

CHRISTCHURCH REGISTRY

BETWEEN CANTERBURY BYE-PRODUCTS
LIMITED

PLAINTIFF

A N D WALLIS BROTHERS LIMITED

DEFENDANT

A. 295/80

BETWEEN THE CANTERBURY BYE-PRODUCTS
COMPANY LIMITED

PLAINTIFF

A N D THOMAS MEATS WHOLESALE LIMITED

DEFENDANT

A. 193/81

BETWEEN CBP INDUSTRIES LIMITED

PLAINTIFF

A N D WALLIS BROTHERS LIMITED

DEFENDANT

A. 194/81

BETWEEN CBP INDUSTRIES LIMITED

PLAINTIFF

A N D DAVID NELSON THOMAS and
NOELINE LENORE THOMAS

DEFENDANTS

A. 189/81

BETWEEN CBP INDUSTRIES LIMITED

PLAINTIFF

A N D THOMAS MEATS WHOLESALE LIMITED

DEFENDANT

Judgment: 6 April 1984
Hearing: 6 April 1984
Counsel: J. Fogarty for Plaintiff
A.A.P. Willy for Defendants

ORAL JUDGMENT OF CASEY J.

This motion for further and better particulars arises out of the fact that in the affidavit of documents already filed which is common to all, the information available from some 28 cartons inspected to some extent by the Plaintiff's solicitor tends to suggest that all the Defendant Companies have been engaged in the purchase of livestock slaughtered out of the Plaintiff's abattoir area but, apart from Wallis Brothers Limited, there is very little information about the disposal of that meat by the Companies concerned. It is Mr Fogarty's contention that any sale of meat by any Defendant must be relevant to the actions and this is accepted by Mr Willy. The Plaintiff maintains that as there is inadequate information about this in the primary records made available to it on discovery, it is now entitled to go further into the Company and accounting records of each of the Defendants in order to ascertain if it can find out from them what has happened to the meat which each of them has purchased.

The opposition was mainly grounded on oppression to the Defendants because to give discovery to the extent sought by the Plaintiff would involve opening their books and information about their trade to a competitor. The problem the Plaintiff faces is that liability depends to a large extent on what the Defendants have been doing with the meat, and this can only be ascertained from their own records. To deprive it of full discovery relevant to the matters which it feels it must establish in order to succeed would in effect deprive it of any remedy at all against the Defendants - at least, that is the fear that the Plaintiff is under at the moment.

As a result of the airing these issues have had this morning the efforts of Counsel have now been devoted to ways of making relevant and appropriate records available to the Plaintiff without breaching the confidentiality which it is desirable to maintain in the case of parties which continue to trade in the same area as competitors. As a result of their discussions, agreement has been reached on the order I am prepared to make. I refer to the draft submitted by Plaintiff's Counsel.

There will be an order in terms of paragraph (i). Paragraph (ii) will be deleted. Paragraph (iii) becomes paragraph (ii) and will stand with the addition, after the word "Defendants", "in respect of the foregoing transactions". Paragraph (iv) becomes paragraph (iii) and the opening words from "All parts" down to "working papers" are deleted. It will now read "All records as to turnover of livestock and meat, both sales and purchases". Counsel note that implicit in this is that the Plaintiff will not be entitled to have access to balance sheets, or profit and loss accounts of the Defendants as documents, but this does impose an obligation on the Defendants to discover to the Plaintiff figures from those documents which record turnover of livestock and meat, both in respect of sales and purchases. It is now accepted that what was sought in paragraph (v) is embraced in this new wording and that can be deleted. So far as the conditions are concerned, Counsel have not indicated any difference between them and they remain, with the reservation that leave is reserved to the parties in paragraph (v), and the time for compliance will be 28 days in place of 14.

Solicitors:

Weston Ward & Lascelles, Christchurch, for Plaintiff
 Joynt Andrews Cottrell & Dawson, Christchurch, for Defendants

