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IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

A.No.48/83

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BETWEEN W.O. HEYWOOD CABINETMAKERS LIMITED a duly incorporated company having its registered office at Whangarei and carrying on business there and elsewhere as cabinetmakers

Plaintiff

AND WALLACE N. ROBB of Homestead Road, Kerikeri, Chiropractor

Defendant

Hearing: 1 May, 1984.

Counsel: B.P.C. Carter for Plaintiff.
Miss S.A. Taylor for Defendant.

Judgment: 1 May, 1984.

(ORAL) JUDGMENT OF VAUTIER, J.

This is a writ of summons in which the plaintiff seeks recovery of the sum of $15,062 together with interest on such amount at the rate permitted in terms of the Judicature Act. In the statement of claim it is alleged that the amount is simply the balance owing to it for furniture manufactured for the defendant, the total price for which was $25,062 of which only $10,000 has been paid. There is a counterclaim by the defendant in which the defendant is seeking to recover damages upon the basis that the plaintiff caused loss to him by its delay in manufacturing the furniture in question.

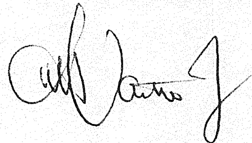
This case illustrates the point that the delays which are occurring in the conduct of litigation in this Court are most often attributable not to the inability of the Court system to handle matters expeditiously but to the failure of the parties or their solicitors to take the procedural steps required at the proper time or are due to the deliberate delaying tactics of defendants. The latter can be combatted under the provisions of the Rules but it is noteworthy that solicitors for plaintiffs are failing to avail themselves of these sanctions probably because they themselves are in arrears with other cases and consider that they are not for this reason able to take steps against their opponent in the particular case. The unfortunate results that stem are that litigants are compelled to submit to completely unnecessary delay and there is little doubt that many solicitors excuse their own dilatoriness by putting forward to their clients the excuse that a backlog of cases awaiting hearing makes it impossible to obtain a fixture. The further unfortunate and unacceptable result is that the time of Judges and of the administrative staff of the Courts is continually being wasted through cases not being ready to proceed and last minute adjournments being sought, just as has occurred in this case. This means, in turn, that other cases awaiting hearing which could have been dealt with cannot be substituted in time and other parties have to suffer prejudice unnecessarily.

The record here shows that the last interlocutory step taken was the filing of the defendant's affidavit of documents. This was filed on 28 November, 1983. It should have been filed, it appears, by about 10 October, 1983. The

plaintiff's solicitors, by issuing the order earlier, could have required it to be filed by the end of August, 1983. The record further shows that on 6 December, 1983 the plaintiff's solicitors asked the defendant's solicitors to sign a praecipe to set the case down. The defendant's solicitors failed to return the praecipe in accordance with this request and ignored a further written request made on 13 December, 1983. Accordingly, by letter dated 2 February, 1984 the plaintiff's solicitors asked the Registrar to set the case down unilaterally. That letter, I note, was not received by the Court office until 15 February, 1984 along with the praecipe to set down signed by the plaintiff's solicitor only. The Registrar by letter dated 28 February, 1984 advised the defendant's solicitors of the filing of the unilateral praecipe and stated that unless advice was received to the contrary within 10 days of the letter the matter would be placed on the ready list. No advice from the solicitors for the defendant having been received the matter was so placed on the ready list. I am informed from the Bar this morning that in fact the defendant's solicitors belatedly on 29 February, 1984 signed and returned the praecipe to set the action down. There was the usual fixture day prior to the present sitting of the Court, this being on or about 17 April last when a fixture was allocated for this case for today. Yesterday, application was made to me in Chambers by counsel on behalf of the defendant seeking an adjournment of the trial simply on the basis that counsel who was to appear for the defendant had other commitments and the case was not ready to proceed. In view of the history to which I have adverted and the obvious indications of the matter being deliberately

delayed by the defendant, an adjournment was refused. Now, this morning, when the case came to be called in Court, both counsel seek to have an order made in terms of s.46 of the District Courts Act 1947 transferring the proceedings to the District Court. This application is made notwithstanding the fact that the setting down fee of $100 has been paid in respect of the hearing in this Court and that fee will, of course, be wasted if the application for transfer is acceded to and the order made at this stage.

I am not prepared to make the order for transfer without formal application being made and, of course, any necessary abandonment recorded as regards the excess of the claim over the jurisdiction of a District Court. There needs also to be taken into account the fact that it will be necessary for the counterclaim also to be transferred if that is what is desired. In the meantime, the action will stand adjourned. When further application is made for a transfer I will give consideration as to whether or not in the circumstances the better course might be to simply give a judgment of non-suit against the plaintiff in this action and the defendant on his counterclaim so that the matter can be recommenced in the District Court.



<u>SOLICITORS:</u>

Connell Lamb Gerard & Co. Whangarei, for PLaintiff.

McElroy Duncan & Preddle Auckland, for Defendant.