

IN THE HIGH COURT OF NEW ZEALAND
ROTORUA REGISTRY

27/12
CP 125/91

BETWEEN BODY CORPORATE NO. S36074
SOUTH AUCKLAND REGISTRY

PLAINTIFF

2503

A N D HOLIDAY OWNERSHIP LIMITED
(formerly known as
INTERNATIONAL TIMESHARE
CONSULTANTS LIMITED)

FIRST DEFENDANT

A N D PACIFIC INTERNATIONAL
MANAGEMENT LIMITED

SECOND DEFENDANT

Hearing: 29 November 1991

Counsel: P.T. Finnigan for Plaintiff
P.R. Heath for First & Second Defendant

Judgment: 29 November 1991

ORAL JUDGMENT OF ANDERSON J

This matter comes before the Court today as an application for an interim injunction directed to requiring the defendants to make available to the plaintiff certain commercial information relating to the administration of a timeshare resort. The parties are at odds over the management agreement. The plaintiff is anxious to post out invoices to

holders of interests in the timeshare to recover operational costs due by such members on a periodic basis.

The amount involved in dispute between the parties - being the costs of sending out the invoices to the numerous holders of timeshares - is relatively small, but it is plain from the papers that there are underlying issues of greater concern than the first defendant's and/or second defendant's fees which would be payable if those parties attended to the invoicing of timeshare members. The actual amount of money sought to be recovered from members is in the vicinity of \$400,000.

I have reviewed these matters, although the application has not been argued before me today because the plaintiff's application has been resolved on a commercial and pragmatic basis which the parties are anxious that I should record, lest their commonsense approach to today's particular issue might be taken as some concession in respect of wider issues.

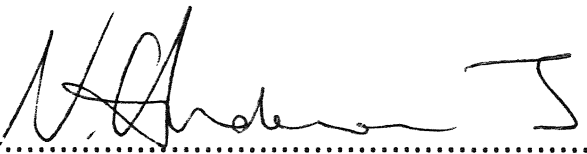
To this end the parties, by their learned counsel, have placed before me a draft order for interim injunction, together with a memorandum which specifically draws attention to the "without prejudice" stance of the parties in coming to today's temporary accommodation of each other.

Thus, to the extent that the first and second defendants have acquiesced in the order to be made, such acquiescence is without prejudice to their asserting their position as fully as they see fit if this matter proceeds to a substantive hearing. It ought be recorded that the plaintiff's stance is similarly without prejudice to its ultimate position.

The parties, by their learned counsel, wish me to record this accommodation in these terms, and I do:-

"The orders to be made are made without any concession being made by the defendants as to the entitlement of the plaintiff to such orders, but simply to avoid the cost of the injunction proceedings; although it is accepted that the plaintiff's rights to seek the costs in respect of the interim injunction proceedings are still reserved. The parties further acknowledge that all issues of damages which may flow from matters raised in the proceedings are to be expressly reserved from the point of view of both the plaintiff and the defendants."

Given all these matters, I now make orders for interim injunction in terms of the form of order filed and endorsed with the signatures of learned counsel. I direct that the accompanying memorandum similarly endorsed by counsel and parties be retained on the Court file for future reference.

A handwritten signature in black ink, appearing to read 'N.C. Anderson J.', is written above a horizontal dotted line.

N.C. Anderson, J.

Solicitors for Plaintiff:

Rice Craig, Auckland

Solicitors for Defendants:

Stace Hammond, Hamilton

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