

COURT OF APPEAL

Citation: *Kilrich Industries Ltd. v. Halotier*
2005 YKCA 04

Date: 20050621
Docket: C.A. 04-YU525
Registry: Whitehorse

Between:

KILRICH INDUSTRIES LTD.

Respondent (Plaintiff)

And

HENRI HALOTIER

Appellant (Defendant)

Before: Mr. Justice R.S. Veale

Appearances:
Sean Kelly
Henri Halotier
Richard Pritchard

For the Respondent
On his own behalf
Amicus curiae

ORAL MEMORANDUM OF JUDGMENT

INTRODUCTION

[1] VEALE J.: This is a matter that was first heard on April 29, 2005. At that time, the applications were made in English and Mr. Halotier did not have a translator present. I understand the rulings I made were explained to him in French and that he was in agreement with the result and does not wish the matters to be re-heard. However, in a case management meeting on June 17, 2005, clarification of the rulings and their implications was discussed. This hearing has been set to hear submissions and to clarify the rulings, if necessary.

[2] I will first set out the order made on April 29, 2005, and then I will hear submissions on the implications or further directions that may be requested.

[3] I ordered that Mr. Pritchard be removed as solicitor of record for Mr. Halotier. This means that Mr. Halotier is unrepresented in this complex case.

[4] In order to assist Mr. Halotier and the Court, I appointed Mr. Pritchard as *amicus curiae* or friend of the court.

[5] I ruled that the appeal would be heard in English. I have been advised by counsel that this is really not appropriate as Mr. Halotier does not understand English sufficiently. As this order has not been filed, I rescind this part of my order as it is preferable that the case proceed with three bilingual judges. Each party may testify and file documents in the language of their choice and shall arrange for their own translation of documents and at the hearing of the appeal. The court will not provide simultaneous translation at the hearing.

[6] I ordered that Mr. Halotier be cross-examined on his affidavit filed April 22, 2005, where he seeks to introduce evidence that was not heard at trial. That application will be heard by the three judges and the purpose of the cross-examination is to ensure that the matter will be ready to proceed, should the Court allow the evidence to be heard.

[7] I ordered that the factum of Kilrich Industries Ltd. be filed 14 days after the completion of the transcript of the cross-examination.

[8] As an issue under the *Constitutional Questions Act*, R.S.Y. 2002, c. 39, has been raised, counsel for the Government of Yukon appeared seeking directions. I directed that counsel for the Government of Yukon file an appearance as an intervenor.

[9] Counsel for Kilrich Industries Ltd. applied for costs. I declined to order costs, leaving that matter to the judges that hear the appeal.

DECISION

[10] After hearing submissions from Mr. Pritchard and Mr. Kelly, I am prepared to make what I will call an interim direction on the role of the *amicus curiae*, Mr. Pritchard. This direction will assist counsel in proceeding with this appeal but leaves the final determination of the role of *amicus curiae* to the judges that hear the appeal.

[11] This case is somewhat unique in that Mr. Halotier is self-represented and prefers to communicate in French. Mr. Pritchard, the *amicus curiae* and Mr. Kelly, counsel for Kilrich Industries, communicate in English. Difficulties have been encountered and the purpose of this direction is to facilitate the progress of this appeal to a hearing.

[12] Although Mr. Pritchard is not counsel for Mr. Halotier, his task is to explain the issues and procedure to Mr. Halotier. He may advise him as to the issues or law as Mr. Pritchard understands them and communicate Mr. Halotier's position to the Court or Mr. Kelly. However, Mr. Pritchard is *amicus curiae* and may take a position that is not the position of Mr. Halotier. Mr. Halotier is always free to address the Court directly about his position on any matter.

[13] In order to facilitate communication between Mr. Halotier and counsel for Kilrich Industries Ltd., Mr. Kelly should put the matter in writing in English and meet with Mr. Halotier, Mr. Pritchard and a translator. Mr. Halotier's position can be conveyed to Mr. Kelly after appropriate discussion and legal advice or explanation from Mr. Pritchard.

When Mr. Halotier or Mr. Pritchard, on his behalf, take a position either with Mr. Kelly or before the Court, it can be taken as the position of Mr. Halotier.

[14] As to the cross-examination of Mr. Halotier, Mr. Pritchard should be present, not as counsel but to assist Mr. Halotier. The cross-examination should be confined to the new evidence that Mr. Halotier wishes to put before the Court and the evidence that Kilrich Industries Ltd. wishes to raise in response.

[15] It is not the role of *amicus curiae* to raise issues that have not been raised by the parties. However, the *amicus curiae* may raise issues that are important to Mr. Halotier, subject always to the direction of the Court.

[16] Mr. Kelly is free to raise the issue of the role of *amicus curiae* with the Court in the event that the role is expanded beyond the parameters of this ruling.

VEALE J.