

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KEVIN WALSH

Plaintiff

- and -

FERN ANNIE JENSEN

Defendant

MEMORANDUM

The plaintiff's motion for an order requiring the defendant to hold certain disputed items of personal property in trust for the plaintiff pending the disposition of this action, and for an accounting under oath respecting the disposition or location of these items, is dismissed.

The cohabitation contract allegedly entered into between the parties, as mentioned in paragraph 4 of the statement of claim, is said there by the plaintiff to govern the disposition of their assets, whether acquired before or during their relationship. That contract has not been pleaded in more specific terms; and it is not in evidence before me. In these circumstances, it is not open to me to make any order imposing trust obligations on either party to the contract or to declare that such obligations arise under the contract.

These are not proceedings to which the *Matrimonial Property Act*, R.S.N.W.T. 1988, c. M-6 can apply since the parties were never married.

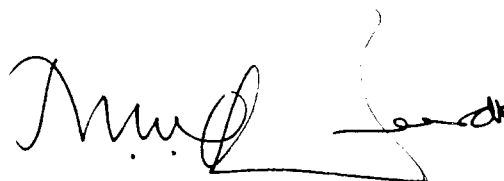
The plaintiff has chosen to bring this action claiming relief including an order

requiring the defendant to return items of personal property to the plaintiff which the plaintiff claims to be his property. He has, however, chosen not to invoke the *Rules of Court* in the specific manner required for an action for replevin. If that is the relief which he seeks, then he should meet the requirements of the Rules in that connection. Failing this, he cannot succeed in obtaining the equivalent of replevin relief by proceeding as he has.

The plaintiff has not, in general or specific terms, sought declaratory or injunctive relief in his statement of claim. It is therefore not open to him to now seek injunctive relief by bringing these interlocutory proceedings in this action. And declaratory relief is of course not available, in any event, in interlocutory proceedings.

The plaintiff has available the usual recourse to pre-trial discovery proceedings, including the use of interrogatories. The relief which he seeks in terms of an accounting can be obtained in the usual way by recourse to such proceedings.

In the circumstances, the plaintiff shall pay the sum of \$300 to the defendant, in any event of the cause, as the costs of this motion.

A handwritten signature in black ink, appearing to read 'M.M. de Weerd', with a long horizontal flourish extending to the right.

M.M. de Weerd
J.S.C.

Yellowknife, Northwest Territories
June 2nd 1995

Counsel for the Plaintiff: James D. Brydon, Esq.

Counsel for the Defendant: Ms. Karan M. Shaner

CV 05684

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HONOURABLE MR. JUSTICE M.M. de WEERDT

