

CANADA / JUDGMENT

Galena Contractors Ltd. v. Zarelli

2014 BCSC 324

COURT

Supreme Court of British Columbia

DECIDED

21 February 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCSC 324 Galena Contractors Ltd. v. Zarelli

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Galena Contractors Ltd. v. Zarelli,

2014 BCSC 324

Date: 20140221

Docket: 18036

Registry: Nelson

Between:

Galena Contractors Ltd.

Plaintiff

And

Dennis Zarelli, Marilyn James, Vance Robert Campbell,

Robert Watt, John Doe, Jane Doe and

Other Persons Whose Identities Are Unknown To The Plaintiff

Defendants

Corrected Judgment: The text of the judgment was corrected
at paragraph 21 on March 11, 2014.

Before: The Honourable Mr. Justice McEwan

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

C.J. Wiebe

No other appearances

Place and Date of Trial/Hearing:

Nelson, B.C.

February 21, 2014

Place and Date of Judgment:

Nelson, B.C.

February 21, 2014

- [1] THE COURT: This is an application brought by Galena Contractors Ltd. against certain named and unnamed defendants seeking an interlocutory injunction, because their progress in extending a road in the Perry Ridge area of British Columbia has been impeded by those persons, despite the fact that Galena Contractors Ltd. is authorized to do the work by the Province of British Columbia through its agent, B.C. Timber Sales. That entity is described in the material as a stand-alone organization within the Ministry of Forests, Lands, and Natural Resource Operations of Her Majesty The Queen in Right of the Province of British Columbia.
- [2] The matter goes back in its current manifestation to July 15, 2013, when it came before this court in chambers in Nelson. On that occasion, I declined to grant the injunction, but fixed a day later in that week, that is July 18, 2013, for the RCMP to send a representative to court to explain why those persons then blocking the road were not being dealt with under the criminal law.
- [3] That appearance and that hearing was obviated by the RCMP actually attending and purporting to carry out their duties under the Criminal Code.
- [4] The position of the RCMP at the time was set out in by their legal representative, a man named Les Rose, who sent an email that included, in part, the following text:

... the RCMP does not require an Enforcement Order to respond to offences associated with protests unlawfully interfering with Galena's operations.

Indeed, we are engaged with respect to the matter and currently considering the full range of operational response including discussion and intervention; and we are fully prepared to use the extent of our powers under the Criminal Code to end any (illegal) activity associated with this protest.

[5] The plaintiff company was permitted, through the agency of the police, to begin to carry out their works at that time. The matter has not returned to the court until now. There are a number of reasons for this, some quite unrelated to the issues at hand.

[6] In the material assembled before the court on this occasion, there is an affidavit from Sergeant Darryl Little of the Royal Canadian Mounted Police at Nelson, British Columbia. He says, among other things, at paragraph 5 of his affidavit:

I make known to the Court my efforts on behalf of the RCMP to resolve the illegal activity in relation to this matter and maintain the rule of law, specifically the offence of Mischief under Section 430(1)(c) of the Criminal Code of Canada.

[7] He deposes that on June 19, 2013:

On learning of this allegation, I immediately directed a criminal investigation to be initiated resulting in the discovery of evidence and documentation confirming the offences referred to in paragraph 5.

[8] In paragraph 9, he says:

I fully investigated the facts concerning the allegations as described above in paragraph 5 and I have concluded that the offences have been made out.

[9] He describes, in several other paragraphs, the specific encounters the police had with those who were purporting to block the road at that time. The protestors were advised that they would be arrested for mischief.

[10] Sergeant Little says at paragraph 12:

I have communicated the details of this situation to RCMP Criminal Operations in Surrey, BC, and I understand this information has been relayed to BC's First Nations leadership. I further understand that the BC First Nations - Police Public Safety Protocols to resolve potential conflict have not been invoked.

[11] He says further at paragraph 13:

Once I had established reasonable grounds of a breach of criminal law and gathered all pertinent information and evidence in the context of the situation, the RCMP prepared a Report to Regional Crown Counsel . . . for review and approval of charges relative to the individuals under the applicable section of the Criminal Code. The report was delivered to Crown Counsel on August 2, 2013 recommending a charge of Mischief against three individuals.

14. On January 8, 2014, I was advised by Regional Crown Counsel that based on the RCMP's RTCC submission criminal charges pertaining to arrests in this situation would not be approved by Crown Counsel.

[12] Sergeant Little points out that the Crown's position must inform police discretion in taking any criminal law enforcement action in this matter, in the absence of civil process.

- [13] Sergeant Little accordingly, on January 10, 2014, advised Galena Contractors Ltd. that the RCMP's hands were tied with respect to criminal law enforcement and that the only enforcement action they could take would be by way of civil injunction, accompanied by an enforcement order.
- [14] There is nothing before me from Crown counsel to suggest what guided their exercise of discretion to refuse to follow the recommendation of the RCMP that criminal charges be laid in this matter. It may be that they are following the guideline worked out many years ago for matters of this kind, reflecting the Attorney General's preference that this kind of unlawful activity be treated as if it is not unlawful, but that it be treated by the courts as if it is a civil problem between individuals that does not engage the public law. As long ago as *Slocan Forest Products Ltd. v. John Doe, Jane Doe, and Persons Unknown*, 2000 BCSC 150, I have been specifically critical of this stance.
- [15] I am proceeding *ex parte* on this occasion because I am satisfied that the situation is urgent and that, on its face, as I explained long ago in *Slocan Forest Products*, this is not a case that can properly be characterized as a dispute between two parties. A civil dispute implies a disagreement about the parties' legal rights in a specific context. As is manifest from the DVD that was shown in court this morning, the defendants, in the person of a man identified to me as Dennis Zarelli, do not assert a legal right against Galena Contractors Ltd. who have the legal right to build the road in accordance with their contract with the Government of British Columbia. They assert a right that has been addressed in *Campbell v. British Columbia*, 2012 BCCA 274. That was a case that involves a number of the same people named in this proceeding, and the bottom line is that on that occasion the representative right that was asserted, and is apparently asserted in this case on behalf of the Sinixt Nation, was not legally recognized.
- [16] That is to say that in the circumstances, as they appear on the material before the court, there is no lis between the parties and it is not really a matter of addressing *RJR Nabisco*, or *Wale v. A.G.B.C.*, and talking about balance of convenience or anything of that nature. It appears the plaintiff has a strong case that there is no legal right asserted by the parties that can be used to impede their progress.
- [17] I expressed my reluctance in July of 2013 to issue an injunction and my preference that, on the basis that all citizens are equal before the law, the criminal law be applied equally. That is to say that Galena Contractors has the benefit and the protection of that law, and ought to be able to call it in aid of putting an end to obstructions of their lawful rights by persons who do not have a right to do so.
- [18] It is a matter of considerable concern to me that the police have recommended charges under the Criminal Code, but the Crown, after taking several months, have decided they would rather not.

- [19] I am going to direct that the plaintiff send to the Regional Crown counsel concerned a copy of the DVD filed in this proceeding, which I think, among other things, shows that the Crown's position in this matter is being interpreted as somehow a positive endorsement of the activities of the defendants. There could hardly be anything more corrosive to the rule of law.
- [20] The Crown's apparent preference for turning these matters into contests not between those who have committed an illegal act and society, but with the judge, is highly regrettable. It is the standard in our law that injunctions are a last resort, not a first resort.
- [21] All citizens should have the benefit of the Criminal Code and should not be forced to seek court improvised criminal law on a case-by-case basis at, I may add, their own expense.
- [22] The affidavit of Sergeant Little also alludes to a protocol between the police and the First Nations. The suggestion is that it is not being evoked in this case. Any judge being asked to issue an injunction in a context where an aboriginal right is being asserted must be concerned about that protocol as well. I have had to deal with that in a case in 2013 in *Smithers*. There is reason to be very concerned when the court issues injunctions of this kind generally, and specifically in connection with aboriginal protests, that the police will invoke the concept of operational discretion to do nothing. This puts the court in the position of having issued an order that is not being enforced. This is, again, radically corrosive to the rule of law.
- [23] In view of the position taken by the Crown in this case and the urgency that has been identified with the equipment necessary to carry out Galena Contractors Ltd.'s work on the site, I am prepared to issue an injunction on a time-limited basis.
- [24] I will grant the injunction sought in its terms, that is, as to the draft paragraphs 1 and 2, which are the standard injunction provisions.
- [25] With respect to the police arrest provision, I have explained to counsel that I take the view that that places the police in the role of an agent for the court which should be avoided, and that the appropriate order is therefore that when the peace officer arrests or removes any person pursuant to this order, they be brought immediately before the court.
- [26] There is an application before me, as well, for directions as to service of the order which, given the difficulty there apparently is in serving the various defendants, I think is appropriate and I grant the order in its terms. That is, there may be substitutional service as sought.
- [27] I previously directed that this matter be transferred to Nelson for all purposes. Apparently that has not yet been done. I direct that that occur, because those people who are interested in this matter, whether they have standing or not, are far more likely to be able to observe the proceeding, if not participate in it, if the matter is held in Nelson, and I think fairness dictates that that be where it is.

- [28] The injunction I am granting will either end or be extended on March 3rd, which is a date I fix for the return of this matter and for the return of any matters served on the defendants. On that occasion, I expect the RCMP to appear in the person of Sergeant Little to, if necessary, speak to his affidavit or be examined on it. I also expect a representative of the Regional Crown to appear to explain the position it has taken in this matter.
- [29] I issue the order of injunction, ex parte. It may be set aside or there may be an application to have it set aside on the date I have fixed, March 3rd, or earlier if a person with standing seeks to bring the matter before the court on five days' notice.
- [30] I issue the order I do with the enforcement provision built into it. I and other judges have said this before: I expect my order to be enforced from the moment it is pronounced. I expect it to be put in the hands of the RCMP immediately. I do not expect there to be a ceremony of reading the order and returning to court for a further order that suggests that the court really meant what it said the first time. I expect the police to enforce the order, to enable Galena Contractors Ltd. to get in and do what they must before the regulations that may change make that impossible, which is why I have created this two-week window.
- [31] If the RCMP fail to make this possible, I will expect to address that issue on March 3rd, if not before.

"McEwan J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/14/03/2014BCSC0324cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/galena-contractors-ltd-v-zarelli-2014>

Prepared on 28 October 2026 · Esheria