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NZLR

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

15/7

C.P. NO. 151/94

283  
9178

BETWEEN PAUL FINANCE LIMITED

Plaintiff

A N D COMMISSIONER OF  
INLAND REVENUE

Defendant

Hearing: June 13 and 14, 1994

Counsel: Mr. Warburton for Plaintiff  
Mr. Ruffin for Defendant

Judgment: June 14, 1994

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(ORAL) JUDGMENT OF MASTER ANNE GAMBRILL

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Solicitors for Plaintiff

Warburton, Auckland.  
DX 236

Solicitors for Defendant

Meredith Connell & Co.,  
Auckland. DX 63

I have before me an application for Summary Judgment. At the present time it is difficult to handle all the relevant papers for the purposes of giving the reasons for the conclusions I have reached and these will be made available to the parties very shortly. I have, however, had the opportunity over night to go through the relevant evidence and the sections put before me of the Income Tax Act 1976 and the Goods & Service Tax Act 1985, and the cases.

I have given careful consideration to these matters and to the primary defence of the Commissioner that a mistake occurred when the assessment with its annexed cheque was released from the computer. I am satisfied that there is sufficient evidence before this Court of a mistake that would enable a tenable or arguable defence to be run in a substantive hearing and that this defence can be raised to the Summary Judgment application based on the statutory provisions. On this basis I would refuse the Summary Judgment application. Full reasons will be set out subsequently.

The Defendant having succeeded is entitled to costs of \$2,500 plus disbursements as fixed by the Registrar.

The Summary Judgment application having been dismissed, the Statement of Defence on the file is now the Statement of Defence to the substantive proceeding. I am satisfied that the parties can work out realistically a timetable for the future conduct of the proceeding. If after 30 days there are difficulties on any interlocutory matters or a question of setting it down

for a substantive hearing, I am prepared to accept a memorandum and hear the parties in a Chambers list.

  

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MASTER ANNE GAMBRILL

