

Federal Court



Cour fédérale

Date: 20150119

Docket: T-1284-13

Citation: 2015 FC 68

BETWEEN:

WILLIAM LOUISON

Applicant

And

**OCHAPOWACE FIRST NATION,
312050 SASKATCHEWAN LTD., AND
MINISTER OF INDIAN AFFAIRS AND
NORTHERN DEVELOPMENT CANADA**

Respondents

REASONS FOR JUDGMENT

MACTAVISH J.

[1] For over a decade, the Ochapowace First Nation has been trying to evict William Louison from lands that he has occupied from as early as 1997. The First Nation's most recent effort involved serving a Notice to Vacate the property on Mr. Louison in July of 2013.

[2] In this Application, Mr. Louison challenges the Notice to Vacate, asserting that the lands in question are rightfully possessed by him as a descendant of the original holders of the land, and as a member of the Kahkewistahaw First Nation. Mr. Louison seeks an Order prohibiting the

Ochapowace First Nation from “dispossessing” him of the land that he occupies, arguing that the Ochapowace First Nation does not have a legitimate legal interest in the land.

[3] As his counsel conceded at the hearing, Mr. Louison is essentially trying to assert Aboriginal title to the lands in question. The Saskatchewan Court of Queen’s Bench has already determined in other proceedings between these parties that Aboriginal title is held communally, and that Mr. Louison does not have standing to assert Aboriginal title on behalf of the Kahkewistahaw First Nation. The Saskatchewan Court of Appeal upheld this finding, and the Supreme Court of Canada denied leave to appeal that decision.

[4] I agree with the respondents that Mr. Louison is attempting to re-litigate a legal issue that has already been finally determined against him by the Saskatchewan Courts. Consequently, Mr. Louison’s application for judicial review will be dismissed.

I. Background

[5] Mr. Louison was originally a member of the Ochapowace First Nation (Ochapowace Indian Band #71). On November 3, 1997, the Ochapowace First Nation Agricultural Board allocated a home to Mr. Louison on lands described as NE 3-17-3 W2. On May 8, 2001, Mr. Louison entered into an agricultural lease agreement with Ochapowace Land & Cattle Division. This lease ran from May 8, 2001 to November 1, 2003 with respect to the following lands: section 3-17-3 W2, NW and NE 2-17-3 W2M, S ½ 11-17-3 W2M, NW 11-17-3 W2M, N ½ 14-17-3 W2M, SW 14-17-3 W2M.

[6] The Ochapowace First Nation has the only legally recognized right to possess these lands, either as reserve lands, or through the “Specific Claim Trust”. The Specific Claim Trust is

the Band entity responsible for directing the operation of land through the respondent 312050 Saskatchewan Ltd., which holds fee simple title to certain of the lands at issue in this case.

[7] Shortly after taking possession of the property, Mr. Louison defaulted on his obligations under the lease. The Ochapowace Lands Office then began enforcement proceedings against him, initially seeking arrears of rent, and ultimately seeking possession of the lands.

[8] In 2003, Mr. Louison commenced proceedings in this Court against a number of defendants, including the then-Chief of the Ochapowace First Nation. Mr. Louison claimed that he was the beneficiary of certain trusts and interests under the Royal Proclamation relating to the lands in question. Mr. Louison sought payment for use of the lands, asserting that the Ochapowace First Nation had trespassed on his land. In response to motions brought by the defendants, Justice Rouleau struck Mr. Louison's Statement of Claim and dismissed the action. No reasons appear to have been provided for that decision.

[9] In 2007, Mr. Louison applied for, and was granted membership in the Kahkewistahaw First Nation (Kahkewistahaw First Nation #72). According to Mr. Louison's Notice of Application, he sought membership in the Kahkewistahaw First Nation "upon learning of the history of the land". Mr. Louison ceased to be a member of the Ochapowace First Nation on February 8, 2008.

[10] The dispute between Mr. Louison and the Ochapowace First Nation with respect to Mr. Louison's occupation of the lands in question remained ongoing. The Ochapowace First Nation continued with its efforts to remove Mr. Louison from the property, serving him with

additional Notices to Vacate in 2008, and again in 2009, although nothing appears to have occurred as a result of the service of these Notices.

[11] In 2009, Mr. Louison commenced proceedings in the Saskatchewan Court of Queen's Bench against the Ochapowace First Nation and 312050 Saskatchewan Ltd. in which he asserted "Indigenous title" to the lands in dispute.

[12] The defendants brought a motion to strike Mr. Louison's claim on the basis that he lacked standing to bring a claim of Aboriginal or "Indigenous title". This motion was granted: *Louison v. Ochapowace Indian Band #71*, 2011 SKQB 87, 369 Sask. R. 258 (*Louison #1*), aff'd by 2011 SKCA 119, 377 Sask. R. 19, leave to appeal refused [2011] S.C.C.A. No. 533, C.S.C.R. No. 533.

[13] In granting the defendants' motion to strike, the Saskatchewan Court of Queen's Bench noted Mr. Louison's claim that "Indigenous title" was different from Aboriginal title in that "Indigenous title" is both an individual and a communal right. The Court further noted that Mr. Louison purported to sue, not just in his personal capacity, but also "in a representative capacity on behalf of all Indigenous Peoples of Saskatchewan": *Louison #1*, above at para. 3.

[14] The Court nevertheless held that Mr. Louison's claim still related "first and foremost to a dispute between the plaintiff and Ochapowace regarding the plaintiff's continued occupation of lands specified in the claim": *Louison #1*, above at para. 4.

[15] The Court also addressed Mr. Louison's argument that the Ochapowace First Nation had no legally enforceable right to evict him, and that the lands in question had been settled by his ancestors.

[16] Citing the Supreme Court of Canada's decision in *Delgamuukw v. British Columbia*, [1997] 3 S.C.R. 1010, at para. 115, 153 DLR (4th) 193, the Court observed that "a dimension of Aboriginal title is the fact that it is held communally": *Louison #1*, above at para. 8. The Court acknowledged Mr. Louison's novel claim to "Indigenous title" that was somehow different from Aboriginal title. The Court found, however, that Mr. Louison had "laid no factual foundation upon which the court could ever come to such conclusion": *Louison #1*, above at para. 8.

[17] The Court also noted that the Ochapowace First Nation "has the only legally recognized right to possess the subject lands", and that Mr. Louison had "no legal basis upon which he [could] purport to represent the interests of others": *Louison #1*, above at paras. 6 and 7.

[18] The Saskatchewan Court of Queen's Bench thus concluded that Mr. Louison's claim was "clearly misguided and [could] not succeed": *Louison #1*, above at para. 9. Consequently, the defendants' motions to strike were granted, and the claim was dismissed, with an award of double costs to the defendants. As noted earlier, this decision was subsequently upheld by the Saskatchewan Court of Appeal, and leave to appeal was refused by the Supreme Court.

[19] After Mr. Louison's application for leave was dismissed by the Supreme Court, a quorum of the Ochapowace First Nation's Chief and Council issued a fresh Notice to Vacate to Mr. Louison, asking him to leave the lands by July 17, 2013. The Notice was served on Mr. Louison on July 10, 2013, citing the following reasons in support of the decision:

- a. Mr. Louison ceased being a member of the Ochapowace First Nation in February 2008 by his own choice;
- b. Mr. Louison received letters to vacate in 2008 and 2009 but refused to comply;
- c. Mr. Louison did not hold a valid lease to the lands to which he lays claim, including NW & NE 2-17-3 W2,

SE &SW 11-17-3 W2, NW 11-17-3 W2, NE &NW 14-17-3 W2, SW 14-17-3 W2, SW&NW 13-17-3 W2;

- d. The Supreme Court of Canada refused to grant leave from the Saskatchewan Court of Appeal's judgment dismissing Mr. Louison's claim to the land; and
- e. Mr. Louison violated section 4 of Ochapowace First Nation By-Law No. 2005.01 regarding trespass.

[20] It is this Notice that underlies Mr. Louison's application for judicial review.

[21] Before concluding my review of the history between these parties, it should also be noted that the respondents have now commenced proceedings against Mr. Louison in the Saskatchewan Court of Queen's Bench in which they seek to evict Mr. Louison from the lands in dispute. On December 6, 2013, these proceedings were adjourned *sine die*, pending this Court's decision in the present case: *Ochapowace Indian Band #71 v. Louison*, 2013 SKQB 428, [2013] S.J. No. 764.

II. Mr. Louison's Arguments on this Application for Judicial Review

[22] As a preliminary matter, it should be noted that although the Minister of Indian Affairs and Northern Development Canada was originally named as a respondent to this application, Mr. Louison has since discontinued the proceeding as against the Minister.

[23] Mr. Louison asserts in his Notice of Application that the lands in dispute are "rightfully possessed by [him] as member of the Kahkewistahaw First Nation and descendant of the original holders of the land". After reviewing what he says is the history of the land, he asserts, amongst other things, that the respondents' interests in the lands are "illegitimate" as the land "is the traditional land of [the predecessor to] the Kahkewistahaw First Nation".

[24] In his July 25, 2013 affidavit, Mr. Louison explains that he claims occupancy of, and the right to use the disputed lands “because of [his] historic connection to the land as a member of the Chief Kahkewistahaw Band, now known as Kahkewistahaw First Nation #72, and through the prior occupancy by my family”: at para. 17.

[25] Mr. Louison explains that his great-great-grandfather was the hereditary chief of the Kahkewistahaw, who were signatories to Treaty No. 4, and that the lands in question form part of traditional Kahkewistahaw lands.

[26] In his memorandum of fact and law, Mr. Louison asserts that the lands in dispute were unlawfully taken from the Kahkewistahaw First Nation in violation of Treaty No. 4 and the *Indian Act*, S.C. 1880, c. 28. According to Mr. Louison, there was never any surrender of the lands by Chief Kahkewistahaw, with the result that a subsequent transfer of the lands to a predecessor of the Ochapowace First Nation was illegal. As a consequence, Mr. Louison submits that “the Ochapowace First Nation’s authority to evict [him] is not well founded as [the] Kahkewistahaw First Nation is the proper administrator of the land”.

[27] Central to Mr. Louison’s current application is thus his claim that the Ochapowace First Nation lacks the legal authority to evict him because the Kahkewistahaw First Nation holds Aboriginal title to the lands in question. Indeed, in response to a question from the Court, counsel for Mr. Louison acknowledged that Mr. Louison was essentially trying to establish Aboriginal title to the lands through this Application.

[28] The lands in issue are currently either reserve lands of the Ochapowace First Nation, or lands held in fee simple by a company that the Ochapowace First Nation controls. For

Mr. Louison's application to succeed, he would have to demonstrate that despite this, it is the Kahkewistahaw First Nation that holds Aboriginal title to the lands.

[29] The Chief of the Kahkewistahaw First Nation has, however, confirmed that the Kahkewistahaw First Nation has not asserted any claim to the disputed lands, and has, moreover, declined Mr. Louison's request to become involved in these proceedings.

[30] The Chief of the Kahkewistahaw First Nation has also confirmed to the Chief of the Ochapowace First Nation that the Kahkewistahaw First Nation will not challenge the Ochapowace First Nation's claim to Aboriginal title to, and its use of, the lands in question, although it may claim compensation from the Federal Government under the Specific Claims Policy.

[31] In these circumstances, the only way Mr. Louison could succeed in his application would be if he has standing to assert Aboriginal title to the lands in dispute. This issue has, however, already been finally decided as between these parties by the Saskatchewan Courts, and the Supreme Court of Canada has declined to intervene. Mr. Louison has, moreover, not demonstrated any reason why the findings of the Saskatchewan Courts should not apply in this case: *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19, [2013] 2 S.C.R. 125.

[32] While Mr. Louison may well feel a strong connection to the lands of his ancestors, he does not have the requisite legal standing to assert a claim for Aboriginal title to those lands on behalf of the Kahkewistahaw First Nation. Consequently, his application is dismissed.

III. Costs

[33] Mr. Louison shall have one week in which to make written submissions on the question of costs and the respondents shall have a further week in which to respond, following which an order will issue.

"Anne L. Mactavish"

Judge

Ottawa, Ontario
January 19, 2015

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1284-13

STYLE OF CAUSE: WILLIAM LOUISON v OCHAPOWACE FIRST NATION, 312050 SASKATCHEWAN LTD., AND MINISTER OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT CANADA

PLACE OF HEARING: REGINA, SASKATCHEWAN

DATE OF HEARING: JANUARY 12, 2015

REASONS FOR JUDGMENT: MACTAVISH J.

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