

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A.886/82

483

BETWEEN AQUAHEAT INDUSTRIES LIMITED

Plaintiff

A N D HENDERSON & POLLARD LIMITED

Defendant

Hearing : 13th April 1984 (In Chambers)

Counsel : C.L. Caldwell for Plaintiff
D.P.H. Jones for Defendant

Judgment : 13th April 1984 (In Chambers)

(ORAL) JUDGMENT OF BARKER, J.

In this action, the plaintiff sues the defendant for approximately \$50,000, being the amount allegedly due for a steam generating unit. The defendant alleges that this steam generating unit was not supplied in accordance with the terms of the contract. It therefore denies liability for the plaintiff's claim; it also has a counterclaim based on the faulty working of this machine.

The counterclaim is in two parts. First, claiming approximately \$8,000 for various extra costs incurred by reason of the plaintiff's alleged breach of contract; and secondly, a claim for \$180,728 for alleged loss of profits.

The plaintiff has moved for an order under Rule 134 of the Code of Civil Procedure in effect seeking that the claim and

the counterclaim be heard separately. The affidavit in support from the Managing Director of the plaintiff, states that if both the claim and the counterclaim are to be tried, then a fixture of at least 10 days would be required.

It seems to me that the claim and counterclaim are rather inextricably involved so far as liability is concerned. Therefore, it would be unrealistic to separate the hearing of the claim and counterclaim concerning liability. However, quantum is a different issue. The question of quantum, both of the claim and of the counterclaim, is what will occupy a large amount of the hearing time. Accountancy and technical engineering evidence is notoriously complex and often takes days of sitting time to be occupied.

In this case, I think that justice requires an order that the claim and the counterclaim be heard together so far as liability is concerned; once a decision is reached (and it is held that the defendant is entitled to succeed on its counterclaim) the question of quantum could then be deferred for consideration, preferably by a referee under the appropriate section of the Arbitration Act 1908.

Alternatively, the parties may well be able to agree as to quantum of damages by such means as exchanging experts' reports and the like.

The matter will therefore be reduced in compass. Counsel assess the hearing time now as 5 or 6 days at the most. Apparently some assessment is being carried out by an independent

expert which may assist the parties in agreeing on the question of quantum.

The matter is to be called at the next general callover on Thursday, 31st May when consideration will be given to a fixture. By that date, I expect counsel who will be appearing at the trial to give me a proper estimate of the hearing time required.

M. J. Barker, J.

SOLICITORS:

Buddle, Findlay, Wellington, for Plaintiff.

Meredith, Connell & Co., Auckland, for Defendant.