

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

**CIV 2009-470-1033**

UNDER the Companies Act 1993  
IN THE MATTER OF originating application pursuant to s 290 of  
the Companies Act 1993  
BETWEEN TRUCK PAINTING SPECIALISTS  
LIMITED  
Applicant  
AND CAMBRIDGE DECORATIVE &  
AUTOMOTIVE SUPPLIES LIMITED  
Respondent

Hearing: 9 December 2009

Appearances: Mr Blair for applicant  
No appearance for respondent (Mr Purser company director addresses  
Court by leave)

Judgment: 9 December 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE J P DOOGUE**

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Solicitors:

Mr A Blair, Solicitor, Tauranga – by email: [andrewblair@enternet.co.nz](mailto:andrewblair@enternet.co.nz)

Copy:

Mr G Purser, Company Director, Cambridge Decorative and Automotive Supplies Limited

[1] Mr Blair appears for the applicant. No counsel appeared for the respondent. Mr Purser who is a company director sought leave to address me and I heard him on some aspects of the claim but I pointed out to him that a company required to be represented by a lawyer with a practicing certificate: *Re G J Mannix Ltd*, [1984] 1 NZLR 309 (CA))

[2] The applicant has sought an order setting aside a statutory demand. The statutory demand is for paint supply. Mr Purser today provided me with the terms and conditions upon which his company supplied the paint. Those terms included the following:

I we agree to indemnify you against all cost, whether commission, legal fees or otherwise, incurred by you or your duly authorised agents relating to any monies, goods or service that may be outstanding from time to time pursuant to the terms of this agreement.

[3] The applicant did not pay its account when it was required to. The respondent served it with a statutory demand which was apparently drawn up on its behalf by Baycorp (NZ) Limited. The statutory demand sought \$50,901.39 for the cost of the paint, \$320 for a company search, \$1,497.60 for interest and \$19,929.43 being 'cost of collection on the debt as per standard conditions of trade'.

[4] Notwithstanding the terms of the statutory demand the only amount now sought is some \$13,000 (in substitution for the \$19,929.43 actually mentioned in the statutory demand).

[5] The application to set aside the statutory demand is not opposed. No notice of opposition has been filed. The grounds in the application are that there is a substantial dispute whether or not part of the amount claimed by the respondent is owing or due, namely the amounts of \$320 and \$19,929.43. I take the view that there must be a reasonably arguable dispute as to whether the respondent is able to pass on collection of costs of this scale. First, I would be prepared to accept that the agreement to indemnify was subject to an implied term of reasonableness of the charges that could be recovered. Second, the Court always retains control over costs of this kind and would apply the yardstick of reasonableness and fairness. It is arguable that the costs claimed here by the respondent for collection of the debt

(representing as they do something like a third of the debt) are unreasonable and that that dispute should be litigated in the usual way and it should not have been the subject of a statutory demand. I therefore make the order that the statutory demand is set aside. The respondent is to pay costs on a 2B basis and disbursements as fixed by the Registrar.

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J P Doogue

Associate Judge