Federal Court of Canada
Trial Division

Section de première instance de
la Cour fédérale du Canada

9/30/1

T-888-96

96 274 066

B E T W E E N:

MARY WALL

Plaintiff

- and -

VAL BRUNELL

carrying on business in the business name and style of

ORTHO-McNEIL INC.

Defendants

REASONS FOR ORDER AND ORDER

GILES, A.S.P.:

There are two motions before me under Rule 324. The first motion seeks a judgment under Rule 432 for a specific sum of money and for possession of certain documents. Such a judgment cannot be given under Rule 432 when the claim is as outlined in the statement of claim. The statement of claim here did not include a claim for a liquidated amount but for damages and certain other relief.

Unless damages have been liquidated by agreement they are not a suitable subject for a judgment under Rule 432 rather than under 433 where a judgment can be obtained with a reference to determine the amount of damages. In this case the relief sought includes relief other than a judgment for money and a different Rule will be necessary to authorize a default judgment.

Before this motion was set before me the defendant had moved to strike the claim as against one of the defendants. Also, the plaintiff had purported to amend the statement of claim and the defendants had filed a defence to the "amended statement of claim".

Because the motion for judgment sought relief to which the plaintiff was not entitled entirely, and in any event an amended claim has been since filed the motion for judgment will be dismissed.

Because the motion to strike the individual defendant was with respect to the unamended statement of claim it will be struck out without prejudice.

O R D E R

The motion for default judgment is dismissed. The motion to strike the claim as against the individual/defendant is dismissed without prejudice. The plaintiff is directed to file forthwith a document styled Further Amended Statement of Claim which contains all of her claim in one document and is headed with the new style of cause hereby ordered,

MARY WALL

Plaintiff

- and -

VAL BRUNELL and ORTHO-McNEIL INC.

Defendants

and the use of that style of cause in the statement of defense is approved.

"Peter A.K. Giles"
A.S.P.

Toronto, Ontario,
September 6, 1996

FEDERAL COURT OF CANADA

Names of Counsel and Solicitors of Record

COURT NO:	T-888-96
STYLE OF CAUSE:	MARY WALL - and - VAL BRUNELL and ORTHO-McNEIL INC.

CONSIDERED AT TORONTO, ONTARIO UNDER THE PROVISION OF RULE 324.

REASONS FOR ORDER AND ORDER BY:	GILES, A.S.P.
DATED:	SEPTEMBER 6, 1996

APPEARANCES:

Mary Wall

Acting in person

Mr. Gary Daniel

Solicitor for the Defendants

SOLICITORS OF RECORD:

Mary Wall
Plaintiff
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For the Plaintiff

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For the Defendants