

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 25/88

BETWEEN HI-LITE INDUSTRIES
LIMITED

Plaintiff

AND DERMOT GREGORY
NOTTINGHAM

Defendant

Hearing: 19 August 1988
Counsel: Lee for Plaintiff
D. Nottingham in person
Judgment: 19 August 1988

(ORAL) JUDGMENT OF THORP J

This is an application for summary judgment brought by the plaintiff, a lighting and electrical engineering company, against Mr D.G. Nottingham, described as a company director. It is for the balance of monies for the supply and equipment of electrical and lighting planned for a nightclub in Gisborne. The claim is for a figure of \$16,018.61.

The defendant has filed a Notice of Opposition stating opposition on two grounds. The first of these is that the contract was between the plaintiff and a company called Property Stock Limited, not between the plaintiff and the defendant personally. The second is that the equipment supplied was faulty and not of merchantable quality or fit for the purpose for which it was supplied.

There have been numbers of affidavits on both sides, supplementary affidavits on either side being filed today. Those filed for the defendants bear the usual indicia of documents.

I have disregarded the circumstances of a summary judgment application against the present defendant and his brother in respect of material supplied for the same project which was heard this morning except that I have taken into account that I was informed that the defendants have had difficulty obtaining legal representation in Gisborne, because of the number of legal firms involved for creditors of the nightclub in question.

I propose to regard the defendant's documents accordingly with a certain liberality of interpretation which would not be granted to documents professionally prepared.

The documents, even regarded in that fairly liberal fashion, do not convince me that there is an arguable defence of merchantable quality or anything of that sort. The issue which is of moment is the first ground of opposition, the contention that the contract was between the plaintiff and Property Stock Limited.

The plaintiff says that the arrangement between them was the subject of a written contract. Its affidavit in support of the application exhibited a document, said to be that contract, as Exhibit B. It is on the plaintiff's letterhead, and is addressed to the defendant, trading as Metro Nightclub, 690 Gladstone Road, Gisborne. The first page has two sets of initials: on the left hand side. One set of initials is or appears to be that of Mr Pearce, who signed at the end of the document on behalf of the plaintiff company. The other initials are not identified by any satisfactory means. It was suggested by Mr Lee, as counsel for the plaintiff, that they are those of Mr Nottingham. Even assuming that they are, it is quite plain that Exhibit B is neither signed nor initialled in the same way in the place provided for execution on behalf of the purchaser, and that that has been filled in by an abbreviated form of the same signature used on behalf of the vendor/supplier.

In the same affidavit particulars of goods supplied are shown in the subsequent Exhibit C. That document is a letter dated 4 September which is addressed to Property Stock Limited and

calls upon the addressee to pay the monies due under the contract.

It is not surprising that even a layman's affidavit was able to suggest that those documents did not establish the claim asserted. However a further affidavit by the plaintiff's director refers me to Customer Orders addressed to "Nottingham trading as Metro Nightclub" or simply "Metro Nightclub", and signed at the foot in the section marked "Customer" by the defendant, Mr Dermot Nottingham. He has asked that these be read with the document Exhibit B. They are certainly documents which support the contention that any contract then completed would have been one between the plaintiff and the defendant, but go no further than supporting that proposition.

However, Mr Pearce goes further in his affidavit. He alleges that there was in fact a fully completed contract, that is, a document in the form of Exhibit B signed both by Mr Pearce and Mr D.G. Nottingham.

A directly contrary assertion is made in Mr D.G. Nottingham's affidavit. That affidavit also attaches a series of Accounts Rendered for the balance due for this work addressed to Property Stock Limited. It further encloses a letter from the plaintiff dated 15 June and addressed to Property Stock Limited, "re Account Property Stock Limited", claiming the same amount as is claimed in the present proceedings.

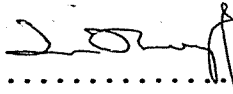
The duty of an applicant for summary judgment is to satisfy the Court that there is no genuinely arguable defence against the claim. This applicant falls a long way short of attaining that standard, and the application must be dismissed.

In an application made against Mr Nottingham and his brother this morning by another supplier of material for the same work, the central allegation, based on different and in my view stronger evidence, was that the purchasers were Mr D.G. Nottingham and his brother Mr P.R. Nottingham. In dismissing that application I directed as a condition that a Statement of Defence be filed within 14 days, and that costs be reserved because I thought

they should follow the event. In my view had the defendants been represented by counsel in this matter it would have been a proper case for costs to follow the event of the application. The fact is that they are not represented by counsel, so there will simply be no order for costs.

There will be a direction that a Statement of Defence be filed and served within 21 days.

Mr Nottingham is advised that he must urgently obtain legal representation for this matter also.


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