

CV 08434

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

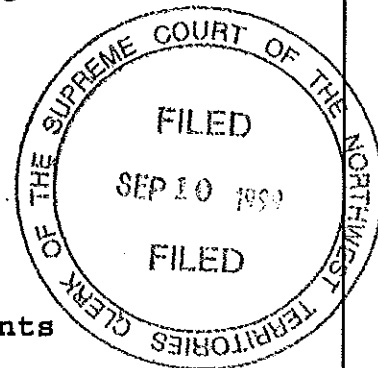
ROMAN WELNA

Appellant

- and -

HANS ULRICH NOLTING and
WALTRAUD NOLTING

Respondents



Transcript of an Oral Decision delivered by The Honourable
Justice V.A. Schuler, sitting at Yellowknife, in the
Northwest Territories, on September 9, A.D. 1999.

APPEARANCES:

Mr. R. Welna:	For himself, the Appellant
Mr. H. Nolting:	For the Respondents

1 THE COURT: Well, the process in the
2 Territorial Court for civil claims is supposed to be a
3 process that people can use without lawyers, and I
4 think, because of that, the rules that exist have
5 attempted it to make it as straightforward as
6 possible.

7 The Rules do provide that a Notice of Trial will
8 go out by mail. Now, it's unfortunate -- it seems that
9 what happens in these cases, and I'm just speaking
10 generally now, is that the person who's the Plaintiff
11 fills out the claim and they give an address for the
12 Defendant. Then, as I understand it, the defence that
13 is given to the Defendant to fill out, and to have
14 filed if they wish to, already has the address of the
15 Defendant printed on it. So there doesn't appear to be
16 a place where the Defendant can say this is the address
17 where I should be served by mail. That just seems to
18 be a bit of an omission, something that perhaps wasn't
19 thought of when the rules or the forms or the
20 procedures were put into place.

21 In any event, as I understand it from the
22 documents, the address that was given -- and there's no
23 suggestion that there was anything wrong with this.
24 The address that apparently was given by Mr. Nolting
25 was the address on Finlayson: 5078 Finlayson Drive.
26 Mr. Welna was served personally at that address with
27 the documents. When I say "with the documents", I mean

1 the claim and the defence form. When the Notice of
2 Trial went out, it was sent to that address, which is
3 logical from the clerk's point of view because that was
4 the only address that was on the documents. Mr. Welna
5 says that he didn't receive it; that's not his mailing
6 address. He has sworn a statement saying he didn't
7 receive the Notice of Trial, wasn't aware of it until
8 the sheriff seized his goods, and then he went to court
9 to find out why that had happened.

10 MR. WELNA: May I say something?

11 THE COURT: Not right now, Mr. Welna. I'm
12 already -- I think you've said what you need to.

13 Mr. Nolting questions the fact, or he questions
14 Mr. Welna's assertion that he didn't receive it, and he
15 points out that the judgment also would have been sent
16 out and that would mean that the judgment wasn't
17 received either. I can't find, though, any indication
18 in the file that the judgment was sent. Now, that
19 doesn't necessarily mean that it wasn't. It's just I
20 don't have the usual affidavit from the clerk saying
21 that it was sent out. So although it would seem
22 logical that it was sent out, there's no proof that it
23 was.

24 Mr. Nolting has also made submissions about what
25 the people at the Post Office have told him. I don't
26 have sworn statements from the people at the Post
27 Office. I'm prepared to accept that in the normal

1 course mail doesn't go missing, but I don't think I can
2 say that it's impossible for mail to go missing. It
3 does go missing from time to time, and although it
4 should be -- normally it would end up back where it
5 started. Again, I don't think anyone living in this
6 country could say that mail never goes missing.
7 Sometimes it does. Maybe it did in this case.

8 I just want to refer to the judgment given by
9 Judge Bruser. It appears to me that he did take into
10 account the fact that Mr. Welna wasn't there, because
11 his judgment says, "Having heard from the Plaintiff,
12 and the Defendant not", and he's underlined 'not'
13 twice, "being present" -- or someone has. This perhaps
14 is the clerk's writing; I'm not sure -- "judgment was
15 given in favour of the Plaintiff in the amount
16 specified." So all I can take from that is that
17 Mr. Nolting presented his case, the judge didn't hear
18 from Mr. Welna because Mr. Welna wasn't there, and the
19 judge gave his judgment. What it really comes down to,
20 in my view, is, in the circumstances, and noting that
21 in these types of situations both sides should be heard
22 from, would it be fair to set aside the judgment, put
23 matters back to where they were before the judgment was
24 issued, and give Mr. Welna the chance to present his
25 case? I would perhaps have trouble with that if it had
26 been a situation where Mr. Welna had not filed a
27 Statement of Defence (a defence to the claim). But in

1 this case he did file a defence to the claim, so
2 obviously he did have the intention of presenting his
3 side of things to the Court, and the only problem,
4 therefore, has been a procedural one: the Notice of
5 Trial apparently not having been received.

6 The claim is -- Mr. Nolting says it's
7 straightforward. I'm not so sure that it's
8 straightforward. There seems to be an issue of
9 Mr. Stoodley's involvement and what Mr. Stoodley did or
10 didn't do and what impressions he may have given to
11 Mr. Welna about what authority Mr. Stoodley had. Now,
12 those are all questions I do not decide today. But I'm
13 just saying that those are questions that a judge would
14 have to hear evidence about and would have to decide
15 whether Mr. Welna was trespassing on the property,
16 whether he had some kind of authority to be there.

17 So in the circumstances, and I appreciate that
18 Mr. Nolting is concerned about the time that's involved
19 and, no doubt, the disruption all of this has meant to
20 him, but when I weigh that against the question of
21 whether Mr. Welna should be able to present his case to
22 the Court, and considering that from the date of the
23 trial until now is really just a little bit more than a
24 month - it's not an excessive amount of time - I think,
25 in the circumstances, the right thing to do is to set
26 aside the judgment. That will be on condition,
27 however, Mr. Welna that you do pay into court the

1 \$5,400 by way of a certified cheque, and that is to be
2 paid to the Territorial Court, to be held pending
3 judgment in this action.

4 MR. WELNA: To the Territorial Court, held
5 for...?

6 THE COURT: Held pending --

7 MR. WELNA: Okay, pending.

8 THE COURT: -- judgment, because I'm setting
9 aside the judgment that was given. So it will be held
10 pending a new judgment, and to be then applied to any
11 judgment in favour of Mr. Nolting in this action.

12 THE COURT CLERK: Is there a time factor, My Lady?

13 THE COURT: I understand from the affidavit
14 the money is available now?

15 MR. WELNA: Yes. The bank's -- Montreal bank
16 is open 'til three I think.

17 THE COURT: Well, it's ten to three now.
18 We'll say to be paid by Monday at 5 p.m.

19 MR. WELNA: Okay.

20 THE COURT: The seizure, then, will be
21 released once that money is paid into court. The
22 matter, then, is to be returned to the Territorial
23 Court for a new trial date to be set.

24 Now, Mr. Welna, I think you should speak to the
25 clerk and make sure that your mailing address is
26 provided.

27 MR. WELNA: Oh, I did after that.

1 THE COURT: Your proper mailing address, so
2 that that's clear. The other thing I would suggest is,
3 and I simply say this, it may assist both of you, there
4 are rules that apply to the Territorial Court and you
5 may want to get a copy of those rules. I don't know
6 that the clerk gives them out, but the clerk may be
7 able to tell you where you can get them.

8 MR. NOLTING: I had them. I had them. I worked
9 by them basically, and it didn't get me anywhere.

10 THE COURT: Well, I wouldn't say it didn't get
11 you --

12 MR. NOLTING: I have --

13 THE COURT: Mr. Nolting, I'm not going to
14 argue with you about that. All right, that's fine.
15 We'll just leave it at that.

16 MR. NOLTING: It's just I --

17 THE COURT: Just leave it at that, please. I
18 would just recommend -- this is an unfortunate
19 situation that happened --

20 MR. NOLTING: Yes.

21 THE COURT: -- but, as I say, the time is not
22 that lengthy that's gone by, and this way it seems to
23 me you can both present your cases, and the judge, I'm
24 sure, will decide on the evidence what should happen.

25 So I've dealt with the money being paid into
26 court. And the seizure, then, would be released upon
27 payment of the money into court. And that's it.

1 I think perhaps, Madam Reporter, you could do a
2 transcript and put it on the file.

3 You'll probably have to take out an order,
4 Mr. Welna.

5 MR. WELNA: An order?

6 THE COURT: A formal order, yes.

7 MR. WELNA: The clerks will help me with
8 that?

9 THE COURT: Well, I'm not sure to what extent
10 they'll help you with that, but perhaps the person who
11 helped you with your documents will help you with
12 that.

13 MR. WELNA: The formal order is for the stuff
14 that was seized? Is that --

15 THE COURT: Well, saying that the judgment is
16 set aside. Judge Bruser's judgment is set aside, the
17 money is to be paid into court, \$5400 by way of
18 certified cheque paid to the Clerk of the Territorial
19 Court, to be paid by 5 p.m. on Monday, September the
20 13th, to be held pending judgment in the action, and to
21 be paid to Mr. Nolting, or, depending on the amount of
22 the judgment, part paid to Mr. Nolting should he
23 recover judgment against you.

24 So I think that covers everything. Thank you both
25 very much for your arguments. We'll close court.

26 (PROCEEDINGS ADJOURNED SINE DIE)

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Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich
Court Reporter