20/12

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CP 363/86

BETWEEN	FREMONT CONSTRUCTION CO. LIMITED
	Plaintiff
A N D	P.J. RENSHAW, K. EDWARDS, and P.V. PAINO
	First Defendants
A N D	D.E. TAYLOR & M.A. TAYLOR
	Second Defendants
A N D	BUDDLE FINDLAY
	Third Party

Hearing: 13 December 1988

Counsel: T.G. Stapleton for the Plaintiff
C.L. Caldwell for the Defendants and Third Party

ORAL MEMORANDUM OF CONFERENCE OF ELLIS J

This is a re-convened settlement conference called to clarify certain matters and also to endeavour to modify what was recorded in my previous memorandum of 2 November 1988.

(1) Mr and Mrs Taylor raised two matters of history that they wish recorded, the first is that they maintain that they did not refuse the builder entry to the property to complete outstanding matters. They maintain that he demanded some $29,000 before he proceeded and that was the empasse that was reached.

Consequently they maintain that at that time title was not available, although they were willing to pay if the work was complete. These matters are of historical interest only in the way the parties approached the settlement conference early in November, but I record them to make the Taylors' position known.

(2) Mr and Mrs Taylor are concerned that I might not have understood the amount that was in the solicitor's trust account. It appears there is now something in excess of $14,000 in the trust account. The Taylors consider that they should be entitled to the interest representing the use of the money, as they have not had the benefit of the outstanding work which it represents. This suggestion is at variance with the way I understood the matter on 2 November. I have suggested that the question of interest be settled by me in conjunction with the question as to costs, which I will mention next. It is not explicitly stated in the memorandum of 2 November how costs were to be dealt with. It would plainly be convenient if each party simply paid its own costs and one half the supervisor's fee. Mr and Mrs Taylor have told me that they consider this would be unfair, so I have suggested that the question of costs, interest and the

supervisor's fee be left for me to decide when all other matters have been attended to in accordance with the agreement. This will require the Plaintiff's consent as part of the settlement arrangements and Mr Stapleton will take instructions accordingly.

(3) The Taylors raise the question of general damages for their personal inconvenience and suffering over some three years that this dispute has lasted. That matter was not canvassed at the earlier conference. I can only suggest that this too be put to one side as unresolved. For my own part, I can see that any immediate consideration of it may well be counterproductive and much may depend on the efficiency and quality of the work yet to be done. There are two possibilities, first is that the question of this element of damage, if maintainable, is abandoned by Mr and Mrs Taylor as part of the overall settlement. Again, I say that this would be a convenient approach. The alternative is to leave it unsettled and again Mr Stapleton would need to take instructions as to whether he was prepared to accept that. Mr and Mrs Taylors suggestion therefore will have to wait until we know Fremont's position.

(4) Mr and Mrs Taylor have paid some $973.74 to repair leaks. Some of the repairs have not been successful and will be dealt with by the Plaintiff. Again, the mater was not canvassed directly at the conference of 2 November. The alternative again is either to say that the proposed form of settlement covers all matters already paid for and that the amount must therefore simply be an expense of the Taylors. Alternatively, it can be treated as unresolved. Again, Mr Stapleton will need to take instructions.

(5) Mr Stapleton sent a letter to Buddle Findlay on 14 November 1988 with draft letters to the City Council and to unnamed supervisors for consideration by Mr and Mrs Taylor. In the letter it was suggested that 18 days rather than 14 be taken. That is contrary to the understanding that was reached on 2 November. If this presents a problem, plainly the parties will have to confer further. I do not propose to suggest anything at this stage, as it is plain that we will have to re-convene to settle some of the matters I have referred to above. From the Taylors point of view, four days longer will simply involve them in further expense and upheaval, and I understood from Mr Francis that all he required was 10 working days in fact. As I have said, this will require further consideration. There is no need for a penalty clause, as the settlement arrangement is for a definite number of days and all that is required is to settle the time that will be taken.

(6) The Taylors raise the question of payment of the supervisor's fee. It is much to be preferred that only one supervisor be engaged and that the parties agree to meet his fee equally. Whether the Taylors can recover any part of the fee from Fremont, again can be dealt with in two ways, either the parties can agree now to pay half each, or they can agree with my settling it as part of costs and expenses, here too Mr Stapleton will have to get instructions.

Notwithstanding the above matters, which I hope can be dealt with as matters of detail, it appears that the substance of the matter can be relatively quickly taken to the next stage. Mr Minty has been asked by the Plaintiffs to prepare a written specification of the work and it is likely that this is available now. Once this is sent to the Taylors, they can then respond to it and Mr Stapleton's letter of 14 November and the attached drafts. The sooner that is done, the better.

The parties agree that the conference can be adjourned without a date.

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