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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

A.1028/84

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1597

BETWEEN COLLEEN CORSE-SCOTT of  
Auckland, Real Estate  
Salesperson

Plaintiff

AND CASVAL HOLDINGS (N.Z.) LTD of  
Auckland, Real Estate Agents

Defendant

Hearing: 17th December, 1984

Counsel: Becroft for Plaintiff to Oppose

Judgment: 19 December, 1984

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JUDGMENT OF SINCLAIR, J.

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The Plaintiff issued a bill writ against the Defendant Company in respect of two cheques drawn on the 23rd August, 1984, one for \$1,050.55 while the other was for \$2,140. Both cheques were dishonoured on being presented and after the bill writ was issued a motion was filed on behalf of the Defendant for leave to defend.

The first motion filed was one which was lodged ex parte and was filed by Mr N. M. Evitt, a Director of the Defendant. However, notice was directed to be given of the ex parte motion to the Plaintiff and the matter originally came before me on 16th November, 1984 and Mr Becroft appeared on behalf of the Plaintiff. There was no appearance on behalf of the Defendant and the application was dismissed with costs of \$100 to the Plaintiff. However, it was contended that there was no appearance on behalf of the Defendant

due to some misunderstanding and consequently the matter came before me again on the 17th December, 1984 when I allowed the matter to be heard as though there had been no earlier hearing at all.

The only affidavit filed was one from Mr Evitt and once again he appeared on behalf of the Defendant Company. Mr Becroft raised no objection to Mr Evitt so appearing, provided that it was on the basis that there would be no complaint by the Defendant Company that it had not been represented at this hearing by legal counsel. Mr Evitt accepted that situation.

The argument on behalf of the Defendant really was on the basis that the affidavit disclosed there was a possible defence and that in the circumstances, having regard to the discretion which was vested in the Court, leave to defend should be granted: It is worthwhile in this case to set forth just what is contained in the affidavit:

Paragraph 1 deposed to the fact that Mr Evitt was the sole Director of the Defendant Company and that the Plaintiff had been employed by the Defendant as a sales person for several years, her employment terminating on the 20th August 1984. A copy of her terms of employment was annexed to the agreement. Paragraph 3 of the affidavit then stated as follows:

"That the plaintiff was in serious breach of the terms of clauses 3, 7 and 12 of the agreement referred to in paragraph 2 hereof."

Nowhere in the affidavit is there set forth the nature of the breaches which were alleged as against the Plaintiff, nor

is it alleged, apparently, that any of those breaches has resulted in financial loss to the Defendant. There is merely a general statement that the Plaintiff has been guilty of some breaches of her conditions of employment, but it is impossible to tell whether those allegations are of any real moment or not.

Paragraph 4 of the affidavit reads as follows:

"That the bills of exchange were released by the Defendant to the Plaintiff under duress."

There are no particulars of the duress alleged, nor is it stated how, when or where such duress occurred. Once again there are no particulars as to whether that purported duress has resulted in any financial loss to the Defendant.

Paragraph 5 states as follows:

"That an investigation has revealed that the defendant has just claims against the plaintiff for a sum greatly in excess of the amount claimed in this action."

No particulars are given as to the nature of the claims, the manner in which they arise or the approximate amount involved.

Paragraph 6 of the affidavit does state that when the investigation is completed an action would be commenced against the Plaintiff for such sum as "is just", but I note that the affidavit was sworn on the 2nd October, 1984 and to date no attempt has been made to quantify this claim at all.

As has been said by the Courts on many occasions, bills of exchange are to be regarded as the equivalent to cash and in my view no case has been made out by the Defendant which

would warrant the granting of the leave sought. The recent authorities are conveniently gathered in Finch Motors Ltd v. Quin (1982) N.Z.L.R. 513. It is sufficient to extract from the judgment of Hardie Boys, J. an extract from the decision of Sir Eric Sachs in Cebora SNC v. SIP (Industrial Products) Ltd (1976)1 Lloyds Rep. 271. The quotation which appears at pages 278 and 279 is as follows:

"For some generations one of those certainties has been that the bona fide holder for value of a bill of exchange is entitled, save in truly exceptional circumstances, on its maturity to have it treated as cash, so that in an action upon it the Court will refuse to regard either as a defence or as grounds for a stay of execution any set off, legal or equitable, or any counterclaim, whether arising on the particular transaction upon which the bill of exchange came into existence, or, a fortiori, arising in any other way. This rule of practice is thus, in effect, pay up on the bill of exchange first and pursue claims later."

I am of the view that no case has been made out for granting the Defendant leave to defend and if it does have any claim against the Plaintiff then it can pursue that claim at a later date. Accordingly the motion for leave to defend is dismissed and I allow the Plaintiff costs of \$200 which is intended to cover the costs of the Plaintiff's appearances on the 16th November last and the 17th December 1984.



SOLICITORS:

Fortune Manning & Partners, Auckland for Plaintiff.  
Defendant in person.