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NZLR

NOT  
RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M NO 1230/95

UNDER The Companies Act 1993

BETWEEN FUJIICHI (NEW ZEALAND) LIMITED

Plaintiff

A N D NAVAJO BAR AND GRILL LIMITED

Defendant

Hearing: 1 March 1996 and 15 March 1996

Counsel: M Dollimore for the plaintiff  
C LaHatte for the defendant

Judgment: 15 March 1996

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**(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT**

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Solicitors for the plaintiff  
McKechnie Quirke & Lewis  
DX JP 30036

Counsel for the plaintiff  
Mark Dollimore  
DX CP21018

Solicitors for the defendant  
Howard-Smith & Co  
DX BP66501

Counsel for the defendant  
C La Hatte

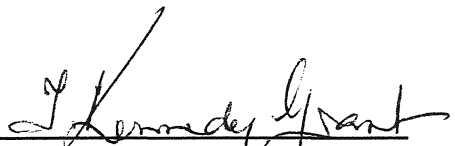
When this matter first came before me a fortnight ago, I indicated to counsel at the end of the hearing that, provided the technical objection to the admissibility of the evidence of delivery and signature acknowledging delivery could be overcome, I would find for the plaintiff. That deficiency has been made good, in my view, by the further affidavit of Mr Hawkins sworn on 7 March 1996 which I admit in evidence and on the basis of which I find that the plaintiff has established the existence of the debt.

The defendant has, I am advised by Mr La Hatte, placed its solicitor, his instructing solicitor, in funds to the tune of \$5,600.00. That leaves a shortfall of \$1,024.05 on the reduced amount claimed by the plaintiff, the plaintiff having given credit for six deliveries in respect of which there is no signature. Mr La Hatte has sought to argue that the fact that the defendant has placed its solicitor in funds to that sum indicates that it is in fact solvent and able to pay its debts as they fall due. I do not agree.

In all the circumstances I consider that the appropriate orders are as follows:

- 1 There will be an order putting the defendant company into liquidation by appointing the Official Assignee, Auckland as liquidator.
- 2 This order is to lie in Court until the closing of the Registry on 29 March 1996.
- 3 If, before that date, the defendant pays to the plaintiff the sum of \$7,600.00 and files in this Court the plaintiff's receipt or the receipt of its solicitor for payment of that sum, such payment having been made by way of bank cheque or solicitors' trust account cheque, the first order made by me will be recalled and the proceeding will be struck out with no order as to costs.

I have made the above orders because I consider they are the best way of safeguarding the interests of both parties. They ensure prompt payment to the plaintiff, under the threat of liquidation of the defendant if there is not payment. They ensure to the defendant a reasonable further opportunity to make good the shortfall. The figure of \$7,600.00 is made up as follows: \$5,600.00 already held in the defendant's solicitors' trust account; the shortfall of \$1,024.05 on what is now claimed by the plaintiff; and a sum of \$975.95 as costs and disbursements.

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MASTER T KENNEDY-GRANT  
