

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

CIV-2006-404-4336

BETWEEN

CIVIL CONSTRUCTION GROUP
LIMITED
Plaintiff

AND

DHUEZ LIMITED (IN RECEIVERSHIP)
Defendant

Hearing: 4 June 2008

Appearances: Mr D Connor for plaintiff
No appearance for defendant

Judgment: 4 June 2008

(ORAL) JUDGMENT OF LANG J

Solicitors:
David Connor, Auckland

[1] This proceeding has a long-standing history with instances of default on both sides.

[2] These came to ahead on 21 May 2008 when a case management conference was held before Associate Judge Sargisson. By that date the plaintiff had filed an application for an order under r 258 of the High Court Rules that the statement of defence be struck out and that judgment be given in its favour. The application was based on the failure of the defendant to comply with an earlier direction of the Court requiring it to file a statement of defence to the amended statement of claim by a specified date.

[3] During the conference on 21 May 2008, counsel then appearing for Dhuez Limited advised the Court that his client no longer proposed to defend the plaintiff's claim or to resist the application for orders under r 258. After advising the Court of those matters counsel sought, and was granted, leave to withdraw.

[4] Associate Judge Sargisson did not make an order striking out the plaintiff's claim and entering judgment in favour of the defendant. She had some reservations about the jurisdiction of an Associate Judge to make the orders that the plaintiff sought. On that basis she directed that the proceeding be listed for mention before a Duty Judge so that formal orders could be made.

[5] I now make an order striking out the statement of defence on the ground that the defendant has failed to comply with the previous orders of the Court. That having been done, there is no impediment to the plaintiff seeking judgment against the defendant.

[6] The plaintiff relies on all the documentary evidence on the file. This includes the various affidavits that were filed in support of, and in opposition to, an earlier application by the plaintiff for summary judgment. In addition, the plaintiff

has filed two affidavits this morning in which the quantum of the claim for interest is clarified.

Substantive claim

[7] The plaintiff's claim relates to a claim (known as Progress Claim No 4) that it rendered pursuant to the provisions of a construction contract that it entered into with the defendant. On the material now before the Court I have no hesitation in concluding that that progress claim remains unpaid. The plaintiff is therefore entitled to judgment against the defendant in the sum of \$298,004.63 being the amount claimed in progress claim 4.

Interest

[8] The claim for interest is based on the provisions of NZS 3910:2003. These are the New Zealand standard conditions of contract for building and civil engineering construction and are the standards applicable as at the date of the contract between the plaintiff and the defendant.

[9] The issue of interest is dealt with at GCC 12.7. The relevant clauses are as follows:

12.7.1 The Principal shall pay the Contractor interest compounding Monthly on all scheduled amounts shown as payable in the Payment Schedule and remaining unpaid after the expiry of the time provided for payment.

...

12.7.4 The rate of interest shall be equal to one and a quarter times the average Monthly interest rate as certified by the chartered accountant or trading bank manager, which is currently payable or which would be payable by the Contractor for overdraft facilities.

[10] An important feature of the present case is that interest compounds monthly. The affidavit of Mr Welham contains a spreadsheet in which he calculates the interest that is payable in relation to Progress Claim No 4. It is also noteworthy that

Progress Claim 4 also contains, as one of its constituents, the amount claimed in an earlier claim, Progress Claim 3. Interest in respect of that claim began to run earlier than interest in respect of Progress Claim 4.

[11] Calculated on a monthly compounding basis, Mr Welham deposes that the sum of \$197,197.52 is owing by way of interest as at 1 June 2008. That sum is increased by \$659.60 to bring interest up to date as at 3 June 2008. The total claim for interest is therefore \$197,857.12. I am satisfied that the plaintiff has calculated the interest payable by the defendant according to the appropriate formula, and that judgment should be entered in accordance with it.

[12] I therefore enter judgment in favour of the plaintiff and against the defendant in the sum of \$197,857.12 in respect of interest.

Costs

[13] I award costs to the plaintiff on a Category 2B basis together with disbursements as fixed by the Registrar.

Lang J