

IN THE DISTRICT COURT  
HELD AT AUCKLAND

Plaint No. 3803/82

*cited in  
AIC Review  
Finance Ltd v  
Small (1986)  
2 NZLR*

BETWEEN

SOUTH PACIFIC CREDIT CARD  
LIMITED

a duly incorporated company  
having its registered office  
at Auckland and carrying on  
business as credit card  
operator, namely, American  
Express Card Services

PLAINTIFF

A N D

KEVIN LINDSAY JEFFERIS  
OF 112 Lake Road  
Hamilton

DEFENDANT

Date of Hearing: 5.11.82

Date of Decision: 28.2.83

Counsel:

*W. Whitehead*

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DECISION OF JUDGE G C P A WALLACE

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The plaintiff is a company carrying on business as a credit card operator, namely, American Express Card Services. The defendant is a basic card member of that organisation. The defendant has failed to pay to the plaintiff accounts for credit card purchases between the months of September 1980 to December 1980. The plaintiff is suing for recovery of the sum outstanding together with certain charges. The plaintiff's registered office and place of business is in Auckland and the defendant resides in Hamilton.

The plaintiff's action has been commenced in this Court and a question has been raised as to whether that is the appropriate Court in terms of the District Court Rates 1948.

Rule 26:-

"26. Actions Generally - (1) Except where by any Act or rule it is otherwise provided, an action may be commenced -

(a) In the Court nearest to the place where the defendant or 1 of the defendants resides or carries on business; or

(b) Subject to the succeeding provisions of this rule, in the Court nearest to the place where the cause of action or a material part thereof arose.

(1A) Where the Court nearest to the place where the defendant or 1 of the defendants to an action resides or carries on business is the Court at Auckland, North Shore, Otahuhu, Papakura or Henderson, and the Court at one of those 5 places is the Court nearest to the place where the cause of action or a material part thereof arose, subclause (1)(b) of this rule shall not apply to the action.

(2) Where an action is founded on a contract for the sale or hire of goods and payment is to be made by instalments, subclause (1)(b) of this rule shall not apply unless the claim is for a sum of money exceeding \$100: Provided that in any such case the action may be commenced in the Court nearest to the place where the defendant entered into the contract notwithstanding that the amount of the claim does not exceed \$100.

(3) Where a plaintiff desires to commence an action by virtue of subclause (1)(b) of this rule he shall include in the plaint note a certificate that the Court is the nearest Court to the place where the cause of action or a material part thereof arose.

- (4) Where the plaintiff sues as assignee of a debt or other cause of action the action may be commenced in any Court in which, but for the assignment, the assignor might have commenced the action, and not elsewhere.
- (5) The foregoing provisions of this rule shall not apply to any action against the Crown (whether alone or with any other person); and any such action as aforesaid shall, except where by any Act or rule it is otherwise provided, be commenced in the Court nearest to the place where the cause of action or some material part thereof arose:  
Provided that if there is any reasonable doubt as to the Court in which any action should be commenced under this subclause, the action may be commenced in the Court nearest to the place where the plaintiff or one of the plaintiffs resides or carries on business."

Under Rule 26(1)(a) The appropriate Court for commencement of the action would be Hamilton.

The plaintiff has relied on Rule 26(1)(b) and pursuant to Rule 26(3) has endorsed the plaint note with the appropriate certificate and filed in this Court.

The decision of District Court Judge Bergin in Broadlands Finance Limited v Alan James Priddle delivered in this Court in June 1982 has raised some doubts as to whether this Court is the proper Court for the commencement of the plaintiff's action in this case and a number of others.

The defendant has taken no steps in the matter at all. Counsel for the plaintiff has filed extensive and helpful submissions. I have to decide on the facts of this case or more properly, the nature of the transaction out of which the action arose whether the cause of action on a material

part of it arose within the District of this Court.

I have considered Judge Bergin's judgment in the Broadlands' case and I agree with his decision. However I accept Counsel's submission that the facts of the Broadlands' case differs in important respects from the facts of the present matter.

The present plaintiff and Broadlands Finance Limited carry on business throughout New Zealand. The former has no branch office in relation to credit card members, the latter has branch office in which a transaction may originate although the decision to enter into a contract may be made only by the Head Office in Auckland. Judge Bergin found that there was no evidence to show that any of the negotiation surrounding the loan evidenced by the written contract were conducted in Auckland or elsewhere than Lower Hutt.

The nature of the contract in this case is quite different. It is one of card membership of an organisation whereby the member obtains a credit facility which can be used throughout New Zealand and abroad. In simple terms the use of the card enables a card member to purchase goods and services without payment at the time. The payment is made by the plaintiff and the card member on joining has contracted to pay to the plaintiff the sums so paid by the plaintiff.

Forms for application for membership may be obtained from any establishment which accepts the credit card but all such forms must be sent by the applicant to the plaintiff's office in Auckland. If there are any negotiation in relation to the application such can only be conducted with the plaintiff's place of business in Auckland. The plaintiff acknowledged that it had 3 small sub offices but that they existed to services the plaintiff's establishments and not card members.

It is clear from the form of application for membership

that an applicat's credit worthiness is an important consideration and this is checked, then decided upon, in Auckland.

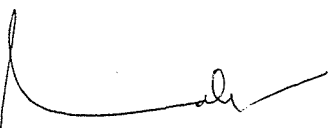
To succeed in its claim the plaintiff has to prove that the defendant was a credit card member and thereby bound by the conditions of membership, that the moneys were due by the defendant and that he has failed to pay.

The proof of card membership is a very material part of the cause of action. The only aspect of that which may have occurred outside Auckland is the obtaining and completion of a form of application. That in itself does not take the matter very far. The application does not even come to the attention of the plaintiff let alone receive consideration until received at the Auckland office. This appears to me to distinguish the matter from the Broadlands' situation where branch offices exist and it appears agents for the company. In the Broadlands' situation the decision to enter into the contract is made by Head Office but (as it appears from Judge Bergin's decision) negotiation may be conducted by a Branch or an agent and documents signed at a Branch.

The facts of card membership appear to me to have arisen in the district of the Auckland Court and constitute a material cause of action. Consequently the plaintiff cannot be said to have commenced its action in the wrong Court.

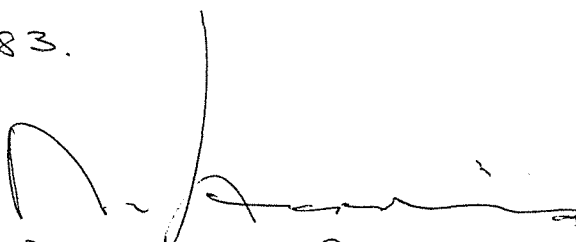
In view of my finding on this point I do not consider it necessary to determine the question relating to a stipulation as to place of payment except to say if that were the only part of a transaction to which the term material part of a cause of action could be applied when I do not think it would, of itself, be sufficient. It may add weight, as it does here, to the other material facts. The degree of weight to be must depend upon all of the facts of a matter.

Judgment for the plaintiff for the account claimed,  
together with Court cost but not witnesses' expenses,  
or solicitor's fee.



(G C P A Wallace)  
District Court Judge

Fragment delivered by me this 28th  
February 1983.

  
Deputy Registrar