

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

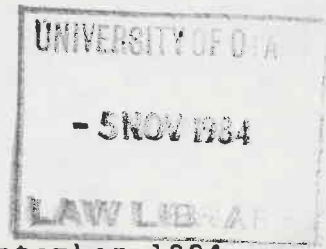
No. A.105/83

BETWEEN CHRISTCHURCH CITY COUNCIL

Plaintiff

A N D J. RATTRAY & SONS LIMITED

Defendant



Hearing: 3. 4 September 1984

Counsel: D.M. Palmer for Plaintiff
R.E. Wylie and E.D. Wylie for Second Defendant

Judgment: 14 SEP 1984

JUDGMENT OF HOLLAND, J.

This action was called at the commencement of the resumption of the hearing of Action No. 232/81 brought by City South Supermarket Limited & Others as plaintiffs against the defendant. Counsel for the plaintiff indicated to me that the plaintiff and the defendant had reached agreement and that the defendant would consent to an order for an injunction in terms to be specified later but to lie in Court until 31 May 1985. On the second day of the hearing of the allied action counsel for the plaintiff and the defendant informed me that the parties consented to an order being made "against the defendant granting an injunction prohibiting the use of the premises at 45 Battersea Street, Christchurch for the sale of goods to persons other than those in the business of re-selling such goods either in an original or processed form". The injunction was to lie in Court until 31 May 1985.

Although the judgment was to be by way of consent I reserved the formal entry of judgment because I was hearing a claim for an injunction in stricter terms at least by way of the requirement that

the order be not enforced until 31 May 1985 at the suit of City South Supermarket Ltd & Others. In the event of my granting the injunction in that action there would be no purpose in granting the injunction in favour of the City Council. I was also troubled about jurisdiction because of an amendment to the Town and Country Planning Act 1977 after the commencement of these proceedings but before judgment. Although the statement of claim does not specifically say so the proceedings brought by the plaintiff were clearly brought under the provisions of section 92(2) of the Town and Country Planning Act 1977 which provided as follows:-

"The Council in whose district the offence has been committed may, in respect of a continuing offence (whether or not a conviction has been entered in respect of the offence), apply to the High Court, or, if the capital value as appearing in the district valuation of the property concerned does not exceed \$50,000, to a District Court for an injunction to restrain the continuance of the offence".

The writ was issued on the 12th day of April 1983. On 16 December 1983 the Governor General's Assent was given to the Town and Country Planning Amendment Act 1983. Section 9 of the amending Act repealed subsection (2) of section 92 of the principal Act. Section 36 introduced a new section to be inserted after section 173 of the principal Act in the following terms:-

"(1) The Council or Maritime Planning Authority in whose district or area an offence against this Act has been committed may, in respect of a continuing offence (whether or not a conviction has been entered in respect of the offence), apply to a District Court for an injunction to restrain the continuance of the offence.

"(2) The continued existence of anything in a state, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed to be a continuing offence."

It follows that from 16 December 1983 the Town and Country Planning Act 1977 no longer conferred authority on the plaintiff to apply to this Court.

Although this amendment to the Town and Country Planning Act cannot be said to have deprived this Court of its inherent jurisdiction to grant injunctions, there nevertheless may be some doubts as to the standing of the plaintiff in these proceedings in seeking an injunction under the inherent jurisdiction. There also seems little point in this Court declining jurisdiction or declining to issue the injunction and to require the parties to start new proceedings in the District Court to obtain such an injunction.

Counsel have submitted that the problem is resolved by the Acts Interpretation Act 1924, and in particular section 20(g) which provides:-

"(g) Any enactment, notwithstanding the repeal thereof, shall continue and be in force for the purpose of continuing and perfecting under such repealed enactment any act, matter, or thing, or any proceedings commenced or in progress thereunder, if there be no substituted enactments adapted to the completion thereof."

The new section 173A of the Town and Country Planning Act 1977 introduced by the Town and Country Planning Amendment Act 1983 is clearly a substituted enactment for section 92(2) which was

repealed. But I am not satisfied that it is "adapted to the completion" of the proceedings. There is in the Town and Country Planning Amendment Act 1983 no saving provision and no specific provision relating to pending proceedings. Section 22 of the Acts Interpretation Act 1924 provides as follows:-

"The expiration of an Act shall not affect any judicial proceedings previously commenced under that Act, but all such proceedings may be continued and everything in relation thereto be done in all respects as if the Act continued in force."

Applying section 22 of the Act to assist in the interpretation of section 20(g) I am satisfied that there is still jurisdiction to grant an injunction under the Town and Country Planning Act at the suit of the plaintiff in these proceedings commenced before the statutory provision was repealed.

I have contemporaneously with this judgment released a judgment in Action No. 232/81 refusing an injunction at the suit of the plaintiffs in that action. It accordingly follows that an order for an injunction should be made. Although the parties have consented to precise terms I prefer to give judgment in slightly different terms more usual for injunctions which are required to be specific and clearly capable of enforcement. There will be an order for the issue of an injunction restraining the defendant its servants and agents and subsidiaries from using or permitting the use of the premises at 45 Battersea Street Christchurch or any part thereof for the sale of goods to persons other than those in the business of

reselling such goods either in an original or processed form. The injunction is to lie in Court and not issue until 31 May 1985.

The plaintiff is entitled to costs. Counsel for the plaintiff has very properly advised me that after the issue of proceedings the matter was deferred until the decision of the Court of Appeal was known in yet other proceedings as to the legality of the defendant's operations. From shortly after the release of that decision of the Court of Appeal the defendant commenced negotiations with the plaintiff from which it was clear that it could hardly resist the injunction. The matter has been resolved by consent. The plaintiff, however, has had to go to the expense of issuing proceedings, consulting its solicitors and conferring from time to time about the conduct of the proceedings and the terms of the order. In the circumstances, the plaintiff is awarded costs of \$500 together with disbursements and other necessary payments to be fixed by the Registrar.

C. D. Holland J

Solicitors:

Weston Ward & Lascelles, Christchurch, for Plaintiff
Cavell Leitch Pringle & Boyle, Christchurch, for Second Defendant

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