

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
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 Ltd
39 Nugent Street
Grafton, Auckland
2nd Defendant

And

Nick Quy
56 Fordyce Ave
Pakuranga, Auckland
General Manager ECC Living & Lighting
3rd Defendant

**MOTION FOR
SUMMARY JUDGEMENT ON LIABILITY**

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**MOTION FOR
SUMMARY JUDGEMENT ON LIABILITY**

The Plaintiff seeks summary judgement on liability, as provided for by section 153 of the District Court Rules.

1. The Plaintiff filed a "Notice of Proceeding" and "Statement of Claim" in the New Zealand District Court, Auckland on 13th October 2008, under the Fair Trading Act 1986.
2. The "Notice of Proceeding" and "Statement of Claim" were accepted and signed by the Deputy Register Mr. G McKay and given the Civ No : 08/004/2516

The 1st Defendant

3. The 1st Defendant is an Italian registered corporation. The "Notice of Proceeding" and "Statement of Claim" was served on the 1st Defendant at their Italian offices via Magnadola, 15 - 31045 Motta di Livenza, Treviso, Italy at 11.23am on the 21st October 2008.
4. Under the rules of the District Court, the 1st Defendant had 50 days after 21st October 2008 to file a defence.
5. This 50-day period has now expired and the 1st Defendant has failed to file a Defence in accordance with the District Court rules.
6. Under District Court Rule No. 153, the Plaintiff seeks the court to give summary judgment on liability against the 1st Defendant and proceed to a hearing on the issue of quantum.

The 2nd and 3rd Defendants

7. The "Notice of Proceeding" and "Statement of Claim" was served on the 2nd and 3rd Defendants on the 13th October 2008.
8. The 2nd and 3rd Defendants have failed to file a Defence in accordance with the rules of the District Court. Instead, the 2nd and 3rd Defendants have filed an "Appearance Reserving Rights".
9. The 2nd and 3rd Defendants have stated that they;

"oppose the Plaintiff's claim and are of the opinion that it neither complies with the Rules nor is in a format to which they can plead"

10. The Plaintiff contests the claims of the 2nd and 3rd Defendants. The Plaintiff has detailed 4 separate representations made by the Defendants, in accordance with the District Court Rules.

- a) Representation No 1 is detailed in paragraphs 66-67 of the Plaintiff's Statement of Claim. A copy of this representation in its original form was included in the attachments to the Statement of Claim and labeled "3A".
- b) Representation No 2 is detailed in paragraphs 68-71 of the Plaintiff's Statement of Claim. A copy of this representation in its original form was included in the attachments to the Statement of Claim and labeled "3B".
- c) Representation No 3 is detailed in paragraph 72 of the Plaintiffs Statement of Claim. A copy of this representation in its original form was included in the attachments to the Statement of Claim and labeled "3C".
- d) Representation No 4 is detailed in paragraphs 73-75 of the Plaintiff's Statement of Claim. A copy of this representation in its original form was included in the attachments to the Statement of Claim and labeled "3C".

11. In accordance with the District Court Rules, the Plaintiff detailed in its pleadings that the above representations contravened;

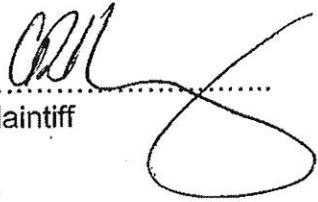
- Part 1, section 9 of the *Fair Trading Act 1986*
- Part 1, section 10 of the *Fair Trading Act 1986*
- Part 1, section 13(i) of the *Fair Trading Act 1986*
- Part 1, section 22 of the *Fair Trading Act 1986*

12. In accordance with the District Court rules the Plaintiff has detail extensive particulars in relation to the Defendant's above mentioned contraventions of the Fair Trading Act

13. Having failed to file a defence within the rules, the Plaintiff seeks the court to give summary judgment on liability against the 2nd and 3rd Defendants and proceed to a hearing on the issue of quantum.

14. The Plaintiff requests a hearing on the issue of quantum at the earliest possible date, as the Plaintiff's loss and damage from the Defendants' contraventions of the *Fair Trading Act 1986* continue to accrue.

Dated this.....10th.....day of.....DECEMBER 2008


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Plaintiff

This document is filed by :... CRAIG KELLY
Director of the above named Plaintiff.

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Alternatively, documents for service may transmitted by facsimile to
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