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IN THE NEW ZEALAND DISTRICT COURT
HELD AT AUCKLAND

CIV No. 08/004/2516

Under the *Fair Trading Act 1986*

BEWTEEN

D.V. Kelly Pty Ltd
Plaintiff

AND

Magis S.p.a
1st Defendant

And

ECC Living & Lighting Ltd
2nd Defendant

And

Nick Quy
3rd Defendant

VERIFIED AFFIDAVIT OF
DOCUMENTS OF THE PLAINTIFF

Dated the
3rd September 2009

Address : 24 Wendlebury Rd
Chipping Norton,
NSW, 2170
Australia
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VERIFIED AFFIDAVIT OF DOCUMENTS OF THE PLAINTIFF

I, Craig Robert Kelly, of Sydney swear;

1. I am the operations director of the Plaintiff and I am authorized to swear this affidavit on behalf of the Plaintiff.
2. The information contained in this affidavit is either from my own knowledge or is derived from the records of the Plaintiff to which I have full access.
3. I make this affidavit under an order for discovery made by her Honour Judge Sharp on 18th June 2009.
4. I am aware of my obligations under the discovery order and understand those obligations.
5. In order to fulfill my obligations under the discover order, I have searched for all documents required to be discovered under the order, and I have reviewed all physical and electronic files in the Plaintiff's control which may contain relevant documents.
6. I identify the documents that the Plaintiff is required to discover in the Schedule of this affidavit.
7. In Part 1 of the Schedule, I identify documents that are in the Plaintiff's control and or which privilege or confidentiality is not claimed.
8. In Part 2 of the Schedule, I list the documents in the Plaintiff's control for which privilege is claimed as these documents consist of confidential communications between the Plaintiff and legal representatives of the Plaintiff in their professional capacity.
9. In Part 3 of the schedule, I list the documents in the Plaintiff's control for which confidentiality is claimed.
10. In Part 4 the Schedule, I list documents that are no longer in the Plaintiff's control and state when each document ceased to be in the defendants control and the persons who to the best of my knowledge and belief
11. In Part 5 of the Schedule, I list documents I believe exist relating to matters in question in the proceeding.
12. To the best of my knowledge and belief, this affidavit is correct in all respects and faithfully carries out the Plaintiff's obligations under the discover order.

Sworn at Sydney on this ____ day of September 2009

_____ Craig Robert Kelly

Before me _____

**IN THE DISTRICT COURT
AT AUCKLAND**

CIV-2008-004-002516

BETWEEN	D V KELLY PTY LTD Plaintiff
AND	MAGIS S P A First Defendant
	E C C LIVING AND LIGHTING LTD Second Defendant
	NICK QUY Third Defendant

Appearances: Plaintiff appears in Person
I Finch for the Defendants

Judgment: 24 February 2009

ORAL JUDGMENT OF JUDGE D J HARVEY

[1] This is an application by Magis SPA and others, who are defendants in proceedings under the Fair Trading Act brought by D V Kelly Pty Limited, an Australian company.

[2] The proceedings got started with a notice of proceeding filed by Mr Kelly, a director of the plaintiff company, who appears today and as director is able to appear. It is indeed a very large and voluminous document, and it was filed on 13 October 2008.

[3] It has been served and the defendants are represented by James and Wells, solicitors, who wrote to Mr Kelly in December of 2008 advising that the proceedings are unnecessarily prolix, and that would seem to be the case. They object to the

pleadings and Mr Kelly was invited to re-plead in the proper format and to withdraw the motion for summary judgment on liability, otherwise the matter would be put before the Court and a question of costs could arise.

[4] The matter was not re-pleaded by Mr Kelly and the application strike-out was filed and Mr Kelly has himself filed a notice of opposition, and has accompanied that with a lengthy memorandum, together with a document attached, number 1, which is entitled, "Amendment Particulars". The amended particulars constitute a statement of claim that amounts to 20 paragraphs and is far more concise and certainly within the Pleading Rules of the District Court.

[5] Mr Kelly has proposed in his opposition firstly, that the strike-out application be dismissed or in the alternative, that the original particulars in the statement of claim be replaced with the amended particulars as per attachment number 1, and that the previous particulars be re-named as a statement of fact in brief on the law. He proposes that an order be made giving the defendants 21 days to file a defence within the District Court Rules and failure to do so will mean the default judgment be awarded.

[6] It could well be said that in that particular proposal he is suggesting an unless order, and I am not prepared to make that at this stage. It would naturally follow that if a defence was not filed within the said period, Mr Kelly would be entitled to apply for judgment.

[7] Having regard to my observations upon the original pleading and the very reasonable approach that I think has been adopted by counsel for the defendants in this particular matter, and taking into account what Mr Kelly has said, I am prepared to dismiss the application on conditions, and they are these.

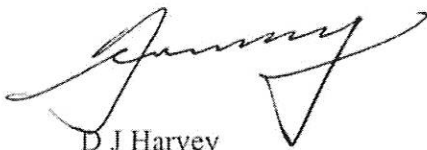
- a) The plaintiff shall be given leave to file an amended statement of claim in the form set out in attachment number 1 to his memorandum of submissions in notice of opposition of 20 February 2009.

- b) The defendants are to file a full and particularised statement of defence within 28 days of the date of filing and service of the amended statement of claim.

[8] The voluminous documentation that commenced these proceedings will remain on the file, but I am not prepared to allow them to be adduced in any way as pleadings or as evidence at this stage. Quite clearly, much of the documentation will be made available by way of discovery.

[9] I now turn to the question of costs. There can be no doubt that Mr Finch warned Mr Kelly about what might happen if he did not file an amended pleading at an early stage, and it did become necessary for an application to be made to prompt some action. On the other hand, I observe that Mr Kelly is representing the company himself, and in answer to a question that I put, does not have any legal training.

[10] Although there would be some who would say, and I am among them, that those who choose to represent themselves must take the rough with the smooth in terms of outcomes and cannot plead ignorance or lack of knowledge or lack of understanding or unfamiliarity with the process, nevertheless, I consider that it would be unfair at this early stage of the proceedings to take advantage of Mr Kelly to that degree. I am not prepared to fix costs at this stage but I am going to reserve costs.



D J Harvey
District Court Judge

IN THE NEW ZEALAND DISTRICT COURT
HELD AT AUCKLAND

CIV No. 08/004/2516

BEWTEEN

D.V. Kelly Pty Ltd
24 Wendlebury Rd
Chipping Norton,
NSW, 2170
Australia
Plaintiff

AND

Magis S.p.a
via Magnadola
15 - 31045 Motta di Livenza
Treviso, Italy
1st Defendant

And

ECC Living & Lighting
39 Nugent Street
Grafton, Auckland
2nd Defendant

And

Nick Quy
56 Fordyce Ave
Pakuranga, Auckland
3rd Defendant

Conference Memorandum
Hearing date 17th June 2009
At 10.30

Filed By : Craig Kelly
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Conference Memorandum Checklist

1. Settlement negotiations and assessment of Alternative Dispute Resolution/Judicial Settlement Conference (ADR/JSC)

Settlement negotiations have been unsuccessful

2. Identification and disposal of any remaining interlocutory applications.

The Defendant's have filed an Application for Security for Costs

The Plaintiff has filed an Application for Separate Decisions on Questions.

Subject to the hearing of the interlocutory applications and evidence on discovery the Plaintiff may make a further interlocutory application seeking to adjoin Directors of the 2nd Defendants as the Fourth and Fifth Defendants.

3. Review compliance with any direction.

There are no outstanding directions requiring compliance

4. Outstanding interlocutory matters.

Refer question 2

5. How evidence is to be adduced and documentary exhibits produced.

Affidavits, Interrogatories by notice, orders for discovery, agreed statement of facts, expert reports.

6. Special physical and judicial resources likely to be required, including computer support and the possibility of disqualification of any particular Judge.

The 1st Defendant is an Italian registered corporation, based in Italy. Video conference, translator may be required?

7. Assess trial duration including (but not limited to):

- degree to which parties have exchanged evidential information;
- resolve any issues about experts reports and evidence;
- determination of which witnesses are actually necessary;

- consideration of time limits or restrictions on presentation of case of any or all parties
- counsel estimation;
- number of witnesses; and
- agreed statement of facts.

8. Need for further conference and attendance of parties at it.

A further conference may be required following hearing of interlocutory applications

- 9. A trial date will be allocated immediately after this conference unless there are good reasons why this is inappropriate (even if ADR option being explored). As a general rule, trial dates will be about 14 weeks ahead.**

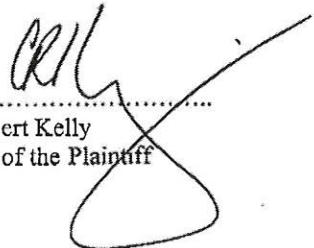
Date should be subject to finalization of interlocutory applications


10. Any change of track.

11. For immediate track, allocate date of hearing.

12. Other matters

Dated this 12th day of June 2008


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Craig Robert Kelly
On behalf of the Plaintiff

 This document is filed by Craig Kelly
Director of the above named Plaintiff. 