

SUPREME COURT OF YUKON

Citation: *Toman v. Fulmer et al*, 2010 YKSC 35

Date: 20100629
Docket 09-A0036
Registry: Whitehorse

BETWEEN:

WILLIAM TOMAN

Plaintiff

AND:

**JEREMY FULMER, DON FULMER, BRIAN OLSON,
JOHN DOE and JANE DOE**

Defendants

AND:

JEREMY FULMER, DON FULMER, JOHN DOE and JANE DOE

Third Parties

Before: Mr. Justice R.S. Veale

Appearances:

David Grunder

Don Dear

Dan Shugarman

Dan Shugarman

Appearing for the Plaintiff

Appearing for the Defendant Olson

Appearing for the Defendant Jeremy Fulmer

Appearing as Agent for William Neen,

Counsel for the Defendant Don Fulmer

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] VEALE J. (Oral): This is an application by William Toman, the Plaintiff in a personal injury action, where the accident occurred outside of Whitehorse near Marsh Lake on August 16, 2007. Mr. Toman and his wife reside in Fayetteville, North Carolina. The Defendant Fulmers reside in the Yukon, and Brian Olson, I believe, resides in the

Yukon as well.

[2] The application is brought by Mr. Toman seeking examination for discovery of himself in his home in Fayetteville, North Carolina. He indicates in his supporting affidavit that he is continuing to recover from injuries sustained in the accident. He is 73 years old. He is having problem with his balance. He is unsteady on his feet and he uses a four-pronged cane to get around from time to time. He can walk 50 yards using the cane, but he is very slow. He also has a walker if he has to walk more than 50 yards. He has a right-leg problem and a right-foot drag, as he describes it. He had a heart attack following the accident in 2007 while he was in the hospital in Seattle.

[3] He indicates that if the examinations for discovery are held in Vancouver his wife would necessarily accompany him as she would be examined in a similar court action, and their eldest son, William Toman, would accompany them as well. I should indicate at this point that counsel for Mr. Olson indicates that they are prepared to pay the costs of travel for all three; in other words, William Toman, his wife, and their oldest son. He also indicates that he is capable of travelling and indeed will travel to Whitehorse for the trial, if necessary.

[4] There was one outstanding issue as to who was going to be counsel for the Plaintiff at that examination. It was originally anticipated that a local counsel in North Carolina, Thomas Pleasant, would attend, and I indicated that that would not be appropriate, and Mr. Grunder has indicated that if the order is that the examination take place in Fayetteville, North Carolina, he will attend for that examination.

[5] The two rules that apply for examinations for discovery are Rule 27(13), which

reads:

- (13) Unless the court otherwise orders, or the parties to the examination consent, an examination for discovery shall take place in Whitehorse.

And Rule 27(28) says:

- (28) So far as is practical, this rule applies to a person residing outside of Yukon, and the court, on application on notice to the person, may order the examination for the discovery of the person at a place and in the manner it thinks just and convenient, but unless the court otherwise orders, delivery of the notice and the notice may be made on, and payment of the proper witness fees may be made to, the lawyer for the person.

So the purpose of the rule is to have examination for discovery take place in Whitehorse as the general rule, subject to an application that it is appropriate to have the examination for discovery take place in another place that is just and convenient.

[6] I have a great deal of sympathy for Mr. Toman and his spouse and the injuries that they have received in this accident. Nevertheless, I am also aware they are capable of travelling, particularly with the assistance of their elder son, William Toman. In my view, given the costs associated with three counsel travelling to Fayetteville, North Carolina, as compared to the cost of transportation for the three Tomans to come to Vancouver, I am of the view that it is appropriate to order that the examinations for discovery of Mr. Toman take place in the City of Vancouver.

VEALE J.