

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

KARI-LYNN HARDISTY

Plaintiff

-and-

851791 N.W.T. LTD., CARMACKS CONSTRUCTION INC. and MR. ARNDT

Defendants

-and-

RUSSELL ANDRE, CLAUDE TRUDEL, TER MAR HOLDINGS LTD., THE  
COMMISSIONER OF THE NORTHWEST TERRITORIES, JOHN HOPF, JOE  
COOK, WAYNE ARNDT and CARMACKS CONSTRUCTION INC.

Third Parties

MEMORANDUM OF JUDGMENT

[1] This memorandum addresses the question of costs.

[2] The two defendants, 851791 N.W.T. Ltd. and Carmacks Construction Inc., each sought contribution and indemnity from the other. They had both contributed to a settlement of the plaintiff's claim. In a judgment delivered on October 6, 2004, I found in favour of 851791 N.W.T. Ltd. and awarded it judgment of \$165,542.71 (see [2004] N.W.T.J. No. 58). The successful defendant now seeks its costs, on a party-and-party basis, of the entire proceedings. The unsuccessful defendant seeks to limit the costs to the trial of the issue before me.

[3] In a situation such as this, it is common for a defendant, who has successfully claimed over against another defendant or a third party, to recover its costs of the entire proceeding. I see no good reason why that general rule should not apply here. The proceedings vis-à-vis the plaintiff were limited and therefore the costs claimed are not unreasonable. In addition, those proceedings undoubtedly made the action before me much more direct and uncomplicated.

[4] Carmacks takes issue with the disbursement for an expert's report. If I were not inclined to award costs for the entire proceeding I may have considered that expense as an unrecoverable item. However, having regard to my conclusion on the main question, I allow that disbursement.

[5] The successful defendant has submitted a proposed Bill of Costs. It is based on the appropriate column. It has been suggested that a fixed amount may be more appropriate so as to avoid further disputes on a taxation. I agree.

[6] Having reviewed what was submitted, I award costs to 851791 N.W.T. Ltd. in the fixed sum of \$20,000.00 (inclusive of all disbursements and the costs of this application but exclusive of G.S.T.).

J.Z. Vertes  
J.S.C.

Dated at Yellowknife, NT this  
5<sup>th</sup> day of January, 2005.

Counsel for 851791 N.W.T. Ltd.:	Gary J. Draper
Counsel for Carmacks Construction Inc.:	Edward J. Boomer