

SUPREME COURT OF YUKON

Citation: *MacNeil. v. Hedmann*, 2013 YKSC 82

Date: 20130816
Docket: S.C. No. 09-D4165

Registry: Whitehorse

BETWEEN:

CYNTHIA LYNN MACNEIL

Plaintiff

AND:

DAVID GEORGE CLINTON HEDMANN

Defendant

Before: Mr. Justice E.W. Stach

Appearances:
Debbie Hoffman
David Hedmann

Counsel for the Plaintiff
Appearing on his own behalf

**RULING ON SECOND APPLICATION FOR ADJOURNMENT
DELIVERED FROM THE BENCH**

[1] STACH J. (Oral): It is apparent that this trial cannot be completed this week. As a consequence, I am asked by Mr. Hedmann that, rather than continuing with the trial next week, I adjourn the trial for continuation at some future date still to be determined. Ms. Hoffman for the plaintiff, Cynthia MacNeil, takes the position, equally adamantly, that in the interests of fairness, the trial continue next week.

[2] The thrust of Mr. Hedmann's current position on this issue is premised on an allegation of significant economic loss to him if he cannot attend to business commitments he has recently made in Alberta.

[3] Trials are typically a dynamic and fluid process. Their duration is seldom predictable with anything approaching precision. The case before me now is no exception.

[4] The seminal case law that governs the issue before me is set out in a decision of the British Columbia Court of Appeal in *Sidoroff v. Joe* (1992), 76 B.C.L.R. (2d) 82, namely that the interests of justice must govern whether to grant an adjournment, and that those interests require a balancing of the interests of the plaintiff and the defendant. That decision has been followed in the Yukon in a decision of Mr. Justice Gower in *D.M.M. v. T.B.M.*, 2005 YKSC 63.

[5] From the record before me respecting this issue, I find that Mr. Hedmann knew no later than June 20, 2013 of the real risk that this trial could not be completed in five days. In his affidavit filed this morning, Mr. Hedmann says that he entered into a contract in June 2013 and that work on the project has already begun. In the period following June 20, 2013, Mr. Hedmann nevertheless made and confirmed plans that would take him out of the jurisdiction during the week of August 19, 2013. The contract, having already been made, is in my opinion unlikely to be undone.

[6] Mr. Hedmann asserts in addition that he wishes to have some certainty about the availability of two defence witnesses who are not currently in the jurisdiction. However,

the material before me shows no compelling reason why those witnesses cannot be available next week.

[7] In reference to the issue I have to decide here, I am mindful of the fact that expeditious and speedy resolution of trials is a relevant consideration. It has been said here that this litigation between Cynthia MacNeil and David Hedmann has now endured for a period of time longer than their marriage subsisted. Adjourning the trial to some future undetermined date will inevitably give rise to additional legal costs for Cynthia MacNeil. Moreover, I am reasonably confident that the attempt to fix a date for continuation, having regard for my own calendar, would take us several months forward into the months of November or December at the very earliest.

[8] I am confident that the continuation of the trial next week will not impair a fair trial on the merits of this action. I conclude, on balance, that the interests of justice require that this trial continue next week, and I so order.

[9] Those are my reasons on the ruling, and I should ask at this stage whether there are submissions as to costs?

[SUBMISSIONS RE COSTS]

[10] THE COURT: I repeat in part what I said during my reasons, namely, that trials are a dynamic and a fluid process whose duration does not admit of precise calculation. While there is no formal application before me, the process that we have just gone through amounts to the same thing. It introduced a time consuming element to the trial for which, in my estimation, an award of costs is appropriate.

[11] The amount of costs ought not in these circumstances to constitute a penalty. Costs in the amount as suggested by counsel for the plaintiff are what I think approach that of a penalty.

[12] In the end, I direct that costs fixed in the sum of \$500 be payable by Mr. Hedmann to the plaintiff, Cynthia MacNeil. Thank you.

[13] THE CLERK: Would that amount be forthwith, Your Honour?

[14] THE COURT: I believe that unless indicated to the contrary, that all such cost orders are payable forthwith or within 30 days.

STACH J.