

SUPREME COURT OF YUKON

Citation: *The Town of the City of Dawson v. Palma*,
2012 YKSC 26

Date: 20120309
Docket S.C. No.: 11-A0035
Registry: Whitehorse

BETWEEN:

THE TOWN OF THE CITY OF DAWSON

Plaintiff

AND:

MICHELE PALMA

Defendant

Before: Madam Justice S. Martin

Appearances:

Daniel Bennett and Meagan Lang
Peter Sandiford

Counsel for the Plaintiff
Counsel for Defendant

REASONS FOR JUDGMENT DELIVERED FROM THE BENCH

[1] MARTIN J. (Oral): [Equipment failure - recording commences] into the form of a trial alleging there are triable issues best suited to a trial process. Dawson opposes this application on the basis that the Court has sufficient documentary and affidavit information before it to resolve the issues without the time and cost associated with the trial process.

[2] In reviewing this matter, I accept that the appropriate authority is the *Boffo* test, this is a Rule 10 matter, and my attention should be focussed on whether or not there is a triable issue and whether or not it can be determined and decided on the basis of the evidence before the Court.

[3] This matter arises in relation to claims by Mr. Palma relating to a building on land that is currently owned by Dawson. Both parties are successors in title and there are various underlying documents and lease agreements which are before the Court. Two main issues arise from my understanding of the documents and argument. The first is who owns or has rights in what is referred to as the CIBC Heritage Building; and the second is Dawson's interest in the land and the lot, subject to any interests that Mr. Palma may have in the building. This devolves into an issue under s. 66 of the *Land Titles Act*, RSY 2002, c. 130, and a question of whether Dawson took its Certificate of Title as a *bona fide* purchaser in good faith, or whether there is an aspect of fraud as set out in s. 66, which would place a different interpretation on title. Similarly, Mr. Palma asserts that there are equities arising, notably under the concept of proprietary estoppel.

[4] I have reviewed the documents and the record and spent some time with them. It is my assessment that a Court could go a long way on the present documentary record, especially in respect of the interpretation of the legal instruments at the core of this dispute. By that, I include the 1984 lease and the 1989 lease and note that while there is some dispute about the extent of the parol evidence rule, that the documents would, in large respect, even if I accepted Chief Justice Winkler's approach, go some way to limiting the scope of that review. However, that accepted, and even acknowledging that Dawson accepts the current evidentiary base of Mr. Palma's case, including the affidavit of Mr. Steins, Mr. Palma claims that he requires discovery and other rights of trial to properly assert his claims, his defences and his possible counterclaims.

[5] There are limited factual disputes and they are outlined adequately in Mr. Palma's materials in two paragraphs. Credibility issues may arise in respect of the allegation of fraud under the *Land Titles Act*. In my view, it is and will remain, important to ascertain what the City of Dawson knew about Mr. Palma's rights before and possibly even after transfer to them, and any conduct, knowledge, actions in respect of any steps Mr. Palma has taken to actually affect restoration of the CIBC building.

[6] I have considered whether it is appropriate to allow the petition to proceed and that if these matters truly are engaged to keep open the possibility that a trial could be declared at a future date. In my view, that is a duplicative procedure and that the appropriate way to deal with this issue is to have one order to do it one way, and to do it once. I accept, therefore, Mr. Palma's request to have this converted into a trial, with this admonishment, perhaps, or at least this caveat. There is no doubt in my mind that a trial will be more costly than the petition and I expressly keep open the ability of the Trial Judge to review what, if anything, was necessary, beyond the record before me in this application, in making any cost award at the trial.

MARTIN J.