Federal Court  Cour fédérale

Date: 20110329

Docket: T-1236-10

Citation: 2011 FC 378

Ottawa, Ontario, March 29, 2011

PRESENT: The Honourable Mr. Justice Barnes

BETWEEN:

CHARLES ROBERTSON

Plaintiff

and

KYLE BEAUVAIS AND
MOHAWK COUNCIL OF KAHNAWAKE

Defendants

and

HER MAJESTY THE QUEEN

Third Party

REASONS FOR ORDER AND ORDER

[1] This is a motion by the Defendant, Kyle Beauvais, to strike out in their entirety the allegations made against him in the Statement of Claim in this proceeding. Mr. Beauvais contends that this Court is plainly without jurisdiction to hear the matter because it involves a private contractual dispute involving the possession of land situated on a First Nations reserve that must be

resolved by reference to provincial and not federal law. Mr. Beauvais acknowledges that the *Indian Act*, RS, 1985, c I-5 contains some limited provisions regarding Aboriginal land issues but contends that they have no application to the issues raised in the Statement of Claim. Indeed, he asserts that there "is a complete and utter absence of federal law governing the dispute" between the Plaintiff and himself and that the case will be resolved under the Quebec Civil Code.

Litigation Background

[2] There is no doubt that this dispute as framed in the Statement of Claim concerns a purported transfer of possession of lands situate on the Kahnawake Mohawk Reserve in Kahnawake, Quebec (the disputed land) from the Plaintiff to Mr. Beauvais. It is undisputed that title to the disputed land is held by the federal Crown on behalf of the Kahnawake Band.

[3] The Plaintiff alleges in the Statement of Claim that Mr. Beauvais had occupied the disputed land beginning in 2007 under a rental agreement. The Plaintiff maintains that he entered into a verbal agreement with Mr. Beauvais in March 2010 that provided for the latter to purchase the Plaintiff's possessory interest in the disputed land for a price of $350,000.00. This agreement, he alleges, was partially executed – albeit by mistake or fraud – when the requisite transfer documents were registered by the Band. However, the Plaintiff also alleges that Mr. Beauvais has since resiled from their agreement by refusing to pay the balance of the agreed purchase price and by refusing to pay further rent. The Plaintiff seeks relief in the form of a series of declarations cancelling the agreement and the transfer of possession of the disputed land and damages.

[4] The Third Party, represented by the Minister of Indian Affairs, appears to have declined to give legal effect to the transfer of the disputed land under s 24 of the *Indian Act* pending a judicial resolution of the underlying dispute.

Issues

[5] Should the Court refuse to grant relief on this motion because the Defendant, Kyle Beauvais, has pleaded over to the substantive allegations in the Statement of Claim or because of his delay in bringing this motion?

[6] Should the allegations in the Statement of Claim against the Defendant, Kyle Beauvais, be struck out under Rule 221 of the *Federal Courts Rules*, SOR/98-106 on the basis that this Court lacks jurisdiction over the subject matter as pleaded?

Analysis

[7] There is no merit to the Plaintiff's argument that by pleading over and by the delay in bringing this motion the Defendant should be precluded from raising a challenge to the Court's jurisdiction to hear the matter. The Court cannot, by an agreement of the parties or by their procedural conduct, acquire a jurisdiction that it does not have. The cases dealing with motions to strike where such discretionary bars to relief have been recognized did not involve challenges like this one to the Court's jurisdiction. Jurisdiction is an issue that can be raised at any time in a proceeding subject to the Court's authority to award costs in cases of abuse or delay: see *Verdicchio v Canada*, 2010 FC 117, [2010] 3 CTC 80.

[8] The Plaintiff and Defendant agree, as do I, that the question to be answered on this motion is whether it is plain and obvious and beyond doubt that this Court lacks jurisdiction to resolve their dispute as pleaded: see *Hodgson v Ermineskin Band* (2001), 267 NR 143 (FCA), 193 FTR 158 .

[9] To found jurisdiction in the Federal Court over a particular cause of action or claim to relief there must exist (a) a statutory grant of jurisdiction by Parliament; (b) an existing body of federal law essential to the disposition of the case; and (c) the law must be a law of Canada: see *ITO – International Terminal Operators Ltd. v Miida Electronics Inc.*, [1986] 1 SCR 752, 28 DLR (4th) 641at p 766.

[10] This motion cannot succeed because it is not plain and obvious that the Court lacks jurisdiction to hear and resolve the Plaintiff's claim. There are central aspects to the Plaintiff's allegations which may well turn on the application of federal law and, in particular, the *Indian Act*. The clearest support for this comes from the decision by Justice Andrew MacKay in *Jones Estate v Louis et al* (1996), 108 FTR 81, 3 CNLR 85. *Jones* was a case involving competing claims to possession of land on the Okanagan Indian Reserve based on a purported transfer agreement between the parties. Justice MacKay noted that the *Indian Act* "establishes the legislative framework relating to interests in lands on a reserve" (see para 6) including matters of transfer and possession (see para 8). He also noted the effect of s 24 of the *Indian Act*, which vests in the Minister the absolute authority to approve a land transfer between members of a band. According to Justice MacKay, in the absence of ministerial approval of a transfer no private agreement or deed of transfer between band members had any legal effect. This led Justice MacKay to conclude that until the Minister gave approval for a transfer, a party was free to withdraw from the arrangement at

any time. Justice MacKay went on to address the specific issue of the Federal Court's jurisdiction over the dispute. He held that the Federal Court had concurrent jurisdiction under ss 17(4) of the *Federal Courts Act*, RS, 1985, c F-7 to deal with a matter "where the Crown may be under an obligation, in respect of which there are or may be conflicting claims" [emphasis added to quote]. The obligation of the Minister under s 24 of the *Indian Act* to consider the approval of a land transfer was sufficient to ground this Court's jurisdiction.

[11] In my view the decision in *Jones*, above, is indistinguishable from the circumstances of this case. Section 24 of the *Indian Act* could also be determinative of the outcome of this case, whatever the nature or details of the arrangement between the parties may have been. It is not my role on a motion to strike to decide if Justice MacKay was correct in finding as he did. It is sufficient that the decision in that case raises an arguable case in favour of this Court's jurisdiction (ie. it is not plain and obvious that the Court lacks jurisdiction) and clearly it does.

[12] In *Rhine v Canada*, [1980] 2 SCR 442, 116 DLR (3d) 385, the Court recognized that the enforcement of an ordinary contractual obligation may still fall within the jurisdiction of the Federal Court provided that there is valid federal law which governs the transaction. In that case, it was necessary to resort to the underlying federal statute in order to enforce what was essentially a borrowing agreement; this was found sufficient to underpin the jurisdiction of the Federal Court. The same type of statutory framework exists here under the *Indian Act* as the legislation deals with the federal Crown's authority to control the use and possession of reserve lands. Section 21 of the *Indian Act* provides for the establishment of a Reserve Land Register and s 24 recognizes the possibility of transfer of possessory interests in reserve lands subject to the Minister's approval. In

the face of these provisions and having regard to the holding of the Supreme Court of Canada in *Derrickson v Derrickson*, [1986] 1 SCR 285, 26 DLR (4th) 175 that "the right to possession of lands on an Indian reserve is manifestly of the very essence of the federal exclusive legislative power" it is arguable that provincial law does not apply to disputes of this kind. It seems to me that band custom and federal common law (including Aboriginal title) are the more likely sources for the principles to be applied to this dispute than is the Civil Code of Quebec: see *Roberts v Canada*, [1989] 1 SCR 322, 25 FTR 161. In any event, the incidental application of provincial law to a matter that must be determined primarily by federal law is not a bar to this Court's jurisdiction: see *ITO – International Terminal Operators Ltd. v Miida Electronics Inc.*, above, at p 781.

Conclusion

[13] The Defendant has not met the elevated threshold for relief under Rule 221 and this motion is dismissed with costs payable to the Plaintiff in any event of the cause.

ORDER

THIS COURT ORDERS that this motion is dismissed with costs payable to the Plaintiff under Column III in any event of the cause.

" R. L. Barnes "
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1236-10
STYLE OF CAUSE:	ROBERTSON v BEAUVAIS ET AL v HMTQ
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APPEARANCES:

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