

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN

CAMILLUS ENGINEERING CONSULTANTS LTD.

Plaintiff

- and -

THE MUNICIPAL CORPORATION OF THE
VILLAGE OF FORT SIMPSON

Defendant

AND BETWEEN

Action No.: S-1-CV-2003000050

THE MUNICIPAL CORPORATION OF THE
VILLAGE OF FORT SIMPSON

Plaintiff

- and -

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

Defendants

MEMORANDUM OF JUDGMENT

[1] This memorandum addresses: (1) the application by the Village of Fort Simpson for an order directing the principal of Camillus Engineering to present himself for cross-examination on his affidavit filed May 1, 2009; and (2) the application by Camillus Engineering to put these actions into case management.

The Guarantee Company of North America takes no position on the first application but supports the second.

[2] This litigation has been going on for over 8 years. The dispute at its core has generated other actions. There have been numerous applications and pre-trial proceedings. For that reason, this Memorandum will address the present applications in a highly summary form. It is directed at counsel so I will not repeat all of the underlying facts and circumstances for these applications.

[3] I will deal first with the motion by the Village of Fort Simpson.

[4] The request to have the principal officer of Camillus Engineering attend for cross-examination arises in the context of another application by the same party. On May 13, 2009, the Village of Fort Simpson filed a Notice of Motion seeking an order that the issue of the value of the work performed by Camillus Engineering under the contract in question in this litigation is *res judicata* within these actions as a result of a decision by Schuler J. of this court dated November 30, 2004. That decision (cited as 2004 NWTSC 84) was rendered in action number CV 2003000077, a proceeding under the *Mechanics' Lien Act*, R.S.N.W.T. 1988, c. M7, involving these same three parties plus numerous others. The motion is made in reliance on Rules 175-182 of the *Rules of Court*. Those are summary judgment rules. I would describe this particular motion as being more in the nature of a "special case" (per Rule 298) or as a "point of law" (per Rule 304).

[5] The affidavit in question is that of Camillus Marianayagam, president of Camillus Engineering, sworn on April 3, 2009, and filed in action number CV-2001000164. My understanding is that this affidavit was filed in response to the Village motion for a determination of the *res judicata* issue and in support of Camillus' application for case management. On May 5, 2009, counsel for the Village wrote to counsel for Camillus expressing his desire to cross-examine Mr. Marianayagam on his affidavit "if his affidavit is to be used at all in opposition to the *res judicata* Order or the application you are making for case management." Counsel for Camillus refused to produce his client arguing that nothing useful could come from such a cross-examination because (a) the issue of *res judicata* is a question of law; (b) Mr. Marianayagam had been examined extensively already; and (c) much of the contents of this affidavit is nothing more than a summary of the lawsuit.

[6] I agree that there is no point in cross-examining on the affidavit if its purpose is to address the question of case management. As I will set out later in this Memorandum, the need for case management is evident from the nature of the

case and its history. I do not need answers from a cross-examination to determine that issue.

[7] Having said that, however, I am not persuaded that a cross-examination on the *res judicata* issue would be either pointless or abusive. A party who files an affidavit in response to an application may be cross-examined on it as of right (see Rule 381). As counsel for the Village submitted, the right to cross-examine is “almost absolute”. A court has the discretion to prohibit such cross-examination where it would be frivolous or abusive but, as cases point out, such a discretion should be exercised sparingly and only in the clearest of situations.

[8] It is not for me to second-guess counsel as to what may be productive and helpful in a cross-examination. It is enough for me to say that I have not heard or seen anything to clearly demonstrate that it would be a useless effort. Nor have I been given any cause to think that this is some type of delaying tactic. On the contrary, it seems to me that both sides would like to see a speedy resolution of this dispute.

[9] I will now address the question of case management.

[10] The objectives of case management are to establish continuing judicial oversight of a case so as to expedite its disposition and avoid wasteful pre-trial activities (see Rule 283). As I said previously, the nature of this action and its history satisfy me that it would be in the interests of justice to place this case under case management. There are numerous issues to untangle. I am not at all convinced, as the Village’s counsel suggests, that a decision in favour of the Village’s position on the *res judicata* issue will render moot many of the outstanding trial issues. Counsel cannot even agree on what the ramifications would be of a decision on the *res judicata* issue whichever way it goes.

[11] In my opinion there is much to be gained, and nothing lost, by placing these two cases into case management. The very fact that no decision has been made as yet as to whether these two actions should be amalgamated or even tried together suggests to me that this litigation could benefit from continuing judicial oversight. And that decision need not await a cross-examination of Mr. Marianayagam.

[12] For these reasons, I make the following orders:

1. These actions will be placed under case management. Pursuant to Rule 282, and in my capacity as Senior Judge of the court, I hereby designate Justice V.A. Schuler to be case management judge.

2. I direct that Mr. Marianayagam attend for cross-examination on his affidavit, filed May 1, 2009, on a date and at a time and in a manner mutually agreed to by the parties. The cross-examination is to be limited to matters pertinent to the *res judicata* issue and shall be conducted no later than August 31, 2009. Conduct money need not be paid but the costs occasioned by the cross-examination shall be costs in the cause.
3. Should any difficulties arise with respect to scheduling of the cross-examination, or counsel are unable to agree on any matter relating thereto, they shall refer the matter to the case management judge.
4. Within 30 days of the completion of the cross-examination, both counsel are to make arrangements with Justice Schuler for a case management conference. The timing, manner and agenda for such conference are in the discretion of the case management judge, however, counsel must be prepared to speak to the question of a date for the hearing of the *res judicata* issue and steps necessary leading up to that hearing.
5. Once a date is set for the hearing of the *res judicata* issue, a judge (other than Justice Schuler) will be appointed to hear it. It should be clear that case management will continue after the hearing of that issue.

[13] Costs of these applications shall be costs in the cause.

J.Z. Vertes
J.S.C.

Dated this 9th day of June, 2009.

Counsel for The Village of Fort Simpson:

W.D. Goodfellow, Q.C

Counsel for Camillus Engineering Consultants Ltd.:

R.A. Kasting.

Counsel for The Guarantee Company of North America:

S.M. MacPherson

S-1-CV-2001 000 164
S-1-CV-2003 000 050

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MEMORANDUM OF JUDGMENT BY THE
HONOURABLE JUSTICE J.Z. VERTES
