

IN THE HIGH COURT OF NEW ZEALAND  
CHRISTCHURCH REGISTRY

A.362/83

**NOT  
RECOMMENDED**

- BETWEEN      HEINZ ALBERT ENGEL  
                                 Plaintiff
  
- A N D      MERRIMACK HOLDINGS LIMITED  
                                 First Defendant
  
- A N D      NOEL BRUCE ULLRICH and  
                                 ERNEST BARNES  
                                 Second Defendants
  
- A N D      WEST COAST TOURIST  
                                 INDUSTRIES LIMITED  
                                 Third Defendant
  
- A N D      WEST COAST JADE LIMITED  
                                 (In Receivership)  
                                 Fourth Defendant
  
- A N D      WEST COAST SOUVENIRS  
                                 LIMITED  
                                 Fifth Defendant
  
- A N D      AOTEAROA SOUVENIRS  
                                 (PUNAKAIKI) LIMITED  
                                 Sixth Defendant
  
- A N D      AOTEAROA SOUVENIRS  
                                 (QUEENSTOWN) LIMITED  
                                 Seventh Defendant
  
- A N D      AOTEAROA SOUVENIRS  
                                 (ROTORUA) LIMITED  
                                 Eighth Defendant

In Chambers:

Hearing:                8th February 1989

Counsel:

P.G.S. Penlington Q.C. and P. Maciaszek for  
Plaintiff  
Second Defendants in person

ORAL JUDGMENT OF WILLIAMSON J.

The Defendants have applied for these proceedings to be adjourned. Their reason for this application is to enable them to have sufficient time to instruct further Counsel to represent them. Their application for adjournment has been opposed by the Plaintiff because of the effect that the delay

would have upon the Plaintiff, and because of the history of previous delays.

It is appropriate and relevant at this stage to briefly outline the history of these proceeding.

The events that are complained of by the Plaintiff took place between the end of 1980 through until 1982. These proceedings were issued on the 24th November 1983. A praecipe to set the matter down for a fixture was filed unilaterally on the 20th August 1987. At that stage an estimate was given for the trial of 8 days. A fixture was allocated on the 29th October 1987 for the 26th April 1988. The hearing of the matter duly commenced on the 26th April 1988 and occupied three days during that week and two days during the following week. Four days were to have been available during the second week but one day and a part of another day were lost because of illness. At that stage both Counsel estimated the hearing would require a further 14 days. Other fixtures were offered by the Registrar for July and August but these were not suitable to Counsel or to the parties. As a result of discussions held at that time, a firm fixture was given for the 3rd October 1988. On the 29th September Mr Hicks, as Counsel for the Defendants, appeared and said that he could not act any longer for them and asked for leave to withdraw. He said that the final parting between himself and the Defendants had taken place on that morning; that there was no alternative to the action which he was taking; that there were serious professional matters involved; and that, realising the inconvenience which would be caused to the Court and the parties, he had not taken this step lightly.

For the Plaintiff Mr Penlington said then that Counsel's decision had to be respected but he emphasised in his submissions the importance to the Plaintiff of the matter being completed without further delays.

When the matter was called on the 3rd October 1988, the Defendant Mr Barnes appeared and produced a letter setting

out reasons for the application for an adjournment. On the basis of these reasons, and because the Defendants had been taken by surprise by Mr Hicks' withdrawal from the matter, an adjournment was granted until the 20th February. Again 14 days were set aside for the hearing of this matter.

The present application is made on the basis that the Defendants require representation and time to arrange that. When I first heard that submission I thought it extraordinary because of the history of the matter, but the Defendants assured me that Counsel, Mr Hicks, had been reconsidering his position in the matter and had indicated that he may agree to return as Counsel and to continue to act for them. Since the submissions were made by the Defendants they have now produced to me a copy of a letter dated the 19th January 1989 in which Mr Hicks says that he declines to act further for them in the matter and sets out his reasons. It is apparent from his letter that the Defendants are not now represented in any way by him and that at this late stage they have been placed in a position where they can justifiably contend that they cannot be prepared for the fixture on the 20th February. The Defendants have complained that this communication has been made to them at what they regard as the eleventh hour and that it is primarily concerned with their inability to pay Counsel the amount which is now claimed as necessary for security for his fees. They have said that because of their personal and professional relationship with Counsel they genuinely believed that he would eventually act for them in the matter.

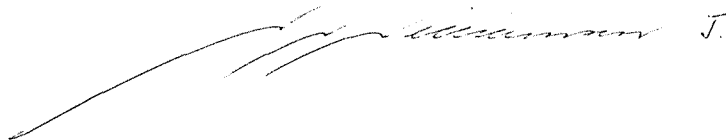
The relationship between Counsel, Mr Hicks, and the Defendants is, of course, a matter between them. In general terms a solicitor or Counsel does not terminate his retainer or relationship with a client except for good reason and upon reasonable notice. Such good reason often involves breach of rules of conduct, inability to obtain clear instructions or a serious breakdown in confidence. A withdrawal which gives insufficient time for a party to engage other solicitors may have consequences in fees so far as the original solicitor is concerned.

It is not part of this Court's task on this application to inquire further into those matters. The important question on this application is to consider whether justice to both Plaintiff and Defendants requires that a further adjournment be granted. Because of the complexity of some of the material in this case and because the hearing has already commenced, and because of the late notice given to the Defendants of the final withdrawal of Counsel, I have reached the view that it is appropriate to grant an adjournment. This will be until the 6th June 1989 when sufficient time is available to deal completely with this matter. The adjournment is on the basis that it is a final adjournment and that there can be no other delays or adjournments so far as the hearing of this matter is concerned. It provides ample time for further Counsel to be instructed. At present the same solicitors are shown on the record for the Defendants. No notice of change of solicitor has been filed. Clearly that matter will also require attention.

I am concerned that the same position over readiness for a fixture does not occur again. While the Court has no responsibility to ensure that the parties are represented, there is a responsibility to clarify issues and to give directions necessary for the expeditious handling of matters. Accordingly I direct that a Conference be held concerning this matter on the 8th March at 9.30 a.m. when I will expect the Defendants to be able to assure the Court that they have made fresh arrangements with a solicitor and/or Counsel which will enable all matters to be attended to in good time before the new hearing.

Counsel for the Plaintiff has sought costs in relation to this application for adjournment. There is a great deal to be said in support of that claim. I am not, however, prepared to make such an order without the Defendants having an opportunity to engage Counsel to argue any points in relation to that. Accordingly I will reserve costs so far as this application is concerned but I would be happy to deal with that matter as a separate issue for argument prior to or at the

hearing in June.

A handwritten signature in cursive script, appearing to read "J. Williams", followed by a large, sweeping flourish that extends to the left across the page.

Solicitors:  
Geddes & Maciaszek, Christchurch, for Plaintiff