

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

Citation: *Sturzenegger v. Peters et al*, 2005 YKSC 32

Date: 20031201  
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): I will rule that I can consider this application, Mr. Peters, even though it is served on short notice and not in compliance with the Rules of Court in terms of the timing of it.

[2] On the issue of the second point on your Notice of Motion, seeking leave of the court to file a third party notice, I note that in the Rules of Court, this is in Rule 22(3):

"A party of record may file a third party notice  
(a) at any time with leave of the court, or ..."

Which is what you are seeking here today. But it is also significant to note paragraph (b) which says:

"(b) without leave of the court,  
(i) at any time before a notice of trial is delivered, or ..."

That clearly is not the case because we have a notice of trial here.

"(ii) if a notice of trial has been delivered, at least 120 days before the scheduled trial date."

That gives some indication of how much time would ordinarily be required in order to allow the filing of a third party notice because of the things that Mr. Parkkari has mentioned.

[3] Once they have been added as third parties, then you have a right to examine them, they have a right to examine you, there is mutual exchanges of documents. All of that would require some time, which would mean that the trial could not proceed as scheduled.

[4] In my respectful view, that would be unfair to Mr. Parkkari's client. He has had this matter set down for trial since mid-July. You have known about these issues, really, since the time that you received the initial notice of claim, the writ of summons and statement of claim. For whatever reason, you chose not to get legal advice on those issues and that has resulted in the matter proceeding until today to be dealt with on the third party issue. You have decided not to get advice prior to now on this point. I am not just talking about the last couple of months that you have mentioned that you have had difficulty trying to retain a lawyer, but the amount of time prior to the last couple of

months where you really have not dealt with it. You may not have thought it was important. I do not know what your reasons were for not getting counsel, but as I said to you before, you do have certain responsibilities as a litigant. If you are going to represent yourself, then you have to do your homework, you have to get advice, you have to do something to know how to present your case, and it should not cause prejudice to the other side if you do not do that.

[5] So I am going to deny your application for leave to file a third party notice. I will repeat what I said to you a moment ago, that even if this trial does proceed and if, for some reason, judgment is granted against you and you feel that you have a continuing claim over against Mr. Holland and/or Ms. Davies, then you should seek legal advice about how to proceed with such a claim. You are not necessarily foreclosed from making that kind of a claim by the order that I am making today, which is to deny you the right to add them as third parties in this action. As a result, the trial date will continue as scheduled and unless I missed something, I think that is it.

[6] MR. PARKKARI: With respect to costs, our submission would simply be that the cost should follow the cause; the cost of this application follow the cause of the trial.

[7] THE COURT: For the record, Mr. Parkkari, will you be filing an order to confirm what has happened today, given that Mr. Peters is unrepresented?

[8] MR. PARKKARI: Yes, and if I am preparing the order, I have asked that we dispense with Mr. Peters needing to approve the form of the order.

[9] THE COURT: Yes, that was done in the past and I will make that order. Thank you.

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GOWER J.