

Federal Court



Cour fédérale

**Date: 20150217**

**Docket: T-1284-13**

**Citation: 2015 FC 195**

**Ottawa, Ontario, February 17, 2015**

**PRESENT: The Honourable Madam Justice Mactavish**

**BETWEEN:**

**WILLIAM LOUISON**

**Applicant**

**and**

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

**Respondents**

**REASONS ON COSTS AND JUDGMENT**

[1] In Reasons dated January 19, 2015, I dismissed William Louison's application for judicial review seeking to quash a Notice to Vacate that had been served on him by the Ochapowace First Nation. Mr. Louison argued that the lands in question were rightfully possessed by him as a descendant of the original holders of the land, and as a member of the Kahkewistahaw First Nation.

[2] Mr. Louison admitted before me that he was essentially trying to assert Aboriginal title to the lands in question. However, the Saskatchewan Court of Queen's Bench has already determined in other proceedings between these parties that Mr. Louison did 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: *Louison v. Ochapowace Indian Band #71*, 2011 SKQB 87, 369 Sask.R. 258, 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.

[3] I therefore concluded that Mr. Louison was attempting to re-litigate a legal issue that had already been finally determined against him by the Saskatchewan Courts, and that he did not have standing to assert a claim for Aboriginal title to those lands on behalf of the Kahkewistahaw First Nation. As a consequence, his application for judicial review was dismissed. What remains to be determined is the question of costs.

[4] The respondents submit that they should be entitled to their costs fixed at \$5,000. While recognizing that this may be at the upper end of the scale of costs ordinarily awarded against an individual litigant in an Aboriginal matter, the respondents say that such an award is justified in this case, given the manifest lack of merit of Mr. Louison's application and the fact that he has derived a substantial benefit from his lengthy and unlawful occupation of the lands in question.

[5] Mr. Louison says that I should consider his financial circumstances, and the fact that Prothonotary Lafrenière awarded him costs in the cause with respect to the respondents' unsuccessful motion to strike his Notice of Application. Mr. Louison also denies that he has derived as great a benefit from his occupation of the lands in dispute as the respondents contend.

[6] I have concluded that the respondents are entitled to the costs that they seek fixed in amount of \$5,000, inclusive of disbursements.

[7] There is conflicting evidence before me as to the extent of the benefit that Mr. Louison has enjoyed as a result of his occupation of the property in question. I do, however, understand him to concede that he has enjoyed the occupation of a house, the use of a workshop, and that he has been able to graze horses and harvest hay on at least a portion of the disputed lands.

[8] I do not have to resolve the conflict in evidence on this point. I agree with Mr. Louison that his application concerned the respondents' authority over the lands in question, and was not a claim by the respondents for damages arising out of his unauthorized use of the property. The question of what benefit Mr. Louison may have been derived from his use of the disputed lands is, in my view, better addressed in the context of the eviction proceedings currently before the Saskatchewan Court of Queen's Bench than in relation to the question of costs in this proceeding. That said, even if I were to accept Mr. Louison's evidence on this issue, there are other reasons why a substantial order of costs is nevertheless appropriate in this case.

[9] I attach little weight to the settlement offer that Mr. Louison made in November of 2013. The offer was open for only one day, and required the respondents to abandon other claims that they may have had against Mr. Louison for previous costs awards and an accounting of profits. The offer would, moreover, have allowed Mr. Louison to remain in possession of the property for an additional seven months after the date of the offer.

[10] Insofar as Prothonotary Lafrenière's costs order is concerned, I do not agree that Mr. Louison should receive a credit for the costs of that motion. Prothonotary Lafrenière

determined that Mr. Louison was entitled to his costs of the motion, in the cause, and not in any event of the cause. The effect of an award of costs of an interlocutory proceeding to a party in the cause is that the party will be entitled to his costs of the interlocutory proceeding, but only if he is ultimately successful in the underlying application: *Turner v. Canada*, [1989] F.C.J. No. 343. That is not the case here.

[11] As to Mr. Louison's financial circumstances, I understand him to now concede that his impecuniosity is not a relevant factor in the determination of the question of costs. I agree: see *Leuthold v. Canadian Broadcasting Corp.*, 2014 FCA 174, at para. 12, 462 N.R. 191.

[12] The factor to which I attached the greatest weight is the manifest lack of merit of Mr. Louison's application, and the fact that he was admittedly trying to re-litigate an issue that the Saskatchewan Courts have already finally determined against him.

[13] One purpose of an award of costs is to discourage unmeritorious litigation: *Apotex Inc. v. Syntex Pharmaceuticals International Ltd.* (1999), 176 F.T.R. 142 at para. 2, [1999] F.C.J. No. 1465, rev'd on other grounds 2001 FCA 137, [2001] F.C.J. No. 727. In this case, a full day was set aside for Mr. Louison's application, and it is evident from the Court record that the respondents were put to considerable expense in preparing for a hearing that was manifestly unmeritorious. In the circumstances, an award of \$5,000 in costs is warranted.

**JUDGMENT**

**THIS COURT ORDERS AND ADJUDGES that:**

1. This application for judicial review is dismissed, with costs to the respondents fixed in the amount of \$5,000.00.

"Anne L. Mactavish"  

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Judge

**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

**SUBMISSIONS ON COSTS CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO  
JUDGMENT AND REASONS DATED JANUARY 19, 2015**

**REASONS ON COSTS AND  
JUDGMENT:** MACTAVISH J.

**DATED:** FEBRUARY 17, 2015

**WRITTEN SUBMISSIONS BY:**

Adam N. Crocker

FOR THE APPLICANT

Mervin C. Phillips  
Leane Phillips

FOR THE RESPONDENTS  
OCHAPOWACE FIRST NATION AND  
312050 SASKATCHEWAN LTD.

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