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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY
COMMERCIAL LIST

CL.27/94

BETWEEN: THE ORDER OF ST. JOHN
AUCKLAND REGIONAL TRUST
BOARD

Plaintiff

A N D: HEALTH SUPPORT SERVICES LTD

First Defendant

AND THE RESIDUAL HEALTH
MANAGEMENT UNIT

Second Defendant

Chambers Hearing: 9 September 1994

Minute: 9 September 1994

Counsel: G J Mercer for plaintiff
R J C Partridge for first defendant
Ms K M Williams for second defendant

ORAL JUDGMENT OF THOMAS J

Solicitors:

Gellert Ivanson, DX 5413 St. Heliers, Auckland, for plaintiff
Bell Gully Buddle Weir, DX 9 Auckland, for first defendant
Crown Law Office DX 8161 Wellington Central, for second defendant

The plaintiff is a charitable trust. It provides ambulance services, including ambulance services to the Auckland Area Health Board up until 1993. In that year the liabilities of the Auckland Area Health Board were transferred to the defendants.

The key question in issue is whether the first or the second defendants are responsible for a liability which allegedly arose in respect of services which the Trust provided to the Board in 1991. The arrangement between the Trust and the Board was an informal one. Although the services had been provided for a number of years, the arrangement had never been reduced to writing. Each year the Board would make an initial advance in payment for the services it anticipated receiving. Later, an account would be rendered and any balance owing was then paid or refunded, as the case may be. The question which arises relates to the liability of the Board for the balance that is outstanding in that year, amounting in all to \$840,000.

Mr Partridge for the first defendant has applied to have the proceeding removed from the Commercial List on the ground that the contract in issue is not one which has a distinct or marked commercial flavour. More particularly, he contends, it was not one which was entered into by "parties ordinarily engaged in commerce".

I propose to decline the application. It may be true that, at first glance, the services in issue do not appear to be of a strict commercial character. But the days when the provision of medical services could be thought of as being non-commercial have gone. Moreover, the services were provided pursuant to a long-standing arrangement which can only be described as being commercial in nature.

I also acknowledge that the parties involved might not be customarily thought of as parties ordinarily engaged in commerce. But even organisations such as the Trust and the Auckland Area Health Board must undertake commercial transactions and enter into commercial relationships. The Board, for example, would undoubtedly have been a party to a considerable number of contracts of a commercial nature relating to the provision of services. And the Trust was in the business, not just of providing ambulance services, but also of obtaining a return for those services. To my mind, although the classification is perhaps marginal, the parties cannot be said to fall outside the contemplation of the statute.

I am also mindful of the fact that this is a case which will benefit from the discipline provided by the Commercial List. Ms Williams contemplates applying to have the second defendant struck out as a party, and other interlocutories are being mooted. I have no doubt that the discipline which the List provides will ensure that unnecessary applications are not made, and that such applications as are necessary will be disposed of expeditiously.

I am advised that this is a case which will be determined largely on the facts. It is likely to last for about three days. As there is a degree of urgency in having the dispute resolved, this would be an ideal case to be directly set down for hearing at an early date if, as a Commercial List Judge, I had the ability to do so. There would, I do not doubt, be a reduction in the number of interlocutories undertaken and an overall saving in time and expense. But Commercial List Judges do not presently have that capacity (although no doubt an order

could be made under s 24D of the Judicature Act). Once the interlocutory applications have been concluded, therefore, proceedings will go on the general list. I express my regret to counsel, but that is the best I can do. In the meantime all parties will benefit from the discipline to which proceedings on the List are subjected.

Costs on this application are reserved.

The following timetable is fixed :

1. The documents referred to in the amended statement of claim are to be provided by the plaintiff to the second defendant within 14 days.
2. Any application to have the second defendant struck out of the proceeding is to be filed within a further 7 days.
3. The proceeding to be called for mention on 7 October next.

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