

CV 04303

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

FIRST CITY TRUST COMPANY



Plaintiff

- and -

INUVIK AUTOMOTIVE WHOLESALE LTD.
and VERNON KOMARNICKI

Defendants

Application by plaintiff for summary judgment.
Dismissed with costs.

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE J.Z. VERTES

Heard at Yellowknife, July 19, 1993.

Judgment filed: July 21, 1993

Counsel for Plaintiff: Paul Grundy

Counsel for Defendants: James Posynick

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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

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AND IN THE MATTER OF THE ESTATE OF ...

... AND ...

Defendants

... and ...

... and ...

Application by ... for summary judgment.

... and ...

REASONS FOR JUDGMENT OF THE HONOURABLE JUDGE J.A. ...

... 1993



Paul Grady

Counsel for Defendant: James Rossick

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

FIRST CITY TRUST COMPANY

Plaintiff

- and -

INUVIK AUTOMOTIVE WHOLESALE LTD.
and VERNON KOMARNICKI

Defendants

REASONS FOR JUDGMENT

The plaintiff applies for summary judgment pursuant to Rule 167 of the Supreme Court Rules.

The Statement of Claim, filed by the plaintiff on November 27, 1992, sets out the cause of action as an alleged default by the defendants in payments due pursuant to an equipment lease agreement. The Statement of Claim also contains the following paragraph:

8. The Plaintiff brought an action for the recovery of the said amounts in the Court of Queen's bench of Alberta, Judicial District of Edmonton, being action number 910321907 on or about the 5th day of November, 1991. Subsequently, judgment was recovered by the Plaintiff against the Defendants and each of them on or about the 5th day of March, 1992. Particularly, the Plaintiff recovered the sum of \$33,157.43, representing the principal amount of the debt, plus interest in the amount of \$2,894.23 pursuant to the terms of the contract and costs in the amount of \$579.10.

3 While it is not specified in the Statement of Claim whether this paragraph is a plea in the alternative, plaintiff's counsel advised me that this application for summary judgment is confined to the claim on the Alberta judgment. Therefore, my decision is aimed at that claim only.

4 The facts reveal that the defendants did not at any time carry on business in Alberta nor did they appear, either by agreement or by responding to the action, to the jurisdiction of the Alberta court. They were served ex juris pursuant to an order and judgment was entered by default. For those reasons, the plaintiff is precluded from relying on the convenient and summary procedures of the Reciprocal Enforcement of Judgments Act, R.S.N.W.T. 1988, c.R-1.

5 The plaintiff, however, relies on the Supreme Court of Canada decision in Morguard Investments Ltd. v. De Savoye, [1991] 2 W.W.R. 217, as establishing the basis for recognition of the Alberta judgment.

6 In Morguard, the plaintiff obtained judgment in Alberta against the defendant personally for the deficiency balance on a foreclosure. The judgment was obtained by default. The plaintiff then brought a separate action in British Columbia, where the defendant then resided, to enforce the judgment. Judgment was granted to the plaintiff and upheld on appeal all the way to the Supreme Court.

It is important to note, however, the underlying facts in Morguard. The land subject to foreclosure was located in Alberta. The contract on which the action was brought was entered into there by parties then resident in Alberta. There was no question as to the Alberta court's jurisdiction to entertain the action and enforce it there if it can. The question was whether British Columbia should enforce it as an exercise of comity between jurisdictions (both of which are part of the Canadian federation).

Mr. Justice La Forest, writing on behalf of the court in Morguard, stated the principle in such cases as follows: " ... the courts in one province should give full faith and credit ... to the judgments given by a court in another province or territory, so long as that court has properly, or appropriately, exercised jurisdiction in the action." (p. 237) The test then has been formulated as whether the original jurisdiction has a "real and substantial connection" with the subject-matter of the action.

While the test can be stated fairly easily, the factors that are to be taken into account are flexible and vary depending on the circumstances of each case. There is no rigid or mechanical formula as reflected by the very general terms used in Morguard to describe the test. At a minimum, the nature of the transaction, the parties' location and intentions, and just the notion of what is fair and convenient, are all factors that must be taken into account.

In this case, the uncontroverted facts are as follows:

1. The defendants carry on business in the Northwest Territories. They have never carried on business in Alberta.
2. All of the dealings leading up to the agreement were carried on over the telephone in response to a mailing received by the defendants.
3. The equipment was delivered to the defendants' place of business in the Northwest Territories.
4. The agreement was signed in the Northwest Territories.
5. The defendants made arrangements for the lease payments to be made through a bank branch in the Northwest Territories.
6. The agreement contains an "applicable law" clause:

This lease shall be construed according to the laws of the province of the place of delivery set forth above.

The "place of delivery" was in the Northwest Territories.

11 In my opinion there is no real or substantial connection with the Province of Alberta. This is not a situation where the defendants are trying to do business in Alberta

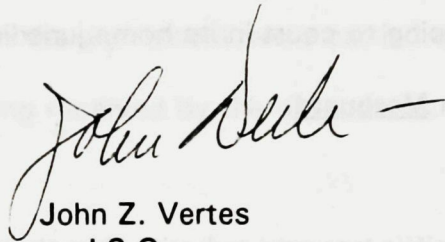
from a base in the Northwest Territories. In such a case it may be only fair that they would be subject to the reach of the Alberta court. On the contrary this is a situation where a business conducts transactions in the Northwest Territories and then wants the benefit of going to court in its home jurisdiction. This is a totally different fact situation from that in Morguard.

12 Plaintiff's counsel submits that there is a substantial connection to Alberta since the plaintiff carries on business there and the equipment would have to be re-delivered there. I do not find these arguments persuasive.

13 The plaintiff may have an Alberta address and that may be the place of re-delivery, but the plaintiff, whose agreement it was, chose to give conflicting signals about its connections to Alberta. The agreement states that any notice that is required to be given must be given to the plaintiff's head office at a British Columbia address. In any event, the only fact connecting the subject-matter of this action to Alberta is the fact that the plaintiff has an office in that jurisdiction. In my opinion that is insufficient to balance all of the other factors that point to the Northwest Territories as being the appropriate jurisdiction.

14 On the evidence presented to me I find that the Alberta court did not have jurisdiction in this matter. Since the plaintiff's application for summary judgment is based strictly on the claim on the Alberta judgment, I dismiss this application.

15 The defendants shall have their costs of this application payable forthwith after taxation and in any event of the cause. The costs are to be taxed as one set of costs on the basis of double column 4 of the tariff of costs.


John Z. Vertes
J.S.C.

Counsel for the Plaintiff: Paul Grundy
Counsel for the Defendants: James Posynick

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

IN THE MATTER OF THE ESTATE OF

PLAINTIFF

FIRST CITY TRUST COMPANY

vs.

and

ALBIE AUTOMOTIVE WHOLESALE LTD.
and VERNON KOMAROWSKI

DEFENDANTS

REASON FOR JUDGMENT OF THE
HONORABLE MR. JUDGE J.J. VEITH

AND THAT THE COURT HAS



For the Plaintiff

For the Respondent

CV 04303

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

FIRST CITY TRUST COMPANY

Plaintiff

- and -

INUVIK AUTOMOTIVE WHOLESALE LTD.
and VERNON KOMARNICKI

Defendants

REASON FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE J.Z. VERTES

