Mintuck v. Valley River Band No. 63A, [1976] M.J. No. 273

Manitoba Judgments

Manitoba Court of Queen's Bench
Solomon J.
April 23, 1976.

[1976] M.J. No. 273 | [1976] 4 W.W.R. 543 | 9 C.N.L.C. 196

Between Gabe Mintuck, plaintiff, and Valley River Band No. 63A, Clifford Lynxleg, Lawrence Ironstand, Cecil Rattlesnake and Joseph Shingoos, defendants

(23 paras.)

Counsel

A.C. Matthews, Q.C., for the plaintiff. R.K. Vohora, for the defendants.

SOLOMON J.

1 Plaintiff, a treaty Indian, resides on the reserve of the Valley River Band No. 63A (the Band). The personal defendants, Clifford Lynxleg, Lawrence Ironstand, Cecil Rattlesnake and Joseph Shingoos, are all members of the Band and reside on the said reserve. Clifford Lynxleg is the Chief, and Lawrence Ironstand, Cecil Rattlesnake and Joseph Shingoos are members of the Band Council, duly elected in accordance with the constitution of the Band as provided for by the Indian Act, Cap. I.6, R.S.C. 1970 (the Act).

2 In accordance with the provisions of the Act, and pursuant to the agreement made between plaintiff and Her Majesty Queen Elizabeth II, represented by the Minister of Indian Affairs and Northern Development (the Minister), and with approval of the Band, plaintiff rented and was operating a 480 acre farm on the reserve. On May 22, 1969, Her Majesty Queen Elizabeth II, represented by the Minister as lessor, entered into a lease with plaintiff by which the lessor rented to him additional land situated within the Valley River Indian Reserve and being the North-East Quarter of Section 4, Township 26 and Range 25, West of the Principal Meridian in Manitoba. Before the lessor executed this lease in favour of plaintiff, the Chief and Council of the Band, by a resolution duly passed, recommended to the lessor that the lease in question be entered into. The lease was for a term commencing May 1, 1969 and ending December 31, 1979. Under it the plaintiff was to receive the use of the land for the years 1969 to 1973 inclusive, rent free, and was to pay the lessor a one-third share of the crop in 1974 and continue doing so until the end-of the term.

3 Plaintiff is an excellent farmer and according to knowledgable independent witnesses is a good manager of his farming operations. He has given every indication of being a progressive individual with a keen desire to succeed. He was doing well on his 480 acre farm but agricultural

consultants for the Department of Indian Affairs were of opinion that he should have more land if his operations were to be conducted economically. Following their advice, plaintiff rented this additional 160 acres for a ten-year period and started to develop this new land in order to bring it up to the standard of his other farm property.

4 Shortly after signing the lease for this additional land, plaintiff started to experience some difficulties with operations on the newly acquired property. It was situated approximately two miles away from his other land and he was obliged to commute daily between the two properties during the farming seasons. The only road to the new farm was through the reserve. Many times plaintiff found it blocked with different vehicles and was not able to get through with farm equipment needed for his operations. Occasionally when he got to the farm he discovered that stray cattle had been allowed to roam freely over his crops, doing considerable damage to them. Sometimes he found members of the band driving trucks over the farm under the pretext they were hunting game, and on occasion plaintiff and his family were intimidated by firearms. Finally, even the Band Chief, Clifford Lynxleg, entered into the picture with harassment. It was obvious eventually than all this interference with farming operations, and harassment of plaintiff and his family, was aimed at getting him to abandon his rights to the lease he had to the new farm.

5 The leasing of the new farm to plaintiff was approved by the former Council and Chief of the Band. Shortly after the lease was executed on May 22, 1969, the incumbent Chief and Council of the Band were defeated in an election and Clifford Lynxleg was elected Chief and the other personal defendants were elected to Council. Harassment and intimidation of plaintiff and his family, and interference with his farming operations, started shortly after this election and continued until the Chief and Council finally passed a resolution which effectively terminated the lease with plaintiff in respect of the new farm.

6 Despite the continuous harassment and interference by members of the Band, plaintiff continued to operate the farm during 1969, 1970 and 1971. His crops were damaged by the actions of some members of the Band, but there was no evidence before the court that the defendants, in their personal capacity, were in any way responsible for such damage, nor could the Band he held liable for those actions. At the conclusion of the hearing, plaintiff abandoned his claim against the Band personal defendants for damage done by other members of the Band. However, he did not abandon his claim against the personal defendants, as members of the Band Council, for damages arising from cancellation of the lease and dispossession. In other words, plaintiff claims damages against Valley River Band No. 63A, and against the personal defendants as members of Council of the Band, for damages suffered as a result of the cancellation of the lease and dispossession of the said lands.

7 Defendants claim that plaintiff, in the spring of 1972, was served with a notice asking him to remedy a breach of the terms of the lease but he did not take heed and consequently the Band, through its Chief and Council, passed a resolution on September 14, 1972, cancelling the lease. If the Band was not satisfied with plaintiff's farming methods it, as cestui-que trust under the provisions of the Indian Act, could have recommended to the Minister to take action against plaintiff for the purpose of remedying the breach or terminating the lease. Both defendants and the Minister, however, knew that plaintiff had not committed any breach of the terms of the lease. The Minister knew that plaintiff was a good farmer and was conducting his farming operations in a husband-like manner, and also knew there were no legal grounds for terminating the lease and did not want to associate himself with defendants' actions. The personal defendants, acting in their capacities as Chief and members of Council of the Band duly elected

to represent the Band in accordance with its constitution established pursuant to the Indian Act, wrongly passed the resolution rescinding the original approval of the lease and effectively terminating the lease because this action prevented plaintiff from operating his farm as provided for in the lease.

8 I am satisfied that plaintiff, as a result of interference and harassment by members of the Band, was prevented from fully benefiting from the land during the years 1969 to 1971 when he was still operating it. The Chief and the Council of the Band, by passing the resolution of cancellation of the lease, were, in fact, endorsing the harassment of plaintiff by other members of the Band and prevented plaintiff from having the use of the land he was legally entitled to under the terms of the lease. Plaintiff unquestionably suffered some damages because he was not able to use the subject land after spending time and energy in bringing it up to the standard of his own property. Evidence on the question of quantum of damages actually suffered by plaintiff as a result of the cancellation of the lease and dispossession is not very good. The court, however, was told by at least one knowledgable witness that plaintiff lost a clear annual profit of approximately $13.00 per acre by losing the use of the land. The farm had 150 acres under cultivation, which means he lost about $2,000.00 annually. The ten year term under the lease did not expire until December 31, 1979, and plaintiff has lost some seven years' profit by reason of non-use of the land. He also lost money on the balance of his operations as well because maintenance of machinery and other general expenses had to be met from the receipts of a much smaller acreage. During the hearing the court was informed that plaintiff is no longer interested in being reinstated as a tenant under the said lease. Taking all factors into consideration, I find that plaintiff has suffered at least a $10,000.00 loss as a result of the cancellation of the lease.

9 Defendants questioned the court's jurisdiction to hear this matter on the ground that plaintiff's action against the Band is based on a lease entered into between Her Majesty the Queen and plaintiff. Defendants argued that under the provision of Section 17(2) of the Federal Courts Act which provides:

> "Without restricting the generality of subsection (1), The Trial Division has exclusive original jurisdiction, except where otherwise provided, in all cases in which the land, goods or money of any person are in the possession of the Crown or in which the claim arises out of a contract entered into by or on behalf of the Crown, and in all cases in which there is a claim against the Crown for injurious effection.",

it would appear this court has no jurisdiction to entertain plaintiff's claim arising out of the lease.

10 I do not share defendants' interpretation of this section nor of the nature of the claim. Plaintiff's claim does not arise out of a contract entered into by or on behalf of the Crown. His action against defendants is based on the principle of law that interference by a third party with contractual relations between two other parties is actionable. He claims there was a valid lease between himself and Her Majesty Queen Elizabeth II represented by the Minister as lessor and that defendants, without justification, proceeded to interfere with its contractual relations. This principle of law was first established in 1853 by the decision in the well known case of Lumley v. Gye, (1843-60), All E.R. 208, 2 El & B1 225, 117 E.R. 749, in which Crompton J., speaking for the court, said (p. 211):

> "Whatever may have been the origin or foundation of the law as to enticing of servants, and whether it be, as contended by the plaintiff, an instance and branch of a wider rule,

> or, as contended by the defendant, an anomaly and an exception from the general rule of law on such subjects, it must now be considered clear law that a person who wrongfully and maliciously, or, which is the same thing, with notice, interrupts the relation subsisting between master and servant by procuring the servant to depart from the master's service, or by harbouring and keeping him as servant after he has quitted it and during the time stipulated for as the period of service, whereby the master is injured, commits a wrongful act for which he is responsible at law. I think that the rule applies wherever the wrongful interruption operates to prevent the service during the time for which the parties have contracted that the service shall continue, and I think that the relation of master and servant subsists, sufficiently for the purpose of such action, during the time for which there is in existence a binding contract of hiring and service between the parties. I think that it is a fanciful and technical and unjust distinction to say that the not having actually entered into the service, or that the service is not actually continuing, can make any difference. The wrong and injury are surely the same, whether the wrongdoer entices away the gardener, who has hired himself for a year, the night before he is to go to his work, or after he has planted the first cabbage on the first morning of his service. I should be sorry to support a distinction so unjust, and so repugnant to common sense, unless bound to do so by some rule or authority of law plainly showing that such distinction exists."

11 Subsequently, in the case of Temperton v. Russell, (1893) 1 Q.B. 715, the court extended that principle of law to include interference by a third party who prevents the other two parties from entering into a contract. Lord Esher, M. R., at p. 728 said:

> "The next point is, whether the distinction taken for the defendants between the claim for inducing persons to break contracts already entered into with the plaintiff and that for inducing persons not to enter into contracts with the plaintiff can be sustained, and whether the latter claim is maintainable in law. I do not think that distinction can prevail. There was the same wrongful intent in both cases, wrongful because malicious. There was the same kind of injury to the plaintiff. It seems rather a fine distinction to say that, where a defendant maliciously induces a person not to carry out a contract already made with the plaintiff and so injures the plaintiff, it is actionable, but where he injures the plaintiff by maliciously preventing a person from entering into a contract with the plaintiff, which he would otherwise have entered into, it is not actionable."

12 In 1964, Gale J. (as he then was) of the Ontario High Court, in the case of Posluns v. Toronto Stock Exchange, (1965) 46 D.L.R. 210, dealt rather fully with the question of liability of a third party for interfering with contractual relations of two other parties, and at p. 261 summarized as follows:

> "While a contract cannot impose the burden of an obligation on one who is not a party to it, a duty is undoubtedly cast upon any person, although extraneous to the obligation, to refrain from interfering with its due performance unless he has a duty or a right in law to so act. Thus, if a person without lawful justification knowingly and intentionally procures the breach by a party to a contract which is valid and enforceable and thereby causes damage to another party to the contract, the person who was induced the breach commits an actionable wrong. That wrong does not rest upon the fact that the intervenor has acted in order to harm his victim, for a bad motive does not per se convert an otherwise lawful act into an unlawful one, but rather because there has been an unlawful invasion of legal relations existing between others.

> This has been established in our jurisprudence by an ever-developing body of authority which had its origin in the great case of Lumley v. Gye (supra). Most, if not all, of the relevant judgments following it were cited and thoroughly discussed with me during the course of the argument at trial, but there is no point in analyzing them individually or collectively at this stage. It will surely be enough to say that while some of the judgments are not susceptible of easy interpretation, perhaps because in many instances they were so elaborate, and others give the appearance of irreconcilability, there can be no doubt that our law recognizes as tortious any unjustifiable and unlawful violation of economic interests which causes harm."

13 Plaintiff had a valid subsisting lease with Her Majesty Queen Elizabeth II represented by the Minister as lessor and himself as lessee. Under the provisions of the Indian Act, the Minister is the Trustee of the lands covered by the lease for the cestui que trust, the Valley River Band. There were no breaches of the terms of the lease and the Band had no right in law to prevent plaintiff from reaping the fruits of the provisions of the lease. The Band, by a resolution duly passed by the personal defendants in their capacities as Chief and members of the Band Council, cancelled the lease without any justification for such interference. Defendants by their actions deprived plaintiff from quiet possession of the lands as provided in the lease. I, therefore, reject defendants' first objection as to the court's jurisdiction.

14 Defendants' second objection was based on the ground that the Band is not a legal entity and cannot sue or be sued as a corporate body. Plaintiff, on the other hand, argued that the Band is a legal entity and he can proceed against it in the same manner as against a body corporate. I reserved my decision on this question and the hearing proceeded on the merits of the issues involved.

15 The Band in the case at bar enjoys very wide powers to perform varied actions and discharge many responsibilities with all the facility of a corporation. The Band entered into a treaty with Her Majesty the Queen by which it acquired many benefits and, conversely, assumed many responsibilities for its members - it can levy taxes, enter into contracts, create debts, construct public works on the reserve and legislate by passing binding orders on all members of the Band. In a word, the Band has practically all the powers of a Municipal Corporation and like a Municipal Corporation is subject to the provisions of The Municipal Act, the Band discharges its duties and obligations subject to the Indian Act. Obviously, the Band has many more powers than most corporations. I am satisfied that the Band, which owns property, has bank accounts, signs cheques, pays wages, and receives money, is not a loosely organized body composed of members scattered all over the world. It is a closely knit entity banded together for the benefit of its members. The Band has a character of its own different from its members. "When a body of twenty or two thousand or two hundred thousand men bind themselves together to act in a particular way for some common purpose, they create a body which by no fiction of law but from the very nature of things differs from individuals of whom it is constituted." (Professor Dicey, 17 Harvard Law Review, p.513) In discharging its many duties within the framework of the Indian Act, the Band discharges them without feeling lack of corporate status.

16 Tritschler J. (as he then was), sitting ad hoc in the Appeal Court of Manitoba in the case of Tunney v. Orchard et al, (1955), 15 W.W.R. 49, was dealing with the question of the liability of an unincorporated association (which is an entity in fact) for the wrongs it commits. On p. 86, speaking for the court, he said:

"The present state of the law may be attributed to a failure to recognize differences in fact among voluntary, unincorporated associations, a failure to see that some are entities in fact and some are not. There is a real distinction in fact between, on the one hand, a carefully constituted union or a well established club and, on the other hand, a loosely associated religious order of 1800, whose members are scattered throughout the world (as in Walker v. Sur (1914) 2 KB 930, 83 LJKB 1188) or a propertyless, vaguely organized association to advance the interests of merchants in a section of Toronto (as in Barrett v. Harris, supra)." (1921) 51 OLR 484) "In the former there may be an entity in fact apart from its membership, with assets which can and ought to be applied to the satisfaction of obligations incurred.

The question is simple enough. Can a union, or other voluntary, unincorporated association which is an entity in fact, be made to answer in the courts for wrongs or for breach of contract or for debts contracted? If it cannot that ends the matter but if, as I think it can, it must not escape the accounting because of a want of ability in the courts to devise a suitable form of judgment. The form of the judgment is but a means to achieve the end of imposing responsibility upon the union and of making it possible for the plaintiff to realize his judgment out of the assets of the union. The form of judgment to be adopted is not all-important so long as the intended result is reached. The method adopted by the learned trial judge seems to me satisfactory. Another method is that followed in the Metallic Roofing case, (1900) 12 OLR 200 (quoted above) particularly the inclusion of a declaration that the property and assets of the union are liable to satisfy the plaintiff's claim. A third method is that suggested by the learned Chief Justice of this court."

17 Tunney v. Orchard et al was appealed to the Supreme Court of Canada (1957) S.C.R. 436) and that court varied the judgment of the Manitoba Court of Appeal, but on the question of whether an unincorporated entity can be held responsible for the wrongs of the association, Rand J., speaking for the court, on p. 436 commented as follows:

"The executive board here is vested with authority to require the employer to comply with the terms of the union contract, including the feature of the closed or union shop. The board, purporting to act within the scope of its authority, may, by way of analogy with a corporation commit either an ultra vires act, that is, one that does not become an act of the membership body, or an act intra vires that brings about a breach of contract through an improper exercise of authority.

That distinction is pointed out by Farwell J. in Taff Vale, supra," (1901) A.C. 426) "where at p. 433 he uses the following language:

'I have already held that the society are liable for the acts of their agents to the same extent that they would be if they were a corporation and it is abundantly clear that a corporation under the circumstances of this case would be liable. See, for example, Ranger v. Great Western Ry. Co. (1854), 5 H.L.C. 86, where Lord Cranworth points out that although a corporation cannot in strictness be guilty of fraud, there can be no doubt that if its agents act fraudulently, so that if they had been acting for private employers the persons for whom they were acting would have been affected by their fraud, the same principles must prevail where the principal under whom the agent acts is a corporation. It is not a question of acting ultra vires, as in Chapleo V. Brunswick Permanent Building Society (1881), 6 Q.E.D. 696, but of improper acts in the carrying out of the lawful purposes of the society.'

> This is as applicable to the labour union here as it was to the partly recognized society with which he was dealing."

18 The Minister of Indian Affairs and Northern Development holds the land in the Indian Reserve as trustee for cestui que trust, the Valley River Band No. 63A, and under the provisions of the Indian Act and pursuant to an agreement between Her Majesty the Queen and the cestui que trust the trustee would not sign a lease in respect of lands on the reserve without recommendation from the cestui que trust. The Chief of the Band and his Council passed a resolution recommending the trustee execute the lease in favour of the plaintiff covering the land in question. After the trustee received the recommendation from the Band, the lease was executed as recommended. One year later an election was held at the Band reserve and the personal defendants were elected as Chief and Council. Shortly after the election, in the fall of 1972, the personal defendants in their capacity as Chief and members of Council passed a new resolution purporting to rescind the resolution of recommendation passed by their predecessors a few years earlier. By this action the Chief and Council effectively stopped plaintiff from using the land, as he had every right to do, because the trustee did not want to take any action to reinstate the plaintiff under the lease without consent of the Band.

19 The Band has power to enter into and to terminate contracts providing such actions are done in accordance with the provisions of the Indian Act. The personal defendants in their capacities as Chief and Council of the Band have power to pass resolutions requesting the trustee (the Minister of Indian Affairs and Northern Development) to cancel a lease, which resolution would effectively terminate the lease providing there was factual justification for such action. From the evidence before me it becomes quite obvious that there were no grounds for the cancellation of the lease with plaintiff. The personal defendants, in their capacity as Chief and Council of the Band, without any grounds passed the resolution of cancellation and by so doing exercised their authority improperly and wrongfully. This is not a case of passing an ultra vires resolution of cancellation, but one of passing an intra vires resolution wrongfully in order to deprive the plaintiff of the use of the land. I therefore find the Band and the personal defendants liable for the damages plaintiff suffered as a result of the cancellation of his use of the land.

20 This action was instituted by plaintiff against the Band and against the four personal defendants who are its Chief and Council respectively. Under Manitoba Queen's Bench Rules, parties who can be sued as persons include a body corporate and politic, trade unions and employers' organizations. A body corporate and politic can only be created by statute, by special charter or pursuant to statutory provisions under which such specific corporations or body politics are established. Although the Band discharges many corporate functions without feeling the lack of corporate status, I was unable to find any record which would disclose that it is a body corporate capable of being sued as a person under Queen's Bench Rules. However, there are provisions in the Queen's Bench Rules how such unincorporated bodies can be sued and Rule 58 provides:

> "Where there are numerous persons having the same interest one or more may sue or be sued, or may be authorized by the court to defend on behalf of, or for the benefit of all."

The Band and its Chief and Council are the defendants in plaintiff's statement of claim and all filed defences. The Chief and members of Council were examined for discovery. During the hearing the personal defendants gave evidence in support of their personal defences and in support of the defence of the Band. In a word, all defendants were represented by counsel

during the hearing, all participated in opposing plaintiff's claim and the court heard all evidence adduced on their behalf.

21 Plaintiff was certain the Band was a legal entity capable of being sued without an order under Queen's Bench Rule 58. No order was asked for under Rule 58, nor did the court make one before the hearing of this matter. I feel, however, the court has power to make such order now. Queen's Bench Rule 156 provides:

> "A proceeding shall not be defeated by any formal objections but all necessary amendments may be made on proper terms as to costs or otherwise to secure the advancement of justice, the determining the real matter in dispute, and the giving of judgment according to the very right and justice of the case."

Under Rule 156, this court has the power to grant necessary amendments to the pleadings and make all necessary orders required by Queen's Bench Rule in order to render a judgment according to the rights of parties and justice of the case. I am accordingly granting the necessary amendments and am making nunc pro tunc an order under Rule 58 that Clifford Lynxleg, Lawrence Ironstand, Cecil Rattlesnake and Joseph Shingoos, who are Chief and Council respectively of the Band, represented and defended on behalf of all other members of the Band except plaintiff, as well as on their own behalf, and that all other members of the Band except plaintiff, as well as individual defendants, are bound by the judgment and proceedings in this action.

22 Plaintiff shall have judgment for $10,000.00 and costs against the individual defendants personally and against all other members of Valley River Band No. 63A (except plaintiff) to the extent of their interest in the funds of the Band, and the property and assets of the Band are liable to satisfy this judgment and for that purpose are subject to execution.

23 Although Her Majesty the Queen, represented by the Minister of Indian Affairs and Northern Development as Trustee for Valley River Band No. 63A, is the lessor of the lands in question, the trustee was not made a party to this action. I wish to make it clear that disposition of the action between the plaintiff and the defendants in this suit should not be construed as a bar to any action the plaintiff might have against the trustee.

SOLOMON J.
