

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

No. A.223/81

BETWEEN CHRISTCHURCH CITY COUNCIL

Plaintiff

A N D FENHALL NOMINEES LIMITED

First Defendant

A N D J. RATTRAY & SONS LIMITED

Second Defendant

Hearing: 3, 4 September 1984

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

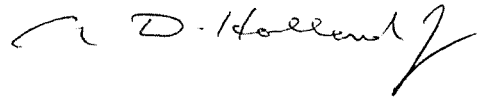
Judgment: 14 SEP 1984

JUDGMENT OF HOLLAND, J.

On 11 December 1981 after a hearing taking that entire week I gave an oral judgment dismissing the action brought by the plaintiff against the first and second defendants but without costs. The counterclaim brought by the second defendant against the plaintiff to which the first defendant was not a party was adjourned sine die. It has now been heard before me. The second defendant does not wish to proceed with the argument in support of the counterclaim and indeed it would be difficult for the second defendant so to proceed because the legal issues involved have now been resolved by the Court of Appeal against the second defendant. The counterclaim of the second defendant is dismissed. I have considered the application for costs but am of the view that the counterclaim did not add to the costs involved in the original proceedings and that as costs were refused in those proceedings no valid ground exists to award the plaintiff costs on the

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counterclaim. The legal matters in issue have been resolved in separate proceedings brought by way of appeal from the Town and Country Planning Appeal Tribunal to the Administrative Division of this Court and to the Court of Appeal. Costs have been awarded in the High Court in favour of the plaintiff and the issue of costs in the Court of Appeal is before that Court. The counterclaim is accordingly dismissed without costs. That disposes of these proceedings.

A handwritten signature in black ink, appearing to read "D. Holland", with a stylized flourish at the end.

Solicitors:

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