

CANADA / JUDGMENT

Central Kootenay (Regional District) v. Lisanti

2020 BCSC 1042

COURT

Supreme Court of British Columbia

DECIDED

14 July 2020

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2020 BCSC 1042 Central Kootenay (Regional District) v. Lisanti

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Central Kootenay (Regional District) v. Lisanti,

2020 BCSC 1042

Date: 20200714

Docket: 21156

Registry: Nelson

Between:

The Regional District of Central Kootenay

Plaintiff

And

Antonietta Lisanti, Luigi Lisanti, Luigi Mastrobuono,

Giovanni Mastrobuono and John Doe

Defendants

And

Patricia Hannah Dreyfus

Third Party

Before: The Honourable Mr. Justice Marchand

Corrected Judgment: The front page of the judgment
was corrected on October 23, 2020

Reasons for Judgment

Counsel for the Plaintiff:

D.J. Goodfellow

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Counsel for the Third Party:

R. Ruston, Q.C.

Place and Date of Hearing:

Kamloops, B.C.

June 22, 2020

Place and Date of Judgment:

Nelson, B.C.

July 14, 2020

Introduction

- [1] The defendants, Antonietta Lisanti, Luigi Mastrobuono and Giovanni Mastrobuono, own a property with a civic address of 2917 Highway 3A in Nelson, British Columbia (the "property"). The defendant, Luigi Lisanti, is a former joint owner of the property. When he passed away, his interest in the property passed by right of survivorship to his daughter and grandsons, the other named defendants.
- [2] The living named defendants rent the property to Shane Sprowl. He is identified as "John Doe" in the style of cause. Mr. Sprowl lives in a "trailer" on the property.
- [3] The property is within the Regional District of Central Kootenay ("RDCK"). The RDCK says that the defendants' current use of the property is contrary to RDCK Zoning Bylaw No. 1675, 2004 [Zoning Bylaw]. The property is zoned Suburban Residential F ("R1F"). The RDCK says that Mr. Sprowl's trailer is a recreational vehicle and that the use of recreational vehicles for residential purposes is prohibited within the R1F zone.

- [4] The zoning issue was brought to the attention of the RDCK no later than September 2017. The RDCK then tried to persuade the defendants to discontinue their asserted prohibited use of the property. After failing to convince the defendants of their folly, the RDCK filed a notice of civil claim on November 26, 2019. The notice of civil claim seeks to enforce the Zoning Bylaw by way of declaratory and injunctive relief.
- [5] On January 17, 2020, the defendants filed their response to civil claim. Broadly, the defendants take the position that there is no basis to prohibit Mr. Sprowl from occupying his trailer as a residence. The defendants' response asserts that the RDCK is acting unreasonably on the basis of false information provided by a neighbouring property owner, Patricia Dreyfus.
- [6] On January 17, 2020, the defendants filed a third party notice against Ms. Dreyfus. Broadly, the third party notice characterizes Ms. Dreyfus as a "busybody" (my word not the defendants') who habitually makes unfounded complaints to public authorities and who did that very thing in this case. The defendants frame their claim against Ms. Dreyfus as "malicious libel or slander".
- [7] There are two applications before me.
- [8] The RDCK seeks orders under Rule 9-5 of the Supreme Court Civil Rules [Rules] to strike virtually all of the defendants' response and/or under Rule 9-6 for summary judgment against the defendants. The RDCK asks the court to grant the declaratory and injunctive relief set out in the notice of civil claim.
- [9] Ms. Dreyfus seeks an order under Rule 9-5 striking out the third party notice on the basis that it discloses no reasonable cause of action, is unnecessary or frivolous, or is otherwise an abuse of the court's process.
- [10] Both the RDCK and Ms. Dreyfus seek special costs.
- [11] For the reasons that follow, I will be granting summary judgment to the RDCK and striking out the third party notice. I will also be granting costs, but not special costs, to the RDCK and Ms. Dreyfus.

RDCK's Application for Summary Judgment

Rule 9-6

- [12] Rule 9-6 serves an essential purpose. It saves the parties and the justice system significant time and expense by summarily weeding out unmeritorious claims and defences: *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 10.

- [13] Under Rule 9-6(5)(a), the court must pronounce judgment if satisfied that there is no genuine issue for trial. The question is whether there is a bona fide triable issue. It must be manifestly clear or beyond a reasonable doubt that there is not: 4 Corners Properties Ltd. v. Boffo Developments (Smithe) Ltd., 2013 BCSC 1926 at para. 15.
- [14] Applications for summary judgment are based on the pleadings as framed and the evidence before the court, and each side must put its best foot forward: Lameman at para. 11; 4 Corners at paras. 21-23.
- [15] In this case, the facts are not in issue, the law is clear and there is a straightforward answer to the issues in dispute between the RDCK and the defendants. As a result, this is a perfect case for Rule 9-6: 4 Corners at para. 24.

Interpretive Approach to Local Government Legislation

- [16] As the outcome turns on an interpretation of the Zoning Bylaw, I consider it appropriate to begin my analysis with a few words regarding the proper approach to the interpretation of local government legislation.
- [17] In *Society of Fort Langley Residents for Sustainable Development v. Langley (Township)*, 2014 BCCA 271 at paras. 11-18, Bauman C.J.B.C., on behalf of the Court, had the following to say regarding the correct approach to interpreting local government legislation:
- [11] (I)t is always salutary to remind oneself of the basic principles of statutory interpretation applicable in construing this species of delegated legislative authority.
- [12] Counsel, of course, cited the Supreme Court of Canada's decision in *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, and then noted Tysoe J.A.'s reformulation of the direction in the context of a municipal law case in *North Pender Island Local Trust Committee v. Conconi*, 2010 BCCA 494 at para. 13:

... the words of an [enactment] are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the [enactment], the object of the [enactment], and the intention of [the legislative body that passed the enactment].

- [13] Again, in the context of municipal empowering legislation and bylaws enacted pursuant thereto, this Court said in *Neilson v. Langley (Township)* (1982), 134 D.L.R. (3d) 550 (B.C.C.A.) (at 554 per Hinkson J.A.):

In the present case, in my opinion, it is necessary to interpret the provisions of the zoning by-law not on a restrictive nor on a liberal approach but rather with a view to giving effect to the intention of the Municipal Council as expressed in the by-law upon a reasonable basis that will accomplish that purpose.

- [14] In *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, Mr. Justice Bastarache stated for the Court (at paras. 6 and 8):

6 The evolution of the modern municipality has produced a shift in the proper approach to the interpretation of statutes empowering municipalities. ... The "benevolent" and "strict" construction dichotomy has been set aside, and a broad and purposive approach to the interpretation of municipal powers has been embraced...

...

8 A broad and purposive approach to the interpretation of municipal legislation is also consistent with this Court's approach to statutory interpretation generally. ...

[15] These common law rules must be married with the expressions of intent by the Legislative Assembly.

[16] Generally, in s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238 we are told that:

8 Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[17] Specifically, under s. 4(1) of the Community Charter, S.B.C. 2003, c. 26, we are directed so:

4(1) The powers conferred on municipalities and their councils under this Act or the Local Government Act must be interpreted broadly in accordance with the purposes of those Acts and in accordance with municipal purposes.

[18] Frankly, the Court can take the hint - municipal legislation should be approached in the spirit of searching for the purpose broadly targeted by the enabling legislation and the elected council, and in the words of the Court in Neilson, "with a view to giving effect to the intention of the Municipal Council as expressed in the bylaw upon a reasonable basis that will accomplish that purpose".

[18] I will keep this guidance in mind throughout my analysis.

The Relevant Provisions of the Zoning Bylaw

[19] Section 479 of the Local Government Act, R.S.B.C. 2015, c. 1 [LGA] empowers the RDCK to divide the regional district into zones and to regulate the use of land, buildings and other structures within a zone. The RDCK has done so through the Zoning Bylaw.

[20] The Zoning Bylaw has a typical structure and comprehensible provisions. Generally, the Zoning Bylaw creates zones, establishes permitted uses within each zone and prohibits all other uses within each zone. I will highlight the relevant provisions.

[21] Division 2 of the Zoning Bylaw establishes various zones within the RDCK. The property is within the R1F zone.

[22] Division 9 of the Zoning Bylaw sets out the permitted uses within the R1F zone. Section 900 provides as follows:

Permitted Uses

900 Land, buildings and structures in the Suburban Residential F (R1F) zone shall be used for the following purposes only:

Dwellings:

One-Family

Two-Family

Accessory Uses:

Accessory Buildings and Structures

Accessory Tourist Accommodation

Home Based Business

Horticulture

Keeping of Farm Animals

Sale of Site Grown Farm Product

[23] Division 5 of the Zoning Bylaw defines the operative terms within s. 900.

[24] A "permitted use" is "the principal, permissible purpose for which land, buildings or structures may be used". Notably, "all uses not listed as permitted shall be deemed to be a prohibited use within the applicable zone".

[25] A "dwelling unit" is a "detached building with self-contained eating, living, sleeping and sanitary facilities and not more than one kitchen, used or intended to be used as a residence for no more than one (1) family".

[26] Not surprisingly, a "dwelling, one-family" is a "detached building used exclusively for residential purposes, consisting of one (1) dwelling unit used or intended to be used as the residence of one (1) family".

[27] Meanwhile, a "dwelling, two-family" is a "detached building used exclusively for residential purposes, as a duplex or dwelling separated by a common wall or floor where one unit may be a secondary suite intended to be used as a residence by two (2) families living independently of each other".

[28] A "building" is defined to mean "any structure used or intended for supporting or sheltering any use or occupancy, and includes a manufactured home; but does not include a recreational vehicle, tent or park model recreational unit".

[29] A "recreational vehicle" is defined to mean "a vehicle, either designed to be towed behind a motor vehicle or self propelled, and includes such vehicles commonly known as travel trailers, fifth wheels, campers, motor homes, or other similar vehicles designed to provide temporary accommodation for recreational, camping, or travel use".

- [30] Finally, a "manufactured home" means "any structure, whether ordinarily equipped with wheels or not, that is designed, constructed, or manufactured to be moved from one place to another by being towed or carried, and to provide a dwelling or premises". A "manufactured home" must also conform to the requirements of the British Columbia Building Code and various Canadian Standards Association ("CSA") standards.

Analysis

- [31] Respectfully, it is not difficult to discern the objectives of Division 9 of the Zoning Bylaw.
- [32] One clear objective of Division 9 is to create a zone for detached single and double family dwellings, including manufactured homes, with listed accessory uses only. Another clear objective is to prohibit the use of recreational vehicles as a permitted single or double family dwelling.
- [33] Contrary to the defendants' assertions, Division 9 of the Zoning Bylaw does not permit all single or double family residential use of the property in any old type of dwelling, including, as the defendants have colourfully asserted, a tent or even a cardboard box. Rather, as permitted by s. 479 of the LGA, the Zoning Bylaw has carefully defined the specific types of single and double family residences that are permitted within the R1F zone. All other types of single and double family residences are prohibited.
- [34] There is no dispute that Mr. Sprowl is currently living on the property in his trailer. While this use of the property as "single family residential" is permitted, the means of use is not.
- [35] The defendants acknowledge that Mr. Sprowl's trailer is designed to be towed behind a motor vehicle. In fact, the defendants acknowledge that Mr. Sprowl intends to regularly tow his trailer behind a motor vehicle to dispose of his sewage at a sani-station. Further, the defendants specifically characterize the "trailer" as a "camper". Finally, Mr. Sprowl's trailer is clearly "designed to provide temporary accommodation for recreational, camping, or travel use". As a result, Mr. Sprowl's trailer is, by definition under the Zoning Bylaw, a "recreational vehicle" and is not, by definition under the Zoning Bylaw, a "building".
- [36] In addition, while the defendants submit that Mr. Sprowl's trailer complies with various CSA standards they have adduced no evidence to establish that is so. More to the point, despite their obligation "to put their best foot forward", they do not submit and have adduced no evidence to establish that the trailer complies with the requirements of the British Columbia Building Code. This is hardly surprising as the trailer is clearly not a "building" to which the Building Code applies. As a result, while Mr. Sprowl's trailer has been "manufactured" and is his "home", his trailer is not a "manufactured home" as defined by the Zoning Bylaw.

- [37] Mr. Sprowl's "trailer" clearly fits the definition of "recreational vehicle" within the Zoning Bylaw. It is not, as the defendants assert, a "manufactured home". It simply does not fit the definition of "dwelling, one-family" or "dwelling, two-family" within the Zoning Bylaw and Mr. Sprowl's use of his trailer as his residence within the R1F zone is, therefore, contrary to the Zoning Bylaw.
- [38] Though decided in the context of differently worded bylaws, I note that the conclusion I have reached is supported by the conclusions reached by the court in *Comox Valley Regional District v. Reiter*, 2015 BCSC 1235 and *Powell River v. Sliwinski*, 2013 BCSC 737.

Remedy

- [39] While the defendants would have preferred the RDCK to proceed by way of violation ticket, there is no serious dispute that the RDCK was free to bring this proceeding to enforce its Zoning Bylaw: *Community Charter*, S.B.C. 2003, c. 26, s. 274 and *LGA*, s. 420; *Burnaby (City) v. Oh*, 2011 BCCA 222 at para. 40.
- [40] There is also no serious dispute that a local government like the RDCK is entitled to a statutory injunction to restrain a continuing breach of its bylaws unless there are exceptional circumstances. The public interest in having the law obeyed typically outweighs any hardship that may be experienced by a defendant as the result of an injunction: *Vancouver (City) v. Maurice*, 2005 BCCA 37 at para. 34; *Oh*, at para. 41.
- [41] In this case, there are no exceptional circumstances. As a result, subject to some relatively minor modifications, the RDCK is entitled to the declarations and injunctions it seeks. I will set out the details in my order.

Costs

- [42] The RDCK seeks special costs on the basis of the defendants' pre-litigation, litigation and continuing conduct. The RDCK submits that the defendants ignored the RDCK's warnings, flouted the Zoning Bylaw, failed to raise genuine issues for trial and characterized the bylaw complaint made by Ms. Dreyfus as malicious.
- [43] In *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at para. 54, the Court noted that the Rules recognize only two forms of costs, namely party and party costs and special costs. At paras. 55-57, the Court distinguished the two as follows:
- i. Party and Party Costs
- [55] Party and party costs are assessed in accordance with Appendix B of the Rules. Party and party costs serve several functions including providing a partial indemnity to the successful litigant, discouraging frivolous actions and defences, encouraging parties to deliver reasonable offers to settle, and discouraging improper and unnecessary steps in the litigation: *Skidmore v. Blackmore* (1995), 2 B.C.L.R. (3d) 201 (C.A.) at para. 37.

ii. Special Costs

- [56] Special costs are typically awarded when there has been some form of reprehensible conduct on the part of one of the parties: *Young v. Young* [1993] 4 SCR 3 at 134-138. Special costs are not compensatory; they are punitive: *Grewal v. Sandhu*, 2012 BCCA 26 at para. 106. They are awarded when a court seeks to disassociate itself from some misconduct: *Fullerton v. Matsqui (District)* (1992), 74 B.C.L.R. (2d) 311 (C.A.) at para. 23
- [57] The leading authority on special costs is this Court's decision in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242 (C.A.). There, Mr. Justice Lambert, writing for the Court, set out that the threshold for special cost awards is "reprehensible conduct". He noted the continuum of circumstances in which special costs could be awarded, ranging from "milder forms of misconduct deserving of reproof or rebuke" to "scandalous or outrageous conduct"
- [44] In *Smithies*, the Court went on at paras. 128-134 to adopt a "bright line" reserving special costs "to punish and deter reprehensible conduct in the course of litigation". The Court held that "[t]here are other suitable mechanisms to censure pre-litigation conduct". In short, special costs are not available to censure pre-litigation conduct.
- [45] In this case, the RDCK appears to be frustrated that the defendants did not heed their warnings and willingly discontinue their unauthorized use of the property. In my respectful view, there was nothing reprehensible about that and, in any event, the defendants' pre-litigation conduct is not subject to censure by way of an award of special costs.
- [46] Next, while the defendants' view of the Zoning Bylaw was unfounded, I cannot say that requiring the RDCK to establish that through this proceeding amounted to a flouting of the bylaw. The defendants took legal advice, articulated their position and, as was their right, defended their position. While the RDCK appears to have found the colourful language used by the defendants to be particularly off-putting, it certainly left no doubt about the defendants' views and falls short of amounting to reprehensible conduct.
- [47] Insofar as the defendants have alleged malice against Ms. Dreyfus, I fail to see how that amounts to reprehensible litigation conduct in relation to the RDCK.
- [48] Finally, it is not uncommon for the court to grant summary judgment. In such cases, something more than a finding that a party failed to raise a genuine issue for trial is required to support an award of special costs. That "something more" is reprehensible conduct that calls for punishment.
- [49] In this case, an award of party and party costs is adequate to discourage parties like the defendants from taking unfounded positions. In my respectful view, going further to award special costs in the circumstances of this case would unduly place a chill on the rights of citizens to dispute positions taken by local governments on zoning and other bylaw enforcement issues.

[50] For these reasons, the RDCK will have its costs at scale B.

Ms. Dreyfus' Application to Strike Out the Third Party Notice

Rule 9-5

[51] Rule 9-5(1) provides, in part, as follows:

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

(a) it discloses no reasonable claim or defence, as the case may be,

(b) it is unnecessary, scandalous, frivolous or vexatious,

or

(d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[52] Rule 9-5(2) provides that no evidence is admissible on an application under subrule (1)(a). Evidence is admissible on applications under the other subrules: *Timberwolf Log Trading Ltd. v. British Columbia (Forests, Lands and Natural Resources Operations)*, 2013 BCCA 24 at para. 20.

[53] In deciding applications under subrule 9-5(1)(a), the court must assume that the facts as pleaded are true, and strike out a pleading only if it is "plain and obvious" that it discloses no reasonable claim: *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636 at paras. 18-21. The "plain and obvious test" also applies to the other subrules: *Stoneman* at para. 24.

[54] Under subrule 9-5(1)(b), a pleading will be struck out as being unnecessary or vexatious if it does not go to establishing a cause of action or does not advance any claim known in law: *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress* (1999), 36 C.P.C. (4th) 266 (BCSC) at para. 47.

[55] Under subrule 9-5(1)(d), the court may strike a pleading that is an abuse of process. In *Chernen v. Robertson*, 2014 BCSC 1358 at para. 29, Hinkson C.J. adopted the following passage from the decision of Baker J. in *Babavic v. Babowech*, [1993] B.C.J. No. 1802 (S.C.) regarding what might constitute an abuse of process:

- [17] Rule 19(24) [now Rule 9-5] is a codification of the court's inherent jurisdiction to stay actions that are an abuse of process or that disclose no reasonable cause of action: *Hunt v. Carey Canada Inc.* (1990), 74 D.L.R. (4th) 321 at 327 (S.C.C.). The principle of abuse of process is somewhat amorphous. The discretion afforded courts to dismiss actions on the ground of abuse of process extends to any circumstance in which the court process is used for an improper purpose.
- [18] The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior or improper purpose; proceedings which are without foundation or serve no useful purpose and multiple or successive proceedings which cause or are likely to cause vexation or oppression.
- [56] The third party notice alleges the following:
- The notice of civil claim filed by the RDCK was brought against the defendants "solely as a result of repeated false claims" of Ms. Dreyfus that Mr. Sprowl was illegally dumping sewage on the property;
 - Ms. Dreyfus' complaints were "based on speculation or were intentionally fabricated" and are untrue;
 - Ms. Dreyfus "has a long history of making unfounded complaints to public authorities";
 - Ms. Dreyfus' repeated allegations had no basis in fact and constitute "malicious libel or slander";
 - Ms. Dreyfus' conduct caused the action to be brought by the RDCK; and
 - The RDCK was improperly pressured to act "by the frivolous but persistent complaints" of Ms. Dreyfus.
- [57] The defendants claim general and punitive damages as well as indemnity for their legal costs in defending the claim.
- [58] Under Rule 3-5(1), the defendants are entitled to pursue their third party claim against Ms. Dreyfus if:
- a. They are entitled to claim contribution or indemnity from Ms. Dreyfus in relation to the relief sought by the RDCK;
 - b. They are entitled to relief against Ms. Dreyfus that relates to or is connected with the subject matter of the RDCK's action; or
 - c. A question or issue between the defendants and Ms. Dreyfus is substantially the same as a question or issue that relates to or is connected with the relief claimed or the subject matter of the RDCK's action, and should be properly determined in the action.

- [59] Given the outcome of the RDCK's application for summary judgment, it is plain and obvious that the third party notice must be struck. It discloses no reasonable claim and is unnecessary.
- [60] The RDCK had the discretion to commence an action to seek declaratory and injunctive relief against the defendants in relation to the Zoning Bylaw: *Burke v. Sunshine Coast Regional District*, 2011 BCSC 1636 at para. 7. The RDCK was successful. The defendants' assertions that Ms. Dreyfus made false claims about them illegally dumping sewage on the property had nothing whatever to do with that outcome. The defendants are therefore not entitled to claim contribution, indemnity or other relief from Ms. Dreyfus that relates to or is connected with the RDCK's action.
- [61] While false statements made by Ms. Dreyfus about the defendants' conduct, if any, might found a defamation claim against her, that would properly have to be determined in a separate proceeding.
- [62] In relation to her submission that the third party notice should be struck as an abuse of process, Ms. Dreyfus submits that I should take into account a conversation between her counsel and counsel for the defendants. According to counsel for Ms. Dreyfus, counsel for the defendants told her that Ms. Dreyfus had been named as a third party to "slap her on the wrist because she is a chronic complainer". Ms. Dreyfus submits that this statement supports the conclusion that the third party notice was filed for the improper and undesirable purpose of chilling citizen complaints to public authorities.
- [63] I am, of course, concerned about any misuse of the court process for ulterior purposes but am unwilling to conclude that the defendants' filing of the third party notice in this case amounts to an abuse of process. In my respectful view, the defendants simply took misguided positions. I am not prepared to convert their poor judgment into a finding that they were abusing the court process based on an off-hand remark made by their counsel, particularly when there is a live issue concerning whether Ms. Dreyfus' complaints about the defendants were defamatory.

Costs

- [64] It is most unfortunate that Ms. Dreyfus got tangled up in this proceeding. Nevertheless, I am unable to characterize the defendants' litigation conduct as "reprehensible". In the circumstances, Ms. Dreyfus is entitled to party and party costs at scale B.

Order

- [65] For all of these reasons, I make the following orders:
1. The defendants' and Shane Sprowl's use or acquiescence in use of a recreational vehicle for residential purposes on the property is in breach of s. 900 of the Zoning Bylaw.

2. The defendants and Shane Sprowl shall cease using or allowing the use of the recreational vehicle for residential purposes on the property within 30 days of this order.
3. The defendants or anyone acting on their behalf and all other persons to whom notice of this order has been given, by themselves, their servants or agents, is restrained and enjoined from the residential use, or allowing or permitting the residential use, of the recreational vehicle on the property without applying for and receiving all necessary approvals.
4. The RDCK and RDCK's employees, agents and contractors are authorized to enter onto the property and remove the recreational vehicle on the property at the cost of the defendants and Shane Sprowl if the defendants and Shane Sprowl have not ceased residential use of the recreational vehicle on the property within 30 days of this order.
5. If the RDCK, by its employees, agents and contractors does enter onto the property to remove the recreational vehicle on the property under paragraph 4 of this order, and upon further application to and approval by the court, the recreational vehicle may be placed for sale and the proceeds of the sale applied to reimburse the RDCK for the cost of removal, storage and sale with the surplus, if any, paid to the defendants, in trust, for Shane Sprowl.
6. The third party notice is struck out.
7. The RDCK and Ms. Dreyfus shall have their costs at scale B.

"L.S. Marchand J."

MARCHAND J.

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