

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

**CIV 2009-404-006116**

BETWEEN

SPAZIO-CASA LIMITED  
Plaintiff

AND

RICHMOND CENTRAL LIMITED  
Defendant

Hearing: 27 November 2009

Appearances: D S Lester for Plaintiff  
Mr Berry, The Director of Defendant

Judgment: 27 November 2009

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**ORAL JUDGMENT OF ASSOCIATE JUDGE ROBINSON ON COSTS**

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Solicitors: Maude & Miller, PO Box 50555, Porirua

[1] The plaintiff now seeks leave to withdraw these proceedings because it has received from the defendant the sum of \$5,737.50 which is the debt that forms the basis of the plaintiff's evidence that the defendant is insolvent.

[2] On seeking leave to withdraw however the plaintiff does seek an order for costs. Those costs which include disbursements according to the plaintiff will be about \$2,700. In seeking costs the plaintiff points out that the defendant took no steps to oppose the proceedings and did not take appropriate steps to set aside the statutory demand within the time limit prescribed by the Company's Act. Consequently the plaintiff was entitled to bring these proceedings. Payment at the last minute of the amount claimed means that the plaintiff will be out of pocket for the costs of these proceedings including the disbursements.

[3] Mr Barry, the director of the defendant appears and opposes the application for costs. He claims to have a valid defence. It appears that the plaintiff's claim is for the supply of tiles. He says the plaintiff recommended a tradesman and that the tradesman was completely unsatisfactory. Consequently, he claims to have a set-off for the extra costs incurred as a result of the bad workmanship of the tradesman recommended by the plaintiff. He says that he brought this information to the attention of the plaintiff when the statutory demand was issued without any success.

[4] I accept for the purpose of this decision that the defendant did advise the plaintiff of his complaint and intention to bring a set-off. The point however is that there was a statutory demand which had been served on the defendant company for a relatively small amount of money and if the defendant wished to contest the statutory demand it should have done so by bringing an application to this Court within a very strict timeframe set forth in the Company's Act. As the defendant did not take that step the plaintiff is entitled to bring these proceedings and has incurred extra costs as a result. Those costs could have been avoided if the defendant had paid the amount claimed when the statutory demand was served on it reserving of course any rights it might have to bring a counter claim or other proceedings against the plaintiff or the workman recommended by the plaintiff.

[5] In the circumstances therefore I conclude that the plaintiff was entitled to bring these proceedings. The proceedings were not brought in bad faith. They have resulted in payment but the plaintiff has incurred the extra costs. In those circumstances I am satisfied that the defendant should pay those extra costs. There will therefore be an order that the defendant pay costs assessed on a 2B basis with disbursements as fixed by the registrar. I observe that there is no evidence of advertising and if those disbursements are claimed then the registrar will need to see some evidence that the proceedings were advertised. The proceedings will accordingly be withdrawn.

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**Associate Judge Robinson**