

CANADA / JUDGMENT

Teal Cedar Products Ltd. v. Rainforest Flying Squad

2022 BCSC 515

COURT

Supreme Court of British Columbia

DECIDED

28 February 2022

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2022 BCSC 515 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 515

Date: 20220228

Docket: S211602-3

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 Judgment re Emily Kane

Counsel for the Crown:

M. Crisp

R. Robinson

Counsel for the Alleged Contemnor:

G. Diamond

Place and Dates of Trial:

Nanaimo, B.C.

February 24-25, 2022

Place and Date of Judgment:

Nanaimo, B.C.

February 28, 2022

[1] THE COURT: Emily Kane is alleged to have committed criminal contempt of this Court's injunction order pronounced on 1 April 2021. In particular, she is said to have wilfully breached in a public way the term of the order that:

The Defendants and anyone having knowledge of the Court's order, are restrained, enjoined and prohibited from:

- (a) impeding, physically obstructing, or in any way interfering with any person, including any member of the public, from gaining access to or egress from, or otherwise making use of any road situate within the [defined injunction area].

Ms. Kane is not a defendant in this action; she is alleged to be a person "having knowledge of the Court's order."

[2] Ms. Kane has made various admissions. There is only one issue in this case: whether the Crown has proved beyond reasonable doubt that Ms. Kane knew or was wilfully blind to the fact that there was a court order in place that prohibited her from blocking the road. For the reasons that follow, I conclude the Crown has carried this burden of proof. It follows that Ms. Kane has committed criminal contempt of court.

- [3] The facts material to my conclusions can be simply stated. On 26 May 2021, Ms. Kane was laying down under a tarp on a forest service road in the injunction area. One of her arms was in a section of PVC tube that was inserted into the ground - this apparatus is known as a "sleeping dragon."
- [4] There is a video recording in evidence of Staff Sergeant Jeffrey Ausmus speaking to Ms. Kane and a fellow protestor situated about five feet away from Ms. Kane. This fellow protestor was also on the road; she, too, was under a tarp with one arm in a sleeping dragon. S/Sgt. Ausmus' role was to give notice of the injunction order to the alleged contemnors, and give them an opportunity to release themselves from the devices (which they had the capacity to do) and discontinue blocking the road. If the alleged contemnors chose not to do so, he was to advise them that they were under arrest.
- [5] S/Sgt. Ausmus carried out his notice-giving role at a distance of about eight feet from the two alleged contemnors. He removed his COVID mask and confirmed that he could be clearly heard. He was in RCMP uniform, as were other nearby police officers. S/Sgt. Ausmus introduced himself and then read an announcement from a prepared script. A copy of the script is in evidence, and when reading from the announcement, the video recording discloses that S/Sgt. Ausmus deviated only slightly and inconsequentially from the script. He said:

There is a civil injunction order in place issued by the Honourable Mr. Justice Vanhoveen (sic) of the British Columbia Supreme Court. Be informed by you blockading this road and preventing Teal Cedar and their contractors from conducting their operations, you are in breach of the injunction order. I ask you step aside and remove the blockade or you will be arrested for civil contempt of court. By not stepping aside, I confirm you understand your jeopardy.

- [6] Unlike many other similar injunction orders, this order does not contain terms about service or notice. The police script directed the reader to ensure that while the announcement is being read that the contemnors are served with a copy of the "full order." This direction on the script was not carried out.
- [7] S/Sgt. Ausmus testified that he had no concerns about the alleged contemnors' ability to hear him when he read the announcement, and I find that they did in fact hear him. After reading the script, he asked each of the two women in turn if they were willing to step aside. After they declined, each was placed under arrest. There is no evidence that either of the two women ever received a copy of the injunction order or had the order or any part of the text of the order read to them.
- [8] The object removal team set to the task of securing the release of the two women from their sleeping dragons. Ms. Kane was turned over to a two-person RCMP arrest team and transported to a mobile police detachment.

- [9] The Crown led evidence of an earlier nearby arrest and removal of persons walking the same road and put in evidence a batch of media reports referring to the injunction during the period from 1 April 2021, the date the order was made, to 26 May 2021, the date of Ms. Kane's arrest. These pieces of evidence were groundwork for alternative Crown arguments relying on circumstantial evidence or wilful blindness to prove knowledge of the terms of the injunction.
- [10] Ms. Kane elected not to call evidence.
- [11] The following principles emerge from the authorities cited by counsel:
1. The Crown need not prove personal service of a copy of the injunction order or that the terms of the order were read to Ms. Kane, but the Crown is required to prove beyond reasonable doubt that she had actual personal knowledge of what was prohibited by the order at the time she contravened it: *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at 224-226; *Carey v. Laiken*, 2015 SCC 17 at para. 32; *MacMillan Bloedel Ltd. v. Simpson*, [1994] B.C.J. No. 542 at para. 14 (S.C.). I note that the phrases "actual personal knowledge," "actual knowledge," and "actual notice" are used synonymously and interchangeably in the caselaw.
 2. The Crown is not required to prove knowledge of the precise formal language in the order. It is sufficient if the accused knew that her actions were forbidden under the order: *British Columbia Telephone Co. v. Telecommunications Workers' Union* (1981), 121 D.L.R. (3d) 326 at 335 (B.C.S.C.).
 3. Knowledge may be inferred from the circumstances or by invoking the wilful blindness doctrine: *Carey v. Laiken*, at para. 32.
- [12] Rule 22-8(14) of the Supreme Court Civil Rules reflects the common law jurisprudence that service of an order is not required to prove contempt of court:
- If the court is satisfied that a person has actual notice of the terms of an order of the court, it may find the person guilty of contempt for disobedience of the order, even though the order has not been served on the person.
- [13] The Crown submits that the contents of S/Sgt. Ausmus' announcement is sufficient proof of actual notice. In the alternative, the Crown argues that the circumstances surrounding the contravention of the order or wilful blindness in relation to the order constitute proof beyond reasonable doubt of the requisite knowledge.
- [14] The accused argues that in the circumstances of this case the police decision not to provide a copy of the order or to read its material terms leaves the Crown falling short of being able to prove actual notice. And, she submits that neither the circumstantial evidence led in this case nor the doctrine of wilful blindness can result in sufficient proof of her knowledge of the material terms of the order.

- [15] During his brief announcement to Ms. Kane and her fellow protestor, S/Sgt. Ausmus delivered three clear messages. First, there was an injunction order in place. Second, by blockading the road and preventing Teal Cedar and their contractors from conducting their operations, the women were in breach of the order. Third, if they did not step aside they would be arrested for contempt.
- [16] While it would have eased the Crown's burden of proving notice if the police had read the material provisions of the order or followed the direction on their script to serve a copy of the full order on Ms. Kane, I am satisfied that S/Sgt. Ausmus clearly and accurately conveyed to Ms. Kane in plain language that there was an injunction order in place and that it was a breach of the order to blockade the road. I am satisfied beyond reasonable doubt that Ms. Kane thereby had actual notice of the term of the order that prohibited her from impeding, physically obstructing, or in any way interfering with any person, including any member of the public, from gaining access to or egress from or otherwise making use of any road situate within the injunction area.
- [17] During his able submissions, Mr. Diamond referred to *MacMillan Bloedel Ltd. v. Simpson*, [1996] 2 S.C.R. 1048 at paras. 7 and 41, in support of his policy argument favouring a practice of reading the Court's order to contemnors. In particular, he argued that reading the order may lead to some contemnors having a greater appreciation of their jeopardy and deciding to peacefully leave a blockade, and that reading the order is fairer because contemnors would not need to take the word of the police about the content or meaning of the order.
- [18] For my decision on the narrow issue presented in this case, it is not necessary to address what might be best police practices to ensure that contemnors have notice of the material terms of an injunction order. And, neither the failure to follow the police script by delivering a copy of the order, nor the police decision to read the scripted announcement rather than reading the order itself or reading the material portion of the order, directly bear on the issue of whether what was in fact said by S/Sgt. Ausmus to Ms. Kane amounts to sufficient notice. I conclude that the transmission of the fact that a court order was in place and the transmission of the material contents of that order - i.e., that the order prohibited obstruction of the road that Ms. Kane was blockading - via an announcement at close quarters in plain language from an evidently reputable source such as this officer of the RCMP is sufficient proof beyond reasonable doubt of actual notice.
- [19] Having reached this conclusion, it is unnecessary to address the evidence led or the arguments advanced about whether there is sufficient circumstantial evidence of notice or whether the doctrine of wilful blindness ought to be invoked.

"Thompson J."

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Prepared on 28 October 2026 · Esheria