

Date: 1997 08 18  
Docket: CV 05529

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

**BETWEEN:**

**IVAN VALIC**

Plaintiff

- and -

**NORTHWEST TERRITORIES HOUSING  
CORPORATION and CHRIS LUPIANO**

Defendants

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**An application for security for costs pursuant to Rule 633. Application granted.**

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

Heard at Yellowknife, Northwest Territories  
on August 15, 1997.

Reasons filed: August 18, 1997

Counsel for the Plaintiff: John Bassie, QC

Counsel for the Defendants: Peter D. Gibson

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**REASONS FOR JUDGMENT**

[1] In this lawsuit commenced by the plaintiff in November 1994 the plaintiff alleges that he was defamed by the defendants in a letter sent on September 16, 1994 to the plaintiff's employer. On the present interlocutory application the defendants seek an order pursuant to Rule 633 requiring the plaintiff to furnish security for costs.

[2] I find merit in this application. The plaintiff is not ordinarily resident in this jurisdiction. The plaintiff has not been diligent in prosecuting his lawsuit. The pleadings, and the evidence before me on the interlocutory application, indicate that the plaintiff's case is a weak one.

[3] It is doubtful that the words complained of are defamatory, by innuendo or otherwise. More importantly, on a plain reading of the pleadings, the defendants have a complete defence to any actual defamation inasmuch as the letter was sent on an occasion of qualified privilege. See *Gatley on Libel and Slander* 8th ed., p.185. The defence of qualified privilege was buttressed by sworn facts contained in affidavits filed on behalf of the defendants. These facts are uncontradicted and the affidavits' contents were not challenged by any cross-examination. The plaintiff in his statement of claim does not allege any *malice* on the part of the defendants in sending the letter (although, in a very recent application to amend his statement of claim almost three years after its issuance, the plaintiff does now seek to add an allegation of malice).

[4] The plaintiff by his own admission has no fixed address. He claims impecuniosity, yet there is a dearth of evidence offered regarding his actual income in recent years, his means of livelihood, his assets, his ability/inability to raise or borrow funds to pay the costs of unsuccessful litigation or to furnish security for such costs.

[5] The plaintiff also offers incomplete and unsatisfactory evidence regarding his lack of diligence in prosecution of his lawsuit.

[6] In my view the defendants have legitimate cause for concern about their chances of recovery of any costs award which might be made against the plaintiff by the trial judge, and the plaintiff does little to allay that concern.

[7] Taking all relevant matters into consideration, I exercise my discretion in favour of the defendants. The application is granted. An order will issue directing the plaintiff to pay into Court, as security for the defendants' costs herein, the sum of \$15,000. Payment is to be made within three months of the date of filing of these reasons. Until such payment is made, all further steps in this lawsuit are stayed, including the pending applications (a) to amend the statement of claim and (b) for case management, on which applications judgment was reserved. In default of payment within the time specified, the plaintiff's action against the defendants is dismissed, without further order.

J. E. Richard  
J.S.C.

Dated at Yellowknife, Northwest Territories  
this 18th day of August, 1997.

Counsel for the Plaintiff: John Bassie, QC

Counsel for the Defendants: Peter D. Gibson

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THE NORTHWEST TERRITORIES**

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**BETWEEN:**

**IVAN VALIC**

Plaintiff

- and -

**NORTHWEST TERRITORIES  
HOUSING CORPORATION and  
CHRIS LUPIANO**

Defendants

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HONOURABLE JUSTICE J. E. RICHARD**

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