

Affidavit covers that claim at paragraphs 11-21, and it is his evidence that there is simply no evidence, documentary or otherwise, of the existence of any remuneration agreement between the company and the defendant.

[4] In support of that proposition, he points out that a set of draft 2014 financial statements for the company were prepared by professional accountants on Mr Evers instructions, and that those accounts have been relied upon by Mr Evers in the High Court proceeding. Those draft accounts show the monies paid to the defendant as drawings, and not remuneration for services involved in running the company.

[5] Secondly, there is no written record of any remuneration agreement, and no reference to any such agreement in any of the company records. Thirdly, if the money paid was remuneration, PAYE should have been paid and PAYE records kept. No PAYE returns have been prepared or filed, nor PAYE paid on these sums claimed to be remuneration. Finally, the company traded at a significant financial loss in the 2014 financial year and there is nothing in the company's financial records to show that the directors had made any determination that remuneration should be paid, in circumstances where there has been a substantial loss.

[6] In addition to those factual matters, it has long been recognised as the law that in the absence of a specific contract to pay a director remuneration, "the court ought not to award remuneration, by way of quantum meruit, in a case in which the relevant organs of the company have not approved it, either in terms of the Articles of Association or s 161 of the 1993 Act." (See *Wellington Audio Visual & Others v Euro Boston Group Limited & Others* HC Auckland CIV-2007-404-1089 31st March 2010 para 28.

[7] There is no evidence of any kind available to me to establish that there was any remuneration agreement, and there is substantial evidence to the effect that no company record of any such agreement exists. In the absence of any written record of such an agreement, the absence of appropriate PAYE records, and the absence of any record or note of remuneration agreement in the company accounts, the evidence points unequivocally to one conclusion.

[8] The standard of proof in a case such as this is proof on the balance of probabilities. I am satisfied on the evidence available to me that the plaintiff has established that there was no remuneration agreement of any kind in force at any time prior to the company's liquidation. I am satisfied further that the law precludes me from addressing the absence of remuneration by way of a quantum meruit assessment. Quantum is not disputed.

[9] For all those reasons, I am satisfied that the plaintiff has established that there can be no defence to the plaintiff's claim.

[10] This issue has been heard and determined as a preliminary point. It is entirely dispositive of the proceeding, and I accordingly enter judgment for the plaintiff in the sum of \$188,161.

T R Ingram
District Court Judge