

CANADA / JUDGMENT

Coastal GasLink Pipeline Ltd. v. Huson

2021 BCSC 2734

COURT

Supreme Court of British Columbia

DECIDED

22 November 2021

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2021 BCSC 2734 Coastal GasLink Pipeline Ltd. v. Huson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Coastal GasLink Pipeline Ltd. v. Huson, 2021 BCSC 2734 Date: 20211122 Docket: S1854871 Registry: Prince George Between: Coastal GasLink Pipeline Ltd. Plaintiff And Freda Huson, Warner Naziel, John Doe, Jane Doe and all other persons unknown to the Plaintiff occupying, obstructing, blocking, physically impeding or delaying access, at or in the vicinity of the area in and around the Morice River Bridge or the area accessed by the Morice West Forest Service Road Defendants Before: The Honourable Madam Justice Church Oral Reasons for Judgment Re: Judicial Interim Release (Re: Attendees: Mariah Kennedy, Tabitha Woodford, Esther McLachlin, Susan Bender and Nina Sylvester) In Chambers Counsel for Plaintiff appearing via videoconference: K. O'Callaghan N. Rand P. Mueller, Articled Student Counsel for Attendee Amber Bracken appearing via videoconference: Counsel for Attendees Cody Merriman, Daphne Deschenes, Hannah Hall, Victor Labreche, Shay Lynn Sampson, Stephanie Stacey, William Wessell and Molly Wickham appearing via videoconference: Counsel for Attendee Michael Toledano appearing via videoconference: Counsel for Attendee Mariah Kennedy appearing via videoconference: Counsel for Attendees Tabitha Woodford, Susan Bender, Esther McLachlin, Nina Sylvester, Taylor Bai-Woo, Beyon Moor, Corey Jocko, Kristina Heidt and Jocelyn Alec appearing via videoconference: D. Sutherland F. Mahon H. Khosa F. Mahon H. Khosa N. Ross Place and Date of Hearing: Prince George, B.C. November 19, 22 & 23, 2021 Place and Date of Judgment: Prince George, B.C. November 22, 2021

- [1] THE COURT: Mariah Kennedy, Tabitha Woodford, Esther McLachlin, Susan Bender and Nina Sylvester appear before me today with respect to an allegation of civil contempt. All five individuals were arrested on November 18, 2021, at a blockade erected at kilometre 44 of the Morice West Forest Service Road, a location of a checkpoint and obstruction erected in the name of the Gidimt'en Band of the Wet'suwet'en people.

- [2] As I understand it, the blockade erected on the Morice West Forest Service Road purported to be part of enforcement procedures conducted by members of the Gidimt'en Clan under what was described as an eviction notice issued to the plaintiff Coastal GasLink Pipeline Ltd. ("Coastal GasLink") and to the RCMP sometime in 2020. The eviction notice purports to evict Coastal GasLink and the RCMP from Wet'suwet'en traditional territories. I note that none of the individuals before me this afternoon are members of the Wet'suwet'en Nation.
- [3] With respect to the kilometre 44 blockade, beyond this blockade is a large camp which houses approximately 500 Coastal GasLink employees who are working on the pipeline construction. As a result of the erection of the blockade at kilometre 44, as well as two other blockades and obstructions at kilometre 36 and kilometre 63.5, those workers were cut off from essential goods and services. The Coastal GasLink employees became aware of these blockades and advised the plaintiff on November 14, 2021.
- [4] Prior to that notification, there had been other interactions between protesters and the RCMP at those locations as recently as September 2021, when the plaintiff was engaged in final clearing in preparation for the pipeline to cross the Morice River. The plaintiff employees and contractors encountered obstructions to their worksite and their equipment and site were occupied by protestors on September 25, 2021. When RCMP attended, they encountered protesters, obstructions and road damage at various locations, including along the Morice Forest Service Road and the Morice West Forest Service Road and the Shea Forest Service Road.
- [5] Counsel for the plaintiff advise that the RCMP at that time took steps to read the injunction to protestors, but took no enforcement action at that time due to a lack of resources. Similarly, in October 2021, RCMP returned to the area and found blockades on the roads, trenches dug in the roads, structures built that obstructed the areas covered by my injunction order and equipment either taken or vandalized. Once again the RCMP read the injunction order to protestors, and once again no enforcement action was undertaken at that time due to a lack of resources.
- [6] Counsel and their clients are aware that the interlocutory injunction order granted by me on December 31, 2019, amongst other things, restrained and enjoined the named defendants and anyone having notice of the order from physically preventing, impeding, restricting, or in any way physically interfering with, counselling others to prevent, impede, restrict or physically interfere with, any person travelling to or accessing various areas along and leading off the Morice Forest Service Road and Morice West Forest Service Road. The reasons for and the background to that order are set out in my reasons for judgment filed 2019 BCSC 664.

- [7] The five individuals before me this afternoon, that I have named, were arrested at the kilometre 44 blockade for allegedly breaching the interlocutory injunction order. Counsel on behalf of Ms. Kennedy, Ms. Woodford, Ms. McLachlin, Ms. Bender and Ms. Sylvester, take issue with and deny that they were in breach of the injunction order at the time of their arrest. That determination will have to be for trial.
- [8] The issue before me today is their release from custody. The plaintiff consents to their release on their undertaking to attend court on February 14, 2022, to engage only in lawful, peaceful protest, to strictly obey my injunction order dated December 31, 2019, and not be within the exclusion area of the Morice Forest Service Road and roads accessed by the Morice Forest Service Road. All five of these individuals consent to the first three conditions, but are opposed to condition 1(d) of the proposed undertaking that would require them not to be within the exclusion zone.
- [9] Both of their counsel submitted that the terms that they will consent to are sufficient to address the primary and secondary grounds for interim judicial release; namely, their attendance at court and the substantial likelihood that they will go on to commit further breaches of the injunction if they are released. Both counsel submitted that the condition 1(d) of the proposed undertaking was contrary to the direction of the Supreme Court of Canada in *R. v. Zora*, that requires release conditions to be the least onerous necessary to address the concerns with respect to the primary, secondary and tertiary grounds, and that they be reasonably connected to those concerns.
- [10] Counsel submitted that the plaintiff's case with respect to the breaches of the interlocutory injunction is weak and their clients dispute that their actions were in fact a breach of the injunction order. They further submit that their clients were not given an opportunity to leave the area prior to their arrest.
- [11] I agree that these five individuals should be released on an undertaking with conditions, but I do not accept defence counsel's submissions that the conditions should not include exclusion from the exclusion zone. The affidavits filed in respect of each of these individuals alleged that they did in fact breach the terms of the injunction at the time of their arrest and they were in a location that physically prevented, impeded or interfered with access to the area of the 44-kilometre mark of the Morice Forest Service Road. I am aware that all five individuals dispute the allegation that they were in breach of the interlocutory injunction order and their suggestion that they were not given an opportunity to leave prior to their arrest. As I have noted, that is not something I can determine today and will have to be determined at trial.
- [12] I note that this is not the first police enforcement operation with respect to my injunction order. I have just referred to prior enforcement action that occurred in January 2019 and February 2020, as well as several RCMP attendances since September 2021, when the injunction was read to protestors at the protestor camps. I understood from submissions of counsel for these individuals that all five have been, to some extent, actively involved and

living in Wet'suwet'en Territory during this protest for some time and knew, or should have known, about the injunction order.

- [13] The recent escalation of confrontation between the protestors and the plaintiff and RCMP, in and around a camp located at 44 kilometre, appears to have been initiated by protestors blockading the road because they purported to evict the plaintiff and the RCMP from Gidimt'en territory. That direct action ultimately resulted in approximately 500 employees of the plaintiff, located at Camp P2, being cut off from essential services and supplies due to road blockades and road deactivation in the face of an injunction order which prohibits such obstruction and interference.
- [14] In my view, the circumstances of the alleged breaches as outlined in the affidavit materials raise tertiary ground concerns under s. 515 of the Criminal Code, with respect to the need to maintain public confidence in the administration of justice. I do not agree with the submission of defence counsel that the plaintiff's case is not sufficiently strong to justify the imposition of such a condition. In my view, an undertaking that requires these individuals to comply strictly with the interlocutory injunction order of December 31, 2019, and not to be in the exclusion zone, is appropriate, and in my view necessary to address those tertiary ground concerns.
- [15] The undertaking is not onerous in the sense that it will impose no financial burden on these individuals and the conditions will not prevent them from engaging in peaceful, lawful protest. In my view, it is the least onerous condition that I may impose in order to address the tertiary ground concerns.
- [16] I will therefore order that Mariah Kennedy, Tabitha Woodford, Esther McLachlin, Susan Bender and Nina Sylvester, be released from custody upon giving the following undertaking to the court,
- a) that they promise to attend before a judge of the Supreme Court on February 14, 2022, at 9:00 am at Prince George, British Columbia, and attend at other times required by the court to be dealt with according to the law. They may attend that hearing via videoconference;
 - b) that they promise, if they engage in protest or activism, that it will be lawful, peaceful and safe;
 - c) that they promise to strictly comply with the terms of the attached order of the Supreme Court dated December 31, 2019, and otherwise keep the peace; and
 - d) that they promise not to be within the exclusion zone defined as the Morice West Forest Service Road or any other areas accessed by the Morice Forest Service Road, except for one attendance, in the company of a peace officer, in order to retrieve their personal belongings.
- "The Honourable Madam Justice Church"

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