

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

M 144/97

BETWEEN PARAPINE TIMBER NZ LTD

Plaintiff

AND HATSWOOD INVESTMENTS LTD

Defendant

Hearing: 23 June 1997

Counsel: Mr Parker for Plaintiff
Mr Davie for Defendant

Judgment: 24 June 1997

ORAL JUDGMENT OF MASTER J.C.A. THOMSON

The plaintiff applies to wind up the defendant for failure to comply with the statutory demand for \$81,772.45. The demand was served on 7 March 1997. The application to wind up was filed on 18 April 1997 and served on 28 April 1997.

A statement of defence was filed on behalf of the defendant by K S Ross a director of the company and as well an affidavit was filed by Katrina Louise Ross. Those documents were filed on 11 June 1997. The statement of defence was therefore out of time.

That matter was first called on 16 June 1997 and Ms Ross purported to appear for the company. Because of the fact that a director was acting for the company in filing the statement of defence and because the Court specifically allowed an adjournment for the company to obtain legal advice I am prepared to permit the statement of defence to be filed and also to allow Mr Davie to be heard.

At the hearing on 16 June the Commissioner of Inland Revenue Department applied to be joined as a second plaintiff and that application was granted.

At the hearing of 23 June the Commissioner was given leave to file an affidavit of service of his statement of claim which had been served on 23 June 1997. I therefore adjourned that application to wind up to 14 July 1997 to allow time for a statement of defence to be filed in accordance with the rules if in fact one is to be filed. The Commissioner is owed \$43,005.54.

The defendant claims that the plaintiff company entered into a deed of arrangement with a company called McCarthy Terraces Limited pursuant to which it was given a mortgage for \$100,000. That mortgage was registered on 6 May 1997. It appears that on 19 October 1995 McCarthy Terraces Limited gave a guarantee to Parapine underwriting certain liabilities incurred by Hatswood to Parapine. Inter alia it undertook to give a mortgage security. Also at that time or soon thereafter it entered into the deed of arrangement which is now relied on by Hatswood to defend the present application to wind up. Those documents are annexed as exhibits B and C to Ms Drayton's affidavit for the plaintiff. In that deed of arrangement McCarthy Terraces Limited undertook to pay \$100,000 to Parapine by 28 February 1996 and pending payment mortgage security was to be given and held unregistered. If the payment was not made then the mortgage or mortgages could be registered. The payment was not made but the mortgages could not be registered and in particular the mortgage for \$100,000 could not be registered until the plaintiff was able to make an arrangement with the Society who was holding the titles to register the mortgage, and to transfer half of Parapine's mortgage security to Ross Partners Solicitors Nominee Company, which company had defaulted on its obligations and had been taken over by the Society. A mortgage was finally able to be registered as I have said on 6 May 1997 which was after the issue of the winding up application. Part of the arrangement between the Society and the plaintiff is that the plaintiff is to exhaust its remedies against the defendant and/or Ian Alexander Ross a director of the defendant company. The defendant argues that as the plaintiff now has security it is not just and equitable that it be wound up. Secondly that it appears

that the application is being pursued at the behest of the Law Society and that is an abuse of the Court process.

As to the just and equitable claim I find as submitted by the plaintiff that no security has been given by the defendant company itself and certainly the statutory demand was not challenged. The fact that another company McCarthy Terraces Limited was prepared to be a surety did not, and does not, in my view prevent the plaintiff pursuing the defendant company for payment as the principal debtor. Further the surety in any event did not pay the \$100,000 by 28 February 1996 as it undertook to do. I therefore do not think it would be unjust to wind up the company if it cannot pay its debts. Furthermore in the circumstances I do not think it unreasonable for the plaintiff to have negotiated with the Society to get the mortgage registered. I accept the evidence from the bar that the security in any event will not realise anywhere near \$100,000 and if sold the plaintiff's share will go nowhere near covering its debt. Furthermore it is unrealistic to ignore the Inland Revenue Department's outstanding debt of \$43,005.54. If the company is not wound up now it appears inevitable it will be wound on 14 July 1997. I find that the company is not able to pay its debts; it is insolvent, and should be wound up. I therefore make the formal order of winding up as recorded on the Court file.



Master J.C.A. Thomson