



No. 27 of 1973

IN THE PRIVY COUNCIL

O N A P P E A L
FROM THE COURT OF APPEAL OF NEW ZEALAND

B E T W E E N:

PETER THOMAS FAHEY (DEFENDANT) APPELLANT

- and -

M.S.D. SPEIRS LIMITED (PLAINTIFF) RESPONDENT

AMENDMENT TO APPELLANT'S CASE

MACFARLANES
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Appellant

COWARD CHANCE
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Solicitors for the
Respondent

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10 In addition to the Appellant's Case as lodged,
the Appellant says:-

31. The Appellant will contend, alternatively to his contention put forward in paragraphs 28(b) and 30(2) and (3) of the Case, that upon the true construction of the guarantee every payment after 30th November 1968 made to the Respondent by Fahey Construction was applicable:

20 First, in or towards payment of the outstanding balance of purchases made after that date, reckoned without interest; and

Secondly, to what is contended to be the unguaranteed part of the account, viz: the balance of \$10,070.06 outstanding at the said date.

30 32. The Appellant's proposed exclusion of interest on outstanding balances after the said date involves his deducting, from each of the corresponding debits in column B in Exhibit 1, the amount of interest shown in Column A as included in the debit. The Schedule appended shows the actual deductions as far as is necessary for the Appellant's present purposes.

Record,
pp.61-62

33. The Appellant's reasons for so deducting interest are stated in paragraphs 27, 28(g) and 30(4)(d) of his Case.

34. The appended Schedule shows that, if payments by Fahey Construction are applied as contended for

in paragraph 31, transfers to the credit of the unguaranteed part of the account will amount, during the period ending 31st January 1970, to \$5072.44. Thereafter, the account runs in debit to the end.

Para.16

Record
p.17

35. Accordingly, since, after 30th November 1968, the total debits in Exh. 1, less interest, are undisputed at \$37513.67, and the total credits at \$33642.69, the balance owing under the guarantee, upon the present hypothesis, will be \$4880.95, though without allowing for the final dividend. The figures are:- 10

Nett debits, Exh.1.	\$37513.67	
Credits, Exh. 1.	33642.69	
	<hr/>	
	3870.98	
<u>Add</u> transfers to unguaranteed account as per Schedule annexed	5072.44	
	<hr/>	
	8943.42	
Less dividend	4062.47	20
	<hr/>	
	\$ 4880.95	
Less final dividend	(unascertained)	
Due under guarantee	<hr/>	
	\$	
	<hr/>	

36. Upon the above alternative arguments the Appellant submits:

- (1) That the Appeal ought to be allowed;
- (2) That the judgments of the Court of Appeal and the Supreme Court ought to be set aside;
- (3) That there ought to be substituted for the said judgments: 30
 - (a) An Order that an account be taken between the parties to ascertain the amount owing under the guarantee by the following method, viz.
 - (i) By excluding from such account the balance of \$10070.06 shown due by Exh.1 on 30th November 1968.
 - (ii) By treating such account as debited with the several amounts 40



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	<u>Gross debits</u>	<u>Debits ex interest</u>	<u>Credits</u>	<u>Transfers to Old Account</u>
		B/F 2621.70		B/F 2320.70
<u>1969</u>				
<u>May</u>	3217.93			
Interest	<u>75.95</u>	3141.98		
<u>June</u>	1629.81			
Interest	<u>32.65</u>	1597.16	5000.00	10
		<u>7360.94</u>		
		5000.00		
		<u>2360.94</u>		
<u>July</u>	1959.65			
Interest	<u>2.60</u>	1957.05	3500.00	
		<u>4317.99</u>		
		3500.00		
		<u>817.99</u>		
<u>Aug.</u>	1956.06			20
Interest	<u>21.28</u>	1934.78	14.04	
		<u>2752.77</u>		
		14.04		
		<u>2738.73</u>		
<u>Sept.</u>	2404.99			
Interest	<u>32.18</u>	2372.81	1013.68	
		<u>5111.54</u>		
		1013.68		30
		<u>4097.86</u>		
<u>Oct.</u>	789.83			
Interest	<u>34.47</u>	755.36	6525.90	
		<u>4853.22</u>	4853.22	1672.68
<u>Nov.</u>	1208.18			
Interest	<u>13.80</u>	1194.38	1410.91	
			1194.38	216.53
<u>Dec.</u>	1395.97			
Interest	<u>19.25</u>	1376.72		40
<u>1970</u>				
<u>Jan.</u>	260.75			
Interest	<u>nil</u>	260.75	2500.00	
		<u>1637.47</u>	1637.47	
				<u>862.53</u>
				<u>5072.44</u>

(Hereafter the account runs in debit until closed on 31st May 1971)

R.E.HARDING



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