

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2022 BCSC 505

COURT

Supreme Court of British Columbia

DECIDED

1 February 2022

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2022 BCSC 505 Teal Cedar Products Ltd. v. Rainforest Flying Squad IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Teal Cedar Products Ltd. v. Rainforest Flying Squad, 2022 BCSC 505 Date: 20220201 Docket: S211602 Registry: Vancouver Between: Teal Cedar Products Ltd. Plaintiff And Unknown Persons operating as the "Rainforest Flying Squad", Robert Arbess (also known as Reuben Garbanzo), John Doe, Jane Doe, and Persons Unknown Defendants And British Columbia (Ministry of Forests, Lands, Natural Resource Operations and Rural Development) Third Party Before: The Honourable Justice Thompson Oral Reasons for Sentence re Holly Wu Counsel for the Crown: M. Crisp R. Robinson Counsel for Contemnor: N. Ross B. Isitt, A/S Place and Date of Hearing: Nanaimo, B.C. February 1, 2022 Place and Date of Judgment: Nanaimo, B.C. February 1, 2022

- [1] THE COURT: Ms. Wu has admitted criminal contempt of the April 2021 injunction order. On 19 May 2021, Ms. Wu was on a road within the injunction area. She placed herself inside a metal culvert that was located in the middle of the road. She had an arm inside a device known as a "sleeping dragon." The device went through a hole in the metal culvert and into the ground. The purpose of a sleeping dragon device is to hinder efforts to remove persons on the roads that they are obstructing. In Ms. Wu's case, it took the RCMP considerable time and effort to extract her from this device and the presence of the culvert complicated those efforts.
- [2] Like so many others that I have sentenced to this point, Ms. Wu is a first offender. She graduated high school with honours and plans to study Environmental Planning. She has volunteered cleaning up beaches. She has worked for some years now as a server. She is currently earning \$2500 per month, but since the pandemic began she has been laid off from three jobs. She has little in the way of savings.
- [3] Through counsel, Ms. Wu explains her actions that led to the criminal contempt finding. She felt an obligation to take urgent action in relation to deforestation, particularly the logging of old growth, because of its effects on climate change - a matter that she characterizes as - I think accurately - a defining issue of our time.

- [4] The Crown takes the position that a \$2250 fine or 75 hours of community work service is a fit sentence. The Crown likens this case to that of Soobin Kim, who received a \$2250 fine. Mr. Kim was also in a sleeping dragon device, although he was entrenched in the roadway.
- [5] Ms. Wu's position is that a \$1500 fine with \$500 suspended would be an apt disposition. Mr. Ross notes that Ms. Wu's arrest occurred on the second day of enforcement and that Ms. Wu has made an early admission of criminal contempt. He urges comparison to the cases of Nicole Jaques and Logan Brisson, each of whom had an arm in a sleeping dragon. Ms. Brisson's sleeping dragon was secured in the ground; she also used some chains, although they were easily removed.
- [6] The principles of sentencing that apply to criminal contempt cases such as the one at bar are not controversial, and are summarized in the Crown's written submission which has been marked as an exhibit. Denunciation and deterrence are the principal sentencing considerations, but the sentence must be proportionate to the gravity of the contumacious act and the circumstances of the individual contemnor.
- [7] Counsel have accurately defined the two narrow issues in this case: (1) whether, having regard to the principle of parity, this is a case like the Jaques case or the Brisson case, or whether the Miranda Holliday or Soobin Kim cases are more apt comparators; and (2) should any portion of the fine be suspended?
- [8] On the first issue, I find that the presence of the metal culvert and the extra challenges that extraction entailed because of it puts the case on the Holliday/Kim side of the line. I think it roughly accords with the circumstances in Ms. Holliday's case: she was another early arrestee, and she had covered her sleeping dragon with a steel plate and a vehicle. On the second issue, I think it is appropriate to suspend a portion of the fine. Ms. Wu's means and income are quite modest and she has endured recent employment setbacks during the pandemic.
- [9] Ms. Wu, your sentence is a \$2250 fine, of which \$750 is suspended on conditions.
[DISCUSSION RE TIME TO PAY THE FINE]
- [10] The conditions of the suspension of one-third of the fine are as follows. First, Ms. Wu must not breach any court order in relation to the injunction area or commit any offence in the injunction area for a period of six months from today. Second, she must pay the \$1500 remainder, i.e. the non-suspended portion of the fine, within six months. "Thompson J."

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