

<u>BETWEEN</u>	<u>EQUITICORP FINANCE GROUP</u> <u>LIMITED and EQUITICORP</u> <u>NOMINEES LIMITED</u>
	<u>Plaintiffs</u>
<u>A N D</u>	<u>D.F. COLLETT</u>
	<u>First Defendant</u>
<u>A N D</u>	<u>C.T. SWEE</u>
	<u>Second Defendant</u>
<u>A N D</u>	<u>M. JOSEPH</u>
	<u>Third Defendant</u>
<u>A N D</u>	<u>S.A. JOSEPH</u>
	<u>Fourth Defendant</u>
<u>A N D</u>	<u>A.I. SCOWN</u>
	<u>Fifth Defendant</u>
<u>A N D</u>	<u>A. CHARTON</u>
	<u>Sixth Defendant</u>
<u>A N D</u>	<u>M. DOSSOR</u>
	<u>Seventh Defendant</u>
<u>A N D</u>	<u>D.J. MULHOLLAND</u>
	<u>Eighth Defendant</u>

Hearing: December 17, 1987

Counsel: Mr. R. Craddock Q.C. & Mr. Black for Plaintiff
No appearance for Second Defendant

REASONS OF MASTER TOWLE

On 17th December 1987 after hearing Counsel for the
Plaintiff and upon being satisfied that the requirements

of the Summary Judgment Procedural Rules had been met and that the Second Defendant had no reasonable defence, I entered judgment against him for \$7,556,442.47 (including interest of \$456,442.47 calculated from 30th June 1987 to 17th December 1987 at 19% per annum). I also entered judgment for a declaration of liability by the Second Defendant in respect of the further amount due on 31st December 1987 pursuant to the Indemnity referred to in the Statement of Claim.

The Second Defendant resides in Singapore and was actually served with the claim documents in Hong Kong on 19th November 1987. No notice of opposition or affidavit in support was filed by him. On 14th December 1987 there was received by the Registrar a letter from the Second Defendant sent from Singapore on 8th December 1987 enclosing an appearance objecting to the jurisdiction of the Court. No affidavit was filed and the only address given by the Second Defendant was in Singapore.

The claim documents exhibited on behalf of the Plaintiff in its application for Summary Judgment show that all the parties executed the Indemnity & Guarantee agreements in Auckland and expressly declared that the documents should be construed in accordance with the laws of New Zealand.

The subject matter of the various contractual documents related to New Zealand Companies and the obligations of the parties were to be primarily performed in New Zealand.

In considering the application for Summary Judgment I have had to consider whether the notification of protest to the jurisdiction could afford a reasonable defence available to the Second Defendant. At the hearing Mr. Craddock made oral application under Rule 131(5) to set aside the appearance. I have evidence before me that the Second Defendant, who is a Malaysian citizen resident in Singapore, is a qualified solicitor of some 30 years standing with extensive business interests since his

retirement from active politics in which he held Ministerial positions with the Malaysian Government. He should be well aware of the implications of non-compliance with Court procedures.

In the absence of any address being filed in compliance with the Rules and there being no appearance on behalf of the Second Defendant and being satisfied that this Court has full jurisdiction to hear the Plaintiff's claim and the application for Summary Judgment, I have set aside the appearance.

I have given consideration to the question of whether any terms and conditions should be laid down which might permit the Second Defendant time to file a defence to the claim, but do not consider it is appropriate in this instance. The notice given by the Second Defendant did not raise any matters which indicate that he might have had a reasonable defence to the claim, brought as it is within the strict requirements of Rules 136 - 142 of the Rules. The Second Defendant clearly on the documentary evidence before me, agreed to submit to the jurisdiction of the New Zealand Courts and though he suggests that he may have a counterclaim against the Plaintiffs, it is so ill defined that the possibility of its existence should hold up the Plaintiff in proceeding to Summary Judgment on the claim.



MASTER R.P. TOWLE

Solicitors:

Rudd Watts & Stone, Auckland, for Plaintiffs