

SUPREME COURT OF YUKON

Citation: *Champion v First Nation of Nacho Nyak Dun*,
2015 YKSC 47

Date: 20151023
S.C. No. 15-A0096
Registry: Whitehorse

Between:

John Edward Champion

Plaintiff

And

First Nation of Nacho Nyak Dun

Defendant

Before Mr. Justice R. S. Veale

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an application for default judgment by counsel for Mr. Champion pursuant to Rules 12(7), 12(8) and Rule 17(5) and 17(6).

BACKGROUND

[2] Mr. Champion is suing the First Nation of Nacho Nyak Dun for wage loss in the amount of \$177,208.48 owing to him as a result of allegedly being unlawfully removed from the office of Chief on January 21, 2015.

[3] Counsel for Mr. Champion served the First Nation by way of Rule 12(7), which provides for substituted service by prepaid or registered mail rather than service by way of Rule 11(2)(d).

[4] Counsel for Mr. Champion filed an affidavit indicating that the First Nation was served by delivering the Statement of Claim and a letter to Canada Post on October 6, 2015, for delivery to the First Nation by Xpresspost. The Statement of Claim and the letter indicate that the office of the First Nation is 101 Future Road, Mayo, Yukon.

[5] The affidavit confirms that the Canada Post website provided tracking information indicating “Item successfully delivered” on October 9, 2015, with a signature that would appear to be “Blanchard”. There is no evidence indicating whether that person is a councillor, officer or staff person working at the First Nation.

[6] The 7 days for filing an appearance has clearly expired by October 20, 2015, the date of filing the requisition for default judgment pursuant to Rule 17(1) for failing to file an appearance.

DISPOSITION

[7] The following Rules are applicable:

Waiver of rule

1(14) On application, on its own motion, or if all parties to a proceeding agree, the court may order that any provision of these rules does not apply to the proceeding.

How service effected

11(2) Service of a document is effected on

...

(d) a Yukon First Nation or Indian Band by leaving a copy of the document with a Chief, councillor, officer or any individual on the staff working at the administration office of the First Nation or Indian Band,

...

Substituted service by mail without order

12(7) Subject to subrule (10), a document may be served by mailing it, together with an acknowledgment of receipt card in Form 12, by ordinary prepaid mail or by registered mail to the residential, business or postal address of the person to be served.

Effective date of service

(8) Service of a document under subrule (7) is effective when the sender receives

(a) the acknowledgment of receipt card, or

(b) a post office receipt bearing a signature that purports to be the signature of the person served.

[8] The purpose of Rule 11(2)(d) explicitly setting out how First Nations are served is to ensure that a statement of claim comes to the attention of the First Nation. The affidavit of service would presumably state the place of service and the person served or, if the person refused to identify themselves, some indication that the person was part of the staff working at the administration office of the First Nation. There is no evidence before me of any attempt to serve the First Nation pursuant to Rule 11(2)(d).

[9] Rule 12(7) is in the Rule providing for substituted service in the words of s. 12(1) “Where for any reason it is impractical to serve a document as set out in Rule 11”.

Substituted service requires a court order except for s. 12(7).

[10] Rule 12(7) recognizes the difficulty of serving people in this vast territory and permits substituted service without an order. Its purpose is to facilitate service where personal service by way of Rule 11 is impractical. In other words, Rule 12(7) requires evidence of some impracticability. In this application, there is no evidence of impracticability, but that is not to say there may not be such evidence. However, the

point is that Rule 12(7) is not the first Rule to follow when Rule 11(2)(d) provides an explicit method of service, subject to resorting to substituted service if the circumstances indicate some evidence of impracticability.

[11] There is no suggestion that counsel for Mr. Champion is acting improperly in following Rule 12(7) as it is no doubt cost effective and fast. However, when Rule 11(2)(d) provides explicit direction, that is the Rule to follow, unless circumstances indicate it is impractical.

[12] Counsel for Mr. Champion is at liberty to file further affidavit evidence to demonstrate impracticability.

VEALE J.