

Federal Court



Cour fédérale

Date: 20201124

Docket: T-546-17

Citation: 2020 FC 1085

Ottawa, Ontario, November 24, 2020

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**DR. LISA S. STERLING and
FREDERICK STERLING**

Applicants

and

**THE LOWER NICOLA INDIAN BAND,
WILLIAM BOSE, LEONA ANTOINE,
HAROLD JOE, JOANNE LAFFERTY,
LESLEY MANUEL, and LUCINDA
SEWARD, EACH BEING COUNCILLORS
OF THE LOWER NICOLA INDIAN BAND,
AARON SAM, CHIEF OF THE LOWER
NICOLA INDIAN BAND**

Respondents

ORDER AND REASONS

[1] This is a Rule 369 motion in writing in which the Applicants ask for various orders under the Court's jurisdiction to enforce its orders (Rule 423) and under Rules 8 and 403 for directions as to costs.

[2] The multi-faceted relief sought is set out below:

1. A Court order pursuant to Rule 423, All matters relating to the enforcement of orders shall be brought before the Federal Court that the Respondents immediately file with the First Nations Land Registry a request to remove the March 17, 2017 Cancellation of the Applicants' Certificate of Possession to Lot 11 referencing the quashed March 15, 2017 Band Council Resolution ("BCR") that purported to cancel the Applicants' Certificate of Possession ("CP").
2. A Court order that requires that the Respondents immediately take action to file within the First Nations Land Registry regarding the land status of Lot 11 an appropriate reference to the Court Order of March 26, 2019 quashing the BCR of March 15, 2017.
3. That the Court remain seized of the issue until the Respondents sufficiently demonstrate to the Court that the First Nations Land Registry accurately reflects the March 26, 2019 Court Order.
4. AND UPON removing the cancellation of the Certificate of Possession, Lot 11, and upon reviewing submissions of the Applicants, provide relief for damages and disruption to the Applicants use and title of their land and property, including lost profits to the Applicants that they have suffered.
5. Grant an extension of time under Rule 8.
6. Provide directions on costs under Rule 403(1)(a).
7. Requesting an Order under Rule 403(1)(a) that directions be given on costs to award for solicitor-client costs and/or alternatively another elevated award just under the circumstances (based on the Respondents' conduct, particularly unproven allegations of fraud).
8. Requesting that directions on costs award include a lump sum related to self-represented litigant costs, including actual time spent on preparing and presenting the case, lost opportunity costs (including Dr. Sterling's lost wages or a portion thereof).
9. Awards costs to the Applicants in the amount of their full solicitor-client costs of \$39,742.18 plus an additional lump

sum of \$66,975 for the time as self-represented litigants plus disbursements of \$6,044.65.

10. Award a special costs award of at least 60% of Dr. Sterling's lost salary for lost opportunity totaling \$160,000.00 or what the court seems just and fair.
11. Such further and other relief as this Honourable Court may deem just.
12. Costs of this motion.

[3] In summary, the Applicants ask for enforcement of this Court's Order of March 26, 2019, to have their Certificate of Possession reinstated, and for an award of damages and various costs.

[4] As to the first matter, reinstatement of the Certificate of Possession, the Respondent Band completed that process on July 21, 2020. The delay was acknowledged to be that of the Band and its failure.

[5] As that matter is now completed, the issue is moot and no further Order need be made in regard to it.

[6] The second major aspect of this motion is relief in the nature of damages. The original proceeding was an application for judicial review, a proceeding that does not permit damage claims to be awarded (*Canada (Attorney General) v TeleZone Inc*, 2010 SCC 62).

[7] If the Applicants have a claim for lost opportunity (whether salary or, as raised in the Respondents' materials, lost business cost of \$700,000) or any similar claims, they must proceed by way of an action.

[8] There are several aspects to the various costs relief sought which will be addressed below. For reasons which will be clear on the substantive costs issues, an extension of time to apply for directions as to costs, is not granted.

[9] The Applicants are entitled to costs as a self-represented litigant [SLR]. The Court of Appeal recognized that, while an SLR is not necessarily entitled to costs as if being awarded costs for their counsel, they are entitled to moderate costs (*Yu v Canada (Attorney General)*, 2011 FCA 42).

[10] There are circumstances where such an award approaches the amount of cost which a party would have obtained under the Tariff if they had been represented by a lawyer. *Air Canada v Thibodeau*, 2007 FCA 115, is an example and an appropriate parallel.

[11] In this present case, while fraud was not established, the reliance on Councillor Seward's evidence touched on "reprehensible" behaviour - deserving of censure or rebuke as per *Microsoft Corporation v 9038-3746 Quebec Inc*, 2007 FC 659 – and should be factored into a cost award.

[12] The Applicants had solicitor-client costs of \$39,742.18 to which they are entitled to some party and party costs which I would award as a \$15,000 lump sum.

[13] The Applicants had disbursements of \$6,044.65 which, being out of pocket expenses, should be fully reimbursed.

[14] While the Applicants claim \$66,975 for last time while representing themselves, that amount is well beyond a modest amount or even Level III of the Tariff. The Court can recognize some value for lost time and considering how difficult the Respondents had and have been in their treatment of the Applicants, I would award a lump sum of \$15,000 under this heading.

[15] Therefore, the Applicants are entitled to an award calculated as follows:

- \$15,000 for solicitor-client costs incurred by then counsel;
- \$6,044.65 for disbursements; and
- \$15,000 as compensation for work on their own behalf.

[16] In all other respects, the motion is dismissed. Success on the motion is mixed; therefore, there will be no costs of this motion.

ORDER in T-546-17

THIS COURT ORDERS that the motion is dismissed in part without costs.

THIS COURT FURTHER ORDERS that the Applicants are entitled to costs and disbursements of \$36,044.65, in accordance with these Reasons.

"Michael L. Phelan"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-546-17

STYLE OF CAUSE: DR. LISA S. STERLING and FREDERICK STERLING
v THE LOWER NICOLA INDIAN BAND, WILLIAM
BOSE, LEONA ANTOINE, HAROLD JOE, JOANNE
LAFFERTY, LESLEY MANUEL, and LUCINDA
SEWARD, EACH BEING COUNCILLORS OF THE
LOWER NICOLA INDIAN BAND, AARON SAM,
CHIEF OF THE LOWER NICOLA INDIAN BAND

PLACE OF HEARING: MOITON IN WRITING CONSIDERED AT OTTAWA,
ONTARIO, PURSUANT TO RULE 369 OF THE
FEDERAL COURTS RULES

ORDER AND REASONS: PHELAN J.

DATED: NOVEMBER 24, 2020

WRITTEN REPRESENTATIONS BY:

Dr. Lisa S. Sterling
Frederick Sterling

FOR THE APPLICANTS
(ON THEIR OWN BEHALF)

Sarah Nelligan

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Dentons Canada LLP
Barristers and Solicitors
Vancouver, British Columbia

FOR THE RESPONDENTS