

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

**CIV 2009-404-5333**

**CIV 2009-404-6322**

IN THE MATTER OF     the Companies Act 1993

BETWEEN                **JAMES WILLIAM PIPER TRADING AS  
PIPERS PATENT & TRADE MARK  
ATTORNEYS**  
Plaintiff

AND                      **NATURAL FIBRE INNOVATIONS  
LIMITED**  
Defendant

AND

BETWEEN                **JAMES WILLIAM PIPER TRADING AS  
PIPERS PATENT & TRADE MARK  
ATTORNEYS**  
Plaintiff

AND                      **NATURAL FIBRES LIMITED**  
Defendant

Appearances: Mr Holmes for plaintiff  
                  Mr Thompson for defendant

Judgment:     6 November 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE**

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**Counsel**

*Mr Holmes, P O Box 4338, Auckland – by facsimile: 09 377 2477*

*McMahon Butterworth Thompson, - by facsimile: 302 2767*

[1] Today Mr Thompson has appeared for the defendant seeking leave to do so, as he must because no statement of defence has been filed. He seeks an adjournment to enable him to file a statement of defence. Mr Thompson seeks an adjournment of those proceedings.

[2] Dealing first of all with the defendant in CIV-2009-404-5333 which I shall refer to as 'Innovations'. These proceedings were served on the company at its registered office which is at a firm of solicitors on 20 August 2009. The proceedings asserted that the company Innovations was unable to pay its debts. The statement of claim was in the usual way verified on oath. No evidence has been placed before the Court which would contravert that position.

[3] Mr Thompson has though outlined to me what the broad defence would be which is the Court should not make an order liquidating Innovations because to do would not be 'just and equitable'. That is because Innovations, he is instructed, owns some intellectual property which may have value. He says that there would not advantage to the plaintiff if an order was made.

[4] After I initially heard from the parties I directed that the proceedings were not to be adjourned. I stated that the defendants in each case were presumptively insolvent. Mr Holmes then properly drew my attention that in the case of CIV-2009-404-5333 the plaintiff was not proceeding by way of a statutory demand. However given the circumstance that I have already referred to, namely the verification of the statement of claim that the company is unable to pay its debts, it is relevant to enquire whether the defendant is seeking to prove the contrary. As I understand it even if it was given time to file a statement of defence it would not attempt to demonstrate that it would be able to pay its debts. As I have said it simply seek to persuade the Court that no utility would be served by making an order in liquidation.

[5] In my view the possibility that there might be an argument that it would not be just and equitable for a liquidation order to be made is a relevant matter. It is difficult to tell whether the Court would in fact exercise its discretion against the plaintiff on that ground. I consider though that Innovations should be given an opportunity to at least file an affidavit and formally seek leave. The company is to

file and serve its application and any affidavit within seven working days. The proceeding will be adjourned to the next list on **4 December at 10.45 a.m.** and I will hear further from the parties as to the course that the proceedings are to take from that point.

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J.P. Doogue  
Associate Judge