

Federal Court of Canada  
Trial Division



JUN 11 1997  
Section de première instance de  
la Cour fédérale du Canada

T-1992-96

BETWEEN:

RONALD KOCH

Plaintiff

- and -

TERRENCE E. DUNSBY, AUDREY DUNSBY,  
KELLEN G. HUBER operating as K.T. VENTURES,  
and WESTX R.V. TRANSPORT LTD.

Defendants

**REASONS FOR ORDER**

**CAMPBELL J.**

Let the attached transcript of my Reasons for Decision delivered orally from the Bench in Edmonton, Alberta, the 6<sup>th</sup> day of May, 1997, now edited, be filed to comply with section 51 of the *Federal Court Act*.

Douglas R. Campbell

Judge

OTTAWA  
May 27, 1997

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THE COURT:

On the first point under Section 327.1 the facts specified in the Order are not in dispute. The one that you have got an admission to is the use between June 6, '96, to the present. Also, there is an agreement that the records will be kept by the Defendant of the hitch he admits to using from now to the date of trial. That is the second one. The third thing would be the pleadings to be amended are closed by a certain time. You are going to have to produce an application for amendment to your defence, and this should be done within the next 30 days.

Mr. Splane, when is the next motions day here?

COURT REGISTRAR:

I think something like that could be handled by the prothonotary, and he is here on May the 21st.

THE COURT:

So by May 30th pleadings are closed. There should not be any reason why you could not get your discoveries completed by the end of the summer, is there?

MR. YOO:

I would ask by the end of August as the deadline.

THE COURT:

Sure. Is there any problem with that, Mr. Spitz?

MR. SPITZ:

I am gone for a large part of July --

THE COURT:

This is only May, so you have got June --

MR. SPITZ:

There has been no delay, sir. I mean I can certainly accommodate it whenever

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THE COURT:

I am not suggesting that there has. So discoveries completed by August 31st.

There are certainly no big issues out here that require comprehensive testimony and questioning. It is the issue of credibility that is the biggest problem. That is the Order, then, by August 31st. All right, so I direct an expedited trial.

On this question of costs, these are my brief reasons, that there is a controversy in this case concerning the right of Mr. Dunsby to have and use either the hitch assembly attached to the F700 truck in 1994 and/or the hitch assembly attached to the truck in 1996. There is a factual issue to be tried, which requires the calling of evidence. In my opinion, this issue is central to the proper determination of this case and, therefore, can only be resolved at trial. Thus, the application for summary judgment is dismissed.

However, the evidence which Mr. Dunsby will have to meet when he and his wife testify is a written agreement, which is Exhibit C to the Koch affidavit. On the face of it, Mr. Dunsby has no right to the hitch that was removed or any other hitch of similar configuration.

In addition, as the defence is presently worded in Clause 4, there is this allegation that he wishes or that he thinks he has consent to manufacture this assembly. I understand that this will be withdrawn, but at this point it is there.

MR. SPITZ:

I'm sorry, sir, if I might interject. It might assist, what was contemplated at that point was the fact that he had made some parts for -- he was not concerned that the hitch was removed was his explanation, because he planned to make these parts anyway.

THE COURT:

Well, it does not read that way. Consent to manufacture is what he says.

MR. SPITZ:

I understand, sir. It means something different.

THE COURT:

It does. It definitely does. So in view of these certain factors to this case, it is appropriate that security for costs be posted by Mr. Dunsby to secure the seriousness of his position, and I set the security at \$2,500, and this must be paid within 30 days into court here at the Edmonton Registry. Anything else?

On this point about your amendment, I could add the clause that you could apply before the prothonotary on May whatever the date is.

MR. SPITZ:

I do intend to, sir, but I have got to look at my schedule.

THE COURT:

You have got to get your pleadings closed by May 30th.

MR. SPITZ:

Yes, I think that suffices, sir, given that you want the amendment by that date.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF SOLICITORS AND SOLICITORS ON THE RECORD

COURT FILE NO.: T-1992-96

STYLE OF CAUSE: RONALD KOCH -AND- TERRENCE E. DUNSBY

PLACE OF HEARING: EDMONTON, ALBERTA

DATE OF HEARING: MAY 6, 1997

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE CAMPBELL

DATED: MAY 27, 1997

APPEARANCES:

MR. EDWARD YOO

FOR PLAINTIFF

MR. PETER SPITZ

FOR DEFENDANT

SOLICITORS OF RECORD:

EMERY JAMIESON  
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FOR PLAINTIFF

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