

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

DONNA MAE MAILOW,

Plaintiff  
(Respondent)

- and -

FRAME & PERKINS LIMITED,

Defendant  
(Applicant)

D. M. Cooper, for the Applicant

S. L. Green, for the Respondent

REASONS FOR JUDGMENT OF THE  
HONOURABLE MR. JUSTICE C. F. TALLIS

This is an application for security for costs.

The Application initially came on for hearing before me on June 8, 1976. At that time an adjournment was granted until June 17, 1976 with leave granted to either party to file additional affidavit evidence.

The Application was argued on June 17, 1976. The Applicant filed a supplementary Affidavit. The Respondent did not file any material.

In this particular case the Respondent resides in the Province of Ontario. The Applicant has filed a Statement of Defence and Counterclaim. On the evidence I am satisfied that the Applicant has complied with the requirements of Rule

The Respondent has no property within the Northwest Territories unless it be an interest or equity in the real property which is the subject matter of this litigation. On an Application of this nature I cannot go into the merits of the action and prejudge the issue. Under the circumstances I find that the Respondent is not possessed of sufficient assets within this jurisdiction that will be available for the Defendant's costs. In addition to considering the cases cited by Counsel I have also considered the following authorities:

- (a) *Magrum v. Canadian Airways Limited*  
1943 1 W.W.R. 307
- (b) *Murray v. Delta Copper Company Limited*  
(1922) 3 W.W.R. 352
- (c) *O'Brien v. Brown* 1958 25 W.W.R. (N.S.) 78

I accordingly find that this is an appropriate case for an order of security for costs. During the course of argument I indicated that if the plaintiff filed an undertaking to personally appear in the jurisdiction for an examination for discovery without payment of witness fees or conduct money, I would take that into account in fixing the amount of security to be given, if I decided that an order for security should be granted. No such undertaking has been filed. As to the amount of security I find that \$950.00 would be appropriate having regard to all the circumstances.

I therefore order that the Respondent do within three months from the service of this order give security for the

defendant's costs of this action in the amount of \$950.00 by payment thereof to the Clerk of the Court or by bond therefor given to the defendant and approved by its solicitors or by the Court.

I further order that, until the said security for costs is given, all further proceedings in this action are stayed. In default of such security being given within the time above limited, the Respondent's action herein shall stand dismissed with costs without further order, unless the Court on special application otherwise directs.

The costs of and incidental to this application shall be costs in the cause.

  
C. F. Tallis

Yellowknife, N.W.T.  
28 June, 1976.

NO. SC 3257

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