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IN THE HIGH COURT OF NEW ZEALAND
INVERCARGILL REGISTRY

No. M.114/82

1369

BETWEEN F.T. ROTHERAM

Appellant

A N D ATTORNEY-GENERAL

Respondent

Hearing: 7 November 1984

Counsel: I. Hunt for Appellant
R. Ibbotson for Respondent

Judgment: 7 November 1984

ORAL JUDGMENT OF HOLLAND, J.

This is an appeal against the refusal of a District Court Judge to grant a rehearing of an entry of judgment by default against the appellant. The appellant was sued by the respondent for the supply of electricity to a house tenanted by him. The proceedings were by way of default summons. The amount involved was $398.77. The summons was served. No defence was filed and judgment was entered by default. Almost two years after the entry of judgment the application was made to set aside the judgment. That was no doubt done because judgment summons proceedings had been taken.

It is acknowledged by counsel for the appellant that in order to succeed the appellant had to establish before the District Court a satisfactory explanation for having taken no steps in the proceedings and that he has a defence which ought to have been heard. Counsel submitted that notwithstanding those provisions in the Rule, the more liberal attitude of the Courts these days was to see whether justice required leave to be granted. There can be no doubt

that the overall issue is one of justice, but there must be some certainty in the administration of justice, and it would seem to me with respect that a defendant will have a very difficult task to persuade a Court to allow a rehearing unless he can at least provide one or other of either satisfactory explanations for taking no steps, or a defence which ought to be heard. This defendant, who is now an appellant, can establish neither. He says he took no notice of the default summons because he was an undischarged bankrupt. In that respect he was quite mistaken because the debt was clearly incurred well after his adjudication and it was not a debt provable in the bankruptcy. He also says that he took no step because the summons was issued spelling his name with an "h" and his true name did not have an "h" in it. He further says he took no notice because he was renting a house owned by his employer and he believed that the employer was paying the electricity charges.

In a letter written to the plaintiff and exhibited in an affidavit made by the assistant accountant of the plaintiff he said:-

> "We were under the misapprehension that the rental of the house included fuel and electricity."

It seems to me to be a clear acknowledgement that his employer landlord was not liable for the electricity. He may have felt he had some right to dispute this claim because he alleges that he did not sign any agreement authorising the power to be installed. Whether that is so or not has not been established because the judgment was entered in default proceedings without evidence. The supply of electricity, however, is a necessity and one where there can be no doubt about the obligation of the householder's primary liability to pay.

The defendant has not offered a satisfactory explanation for failing to file a notice of intention to defend, nor has he presented a defence which ought to have been heard. It was necessary for him to apply to the District Court for leave to appeal against this decision, and that leave was granted, although it is difficult to see why. I am satisfied that the appeal is misconceived and should be dismissed and it is dismissed accordingly.

The respondent seeks costs. This is a relatively trivial matter but the litigation has arisen because of the activities of the appellant which I have found to be unjustified. The respondent will be allowed costs of $50 and disbursements on the appeal.

A D Holland J