

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Kilrich v. Halotier*, 2004 YKSC 80

Date : 20040824
Docket: S.C. No. 03-A0136
Registry: Whitehorse

Between:

KILRICH INDUSTRIES LTD.

Plaintiff

And:

HENRI HALOTIER

Defendant

Before: Mr. Justice L.F. Gower

Appearances:
Glen R. Thompson
Henri Halotier

For the Plaintiff
On his own behalf

**REASONS FOR JUDGMENT
DELIVERED FROM THE BENCH**

[1] Gower J. (Oral): I have reviewed the materials in the plaintiff's chambers record and I have reviewed all of the other documents on the court file with the exception of anything relating to the settlement conference, which I understand was held with Justice Veale on June 14, 2004. It would not be proper for me to be informed of what took place in the settlement conference, because that meeting was without prejudice to the parties.

[2] This case really turns on the application of Rule 19(19), and I repeat, for the purposes of these reasons, what that sub rule says:

An allegation of fact in a pleading, if not denied or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant or mentally incompetent person.

[3] Kilrich has made its allegations in its Statement of Claim filed December 17, 2003, and those allegations are spelled out in more detail in the affidavit of Mr. Boyd, filed June 9, 2004, and the affidavit of Ms. Hnatiuk, filed June 9, 2004. Those allegations are not denied in the Statement of Defence of Mr. Halotier, filed January 13, 2004, or in any subsequent affidavit material or any material from Mr. Halotier.

[4] The allegation by Mr. Halotier that he had already paid \$100,000 for material for windows, exterior doors and logs, but that repairs from Kilrich were never carried out, has been answered by Mr. Boyd in his affidavit of June 9, 2004. That affidavit was not responded to by Mr. Halotier and the essential allegations made by Kilrich remain undenied. Therefore, I take them to be admitted.

[5] I grant judgment against the defendant in the amount of \$13,632.43 as the principle sum due. I further grant pre-judgment interest for the plaintiff in the amount of \$2,585.16 to June 9, 2004, plus an additional \$767.52 to today's date. I further grant the plaintiff special costs for its legal fees and disbursements in the amount of \$3,361.50, plus such further amounts as may be quantified at an assessment hearing, if one is required, for the final amount of those legal fees.

[6] I declare that the plaintiff has a valid and enforceable security interest in all of the defendant's present and after-acquired property pursuant to the customer agreement dated June 21, 2001.

[7] Mr. Thompson?

[8] MR. THOMPSON: Yes, thank you, My Lord. Perhaps one remaining term might be waiver of approval of the form of the order?

[9] THE COURT: So ordered. Waiver of the requirement that Mr. Halotier sign the order. Is there anything more?

[10] MR. THOMPSON: I think that is everything, My Lord. I cannot think of anything further. Thank you.

GOWER J.