

Federal Court



Cour fédérale

Date: 20221220

Docket: T-2458-22

Citation: 2022 FC 1778

Vancouver, British Columbia, December 20, 2022

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

GLENN CARDNO AND ROBERT JAGO

Applicants

and

**KWANTLEN FIRST NATION CHIEF AND
COUNCIL**

Respondent

REASONS AND ORDER

[1] By a notice of application for judicial review filed on November 28, 2022, Mr. Glenn Cardno and Mr. Robert Jago (collectively “the Applicants”) seek review of the decision made on November 21, 2022, by the Kwantlen First Nation Chief and Council (collectively “the Respondent”). In the decision, the Respondent advised Mr. Jago that the Respondent would not “host a public meeting on this matter”, that is about a notice of eviction delivered to Mr. Cardno by the Council on November 3, 2022.

[2] On November 28, 2022, the Applicants filed a notice of motion seeking an injunction to stay the operation of the notice of eviction. The motion was supported by the affidavits of Mr. Cardno and Mr. Jago, affirmed on November 27, 2022, respectively.

[3] The Respondent filed the affidavit of Ms. Christine Loewen, affirmed on December 1, 2022, as evidence in opposition to the notice of motion.

[4] Where the affidavits refer to exhibits, those exhibits are part of the evidence submitted by the respective parties.

[5] Mr. Cardno is the common law spouse of Ms. Virginia Jago, a member of the Kwantlen First Nation. Mr. Cardno is not a member of the Kwantlen First Nation.

[6] Ms. Jago died on September 21, 2021. At the time of her death, she occupied a house situated at 23424 Healing Spirit Lane, on the Kwantlen First Nation reserve. She lived in the house with Mr. Cardno.

[7] The house is owned by the Kwantlen First Nation and was rented to Ms. Jago, pursuant to a rental agreement with the Kwantlen First Nation Housing Department. According to the affidavit of Ms. Loewen, the rental agreements are managed by the Housing Committee of Kwantlen First Nation.

[8] Mr. Jago is the son of Ms. Jago and claims to be the representative of her estate.

[9] Following the death of Ms. Jago, at some point in October 2021, Mr. Cardno and Mr. Jago were advised by Ms. Tumia Knott, a councillor with the Council, that they could continue to live in the house.

[10] That situation changed in 2022. Mr. Cardno received an eviction notice on November 3, 2022. He appealed the eviction notice to the Council and his appeal was dismissed on November 18, 2022. Ms. Knott, on behalf of the Respondent, sent an email, communicated to Mr. Jago on November 21, 2022, advising that the Council would not host a public meeting regarding Mr. Cardno's appeal. She also advised that tenants do not hold interests in the units and are unable to transfer them upon death.

[11] The Applicants now seek a stay of the implementation of the eviction.

[12] The test for interlocutory relief is set out in *RJR – MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (S.C.C.). The test is tripartite and conjunctive and requires the moving party to show that the underlying application for judicial review raises a serious issue for trial; that irreparable harm that is not compensable in damages will result if the stay is denied; and that the balance of convenience lies in its favour. The failure to meet any one of these three elements means that the request for a stay will fail.

[13] The Applicants argue that their application for judicial review raises a serious issue about their rights and interests in the house. They argue that they will suffer irreparable harm if the relief sought is denied; harm to Mr. Cardno will include homelessness and interference with

relationships with grandchildren and other family members, and harm to Mr. Jago on the basis of his sentimental attachment to the house. They argue that the balance of convenience lies in their favour.

[14] The Respondent submits that the Applicants have failed to meet the test for injunctive relief. They also raise the issue of jurisdiction in this Court over what is essentially a dispute about a rental agreement, a matter of contract law in which the Respondent is not acting as a “federal board, commission or other tribunal”, within the meaning of section 18 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[15] The Respondent raised the issue of jurisdiction. Lack of jurisdiction indeed raises a serious issue but in this motion, the burden lies upon the Applicants to show that their underlying application for judicial review raises a serious issue for trial.

[16] The Applicants were not prepared to fully argue the issue of jurisdiction upon the hearing of the motion and their motion will be decided upon the arguments that they did advance.

[17] Upon reading the materials filed, including the written submissions, and upon hearing oral arguments from the parties, I am satisfied that this motion can be decided without deciding the question of jurisdiction.

[18] I am not satisfied that the Applicants have presented “clear and convincing evidence” that they will suffer irreparable harm if their motion is denied.

[19] I refer to the decision in *Peshee v. Tsuu T'ina Nation*, 2007 ABCA 211 at paragraphs 30 and 31 where the Alberta Court of Appeal commented on the kind of evidence that is required to show irreparable harm in circumstances similar to those described by the Applicants in their affidavits and written arguments:

[30] If the three respondents are required to move and ultimately establish that the eviction notice should not apply to them because they are entitled to Nation membership, they may have a claim for damages associated with rent and moving expenses. That harm is not irreparable.

[31] There may be circumstances where loss of residence, by itself, would be irreparable harm, but such a finding must have a foundation in evidence. [...]

[20] It is not necessary for me to address the elements of serious issue and balance of convenience. The Applicants have not shown that they would suffer irreparable harm if this motion were dismissed. That failure is fatal and their motion will be dismissed.

[21] The Respondent seek costs. They have succeeded in their opposition to the Applicants' motion and in the usual course, costs will follow the event.

[22] In the exercise of my discretion, costs are awarded to the Respondent in any event of the cause.

ORDER in T-2458-22

THIS COURT'S ORDER is that the motion is dismissed with costs to the Respondent in any event of the cause.

"E. Heneghan"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2458-22

STYLE OF CAUSE: GLENN CARDNO AND ROBERT JAGO v.
KWANTLEN FIRST NATION CHIEF AND COUNCIL

PLACE OF HEARING: VANCOUVER, BRITISH COLUMBIA

DATE OF HEARING: DECEMBER 13, 2022

REASONS AND ORDER: HENEGHAN J.

DATED: DECEMBER 20, 2022

APPEARANCES:

Naomi Sayers FOR THE APPLICANTS

JoAnne Barnum FOR THE RESPONDENT

Nicola Virk

SOLICITORS OF RECORD:

Naomi Sayers FOR THE APPLICANTS

Barristers and Solicitor

Harper Grey LLP FOR THE RESPONDENT

Vancouver, British Columbia