

*Wind Dancer Contracting Ltd. v. 851791 NWT Ltd.
Operating as Rowe's Construction Ltd., 2013 NWTTC 03*

*Date: 2013 02 11
File: T2-CV-2012-000002*

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

WIND DANCER CONTRACTING LTD.

Plaintiff

- and -

851791 NWT LTD. operating as ROWES' CONSTRUCTION

Defendant

MEMORANDUM OF JUDGMENT

of the

HONOURABLE JUDGE CHRISTINE GAGNON

Heard at: Hay River, Northwest Territories
February 1, 2013

Date of Decision: February 11, 2013

Counsel for the Plaintiff: Self Represented

Counsel for the Defendant: Douglas McNiven

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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Plaintiff

- and -

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Defendant

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1. I rendered a decision in this matter on Friday February 1st, 2013, whereupon I partially granted the Plaintiff's claim for unpaid bills, ordering the Defendant to pay \$5922.00 to the Plaintiff.
 2. As the Defendant had paid \$6442.00 into Court, he asked that costs be ordered against the Plaintiff and submitted that a lump sum of \$3000.00 be awarded, including costs for travel and accommodations for the Defendant's legal counsel.
 3. Mr. Felker, the Plaintiff, argued that it was the Defendant's choice to retain legal counsel and that he should not be responsible to pay this lawyer's fees or expenses.

LEGAL ASPECTS

4. When money is paid into Court, Rule 29 of the Territorial Court Civil Claims Rules applies. More specifically, Rule 29(5) provides that:

“If the plaintiff proceeds with his or her action and does not recover more than the sum paid into the Territorial Court the territorial judge shall, unless there are special circumstances, affix the costs of the action and order them to be paid to the defendant out of the money in the Territorial court and the balance paid to the plaintiff (...)”

5. In this case, the monies paid into Court corresponded to the total sum owing on invoices 306520 and 306521, which the Court awarded to the Plaintiff, plus a provision for costs amounting to \$520.00.

6. In exercising my discretion with respect to the determination of costs, I am also guided by Rule 2, which provides that:

(1) “The territorial judge shall hear and determine in a summary way all questions of law and fact *and may make such order of judgment, including an order as to costs, as appears to him or her to be just and equitable.*”

7. Rule 2(2) is also helpful as it establishes a guideline for the interpretation of the Rules in general, by stating that the purpose of the rules is to secure an “inexpensive, expeditious and just determination of every proceeding”.

ANALYSIS

8. In keeping with this interpretation, the rules of the Territorial Court are less formal than the rules of the Supreme Court of the Northwest Territories, for example, by not requiring that corporations and societies appear through counsel. This was duly noted by the Plaintiff, who was represented by its owner, Mr Felker. Given that it was the Defendant’s decision to retain legal counsel, the Defendant should bear some of this expense.

9. I also note that the money was not paid into the Territorial Court at the time the Defendant filed its defense, which was January 25, 2012, but paid such money on December 19, 2012, a few days before the Registry closed for the Christmas Holidays. The Plaintiff was notified of the payment on January 4, 2013. A strict interpretation of section 29(1) of the Rules would defeat the purpose of

Rule 2, however, I will consider this in my overall exercise of discretion in affixing the amount of costs to be paid to the Defendant.

CONCLUSIONS

10. Accordingly, the following costs shall be paid to the Defendant from the monies paid into the Territorial Court: the Clerk's fees as provided in the Tariff for the filing of the claim where the amount exceeds \$500.00, the fee for the issuance of a Notice of trial and the fee for the service of the Notice to the Defendant. In addition, the cost of the action and the disbursements of the Defendant are set globally at \$500.00. The balance of the monies paid into the Territorial Court shall be paid out to the Plaintiff.

11. With respect to the cost for a judgment by default awarded by Judge Bruser to the Plaintiff, it will be borne by the Plaintiff, as this judgment was subsequently set aside. The application by the Defendant to be relieved of his default was granted without cost. Finally, each party will pay its own costs, if any, with respect to any other proceedings incurred prior to the date of the second trial.

12. One last item, on invoices 306520 and 306521, there is a caption with respect to 5% interest being calculated on any balance unpaid after 30 days. During the trial Mr. Felker, for the Plaintiff, said that he wrote that on his invoices as an incentive but that a) it had never been discussed with his clients and b) he never claimed this penalty. Consequently, I find that this would not qualify as pre-judgment interest agreed upon by the parties and accordingly, this will not be included in the calculation of the total amount owing to the Plaintiff.

DATED IN YELLOWKNIFE, THIS 11th DAY OF FEBRUARY, 2013.

CHRISTINE GAGNON,
TERRITORIAL COURT JUDGE

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