

1693

BETWEEN ELECTRIC E.D. DYNAMICS
(1984) LTD
Plaintiff

AND INGLIS ENTERPRISES LTD
Defendant

Hearing: 6 November 1986

Counsel: Kohler for Applicant
Wilson for Defendant

Judgment: 6 November 1986

(ORAL) JUDGMENT OF THORP J

This is a claim of \$13,379.33 for work carried out by electrical contractors at the defendant's Auckland nightclub from November 1985 to January 1986, when the parties fell out. The present proceedings were filed on 24 September, and the notice of opposition and an affidavit in opposition filed on 5 November. No point is taken as to the date on which they were filed.

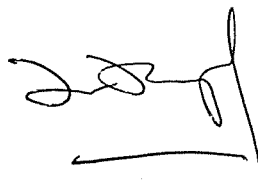
The affidavit of the defendant accepts that some amount is payable. It says that it has paid the sum of \$8,000, and that nothing more is payable. It contends deficiencies in material supplied, hours claimed and also alleges defective workmanship. Part, at least, of those contests was made clear according to the defendant's affidavit before these proceedings were issued, and they do not seem to me to be appropriate matters for determination under the summary judgment procedure.

It is certainly not a procedure appropriate for the settlement of disputed issues of fact, which are the centre of disputes between employers and contractors.

Mr Wilson for the defendant opposed the proposal made by Mr Kohler that the Court should enter judgment for \$8,000, the admitted liability of the defendant, on the ground that it had satisfied that obligation by its delivery of the cheque. That proposition would have been accepted had the action of the defendant not been so extraordinarily late.

I think the best method of proceeding from this point is to grant judgment (as I do) to the plaintiff against the defendant in the sum of \$8,000 but stay execution on that judgment for seven days, to allow costs in respect of today's hearing \$500 and disbursements and reserve the amount of those costs, and to dismiss otherwise the application for summary judgment.

I urge the parties to take steps to have the residual disputes determined by arbitration as I am sure that they are not suitable matters for Court determination. If that request is not accepted and the matter is left in this Court I advise them that in my view it is highly probable that any judge asked to determine the issue would make an order under the Arbitration Act referring the matters accordingly. The action is otherwise adjourned sine die.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the bottom.