

IN THE HIGH COURT OF NEW ZEALAND

A 98/84

WELLINGTON REGISTRY

1486

BETWEEN: ANGUS CORPORATION LIMITED
a duly incorporated company
having its registered office
at Wakefield Street, Lower
Hutt, Wellington, Contractors

Applicant

A N D: COLYN MICHAEL WILSON of Clyde
Bank Road, Frasertown, Farmer
and ALISTAIR JAMES KENNETH
WILSON of Rotuparu Road,
Frasertown, Farmer, trading as
partners under the firm style
of Kohu Park Partnership

Respondents

Hearing: 24 October 1984

Counsel: Mr A.G. Sherriff for Applicant
Mr C.F. Finlayson for Defendants

Judgment: 28 November 1984

JUDGMENT OF JEFFRIES J.

The issue before the court is an application for two orders, namely transfer of proceedings commenced in the District Court at Wairoa into the High Court, and for a further order that the hearing take place at Wellington. The applicant for the orders is the defendant in the proceedings. The order for transfer to the High Court is not opposed, but the second part of the application as to the registry of the High Court is opposed. Something must be said of the background.

The respondents (plaintiffs in the lower court) to the application, Colyn Michael Wilson and Alistair James Kenneth Wilson, were parties with the applicant to a partnership agreement dated 4 December 1980. It was a deer farming partnership and possibly all terms were not contained in the written agreement. The District Court nearest to the farm is Wairoa. The plaintiffs originally issued two sets of proceedings but they have been consolidated. The defendant has counterclaimed. The total sum involved in the claim is short \$14,300 and the counterclaim approaching \$100,000 together with a claim for general damages.

The starting point is that there is agreement that the proceedings be transferred to the High Court and that order is to be made by consent. The applicant whose registered office is Lower Hutt, wishes the transfer to be to Wellington. The respondents seek an order to Gisborne High Court. When a court has made an order for transfer Rules 59A-H apply. Of relevance are Rules 596C and H which involve Rules 4, 6, 8, 9 and 249. Rule 8 has no application to this problem.

Counsel for applicant argued the presumption beneath RR 4 and 6 is that the trial should take place nearest to the defendant's registered office, namely, Wellington, and its view should prevail. Alternatively if R9 - alternative place for filing statement of defence - is to be considered then the respondents have not placed the necessary evidence before the court by way of affidavit.

Rule 6 is subject to R249 which rule gives a court discretion in regard to a change of venue. In my view R9, which provides an alternative place for a trial in the High Court, is the controlling Rule in these circumstances. Although not expressly stated R4 is to be read subject to R9, notwithstanding R4 is couched apparently in mandatory terms. I

put to one side the evidentiary requirement for an affidavit as to place of cause of action in view of the full pleadings before this court from the lower court which placed the cause of action at Wairoa. The applicant could have been required to file its statement of defence at Gisborne if proceedings had been commenced in the High Court and under R6 that would have been the place of trial.

On the evidence that is in the documents there is insufficient reason to grant an application under R249 to transfer proceedings to Wellington.

There will be an order by consent transferring the proceedings to the High Court and the place of trial shall be at Gisborne.

Costs reserved.

A handwritten signature in cursive script, appearing to read "Buddle Findlay", followed by a checkmark symbol.

Solicitors for Applicant:

Buddle Findlay, Wellington

Solicitors for Defendants:

Wauchop Kohn & Co., Wairoa