

Date: 2004 12 14
Docket: S-0001-CV2003000050

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

THE MUNICIPAL CORPORATION OF THE
VILLAGE OF FORT SIMPSON

Plaintiff

-and-

CAMILLUS ENGINEERING CONSULTANTS LTD. and
THE GUARANTEE COMPANY OF NORTH AMERICA

Defendants

AND BETWEEN:

CAMILLUS ENGINEERING CONSULTANTS LTD.

Plaintiff by Counterclaim

-and-

THE MUNICIPAL CORPORATION OF THE
VILLAGE OF FORT SIMPSON

Defendant by Counterclaim

MEMORANDUM OF JUDGMENT

[1] In this action, the Village as Plaintiff sues Camillus for cost overruns and other damages arising from a construction contract described in the Memorandum of Judgment issued concurrently in action no. S-0001-CV2001000196. The Village also sues The Guarantee Company of North America as Camillus' surety under a performance bond for a portion of the cost overruns.

[2] Camillus has defended the action and filed a counterclaim against the Village.

[3] The Village has applied for security for costs. This application is different from the applications in S-0001-CV2001000164 and S-0001-CV2001000196 in that it is not Camillus, but the Village, who has commenced this action.

[4] Where security for costs are sought against a plaintiff by counterclaim, that is, one who did not initiate the action, the Court should be more cautious about awarding security for costs. See, for example, my decision in *Canada (Attorney General) v. Borealis Exploration Ltd.*, [1996] N.W.T.J. No. 83 (S.C.).

[5] The statement of claim filed by the Village sets out a claim against Camillus in negligence for actions and misrepresentations by Camillus in the performance of the construction contract, which it alleges Camillus did not complete. The Village claims that all of this resulted in its incurring a construction cost overrun of \$214,921.00 and other damages.

[6] In its statement of defence, Camillus alleges that it did substantially complete the contract and that any deficiencies were minor and any problems were caused by the Plaintiff not fulfilling its obligations under the contract.

[7] The counterclaim filed by Camillus also alleges negligence by the Village and breach of contract in, for example, not taking the disputes between the parties to arbitration. It claims damages of \$750,000.00. It does not specify what these damages are for or what losses they purport to represent. For this reason, in my view, the counterclaim goes outside and beyond the claim initiated by the Village and, on the face of it, may well be frivolous and vexatious.

[8] For the above reasons and those set out in the Memorandum of Judgment in action no. S-001-CV2001000196, I order that Camillus provide security for costs in the amount of \$87,000.00. The order will issue in the terms of the draft order presented in Chambers.

[9] The Village will have its costs of this application against Camillus.

V.A. Schuler
J.S.C.

Dated at Yellowknife, NT
this 14th day of December, 2004.

Counsel for the Village of Fort Simpson: W. Donald Goodfellow, Q.C.
Counsel for the Guarantee Company of North America: Sheila MacPherson
No one appearing for Camillus Engineering Consultants Ltd.