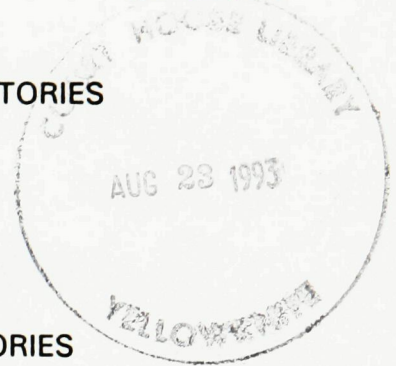


CV 01688

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES



BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Plaintiffs

- and -

AGRIBOREALIS LTD. (A BODY CORPORATE) AND JOSEPH H. KRONSTAL
AND DONALD PORTZ AND R. CLARK REHN

Defendants

Application for summary judgment.
Dismissed with costs.

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

Heard at Yellowknife, Northwest Territories
on July 28, 1993

Reasons filed: August 3, 1993

Counsel for the Plaintiffs: D. McNiven
Counsel for the Defendants: K. Peterson, Q.C.

CV 01888

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CV 01888

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES



BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Plaintiff

AGRIHORALIE LTD. (A BODY CORPORATE) AND JOSEPH H. KRONSTAL
AND DONALD J. FORTY AND R. CLARK BEHN

Defendants

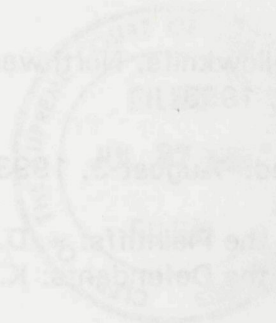
Application for summary judgment
dismissed with costs. MR. LAMONTAGNE

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

Heard at Yellowknife, Northwest Territories
on July 25, 1983

Reasons read by Justice J.E. Richardson, 1983

Counsel for the Plaintiff: J.D. McIvor
Counsel for the Defendant: K. Peterson, D.C.



IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE COMMISSIONER OF THE NORTHWEST TERRITORIES

Plaintiff

- and -

AGRIBOREALIS LTD. (A BODY CORPORATE) AND JOSEPH H. KRONSTAL AND
DONALD PORTZ AND R. CLARK REHN

Defendants

REASONS FOR JUDGMENT

The plaintiff brings an application for summary judgment against one of the defendants Joseph H. Kronstal (hereinafter referred to as Kronstal) pursuant to the Rules of Court permitting such applications. For the reasons which follow, I rule that this is not an appropriate case for the granting of summary judgment.

In 1986 the plaintiff agreed to provide a business loan of \$119,000 to the defendant Agriborealis Ltd. (hereinafter referred to as Agriborealis). In its offer of financing, accepted by Agriborealis, the plaintiff stipulated the security documents that would be required, in the following words:

Security

Promissory Note

Debenture secured by a fixed charge on machinery, equipment, vehicles, land, and buildings, now owned and to be acquired, and by a floating charge on all assets of the company, excluding accounts receivable and inventory, in favour of the Minister, in second position.

Guarantee of the following individuals or corporations for the following amounts.

Board of Directors	\$119,000.00
J. Kronstal	\$119,000.00

3 For purposes of the present application I find that the following facts are not disputed:

1. Kronstal was at relevant times a Director and Officer of Agriborealis.
2. The defendant R. Clark Rehn (hereinafter as Rehn), as the plaintiff's solicitor, prepared the "security documents" which were executed by Agriborealis and Kronstal.
3. The following "security documents" (inter alia) were provided to the plaintiff:
 - a) Promissory Note dated October 7, 1986 executed by Agriborealis. The note commences "For value received, ..." and sets forth the promise of Agriborealis to pay the sum of \$119,000 plus interest pursuant to specific terms.
 - b) Promissory Note dated October 7, 1986 executed by Kronstal. The

note commences "For value received, ..." and is in terms identical to the Agriborealis promissory note.

- c) "Guarantee" dated October 7, 1986 executed by Kronstal and worded as follows:

GUARANTEE

TO: The Commissioner of the Northwest Territories
Yellowknife, N.W.T.

FOR VALUE RECEIVED, I, Joseph H. Kronstal hereby unconditionally guarantee the prompt payment of the principal and interest as set forth in that certain Promissory Note executed by Joseph H. Kronstal dated the 07th day of October, 1986 (copies of which are attached hereto), according to the tenor thereof, and agree that if prompt payment is not made Joseph H. Kronstal will make such payment.

DATED at the City of Yellowknife in the Northwest Territories, this 07th day of October, 1986.

JOSEPH H. KRONSTAL

(emphasis added)

4. Agriborealis was placed in receivership by its principal lender (a chartered bank) in 1987.
5. Agriborealis defaulted in its repayment of the \$119,000 loan to the plaintiff.
6. The plaintiff has yet to receive repayment of a substantial portion of the \$119,000 advanced to Agriborealis, and accrued interest.

In this lawsuit the plaintiff seeks judgment against Agriborealis for the unpaid principal and accrued interest. In fact the plaintiff has already obtained default judgment against Agriborealis. In addition, the plaintiff seeks judgment for the unpaid sums against

Kronstal, relying both on the Kronstal promissory note and the guarantee document. (In his prayer for relief, the plaintiff specifically requests rectification of the guarantee document to provide that it is the Agriborealis promissory note that was guaranteed rather than the Kronstal promissory note). Furthermore, in his statement of claim the plaintiff alleges professional negligence by Rehn in his preparation of the security documents and seeks judgment against Rehn for the unpaid sums.

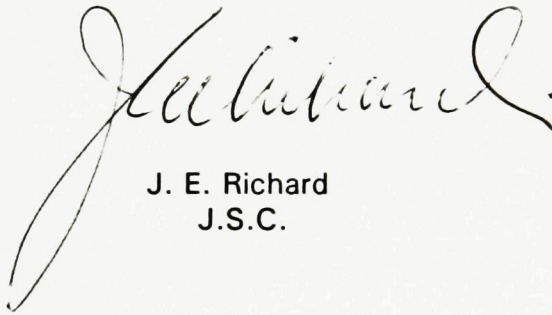
5 Each of Kronstal and Rehn has filed a statement of defence in this lawsuit.

6 In his statement of defence, and in his sworn affidavit filed in answer to the present application, Kronstal alleges that the plaintiff did not advance any funds to him in return for his promissory note, and that he received no consideration for either his promissory note or the guarantee document. He also asserts that he did not execute any document purporting to be a personal guarantee of Agriborealis' debt to the plaintiff. If these assertions are correct, Kronstal may well have a meritorious defence to the plaintiff's lawsuit.

7 In these circumstances it would not be proper to deny Kronstal the opportunity to present viva voce evidence before a trial judge. He is entitled to his day in court. He is entitled to relate to the trial judge the circumstances in which he gave his promissory note to the plaintiff, even though it (apparently) was not required by the loan agreement.

Summary judgment under Rule 167 ought not be granted unless there is no genuine issue to be tried by a judge in a courtroom. It cannot be said that there is no such issue between the plaintiff and Kronstal. Did Kronstal guarantee the Agriborealis loan? Let a trial judge decide, after giving the parties a full opportunity to present evidence.

The application is dismissed with costs.

A handwritten signature in black ink, appearing to read "J. E. Richard". The signature is written in a cursive style with a large, looping initial "J".

J. E. Richard
J.S.C.

THIRD COURT

IN THE SUPREME COURT OF THE STATE OF TEXAS

THE STATE OF TEXAS

vs. THE STATE OF TEXAS

Respondent

THE STATE OF TEXAS

vs. THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

THE STATE OF TEXAS

CV 01688

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

BETWEEN:

**THE COMMISSIONER OF
THE NORTHWEST TERRITORIES**

Plaintiffs

- and -

**AGRIBOREALIS LTD. (A BODY CORPORATE)
AND JOSEPH H. KRONSTAL AND
DONALD PORTZ AND R. CLARK REHN**

Defendants

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