

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

**CIV 2009-404-6936**

UNDER The Companies Act 1993

BETWEEN DILBAG SINGH  
Plaintiff

AND PAPATOETOE WELDERS &  
ENGINEERING LIMITED  
Defendant

Hearing: 4 December 2009

Appearances: Mr McElvin for plaintiff  
No appearance for defendant

Judgment: 4 December 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE**

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**Solicitors:**

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**Copy:**

Mr M Shaheed, 702 Massey Road, Mangere

[1] The plaintiff has brought liquidation proceedings in respect of the company. It says the defendant is 'indebted to the company in the sum of \$7,817.39 in respect of a contract for services and the sale of goods which amount is now due and owing.'

[2] The plaintiff served a statutory demand on the defendant claiming these amounts. It now transpires that this is not a claim for a conventional debt. What the plaintiff is claiming for is in fact for damages arising out of a breach of the contract that he had with the defendant company. The defendant contracted with the plaintiff to provide fireproof doors and window grills. There have been disputes as to whether the defendant properly carried out its contract. None of this material was disclosed by the plaintiff. But the defendant company has written to the Court setting out an outline of the dispute between the two parties. It was not disclosed for example that there had been a hearing of the Disputes Tribunal into proceedings brought by the defendant against the plaintiff claiming the price of the goods. At that hearing the referee enquired into the contract and the circumstances in which the plaintiff apparently cancelled it. The Disputes Tribunal noted that another contractor had apparently been engaged to complete the installation. The Tribunal concluded that the plaintiff was somehow in breach of his obligations in that he had not allowed the defendant in this proceeding to complete the contract to a satisfactory standard.

[3] I note that when this matter was raised at the hearing this morning Mr McKelvin told me that the plaintiff has applied for a re-hearing on the grounds that he was not served with the Disputes Tribunal proceedings.

[4] The question then is whether the plaintiff is entitled to a winding up order in this Court. There is authority that a person claiming in unliquidated damages will qualify as a prospective creditor but equally in the decision in *Re Austral Group Investment Management Ltd* [1993] 2 NZLR 692 said this (at page 698):

It would mean that in this case the plaintiffs could bring proceedings for winding up as contingent creditors, if they could establish on the winding-up proceedings, and within the general proposition that winding-up proceedings are not suitable to determine genuine disputes as to liability, that there was an existing obligation of the company to the plaintiffs.

That cannot be established by the plaintiffs in this case. Although the defendant company for obvious reasons has taken no steps in the proceedings brought against it and others for damages, liability cannot be

determined without a full-scale hearing and that is estimated to take six weeks. I would accordingly hold that the plaintiffs have no status to bring proceedings for winding up as contingent creditors because they cannot establish in winding-up proceedings that they are such.

[5] In this case there is a dispute as to liability. The defendant says it completed the contract. The plaintiff says the defendant did not and is in breach of the contract and what's more that the defendant has an obligation to it in damages which have yet to be determined.

[6] In my view the fact that the case is technically un-defended in that the defendant has not filed a statement of claim is not to the point. There is material before the Court which makes it clear that there is a dispute as to the liability on which the plaintiff bases the claim. For those reasons the plaintiff does not have the necessary standing to bring these proceedings and they must be dismissed.

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J.P. Doogue  
Associate Judge