

26/7

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP No. 2522/88

742

BETWEEN

FLETCHER MERCHANTS
LIMITED trading as
PLACEMAKERS TRADEBASE

Plaintiff

AND

STEPHEN JOHNSON

Defendant

Hearing: 6 July 1989

Counsel: Dale for Plaintiff
 Ms Bedford for Defendant

Judgment: 6 July 1989

(ORAL) JUDGMENT OF THORP J

This is an application for Summary Judgment in respect of an account nominally of \$14,352.90 and interest claimed in the sum of \$2,240.45 for goods supplied by the plaintiff to the defendant between February and April 1988.

Mr Dale properly pointed out to me that the affidavit in support does not have with it any statement or summation of the account between the parties and only some of the invoices which make up the basic debt.

I am told by Ms Bedford that the amount owing is in issue and I accordingly accept Mr Dale's invitation to limit judgment to the question of liability.

The Notice of Opposition on liability indicated that the debt had been written off by the

plaintiff and "therefore" been condoned". The defendant's affidavit indicates his view that some principle of law would prevent recovery of a debt if it were written off in the books of the creditor, if that fact made known to the debtor, and if the debt written off were included in those deducted from the creditor's tax statement for tax purposes.

That proposition was not supported by Miss Bedford, and on the face of it seems totally irrelevant to debtor/creditor matters.

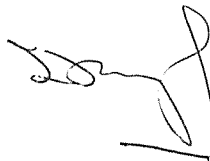
There will accordingly be judgment on liability for the plaintiff.

There is also on file an application for discovery by the defendant. That is adjourned sine die against Mr Dale's undertaking today to supply statements for the account up to today's date and copies of any invoices not previously supplied.

The issue of the propriety of calculation of interest is raised by Ms Bedford. The basis for any interest charge is Clause 2 on the back of the credit application form which is attached to the affidavit. I do not believe it should be necessary at this point to advise the parties as to the procedure to be followed to comply with that arrangement, which must be a very common exercise on the part of the plaintiff company, and should not cause any difficulty.

Costs on today's application to the plaintiff in the sum of \$500.

Solicitors:
Grove, Darlow & Partners for Plaintiff
Holmden, Horrocks & Co. for Defendant

A handwritten signature in black ink, appearing to be a stylized name, possibly "J. J. J.", written over a horizontal line.