

**NOT  
RECOMMENDED**

BETWEEN FIELD HOUSE STUD  
LIMITED (In Statutory  
Management)

Plaintiff

A N D EDWARD L. McKEON,  
trading as ED McKEON  
BLOODSTOCK

Defendant

Hearing: 24 June 1991

Counsel: Mr Chisholm for Plaintiff  
No appearance by Defendant

Judgment: 24 June 1991

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JUDGMENT OF TEMM J.

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The plaintiff claims the difference between the price agreed to be paid for two racehorses, and the actual money received when they were ultimately sold after the contract was repudiated.

The plaintiff has applied for leave to adduce evidence from the affidavits of Mr Kerry Thomas Stotter, sworn on 21 March 1990, and of Mr Ross James Finlayson, sworn on 12 April 1990. The application was granted and, in addition, I heard evidence from Mr Rodney Alexander Sinclair, whose affidavit of 12 February was also tendered in evidence.

The nature of the claim is set out clearly in the particulars provided in writing by counsel for the claimants and the basis of the claim is in a standard form which requires little amplification.

Put shortly the defendant agreed to buy two horses and failed to complete the contract. The plaintiff gave the appropriate notice and eventually cancelled the contract for repudiation. Thereafter the horses were sold to best advantage in circumstances described both in the affidavit and in the viva voce evidence.

In addition the plaintiff claims the costs associated with maintaining the animals and preparing them for sale, which are set out in the schedule to the claim.

I wanted to be satisfied that the costs of agistment in the period between the agreement in January 1989 and March 1989 were properly chargeable to the defendant and, on the evidence given today by Mr Sinclair, I am satisfied on that point.

I was also concerned to know what was the justification for the two sums totalling \$7,400 paid to the Wellington Racing Club and Mr Sinclair has also satisfied me on that point. In the result there will be judgment for the plaintiff on the grounds of repudiation of the contract and damages

calculated in the orthodox way, as set out in the schedule to the statement of claim.

The plaintiff also claims interest in accordance with the provisions of the Judicature Act 1908 and interest is allowed accordingly down to 24 June 1991.

I am informed that the interest claimed in the prayer for relief under paragraph b(i) amounts to \$4,098.63 and under paragraph b(ii) to \$13,433.70.

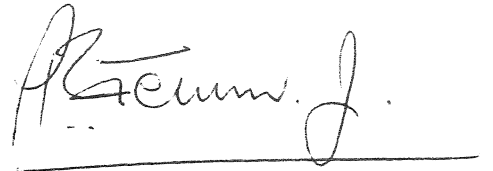
There will therefore be judgment for the amount of the claim, \$67,950.09 plus interest \$17,532.33, a total of \$85,482.42.

After considering the application for costs, as listed in the schedule presented by counsel, I have made an allowance for preparing the summary judgment proceedings, discounted by the fact there is a fee also for preparation for trial, these two being somewhat of a duplication. I have also made an allowance for the application for directions to serve the defendant overseas and I have reduced the claim for costs of trial, because the hearing has proceeded undefended and taken only half a day.

I therefore fix the costs at the rounded figure of \$4,500.

Counsel has also supplied me with a list of disbursements which, upon examination, are almost complete and, for convenience, I have settled on total disbursements of \$839.41.

Judgment will be entered accordingly.

A handwritten signature in cursive script, appearing to read "A. C. M. J.", is written above a horizontal line.

Solicitors: Phillips Nicholson, Auckland for Plaintiff