

**IN THE DISTRICT COURT
AT TAUMARUNUI**

CIV-2022-068-

UNDER THE Charities Services Act 2005, Contract and
Commercial Law Act 2017; & Insolvency Act 2006

IN THE MATTER OF: Breach of Contract; Insolvency & False Filing

BETWEEN: **DENNIS ARTHUR SMITH**, Beneficiary, of
Taumarunui,
Plaintiff

AND: **KING COUNTRY EDUCATION TRUST**, a registered
Charitable Trust, (CC57408)
First Defendant

AND: **RONALD LESLIE COOKE**, Trustee of the First
Defendant, 6 Nelvin Place, Manunui, Taumarunui
Second Defendant

STATEMENT OF CLAIM

Dated: 16 June 2022

Filed by: Dennis Arthur Smith, Plaintiff.
Address for Service: dennis@dennis.nz
4/2a Para St, Taumarunui, 3920 NZ

AND: **BEVAN STUART COOKE**, Trustee of the First Defendant, 14 Greensboro St, Hamilton East
Third Defendant

AND: **GARY PAUL FITZPATRICK**, Trustee of the First Defendant, 11 Peter Terrace, Castor Bay, Auckland, 0620
Fourth Defendant

The Plaintiff claims:

BACKGROUND

- 1 The First Defendant is a registered Charitable Trust (CC57408) established on 12 December 2018.
- 2 The Plaintiff was a founding trustee, Chairman and CEO of the First Defendant from its inception until 22 July 2021.
- 3 The Second Defendant is a founding trustee of the First Defendant and a historian specialising in the collection and storage of historical data, including images from the King Country region (the "**Collection**").
- 4 The Third Defendant is a trustee of the First Defendant commencing on 16 September 2021.
- 5 The Fourth Defendant is a trustee of the First Defendant commencing on 28 January 2020.
- 6 The Plaintiff's companies Writing the Wrong Ltd and Wairua (NZ) Ltd assigned their debts to the Plaintiff on 5 March 2022.
- 7 At all material times the Third Defendant knew of and approved of the Second Defendant's affairs relating to the First Defendant.
- 8 At all material times the Fourth Defendant knew of and approved of the First Defendant's affairs.

TMB EVICTION & KCET ESTABLISHMENT

- 9 In Q3, 2018, the Second Defendant was evicted from The Memory Bank ("**TMB**")

by the Taumarunui Museum Trust (“**TMT**”).

10 TMB was a building that the TMT had fund-raised for and which the Second Defendant had occupied for some 30 years.

11 In December 2018, the Plaintiff assisted the Second Defendant to establish the First Defendant.

TMT LITIGATION

12 In 2018 and 2019 the Plaintiff as trustee of the First Defendant sought legal advice on the legalities of the Second Defendant's eviction from TMB.

13 The Plaintiff and the Second Defendant agreed as trustees of the First Defendant to commence litigation against both the TMT and its trustees personally based upon legal advice that the trustees of the TMT had Breached Trust.

14 The Plaintiff and the Second Defendant worked together to produce three books covering the history of this eviction and surrounding events, “Off the Rails”, “And They Said” and “Breach of Trust”.

15 From early December 2018 to the point of a relationship breakdown between the Plaintiff and the Second Defendant in Q1 2022, the Plaintiff worked together closely with the Second Defendant to ensure security of the Collection.

16 This relationship breakdown was precipitated by the Plaintiff's termination of the Second Defendant's employment by Abundant Past Ltd in October 2020.

17 Tension between the Plaintiff and the Second Defendant increased with the Plaintiff's resignation as Chairman, CEO and Trustee of the First Defendant on 22 July 2021.

FIRST CAUSE OF ACTION – Breach of Contract, Failure to Reimburse as Promised

18 On 14 May 2019 the Plaintiff and the Second Defendant agreed for the First Plaintiff to purchase containers for the

housing/storage of the Collection.

19 The Plaintiff and the Second Defendant agreed that funding for the Collection's housing needs was to be from private funding from a particular long-term supporter (“**SG**”).

20 The Second Defendant assured the Plaintiff that SG “was a millionaire” and that SG “was good for it”.

21 The Plaintiff came to believe that the First Defendant would be able to and would repay him in full when the promised funds arrived as a direct result of the Second Defendant's assurances that SG was “of means” and would be “good for it”.

22 On the basis that he believed that the First Defendant would have the means to repay him the Plaintiff therefore invested \$48,000.00:

22.1 Purchasing three containers;

22.2 'Kitting the containers out'; and

22.3 Moving the Collection and the First Defendant to Matapuna.

23 The First Defendant did not receive the promised \$48,000.00, as SG defaulted.

24 At the First Defendant's Board Meeting on 22 May 2020 the Plaintiff declared a potential conflict of interest and recused himself from financial reimbursement discussions.

25 As trustees of the First Defendant, the Second and Fourth Defendants resolved that the First Defendant would accept liability for the reimbursement to the Plaintiff for his investment into the three containers and fitout.

26 The First Defendant's minutes summarise this agreement as:

*“**AGREED:** KCET shall accept liability in principle for DAS' expenses in purchasing and kitting out the three 40' HC Containers.”*

DEBT COLLECTION

27 On 3 February 2022 the Plaintiff invoiced the First

Defendant (Invoice 1121) for \$48,000.00.

28 On 4 February 2022 the Plaintiff wrote to the Second Defendant detailing the full situation but the matters remained unresolved.

29 On 9 February 2022, the Plaintiff served a Statutory Demand on the First, Third & Fourth Defendants by email for \$48,092.00.

30 On or about 17:00 hours on 10 February 2022, the Plaintiff served the Second Defendant in person a Statutory Demand for \$48,092.00.

31 On or about 12 February 2022, the Plaintiff agreed with the Second Defendant that the First Defendant could return any 'unwanted' containers to him as long as there would be no financial disadvantage to him.

32 On 15 February 2022, the Second Defendant wrote to the Plaintiff on behalf of "the trustees" disputing the Statutory Demand but gave no reason for (nor any details of) the claimed dispute.

33 Between 16 February 2022 and 23 February 2022 the Second and Third Defendant and a third party assisting the First Defendant variously admitted to the Plaintiff that their denial of the debt the Plaintiff claimed was fallacious and was only issued because they *"did not have any money"*.

34 Between 27 March 2022 and 31 March 2022 the Second Defendant arranged for, and supervised the removal of the First Defendant's property (including the Collection) from the Plaintiff's property.

35 During this process, the Second Defendant abandoned some of the housing provided to it and either removed or instructed the removal of desks, electrical, shelving – all components of Invoice 1121.

36 The First Defendant has failed to make payment to the Plaintiff nor to enter into any payment arrangement agreeable to the Plaintiff.

37 The First Defendant is currently operating in an insolvent

state.

WHEREFORE the Plaintiff seeks:

- A) JUDGMENT** against the First, Second, Third and Fourth Defendants jointly and severably in the amount of \$48,092.00; and
- B) COSTS;**

SECOND CAUSE OF ACTION – Act of Insolvency – Unpaid Rent

38 The Plaintiff provided rent to the First Defendant at no charge from mid 2019 to 31 March 2020.

39 At a First Defendant's Board Meeting the Second and Fourth Defendants agreed as trustees of the First Defendant to incur liability for rent, water and power from 1 April 2020 to 31 March 2021 at the rate of \$200.00 per week.

40 The basis for this agreement was that:

40.1 The rent would be paid when the trust had the funds available; and

40.2 The monies owing would not incur interest charges.

41 At a subsequent [digital/remote] Board Meeting on 2 April 2021 the Plaintiff discussed the rent billed and noted that the First Plaintiff was not using much power nor internet.

42 The Plaintiff then offered to reduce the billing from \$200.00 per week to \$150.00 pw and to do this retrospectively.

43 The Second and Fourth Defendants as trustees of the First Defendant agreed to this change and the Plaintiff adjusted his companies billing accordingly reducing the First Defendant's account to \$15,600.00.

44 On 9 February 2022, Wairua (NZ) Ltd served a Statutory Demand on the First, Third & Fourth Defendants by email for \$15,692.00.

45 On or about 17:00 hours on 10 February 2022, Wairua (NZ) Ltd served the Second Defendant in person a Statutory Demand for \$15,692.00.

46 On 15 February 2022, the First Defendant wrote to the Plaintiff disputing the Statutory Demand but gave no reason for (nor any details of) the claimed dispute.

47 The First Defendant has failed to make payment to the Plaintiff nor to enter into any payment arrangement agreeable to the Plaintiff.

48 The First Defendant is currently operating in an insolvent state.

WHEREFORE the Plaintiff claims:

C) JUDGMENT against the First, Second, Third and Fourth Defendants jointly and severably in the amount of \$14,692.00; and
D) COSTS;

THIRD CAUSE OF ACTION – Breach of Contract – Book “And They Said ...”

49 During 2019, the Plaintiff undertook 533 hours of billable work researching, writing, publishing and printing two books, “And They Said ...” (ISBN: 9780473500948) and “Breach of Trust” (ISBN: 9780473539108).

50 The Plaintiff and the Second Defendants as trustees of the First Defendant, agreed to reimburse the Plaintiff for this work “from the litigation payout”.

51 This agreement:

51.1 Assumed that litigation would proceed;

51.2 Limited liability to the First Defendant to the lesser of any awarded a payout or the value of the Plaintiff's invoice; and

51.3 Implied that if the First Defendant lost the litigation

against TMT, there would be no payout.

52 On 24 October 2019 the Plaintiff's company Writing the Wrong Ltd invoiced the First Defendant \$27,582.75, Invoice 1026.

53 On 9 February 2022, Writing the Wrong Ltd served a Statutory Demand on the First, Third & Fourth Defendants by email for \$27,674.75.

54 On or about 17:00 hours on 10 February 2022, Writing the Wrong Ltd served the Second Defendant in person a Statutory Demand for \$27,674.75.

55 On 16 February 2022, the Second Defendant delivered to the Plaintiff a document denying the debt, but without giving any reason or further details.

56 The First Defendant failed to initiate litigation against the TMT.

57 On 23 February 2022 the Second Defendant confirmed to the Plaintiff in person that the First Defendant would now never commence litigation against the TMT, saying, "*because I have to live in this town*".

58 The First Defendant has failed to make payment or to enter into any payment arrangement agreeable to the Plaintiff.

59 The First Defendant's change to its previous decision to litigate now prevents the Plaintiff from receiving income due to him as previously agreed.

60 The First Defendant is currently operating in an insolvent state.

WHEREFORE the Plaintiff claims:

E) JUDGMENT against the First, Second, Third and Fourth Defendants jointly and severably in the amount of \$27,674.75; and

F) COSTS;

FOURTH CAUSE OF ACTION – False Charities Services

Filing

61 During 2021 the Plaintiff advised the First Defendant to record in the First Defendant's accounts uninvoiced debts owing to the Plaintiff of \$48,000.00 as “a contingent liability” alongside of his companies previously invoiced debts.

62 On or before 21 January 2022, the Second, Third and Fourth Defendants agreed to report false financial information of the First Defendant to Charities Services based on accounting advice that “if there is no invoice – there is no debt”.

63 On or about 21 January 2022, the Second Defendant instructed a third party to update the Charities Services website stating that the First Defendant did not owe anyone anything, despite having received invoices, and agreeing to honour debts.

64 The Second Defendant either updated or permitted his name to be used in the updating of the First Defendant's financial records at Charities Services, for the reports AR001 and AR002.

65 In 2022, the Plaintiff more than once sought resolution to this false reporting of the First Defendant's financial position from the First Defendant.

66 The First Defendant has failed to remedy this false-reporting.

67 The First Defendant has caused the Plaintiff embarrassment and potential financial loss.

WHEREFORE the Plaintiff claims:

G) DAMAGES from the First, Second, Third and Fourth Defendants of \$5,000.00 jointly and severally; and

H) COSTS;

Date: 16 June 2022

A handwritten signature in cursive script, reading "Dennis Arthur Smith". The signature is written in black ink and is positioned above a horizontal dotted line.

.....
Signature of Dennis Arthur Smith
Plaintiff