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BETWEEN ALAN WILLIAM EVERISS
Plaintiff

NO.

A N D MARLBOROUGH IMPORTS AND
EXPORTS LIMITED
Defendant

Hearing: 22 August 1975

Counsel: K. Robinson in Support
H.B. Rennie to Oppose

Judgment: 4-9-75

JUDGMENT OF O'REGAN J.

Notice of motion for order for further and better particulars of counter-claim.

The plaintiff's action is for breach of a contract of service and defamation. The defendant has counter-claimed in negligence and claimed damages. The statement of counter-claim alleges that the plaintiff was negligent in that he failed:-

- "(a) To make proper arrangements for the purchase and/or manufacture of goods.
- (b) To ensure that goods ordered were delivered on time and in a marketable condition.
- (c) To ensure that customers understood the terms of sale.
- (d) To ensure that customers paid for goods as arranged.
- (e) To make any/or proper enquiry as Marketing Manager when negotiating contracts for the manufacture of goods and retail outlets."

Prior to the hearing of the present application, the defendant filed a statement of further particulars in which it amplified upon each of the above allegations seriatim. Each paragraph however, is prefaced with the words "without prejudice to the general allegation....." Mr Robinson submitted that the defendant should be ordered to give particulars in a form not circumscribed in that way. Mr Rennie, on the other hand, expressly stated that the counter-claim is for general damages only and submitted that on the authority of London and Northern Bank v. George Newnes Limited 16 T.L.R. 433 and Corporation of Dunedin v. Booth (1908) 10 G.L.R. 695, particulars of such should not be ordered. He explained that the particulars already given were furnish to give the plaintiff some general idea as to the areas in which his employment gave less than satisfaction. He asserts that defendant was under no legal obligation to furnish same.

The defendant's express avowal during the argument of this application to the effect that he seeks only general and not special damages is, in my view, hereafter binding upon it and hereafter precludes it from making claim to any special damages on the action.

If special damages were sought, then particulars should be given and would be ordered - Collins v. Lorraine's Cake Kitchen Limited 1955 N.Z.L.R. 178. From a perusal of the statement of counter-claim and indeed the particulars already furnished, it is not readily discernible whether damages for general or special loss are sought. They are ambiguous as to such matters and could be said to encompass both. Were it not for defendant's categorical statement that it seeks only general damages, I would have ordered it to furnish particulars of special damages claimed, if any and

thereby put the defendant to declare itself on the matter. If it failed to give any particulars thereof, it would thereafter be taken that it did not claim special damages. I do not, in the circumstances, think that such a course is necessary. It is now clear that general damages only are claimed and on the authorities cited by Mr Rennie, I hold that particulars of such are not to be ordered.

In the circumstances, there will be no order as to costs.

Solicitors in Support: Messrs McGrath, Robinson and Company,
Wellington

Solicitors to Oppose: Messrs Gascoigne, Wicks and Company,
Blenheim
