IN THE DISTRICT COURT
AT WELLINGTON

CIV-2014-096-000161
[2016] NZDC 3827

IN THE MATTER	of the Companies Act 1993
BETWEEN	BODY CORPORATE 68792 Applicant/Plaintiff
AND	CUDBY & MEADE LIMITED Defendant/Respondent

Hearing: 7 March 2016

Appearances: Mr D G Dewar for Plaintiff
No appearance for Defendant

Judgment: 10 March 2016

RESERVED JUDGMENT OF JUDGE C N TUOHY

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[1] This is an application for an order entering judgment on an admission. The application is made pursuant to Rule 15.12(1) of the District Court Rules 2014 which provides:

> **15.12 Judgment on admission of facts**
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> (1) If a party admits facts (in the party's pleadings or otherwise), any other party to the proceeding may apply to the court for any judgment or order upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the court may give any judgment or order on the application as it thinks just.

[2] The affidavit of John Greenwood in support deposed that a written settlement agreement was entered into by the parties on or about 11 September 2015 (amended by a subsequent agreement dated 5 October 2015). That agreement settled the plaintiff's claim against the defendant in this proceeding. The settlement required a payment to the plaintiff of $94,500 together with 5% interest by 24 December 2015 (time being of the essence). It has not been made.

[3] The agreement provided in Clause 6:

> 6. In addition to the security described in paragraph 2 above, Cudby & Meade Limited will supply to Body Corporate 68792 an admission of claim in the proceeding CIV 2014-096-000161 in the amount of $116,854.36; being levies and accumulative interest due to 1 September 2015, together with costs in the sum of $4,500.00, but the admission does not bar Mr Memelink and Cudby & Meade Limited's cross claims. The parties agree that such claims, however, do not bar enforcement of the debt.

[4] Following the signing of the agreement, the plaintiff's solicitors sent an admission of claim in terms of Clause 6 to the defendant for execution and return. The defendant made several handwritten alterations to it, executed the altered admission and returned it sometime later. The alterations purported to impose material variations to what was agreed in the settlement agreement which are not assented to by the plaintiff.

[5] Mr Dewar for the plaintiff submits that Clause 8 of the settlement agreement is itself an admission in terms of DCR 15.12(1). In support of that, he cited the judgment of Doogue J in *Sealord Charters v The Ship "Efim Gorbenko" & Ors*[1]. In that case, Doogue J considered that an agreement under which the owner of fishing vessels agreed to pay a sum to the repairer of the vessels in settlement of its action against them was sufficient to enable judgment *in rem* to be given against the vessels under the materially identical High Court Rule in force at the time[2]. His Honour pointed out that the necessary admission may be made in a pleading *"or otherwise"*. He accepted that an admission in an agreement was sufficient to found an application for entry of judgment.

[6] Here, if anything, the case is stronger. Not only was there a clear agreement to pay, there was a clear promise to execute an admission of claim before payment in order to enable the plaintiff to obtain judgment on its claim if payment was not made.

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1 HC Wellington, AD 369, HC Nelson, AD 12/95, 9 December 1996

2 HCR 292 now HCR 15.15

[7] There remains a discretion whether judgment should be entered. That discretion is sometimes exercised when a plaintiff seeking to obtain judgment on an admission has not kept his side of the bargain. I have read Mr Memelink's Notice of Opposition and affidavit with that in mind. Nothing he raises indicates the plaintiff might be in breach of its obligations under the agreement. It has met its obligation to discontinue the separate proceeding in CIV-2013-485-000906. Mr Memelink's complaints amount to attempts to re-litigate the claim against him which was settled, or to bring into account claims which were deliberately separated from the settlement.

[8] Accordingly, judgment is entered against the defendant in the sum of $116,854.36 which includes agreed costs of $4,500. (The plaintiff's application incorrectly seeks $4,500 additional to the $116,854.36. However, the settlement agreement shows that sum included the costs allowance). I also award the sum of $1,200 costs plus disbursements on the present application.

C N Tuohy
District Court Judge