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NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND AUCKLAND REGISTRY

CP.1034/89

563

BETWEEN HK-TVB INTERNATIONAL LIMITED

First Plaintiff

AND WING LEE HOLDING COMPANY LIMITED

Second Plaintiff

AND FOUR SEAS COMPANY LIMITED

First Defendant

AND LAWRENCE SEN HOONG LOH

Second Defendant

Hearing: 22 June 1989

Counsel: Mr Henry for the Plaintiff
Mr Newhook for the Defendants

Judgment: 22 June 1989

ORAL JUDGMENT OF ROBERTSON J

On 18 May 1989 ex parte an Anton Pillar order was granted by Sinclair J. It was sealed on the 19 May 1989. There was an extension of the order because the second defendant was out of the jurisdiction.

Pursuant to the terms of the order inspections and upliftings occurred. Following that certain documents were filed in the Court. The proceeding before me alleges that the response was not in terms of the orders of the Court and sought a writ of sequestration and a writ of arrest.

When the matter was called this morning I was advised by Mr Henry that subsequent documentation filed had provided for the Court record all the information that he understood should have been available. Although I was advised that the matter could be disposed of in just a moment or two I have had the benefit of submissions for over half an hour which indicate to me that there is a clear divergence still with regard to the situation.

The defendants submit that there was no breach of the order for the documentation complained about does not relate to the defendants but to some other entity. Further if there was a breach it was accidental and not wilful or deliberate and certainly not contumaceous. Furthermore counsel for the defendants reminds me of the high standard which is necessarily required before the Court will contemplate punishing for a civil contempt of this sort.

I am not able, on the papers presently before the Court and in light of the strenuous dispute as between counsel with regard to relevant factual matters, to make an assessment as to whether there was a breach. From reading the documentation it would appear that the initial material provided did not comply with the terms of the orders made but the inter-relationship between the defendants and this other entity may have some bearing on that when further information is available.

In the affidavits filed in support of the application presently before the Court there is exhibited correspondence between legal advisors which made it clear that the defendants were acting on legal advice. I inquired of Mr Henry whether he could direct me to any decision where this Court (or an equivalent Court elsewhere in the Commonwealth) had held that a failure by a client acting on legal advice had been treated as deliberate and contumateous. He was not able to point to anything but indicated that he would appreciate the opportunity to research the matter further. He appeared concerned that a scurrilous litigant could simply get legal advice which would enable it to avoid the force and effect of a Court order. I don't doubt that such a possibility exists but I am unwilling to accept that the legal profession, conscious of its obligation to the Court, is available "to give advice to suit" or in such circumstances simply

to enable a litigant to avoid the consequences of a Court order. The legal system in this country depends on an honourable legal profession giving advice in good faith and I will need much clearer evidence than is available to me at the moment to persuade me that anything other than that has occurred in this case.

The question of whether there was any excuse if there was a breach cannot be determined on the state of the papers at this stage and in the Steiner case to which both counsel have referred the Court made a finding on the point. It was simply a case of failure of the Company with no excuse whatever to carry out the terms of its undertaking.

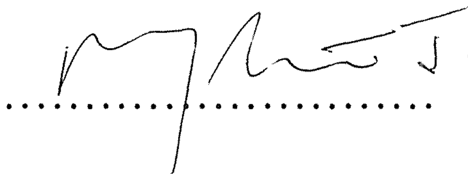
Mr Newhook on behalf of his client contends that if there was a failure to obey the order (and the circumstances are no different as to whether its obeying an order or carrying out an undertaking) then there was an excuse.

I have reached the view that the question of whether there is a need for any punitive action to be taken requires further and greater consideration than is possible at this stage. No doubt in the due despatch of the substantive litigation all the facts which will be relevant will be ventilated. I therefore propose to adjourn this application. It can be brought on when

all the information is available on the Court file and the question of whether the behaviour was wilful and contumateous and whether there is any excuse for it will then be able to be determined by the Court.

I understand that it is accepted by the plaintiff the real purpose of this proceeding was to obtain the information which is now on the Court file and therefore a delay in determining whether any punitive aspect should follow will do no injustice to anybody.

The question of costs on this application is reserved to be considered in tandem with the aspect of the matter which still remains before the Court.



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Solicitors :

Lowndes & Co., Auckland for the Plaintiffs
Brandon Brookfield, Auckland, for the Defendants