

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

M 1106/02

IN THE MATTER OF the Companies Act 1993

BETWEEN EUROPA LIMITED
 Plaintiff

AND BUTLER GIBPAT LIMITED
 Defendant

Hearing: 24 January 2003

Appearances: C LaHatte for plaintiff
 L Beckett for defendant

Judgment: 24 January 2003

(ORAL) JUDGMENT OF MASTER FAIRE

[1] The plaintiff applies to set aside a statutory demand for \$21,230.57. That sum represents the costs of plant and equipment supplied from September 2001. The amount claimed includes a sum inclusive of GST for a coolstore installation of \$9,166.80 and interest of \$1,966.56.

[2] The plaintiff's complaint and basis for a claim that there is a substantial dispute relates to the coolstore installation. He also claims that he will have a consequential loss of profits claim. He does not provide a precise answer in respect of that part of his claim to the contractual exclusion contained in the contract conditions. There is some evidence relating to inadequate operation of the coolstore.

[3] The test which a plaintiff must satisfy is a low test.

Conclusions

[4] In my view, the plaintiff satisfies me that there is a dispute about the coolstore installation that should be resolved in proceedings issued in the normal way. As to the balance of the demand I am not satisfied that there is a dispute. Nor am I satisfied that a proper basis exists for a counterclaim or set-off which would justify my setting aside the full demand.

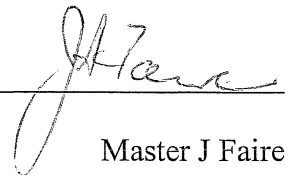
Orders

[5] If I pro rata the amounts, including interest, it is apparent that \$11,128.09 is currently due. Accordingly, I order, pursuant to s 291 of the Companies Act 1993 that the plaintiff pay to the defendant within ten working days of today the sum of \$11,128.09 failing which the defendant may make application to put the plaintiff into liquidation

Costs

[6] I reserve costs. Should an application to put the company into liquidation be justified, I will deal with costs on the disposal of that application.

[7] If the application is not justified, I indicate I would not make an order. My reason is that 47.58% of the amount demanded has been found by me to be the subject of a dispute. In reality both parties have been successful almost to the same extent.



Master J Faire

Solicitors: B Ellis, PO Box 4516, Auckland for plaintiff
KPMG Legal, Private Bag 92 101, Auckland for defendant