Rules Act*, B.C. Reg. 297/2001 O.C.1075/2001 with reference *to Section 38 of the Yukon Judicature Act*, contradicts with the *Canadian Charter of Rights and Freedoms*

> Section 7,15. (1), the *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights*, is invalid.
>
> 2. a declaration that the right to have an appeal is for all Canadian residents including the individuals who can not obtain transcripts for reason of not be [sic] able to afford the cost of those transcripts.
>
> 3. alternatively if above application fails the Court to exercise its duty to find a proper remedy for me to have access to my appeal and therefore access to Justice.
>
> 4. costs; and such other relief this Honourable Court shall deem just.
>
> [Emphasis in original.]

[9] The appellant contends that Rule 20, which requires that a transcript be filed in an appeal proceeding, is out of accord with provisions of the Canadian ***Charter of Rights and Freedoms*** and the other instruments referred to in paragraph 1 above. It must be remembered that this is litigation between two private parties. I fail to see how it engages any of the provisions of the ***Charter*** or any international covenant or declaration relating to human rights. All litigants who are engaged in private litigation are required to follow the Rules of Court. Mr. Justice Veale found that the appellant was not indigent and should not be excused from paying fees. The assessment of the financial situation of an applicant is a largely fact-driven conclusion in an individual case. I do not consider we ought to interfere with the decision of the judge on this subject. It also appears to me that the decision to refuse indigent status because of the lack of substance in the appeal is supportable.

[10] Before Mr. Justice Veale and also in this Court, Mr. Knol suggested that he should be entitled to an award of interim costs. This is an extraordinary remedy that can be granted by a court in an appropriate case, as noted in the case of ***British***

Columbia (Minister of Forests) v. Okanagan Indian Band, [2003] 3 S.C.R. 371, 2003 SCC 71. The basis for making such an award was set out in that case as follows:

> 40 […]
>
> 1. The party seeking interim costs genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial -- in short, the litigation would be unable to proceed if the order were not made.
>
> 2. The claim to be adjudicated is *prima facie* meritorious; that is, the claim is at least of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because the litigant lacks financial means.
>
> 3. The issues raised transcend the individual interests of the particular litigant, are of public importance, and have not been resolved in previous cases.
>
> 41 These are necessary conditions that must be met for an award of interim costs to be available in cases of this type. The fact that they are met in a particular case is not necessarily sufficient to establish that such an award should be made; that determination is in the discretion of the court. If all three conditions are established, courts have a narrow jurisdiction to order that the impecunious party's costs be paid prospectively. Such orders should be carefully fashioned and reviewed over the course of the proceedings to ensure that concerns about access to justice are balanced against the need to encourage the reasonable and efficient conduct of litigation, which is also one of the purposes of costs awards. When making these decisions courts must also be mindful of the position of defendants. The award of interim costs must not impose an unfair burden on them. In the context of public interest litigation judges must be particularly sensitive to the position of private litigants who may, in some ways, be caught in the crossfire of disputes which, essentially, involve the relationship between the claimants and certain public authorities, or the effect of laws of general application. Within these parameters, it is a matter of the trial court's discretion to determine whether the case is such that the interests of justice would be best served by making the order.

[11] I see nothing in the present litigation that would support such an extraordinary order. I again observe that this is litigation between private parties. The issues do not transcend the interests of the parties. This is a case far different from any where such an order has been made and no proper basis exists for making such an order in this litigation.

[12] On a review application, the court must consider whether, in making the orders under review, the justice was wrong in law or principle or misconceived the facts. I do not perceive any error of this sort in any of the decisions of Mr. Justice Veale that are sought to be reviewed. In my view there was a proper basis for the Chambers judge to refuse the relief sought before him by the applicant. In those circumstances, it appears to me that this review application ought to stand dismissed.

[13] I have considered at some length whether or not this appeal ought to be dismissed. The respondent submitted at the hearing of the review application that we should make such an order. As Mr. Justice Veale observed, the appellant faces formidable hurdles in persuading a court that this appeal ought to succeed. Whether the option agreement was or was not valid, it seems that the appellant has not taken any steps or shown any inclination or ability to exercise the alleged right he asserts to purchase the property in issue. Furthermore, the appellant has failed to meet the filing timelines previously mandated by Mr. Justice Veale in the summer of 2007. However, individuals are given an absolute right of appeal from a judgment of this type in a trial court and I am always reluctant to foreclose an individual from pursuing such a right. Effectively, provincial and territorial appeal courts are courts of last

resort in most civil cases because of the difficulty in obtaining leave from the Supreme Court of Canada.

[14] The appellant Mr. Knol seems to have been proceeding for some time under a mistaken notion that somehow or other he can be excused from the requirement to obtain and file the necessary appeal materials. This judgment should make clear to him that this is not so. I consider that he should presently be given some additional time to take steps towards perfecting his appeal. I would order that he have until April 18, 2008 to file the necessary transcript and appeal book material. If, by that time, he has not made the necessary filings, it appears to me that the respondent would have a powerful case on any application to dismiss this appeal on account of a failure on the part of the appellant to comply with the filing requirements to perfect his appeal.

"The Honourable Mr. Justice Hall"

I agree:

"The Honourable Madam Justice Saunders"

I agree:

"The Honourable Mr. Justice Tysoe "