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NLR

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IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

A.33/82

1137

BETWEEN BANK OF NEW ZEALAND

a body corporate
constituted by the Bank
of New Zealand Act 1979
and carrying on the
business of banking in
all its aspects

Plaintiff

A N D

HUGH HARRISON
of Tauranga, Registered
Valuer and
HANK GROOTHUIS of Mount
Maunganui, Registered
Valuer, trading as
HARRISON AND GROOTHUIS
sued as a firm

Defendants

Hearing: 8 August 1984

Counsel: L.A. Andersen for Plaintiff
M.S. McKechnie for Defendants

Judgment: *Delivered* 13 SEP 1984



G.W. ENTWISTLE
Deputy Registrar

JUDGMENT OF GALLEN J.

The Bank of New Zealand alleges that in reliance upon a valuation, it advanced a substantial sum of money to a company known as Tina Cannery Limited. The bank claims that the valuation was negligently made and that the amount which it indicated as principal for mortgage advance was excessive.

It claims to recover damages from the defendants as a result of the loss which it claims to have suffered. The valuation was actually prepared by the first named defendant, Hugh Harrison. It was not prepared for the bank, but was made available to the bank having been originally made for Auckland solicitors. The valuation was made on headed stationery which contained the following heading:-

"In Group Practice
REGISTERED VALUERS

Hugh Harrison, A.N.Z.I.V.
Tauranga
Henk J. Groothuis, A.N.Z.I.V.
Mt. Maunganui"

18 Wharf Stree
P.O. Box 455,
TAURANGA.

The valuation was signed by Mr Harrison and was dated 28 August 1979. It now appears and it is undisputed, that although Messrs Harrison and Groothuis were originally practising as registered valuers in partnership, in 1977 by written agreement the partnership was dissolved. Since 1 January 1978 Mr Groothuis has been practising as a registered valuer quite separately from Mr Harrison. He operates however, from the same office premises as Mr Harrison and they share certain facilities such as secretarial assistance. There has been no sharing of profits since 1 January 1978 and separate accounts have been kept in respect of the separate businesses. Mr Groothuis had nothing to do with the making of the valuation, the subject of the proceedings. This was confirmed by Mr Harrison who filed an affidavit indicating that he used the letterhead concerned and added to it the words

"in group practice" by the application of a rubber stamp. It appears also that two types of letterhead were used - one for the principal or top copy and the others for carbon copies. The principal copy contained the added words "in group practice", the other did not. However, both contained the names of both Messrs Harrison and Groothuis. In his affidavit, Mr Groothuis stated that the use of common letterhead was for administrative convenience.

An application has now been filed to strike out Mr Groothuis from the proceedings on the basis that he was not involved in the valuation or at any material time in partnership with Mr Harrison. The plaintiff opposes this application, contending that the circumstances indicate a holding-out of the continued partnership. A person who is not a partner, becomes liable as if he were one to people towards whom he so conducts himself as to lead them to act upon the supposition that he is a partner in point of fact, see Lindley on Partnership 14th ed. 105. Whether a defendant has or has not so held himself out, is a mixed question of fact and law, see Keith Spicer Limited v. Mansell 1971 W.L.R. 333. The principle is based on estoppel and depends on the existence of a situation where the person against whom the allegation is made can be shown to have represented that the relationship of partnership exists between him and a third person, see Spencer Bower and Turner, Estoppel by Representation 3rd ed. 183.

In this case, both names appear on the letterhead; the reference to registered valuers is in the plural and the words "in group practice" appear. In regard to those circumstances, it is my view that at this stage at least, it is open to the plaintiff to contend that there was a holding-out and that this is a matter which may properly be dealt with in the proceedings when they are heard.

The application will therefore be dismissed. Costs are reserved.

R. R. Walker

Solicitors for Plaintiff:

Messrs Osborne, Handley, Gray
and Richardson, Whakatane

Solicitors for Defendant:

Messrs Scott, Morrison, Dunphy
and Company, Wellington
