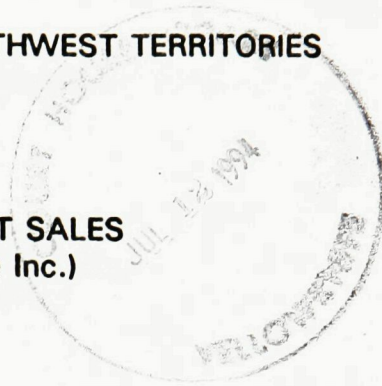


CV 04604

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ARROW-WEST EQUIPMENT SALES  
(a Division of Quip-Line Inc.)



Plaintiff

- and -

GIESBRECHT OILFIELD CONTRACTING LTD.  
and 923133 N.W.T. LTD.

Defendants

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Two related applications concerning the issue of a garnishee summons before judgment, pursuant to Rule 487.

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.E. RICHARD

Heard at Yellowknife, Northwest Territories  
on September 27, 1993

Reasons filed: November 12, 1993

Counsel for Plaintiff: Ken Allison

Counsel for Defendants: Scott Duke

02810 C

02810 C

IN THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

Case No. 88-024

Between

AMERICAN OVERSEAS AIRLINES, INC.

Plaintiff

and

Richard A. ...

Defendant

MEMORANDUM OF DECISION AND ORDER

ON DEFENDANT'S MOTION TO DISMISS

Defendant

Two to three paragraphs in length, including the name of a person or persons before judgment.

STATE A ...

Richard A. ...

...

Counsel for Plaintiff: ...

Counsel for Defendant: ...

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**BETWEEN:**

**ARROW-WEST EQUIPMENT SALES  
(a Division of Quip-Line Inc.)**

**Plaintiff**

**- and -**

**GIESBRECHT OILFIELD CONTRACTING LTD.  
and 923133 N.W.T. LTD.**

**Defendants**

**REASONS FOR JUDGMENT**

1        There are two applications before the court with respect to the issue of a garnishee summons before judgment, pursuant to Rule 487 of the Rules of Court.

2        A summary of the facts is necessary. The defendants Giesbrecht Oilfield Contracting Ltd. (Giesbrecht Ltd.) and 923133 N.W.T. Ltd (923133) are related companies. Both carry on business as logging contractors, Giesbrecht Ltd. in the province of Alberta and 923133 in the Northwest Territories.

3        In January 1993 Giesbrecht Ltd. rented certain equipment known as skidders from the plaintiff at Edmonton, Alberta. This equipment was used by 923133 in carrying out a logging contract in the Northwest Territories for Patterson Enterprises Ltd. in January-



March 1993. The reason Giesbrecht Ltd. and not 923133 entered into the equipment rental agreements with the plaintiff is that 923133 has no assets and no credit rating.

4 Pursuant to the equipment rental agreements, Giesbrecht Ltd. was to return the skidders to the plaintiff in a state of good repair. The plaintiff alleges that Giesbrecht Ltd. failed to do so, and that the plaintiff has suffered damage as a result. The plaintiff also alleges that Giesbrecht Ltd. has failed to pay the full amount of the rental payments owing to the plaintiff. The plaintiff accordingly commenced the within lawsuit on April 15, 1993 to recover from Giesbrecht Ltd. liquidated damages of \$43,461.30 plus additional unascertained sums.

5 On April 15, 1993 the plaintiff obtained, ex parte, an Order authorizing the issue of a garnishee summons before judgment naming Patterson Enterprises as garnishee. The garnishee summons was issued and served upon Patterson. It directs Patterson to pay into court any sums Patterson owes to Giesbrecht Ltd., up to \$43,461.30.

6 On July 19, 1993 Giesbrecht Ltd. filed an application in this court for an order setting aside the court's order of April 15, 1993 and the issuance of the garnishee summons dated April 16, 1993, stating, inter alia, that no monies are owed by Patterson to Giesbrecht Ltd., as alleged in the garnishee summons. Bill Giesbrecht, majority shareholder of both Giesbrecht Ltd. and 923133, states in a supporting affidavit that the Patterson contract was with 923133 and not Giesbrecht Ltd.

7 On July 9, 1993 the plaintiff commenced a separate lawsuit (CV 04767) against  
923133, alleging that it is 923133 that owes \$43,461.30 and additional sums to the  
plaintiff. On July 28, 1993 the plaintiff filed an application, firstly, for an order  
consolidating the two lawsuits and, secondly, for an order authorizing the issuance of a  
new garnishee summons naming Patterson as garnishee with respect to any monies  
owing by Patterson to 923133.

8 On August 6, 1993 the court granted an order consolidating the two lawsuits.

9 The applications presently before the court for determination, therefore, are

- (1) an application by Giesbrecht Ltd. to set aside the earlier garnishee  
summons;
- (2) an application by the plaintiff to have a new garnishee summons  
issued naming 923133 as Patterson's debtor.

10 The matter of the issuance of a garnishee summons before judgment, which is  
considered by the court to be an extraordinary remedy, is governed by Rules 487 and 488

of the Rules of Court:

**487.(1) Subject to subrule 488(1), a person who has obtained a judgment or order for the recovery or payment of money and a plaintiff in an action for debt or liquidated demand may issue a garnishee summons in Form 54 or 55 with such variations as circumstances may require, directed to one or more persons alleged to be indebted, either jointly or severally to the defendant or judgment debtor.**

**(2) The summons shall be issued by the clerk, upon the plaintiff or judgment creditor, his solicitor or agent, filing an affidavit**



- (a) showing the nature and amount of the claim against the defendant or the amount remaining due and unsatisfied under the judgment, and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor,
  - (b) stating that, to the best of the deponent's information and belief, the proposed garnishee, naming him, is indebted to the defendant or judgment debtor, or, if the moneys sought to be attached are wages or salary, that, to the best of the deponent's information and belief, the defendant or judgment debtor was or is employed by the garnishee and where and in what capacity the defendant or judgment debtor was or is so employed, and
  - (c) stating that the proposed garnishee is within the Northwest Territories and, where the garnishee has more than one office or place of business within the Northwest Territories, the place at which or the office through which the indebtedness is alleged to be payable.
- (3) The affidavit mentioned in subrule (2) shall not be deemed insufficient merely by reason of its having been sworn prior to the commencement of the action.
- (4) A copy of subrule (3) of Rule 488 shall be attached to or endorsed on each garnishee summons purporting to attach wages or salary.
- (5) No garnishee summons shall be set aside for irregularity unless, in the opinion of the court, there has been a substantial non-compliance with these Rules.
- (6) Subject to section 5 of the *Public Service Ordinance*, a garnishee summons may be served, whether on the garnishee, defendant or judgment debtor, in any way that a statement of claim may be served and the provisions relating to the manner of service of a statement of claim apply to service of a garnishee summons.
- 488.(1) Subject to subrule (2), proceedings by way of garnishee summons to attach a debt due or accruing due to a person for or in respect of his wages or salary shall be taken only where the claim of the creditor against the debtor is upon a judgment.
- (2) If upon application, which may be made *ex parte*, the court is satisfied that it will be conducive to the ends of justice to do so, the court may make an order upon such terms as to costs or otherwise and subject to such undertaking, if any, as the court may think just, permitting the issue of a summons before judgment; and any party affected by such order may move to set aside the summons.
- (3) Where the debt due to an employee is for wages or salary, the following

portion thereof is exempt from attachment by garnishee for each month in respect of which the wages or salary is payable:

- (a) if the debtor is a married person, the sum of \$400, or
- (b) if the debtor is a married person with dependent children
  - (i) in his or her custody, or
  - (ii) under his or her control, or
  - (iii) in respect of whom he or she is paying maintenance, \$400 plus \$80 for each child, or
- (c) if the debtor is a widow, widower, unmarried mother or divorced person with dependent children
  - (i) in his or her custody, or
  - (ii) under his or her control, or
  - (iii) in respect of whom he or she is paying maintenance, \$300 plus \$80 for each child, or
- (d) if the debtor is an unmarried person \$300.

Careful examination of the above rules reveals that two kinds of situations exist for the possible issuance of a garnishee summons before judgment:

- (a) situations where the debt sought to be attached is for wages or salary -- to which both Rule 487 and Rule 488 apply.
- (b) situations where the debt sought to be attached is for other than wages or salary -- to which Rule 487 applies.

12 A party in the position of the plaintiff in the within action, therefore, need only comply with the precise provisions of Rule 487 and request the Clerk of the Court to issue the summons. An application to the court, *ex parte* or otherwise, is not, strictly



speaking, required.

13 This is in marked contract to the equivalent rule in the Alberta Rules of Court which states:

**470.(1) In any action for a debt or liquidated demand, upon affidavit by the plaintiff, his solicitor or agent**

**(a) swearing positively to the facts establishing his cause of action,**

**(b) stating his belief that the plaintiff is entitled to the relief claimed,**

**(c) exhibiting an undertaking of the plaintiff that if monies are paid into court under a garnishee summons issued pursuant to leave granted upon this application, he will proceed with the action without delay, and**

**(d) establishing a reasonable possibility that the plaintiff will be unable to collect all or part of his claim or be subjected to unreasonable delay in the collection thereof unless permitted to issue a garnishee summons,**

**the court may, upon *ex parte* application, grant leave to the plaintiff to issue a garnishee summons before judgment.**

**(2) Any person who has obtained a judgment or order for the payment of money may, without leave, issue a garnishee summons.**

(emphasis added)

14 The decision of the Alberta Court of Appeal in Westmills Canada Inc. et al v. Harvey and Pulton Warehouse Carpet Sales Ltd. (1989) 94 Alta.R. 57, cited by both parties herein in support of their respective submissions, is necessarily tied to the specific requirement in subparagraph (d) of the Alberta rule. No such additional requirement is contained in the N.W.T. rule.

15 Both Rule 487 and Rule 488 of the Northwest Territories Rules appear to be



modelled on comparable provisions of Saskatchewan legislation, i.e. The Attachment of Debts Act R.S.S. 1978, c.A-32. Sections 3 and 9 of that statute provide as follows:

**s.3.(1) Subject to sections 8 and 9, a person who has obtained a judgment or order for the recovery or payment of money and a plaintiff in an action for debt or liquidated demand may issue a garnishee summons (form A) with such variations as circumstances may require, directed to one or more persons alleged to be indebted, either jointly or severally, to the defendant or judgment debtor.**

**(2) The summons shall be issued by the local registrar upon the plaintiff or judgment creditor, his solicitor or agent, filing an affidavit;**

**(a) showing the nature and amount of the claim against the defendant or the amount remaining due and unsatisfied under the judgment, and swearing positively to the indebtedness of the defendant or judgment debtor to the plaintiff or judgment creditor;**

**(b) stating, that, to the best of the deponent's information and belief, the proposed garnishee, naming him, is indebted to the defendant or judgment debtor, or, if the moneys sought to be attached are wages or salary, that, to the best of the deponent's information and belief, the defendant or judgment debtor was or is employed by the garnishee and where and in what capacity the defendant or judgment debtor was or is so employed.**

**(3) The affidavit mentioned in subsection (2) shall not be deemed insufficient merely by reason of its having been sworn prior to the issue of the writ of summons in the action.**

...

**s.9.(1) Subject to subsection (2), proceedings by way of garnishee summons to attach a debt due or accruing due to a person for or in respect of his wages or salary shall be taken only where the claim of the creditor against the debtor is upon a judgment.**

**(2) If upon application, which may be made *ex parte*, the court or a judge is satisfied that it will be conducive to the ends of justice to do so, the court or judge may make an order upon such terms as to costs or otherwise and subject to such undertaking, if any, as the court or judge may think just, permitting the issue of a summons before judgment; and any party affected by such order may move to set aside the summons.**

Notwithstanding the "less strict" provisions of the Northwest Territories and

Saskatchewan rule, the remedy of attaching funds of a defendant before judgment is an extraordinary remedy, and the court will require meticulous observance of the requirements of the rule. Erickson v. Able Irrigation Ltd. (1982) 19 Sask.R. 114 (Q.B.) and Northwest Holdings Ltd. v. Canoe Lake Band (1983) 28 Sask.R. 28 (Q.B.).

17           On the present applications, counsel for the defendants made no suggestion that the plaintiff has not complied with any of the provisions of Rule 487, either in the case of the garnishee summons obtained on April 15, 1993 or in the case of the proposed issuance of a new garnishee summons naming 923133 as debtor. Instead, counsel's submissions are focused on the alleged failure of the plaintiff to establish the possible insolvency of the defendants. As indicated above, this, under the N.W.T. rule, is not required of the plaintiff.

18           Upon an examination of the material presented, I find that the plaintiff has satisfied the strict requirements of Rule 487. In doing so, I consider Giesbrecht Ltd. and 923133 to be a single "entity" for purposes of the within applications. Mr. Giesbrecht acknowledged as much on his cross-examination and that the operations of the one company are the operations of the other. The plaintiff, in affidavits of Len Chalupa, Laura Chalupa and Diana Rutschmann filed in these proceedings has satisfied the requirements of paragraphs (a) (b) and (c) of subrule 487(2).

19           In addition, and in any event, I find that the plaintiff has satisfied the test set forth



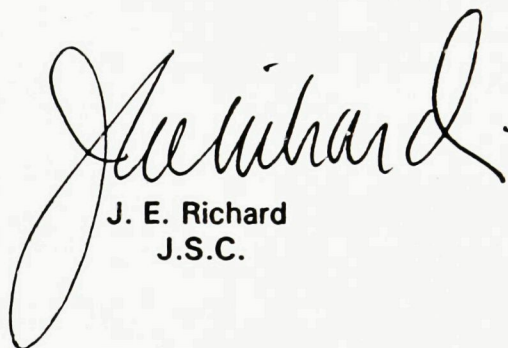
in Westmills, i.e., that it has shown that there is an insufficiency of other exigible assets of Giesbrecht Ltd./923133 and a reasonable possibility that the money sought to be attached will be dissipated unless paid into court.

20 For the foregoing reasons, the Clerk of the Court will issue a garnishee summons as requested, to attach any debt owing by Patterson to 923133 (up to \$43,461.30).

21 In view of my decision on the issue of a new garnishee summons, and in the particular circumstances of this case, I see no valid reason or purpose for setting aside the garnishee summons issued on April 16, 1993. That application is accordingly denied.

22 The plaintiff shall be entitled to its costs of the two within applications, in Column

IV.



J. E. Richard  
J.S.C.

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Case No. \_\_\_\_\_  
Plaintiff, \_\_\_\_\_  
vs.  
Defendant, \_\_\_\_\_

Comes now \_\_\_\_\_, Plaintiff, and moves for an order compelling the Defendant to produce certain documents and information in the possession, custody, or control of the Defendant.

The Plaintiff alleges that the Defendant has possession, custody, or control of certain documents and information that are material to the Plaintiff's case. The Plaintiff has conducted a diligent search of its files and has not been able to locate the documents and information.

The Defendant has refused to produce the documents and information despite the Plaintiff's repeated requests. The Plaintiff believes that the Defendant's refusal to produce the documents and information is an attempt to deprive the Plaintiff of its right to a fair trial.

The Plaintiff requests that the Court grant its motion and order the Defendant to produce the documents and information within a reasonable time. The Plaintiff also requests that the Court award its costs and attorney's fees.

The Plaintiff certifies that the information provided in this motion is true and correct to the best of its knowledge and belief.

Respectfully submitted,  
\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Plaintiff

CV 04604

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IN THE SUPREME COURT OF THE  
NORTHWEST TERRITORIES

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BETWEEN:

ARROW-WEST EQUIPMENT SALES  
(a Division of Quip-Line Inc.)

Plaintiff

- and -

GIESBRECHT OILFIELD CONTRACTING LTD.  
and 923133 N.W.T. LTD.

Defendants

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REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE J.E. RICHARD

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