

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CL.21/92

BETWEEN

IRDOSS COMPUTER
SYSTEMS LIMITED

First Plaintiff

AND

R.D.S. KENT and E.T. COUPE

Second Plaintiffs

AND

IPR CONSULTANTS LIMITED

Third Plaintiff

AND

ARTHUR ANDERSEN

First Defendant

AND

J. ROFE and W.D. ANDERSON

Second Defendants

Hearing: 18 July 1996

Counsel: P J Dale and D Grove for Plaintiffs
J G Miles Q.C. and I.J. Law for Defendants

REASONS FOR RULING OF SALMON J

Solicitors: Grove Darlow & Partners. Auckland for Plaintiffs
J G Miles Q.C. and I J Law for Defendants

On 18 July I heard argument relating to an application by the Plaintiff to allow the admission of the evidence of three further witnesses. After hearing argument I ruled that the evidence would be permitted and said that I would give my reasons in writing.

The witnesses whose evidence the Plaintiff sought to call are Mr McDonald, a chartered accountant, Ms Coupe, one of the Second Plaintiff's and a registered valuer. Mr Miles did not strongly oppose calling the evidence of Ms Coupe, or that of the valuer. I expressed a concern as to the relevance of the valuer's evidence, but that is a matter that can be dealt with after I have heard the evidence and argument in relation to it. The question really was whether the evidence of Mr McDonald should be permitted. It is proposed that he will give expert evidence in relation to monitoring and post-receivership responsibilities.

Mr Miles first dealt with the matter on the basis of principle and put forward three reasons as to why I should refuse leave. His first submission related to the recently promulgated amendment to the High Court rules - rules 441A to 441L. He acknowledged that those rules did not apply to the present case because the directions relating to the exchange of evidence were made prior to those rules coming into force. He argued however, that the intent of those rules reflected the practice of case management and were useful as a guide to the manner in which I should exercise my discretion. That is certainly the extent of the relevance.

Mr Miles relied particularly on rule 441G which limits the circumstances in which oral evidence may be adduced at the trial. In my view, this rule is not relevant to the present circumstances because what is proposed is not oral evidence, but supplementary written statements. In terms of the new rules, rule 441E would in my view be the relevant one. That rule provides that supplementary statements containing new or further evidence served after the service of statement pursuant to rules 441B or 441C, may be adduced as evidence only with the leave of the Court. There is no guide to the exercise of the Court's discretion contained in that rule. As I have already said the rule does

not apply in the present case, but I expect that relevant considerations in the exercise of discretion would include the interest of justice, the reasons why leave is sought, prejudice to the other party, and the general desirability of upholding the integrity of the directions process. Similar considerations apply in the present case.

Mr Miles second submission involved reference to the decision of Tompkins J in Samoa Insurance Co Ltd v. Boston Marks Group Ltd & Others Auckland Registry CP.632/94 12/2/96 and Bomanite Pty Ltd. & Others v. Slatex Corp Aust Pty Ltd & Others (1991) 104 ALR165 a decision of the Federal Court of Australia. Both these cases were appeals against judgments refusing leave to file further affidavits. In each case the central issue was whether it was appropriate to allow an appeal against the exercise of a discretion. In the Bomanite case the particular determination relevant to the present case was that there is a wider interest of the public, beyond the interest of the litigants, in maintaining the integrity and vigour of the procedures of the Court. It is in the interest of the community as a whole that legal business be conducted efficiently. I agree that that is a consideration that should be taken into account.

That was the approach adopted by Tompkins J in Samoa Insurance. At p.4 he noted:-

“Under the system of case management now operating in Auckland all cases have the involvement of a Judge or Master from shortly after commencing until trial. It is in my view important to ensure that the integrity of the case management system thus adopted is maintained. This must require proper compliance with timetable orders, save in exceptional circumstances. Only in that way will the Court’s time be efficiently managed and the access of litigants who wish to have their cases determined facilitated.”

However, he also recorded at p.5 that the application which he was considering was not determinative of the plaintiff's claim and that was a factor that went to the justice of the case which in the end must always be a consideration when deciding an issue of this kind.

Mr Miles third point was to note that this is a case from the commercial list and that the need for compliance with orders is even more important with such cases.

In relation to the brief of Mr McDonald, he pointed out that the brief was only received last week, that he had not been able to deal with this evidence in cross examination of previous witnesses and that three of the defendants witnesses will need to file amended briefs.

Mr Dale pointed out that so far as compliance with timetable orders was concerned, both parties had previously been in default. Originally the plaintiffs were required to supply their briefs by 22 May 1995. They were supplied over a period from 12 June to 8 August 1995. The defendants briefs were supposed to be supplied by 3 July 1995. They were supplied over a period from 1 February 1996 to 6 March 1996. At a judicial conference before me on 24 June, the defendants advise that they had three further witnesses to call and these briefs were served, I am advised, just before the trial commenced.

I have concluded that no real prejudice will be caused to the defendant if the additional evidence is allowed. The briefs of the defendants witnesses will be able to be amended in time for them to be called as originally intended. If it is important that any of the additional evidence be put to witnesses who have already been called, an application can be made for them to be recalled. I propose to reserve the question of costs so that if the defendant is put to additional costs by reason of the late filing of the briefs, that matter can be considered in due course.

Mr Dale assures me that the monitoring evidence is of significance and he submits that the plaintiff should not be denied the opportunity to put its best case forward. Mr Dale also referred to the changes of counsel that occurred. He advised the Court that he became seriously involved in the case in a reasonably short time prior to the trial commencing.

Whilst I agree that the integrity and vigour of the case management system must be maintained, I consider that it is also important to ensure a reasonable degree of flexibility in litigation such as the present. I am satisfied that it is in the interest of justice in this case that the evidence should be adduced and I rule accordingly.

Costs are reserved.

A handwritten signature in black ink, appearing to read "Dale J", is written on the right side of the page.