

CANADA / JUDGMENT

Morriss v. British Columbia (Attorney General)

2021 BCSC 2101

COURT

Supreme Court of British Columbia

DECIDED

28 September 2021

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2021 BCSC 2101 *Morriss v. British Columbia (Attorney General)* IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: *Morriss v. British Columbia (Attorney General)*, 2021 BCSC 2101 Date: 20210928 Docket: S208216 Registry: Vancouver Between: Sean Morriss Plaintiff And Her Majesty the Queen in Right of the Province of British Columbia as represented by the Attorney General Defendant Before: The Honourable Madam Justice Matthews (via telephone) Oral Reasons for Judgment In Chambers Plaintiff appearing on his own behalf: Sean Morriss (via telephone) Counsel for the Defendant: D.G. Cowie (via telephone) Place and Date of Trial/Hearing: Vancouver, B.C. September 28, 2021 Place and Date of Judgment: Vancouver, B.C. September 28, 2021

- [1] The defendant, Her Majesty the Queen In Right of British Columbia, has applied to set aside the default judgment obtained by the plaintiff, Sean Morriss. If that order is granted, it applies to dismiss the amended notice of civil claim and seeks declarations that Mr. Morriss has violated the November 3, 2010 order of Madam Justice Hyslop and that British Columbia has leave to enforce the costs awarded to the province in the November 3, 2010 order of Madam Justice Hyslop. It also seeks special costs.
- [2] I delivered these reasons orally. I have edited them without changing the substance.
- [3] On August 14, 2020, Mr. Morriss commenced this action. On July 9, 2021, he amended his notice of civil claim. The portions that I to refer to are the same in the notice of civil claim filed in August 2020 and the amended notice of civil claim. Paragraphs 1- 4 in the statement of facts section of the amended notice of civil claim read as follow:
1. In visiting the Gold Commissioner in Vancouver August 1974 I noticed an O.I.C. (?July 30, 1974?) stamp placed Mineral Claim Maps on Stein River Area wherein I had a Mine which had been sold for \$23,000,000.
 2. I was referenced to meet with the Deputy Minister of Parks, who requested me to postpone the sale of my Mine because the Government was desirous of making the area into a Wilderness Park.

3. The purchasers concurred with delaying the closing of their Purchase of this Mine.
4. Now started the Merry Go Round.
- [4] Thereafter, in the statement of facts, Mr. Morriss' claim recites facts about various legal proceedings he has brought since the mid '70s pertaining to his mineral claim rights in the Stein Valley and his allegations that British Columbia's steps to make the area into a park interfered with his deal to sell his mining claim rights for \$23 million. In the relief sought section of the amended notice of civil claim, he seeks:
6. Payment of \$23,000,000, with Compound Interest starting from request by Defendant for me to not sell the Stein River Mine in August 1974.
- [5] Mr. Morriss has brought claims in this court pertaining to his mining rights in the Stein Valley on many occasions. Two of those claims were the subject of an order made by Madam Justice Hyslop in 2010. The first is Kamloops registry Action Number 28745 and the second is Kamloops registry Action Number 30222. Both of the statements of claim in those actions contain 33 paragraphs which are identical and relate to "various mining claims to be staked and filed, with ongoing staking well into 1979, pursuant to the governing legislation of the province of British Columbia". The claims relate to Mr. Morriss' alleged agreement to sell his rights or mining operation for \$23 million that he alleges was brought to a halt when British Columbia sought to develop a wilderness park in the Stein Valley.
- [6] On November 3, 2010, Madam Justice Hyslop made a consent order in Action Number 28745, which says as follows: THIS COURT ORDERS:
 1. This action is hereby dismissed, and the Plaintiff will pay the Defendant her costs of this action, inclusive of costs in the aforesaid action, 30222, fixed in the amount of \$50,000.00, inclusive of disbursements.
 2. The Plaintiff, known also as Kenneth Sidney Morriss, is hereby declared to be a person who has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court against the Defendant, members of the Executive Council, and officers, employees, and agents of Provincial government in respect of his rights, as he alleged them to have been, on certain mineral claims located on land in or near the Stein Valley Nlaka'pamux Heritage Park in British Columbia, in this action and the said action, 30222, and other proceedings.
 3. The Plaintiff must not commence any legal proceedings in any Court against the Defendant, and any members of the Executive Council or any officers, agents, solicitors, representatives, or employees of the government of British Columbia:
 - a) for any cause of action alleged in the Statement of Claim or any of the Amended Statements of Claim in this action or in action 30222 or for any cause of action for any act or omission whatever in respect of the facts alleged in the Statement of Claim or any of the Amended Statements of Claim in this action or Action 30222, or

- b) for any act or omission alleged to be or have been related in any way to any mineral claims alleged by the Plaintiff to be or to have been owned by him, whether or not described in any pleading in this action,
 - i) located at any time within the present boundaries of the Stein Valley Nlaka'pamux Heritage Park in British Columbia as depicted on the map annexed as Schedule A to this Order, or ii) located or recorded before December 31, 1990 within 10 kilometres in any direction of the Stein Valley Nlaka'pamux Heritage Park, or any rights associated in any way with such mineral claims, without leave of the Court.
4. The enforcement of the Order of Costs in Paragraph 1 shall be stayed during the time that the Plaintiff complies with Paragraph 3 of this Order, and the Defendant shall have leave to enforce the Order of costs summarily and without further order of the Court upon the Plaintiff commencing any proceeding contrary to Paragraph 3.
- [7] When the defendant was served with the notice of civil claim in this proceeding, it advised the Supreme Court of British Columbia registry that the claim was in contravention of a vexatious litigant order, pursuant to Administrative Notice 16 of this court issued on August 15, 2018. That notice provides: A person who is served with or otherwise becomes aware of process or materials filed by a vexatious litigant who has not obtained prior leave of the Court, should bring this circumstance to the attention of the local registry. The Court may issue an ex mero motu order declaring the process filed to be a nullity or may make other such order as the circumstances require.
- [8] The defendant British Columbia also advised the registry that because the action had been commenced in contravention of the order of Madam Justice Hyslop, it would not be filing a response to the action.
- [9] It appears that the court did not take the steps described in the Administrative Notice 16. Mr. Morriss then proceeded to bring a without notice application for default judgment on the basis that no response had been filed. He obtained default judgment. If British Columbia's application to set aside the default judgment is not allowed, Mr. Morriss has an application pending to have damages assessed based on his default judgment.
- [10] During his submissions, Mr. Morriss conceded that the subject matter of his current claim overlaps with the claims he has been making since the 1970s, including the claims in the two Kamloops actions. One of those claims resulted in the November 2010 order of Madam Justice Hyslop, and the other claim is referred to in that order.
- [11] Mr. Morriss submits that British Columbia's relief should not be granted because Madam Justice Hyslop's order was obtained fraudulently. He asserts that he did not give instructions to consent to the order and that he had fired the lawyer who signed the order on his behalf. He also asserts that the lawyer for British Columbia who signed the consent order was "ejected" from the Court of Appeal. It is not apparent to me what relation that latter statement has to the validity of Madam Justice Hyslop's order.

- [12] In any event, there is no evidence before me that Madam Justice Hyslop's order was obtained fraudulently.
- [13] Mr. Morriss also says that he discontinued the Kamloops claim or claims (I am not sure whether one or two) because he was blackmailed and was told that he would not be able to proceed with other mining interests, not in the Stein Valley, while he continued with the litigation. He asserts that he acceded to that blackmail so he could work his other mines.
- [14] Mr. Morriss has filed an affidavit. I confess to not understanding that he has set out all of the facts I have related in that affidavit. Certainly, in the affidavit, he refers to lawyers being ejected from the Court of Appeal; and he refers to meetings with the Superintendent of Mines, which I understand to be the blackmail to which he refers. However, I did not see in his affidavit any evidence that the order of Madam Justice Hyslop was obtained fraudulently or without his consent, against his instructions, by a lawyer who he had fired.
- [15] Mr. Morriss also submitted that the issue that triggered his new claim, the one that is now before the court, was that he read in a newspaper, or on the internet, about a treaty negotiated with the Stó:lo Nation. I do not understand that treaty to have anything to do with mineral rights or the order made by Madam Justice Hyslop.
- [16] Notwithstanding this submission, it is clear to me that the subject matter of the claim in this action falls within the order of Madam Justice Hyslop and is a claim precluded by that order. For that reason, this action was not properly brought.
- [17] I set aside the default judgment entered on August 30, 2021. I dismiss the amended notice of civil claim. I declare that Sean Morriss has violated the November 3, 2010 order of Madam Justice Hyslop issued in Kamloops registry, File Number 28745. British Columbia has leave to enforce the costs awarded to the Province in the November 3, 2010 order of Madam Justice Hyslop issued in Kamloops registry, File Number 28745.
- [18] British Columbia also seeks an order for special costs, on the basis that Mr. Morriss has been in communication with counsel for British Columbia for a significant period of time, including before this application and during the time after which he had commenced the action. Notwithstanding that, he moved for default judgment without notice to British Columbia. British Columbia asserts that considering the order of Madam Justice Hyslop, his conduct has been reprehensible and is deserving of rebuke of the court. I agree with that submission and I order British Columbia to have special costs of this application.
- [19] Those are the conclusion of my reasons.
- [20] Mr. Cowie, I direct you to draft the order. I direct you to send it to Mr. Morriss. Mr. Morriss, you shall sign the order, unless you believe it is not consistent with the order I have just made. If you sign the order, you shall send it back to Mr. Cowie within seven days of receiving it. If you are not prepared to sign the order, you shall respond to Mr. Cowie, within seven days of receiving the order, with the reasons why. If you have responded with reasons as to why you will not sign the order or if you have not responded within seven days, Mr.

Cowie is at liberty to forward the order to me, with any feedback you have provided on the order, and I will settle the terms of the order. If you sign the order, Mr. Cowie will have it entered and provide you with an entered copy.

[21] CNSL D. COWIE: Very good. Thank you, My Lady.

[22] SEAN MORRISS: My Lady, it's Sean Morriss here.

[23] THE COURT: Yes.

[24] SEAN MORRISS: Yes. At the start of this just now, you mentioned about that if I wanted to have a written thing of this, that they can please ask.

[25] THE COURT: You may order the transcript of my reasons and they will be --

[26] SEAN MORRISS: Yes. Yes.

[27] THE COURT: -- transcribed.

[28] SEAN MORRISS: Yes. Thank you.

[29] THE COURT: All right. Thank you. We are adjourned.

[30] SEAN MORRISS: Thank you.

[31] THE COURT: Order in chambers. Chambers is adjourned. "Matthews J."

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