

**IN THE SUPREME COURT OF THE YUKON TERRITORY**

Citation: *Sturzenegger v. K. Peters et al.*,  
2004 YKSC 24

Date: 20040317  
Docket: S.C. No. 01-A0222  
Registry: Whitehorse

BETWEEN:

**PETER STURZENEGGER  
doing business as ZURICH TRUCKING**

Plaintiff

AND:

**K. PETERS INDUSTRIES NORTHERN LTD. and  
KERRY PETERS doing business as KPI NORTHERN**

Defendants

Before: Mr. Justice L. F. Gower

Appearances:  
Keith Parkkari  
Kerry Peters

For the Plaintiff  
On behalf of the Defendants

**MEMORANDUM OF JUDGMENT  
DELIVERED FROM THE BENCH**

[1] GOWER J. (Oral): Mr. Parkkari, for the plaintiff, has made a number of applications to put closure to the outstanding issues in this trial. The first relates to the matter of pre-judgment interest, which I ordered in my Reasons for Judgment in favour of the plaintiff, but did not give any specific amount other than to say that it was to be awarded pursuant to the *Judicature Act*, R.S.Y. 2002, c. 128. I have received a table of calculations of the interest from Mr. Parkkari. I have not

double-checked the math, but I am going to assume that, as an officer of the court, Mr. Parkkari has done so, and I accept the amount totalled of \$4,581.45 as the proper amount of pre-judgment interest and order the defendants to pay that to the plaintiff on a joint and several basis. For the purposes of the record, I am going to direct that this new document be marked as the next exhibit in the trial.

[2] Next, there is the matter of costs. Mr. Parkkari has asked for costs at Scale 4 and says that there has been more than ordinary difficulty for the plaintiff in prosecuting his action; in particular, difficult issues of fact. He points to the fact that the plaintiff was required to get into the invoices and work done by Mr. Holland on his own behalf for the defendants, as distinct from the work done by Zurich Trucking, and that that put the plaintiff to some further time and trouble in making his case.

[3] I am not persuaded by Mr. Parkkari's argument on that point. In this case, there was an overlap in time between the work that was done by Mr. Holland for the defendants on his own behalf and the work that was done by Zurich Trucking, which is the subject of this action. Even though Mr. Peters raised his objections in that regard at a relatively late date, it is reasonable to presume that it would have come up eventually. Because of the overlap in time, the defendants would want to ensure that the work done by Zurich was accounted for and separately done, in comparison with the work done by Mr. Holland.

[4] In any event, the amount of trial time that was involved was relatively little. I recall Mr. Holland going through the evidence invoice by invoice for the work that he

personally did for the defendants and then doing the same thing for the work done by Zurich Trucking, but it was no more, as I recall, than a few hours of evidence.

[5] The case of *Bradshaw Construction Ltd. v. The Bank of Nova Scotia*, [1991] B.C.J. 540, which Mr. Parkkari filed, was a situation where there were difficult issues of fact, but those were noted to be in the nature of expert appraisal evidence and expert evidence on business evaluation.

[6] I am not persuaded that this is a matter of more than ordinary difficulty and I am going to limit the plaintiff's costs to Scale 3.

[7] The third issue is the Offer to Settle. I have before me an Affidavit of Service filed on behalf of the plaintiff on March 16, 2004, which deposes that the Offer to Settle was delivered by facsimile to the defendants' fax number on August 1, 2003 (a fax confirmation sheet is attached as an exhibit to that affidavit), and that the Offer to Settle was served on the defendants' address for service in Whitehorse on the same day.

[8] The best that Mr. Peters can say is that he does not recall seeing the document, but he cannot say, and has not argued, that it was not received by him, either by fax or by delivery to his address for service. I am satisfied on the basis of the evidence before me that the Offer to Settle was, in fact, delivered properly. Given that the amount of the judgment that I awarded in favour of the plaintiff, at \$38,764.18, exceeds the amount of the Offer to Settle, then, pursuant to Rule 37(23), the plaintiff is entitled to double costs from August 1, 2003 on.

[9] That leaves the matter of the Bill of Costs and Mr. Peters' application today to adjourn dealing with the Bill of Costs so that he can receive legal advice on how to respond to it. Even at Scale 3, the amount of the fees involved are significant, in the amount of \$14,980.00. That is the claimed amount. I am not saying that is going to be the assessed amount. Then, when you add the disbursements, it is a total claimed of \$17,694.68, which is more than half of the amount of the judgment itself, exclusive of pre-judgment interest.

[10] I have to pause here, Mr. Parkkari, because I note in the draft you have some asterisks beside certain of the disbursements.

[11] MR. PARKKARI: Yes, down where GST, those are GST exempt items.

[12] THE COURT: Oh, I see. Okay, that is what it is. Thank you.

[13] I have reviewed the draft Bill of Costs in a cursory fashion and it appears to be in order, but I am not prepared to tax it myself, principally because of Mr. Peters' application for an adjournment.

[14] I am going to allow Mr. Peters the opportunity to get legal advice, but I am going to direct the parties, immediately upon court closing today, to obtain an appointment from the Clerk of the Court for a date and time to do the taxation of this Bill of Costs. I am going to direct that that date be set within two weeks of today's date. That will give you the time that you need to get a lawyer to look this over.

You do not necessarily have to bring your lawyer back to the assessment, but that will be up to you.

[15] Because of the delay that this is going to cause to the plaintiff and because of the previous warnings that I have given to Mr. Peters about the necessity for him to come to court prepared, and because this draft Bill of Costs was sent to him last Friday for his review and he has not responded to the plaintiff, I feel that it is appropriate that the plaintiff should receive special costs for his attendance, through counsel, at the assessment, and that will be in any event of the outcome of that assessment.

[16] I have looked at the terms of the draft order, which I will be handing back to Mr. Parkkari for re-drafting. I will read out verbatim what I have here and in some cases I have made some typographical edits as well.

[17] This Court orders that:

1. Judgment to the plaintiff, Peter Sturzenegger, against the defendants K. Peters Industries Northern Ltd. and Kerry Peters, jointly and severally, in the amount of \$38,764.18;
2. The plaintiff is entitled to pre-judgment interest to March 9, 2004, in the amount of \$4,581.45 from the defendants, jointly and severally;
3. Costs in favour of the plaintiff at Scale 3, including double costs from August 1, 2003, in an amount to be taxed by the Clerk of the Court, or her delegate, from the defendants, jointly and severally; and

4. The parties are directed to forthwith obtain an appointment from the Clerk of the Court to complete the taxation of the plaintiff's Bill of Costs, which shall, in any event, be held within two weeks of the date of this Order, and the plaintiff shall be entitled to special costs for that attendance in any event of the outcome.

[18] Because I have just read out the terms of the Order, I will direct, not as a term of the Order, but as a separate direction, that it is not necessary for Mr. Peters to approve the terms of the Order.

[19] MR. PETERS: Thank you, My Lord.

[20] THE COURT: Your signature will be sufficient.

[21] Have I missed anything?

[22] MR. PARKKARI: No, that's all, My Lord.

[23] THE COURT: Okay. Thank you. We are adjourned.

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GOWER J.