

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV 2005-404-004785**

BETWEEN	JAMES PRODUCTS LTD Plaintiff
AND	APL INVESTMENTS LTD (FORMERLY KNOWN AS AEROSOL PRODUCTS LTD) First Defendant
AND	CUSTOM CHEMICALS INTERNATIONAL LTD Second Defendant
AND	IVAN KEITH PAUL Third Defendant
AND	ROBERT PARKINSON Fourth Defendant
AND	DAMAR INDUSTRIES LTD Fifth Defendant

Hearing: 18 December 2008

Appearances: G J Judd QC for Plaintiff  
A W Johnson for First to Fourth Defendants  
S Lynds/B J Upton for Fifth Defendant

Judgment: 18 December 2008

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**ORAL JUDGMENT OF JOHN HANSEN J**

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Solicitors:

Murdoch Price, PO Box 23-620, Auckland for Plaintiff

Martelli McKegg Wells & Cormack, PO Box 5745, Auckland for First to Fourth Defendants

Simpson Grierson, Private Bag 92-518, Auckland for Fifth Defendant

[1] In these proceedings there are claims arising from the cessation of a joint venture arrangement when the first defendant sold its business. The plaintiff was in business as an importer, manufacturer and distributor of cleaning products. They entered into a joint venture agreement whereby they would make certain additions to products. It would be passed on to the first defendant at cost on the basis that any profit from the sale would be shared on an equal basis.

[2] The matter came before me by way of telephone conference on 27 November 2008. There, without opposition, I made an order that the plaintiff file a further affidavit of documents within 14 days to cover the documents sought by the first to fourth defendants' letter of 17 November. The matter is now back before the Court because that has not been complied with. That is on the basis that it should have been opposed by the plaintiff because it is said that matters relating to the accounts of the plaintiff in the years 2007 and 2008 are irrelevant for the purposes of the hearing.

[3] The position taken by the defendants is that any assessment of damages is dependent upon calculating the proper levels of profitability of the plaintiff since the end of the joint venture arrangement. Mr Judd, however, submits that this is not a claim for ongoing profits. Rather, it is a claim based on the value of the business immediately prior, if I can put it that way, to the joint venture arrangement being terminated. In that regard, such value appears to be calculated by reference to ongoing profits from the business over a period of five years. That apparently is the way the matter has been calculated by the plaintiff's expert.

[4] It seems to me that if the claim is so limited it will perhaps need some tightening of paragraph 37, then there is some force in Mr Judd's submissions. However, on the other side, it is apparent that resources must have been committed and ongoing profits are said to be relevant by Mr Johnson.

[5] In my view, given that the position taken by the plaintiff, which I take I can record as an undertaking is that this is not a claim for loss of profits. Rather, it is a claim based on the value of the business that has been assessed by the experts by taking the maintainable pre-tax profits at the date of the termination of the joint

venture agreement, multiplying it by five and dividing it in half to calculate the plaintiff's value. It will be for the expert, of course, to establish that methodology of value of the joint venture business for the plaintiff as at the date of termination is appropriate. But given that that is the limitation of the claim as advised by senior counsel today, I cannot see that the documents sought are relevant so they are not then discoverable.

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**John Hansen J**