

**IN THE DISTRICT COURT  
AT WHANGAREI**

**CIV-2015-088-000091  
[2016] NZDC 17350**

BETWEEN	JANETTE ANN AJANI Plaintiff
AND	KAMA NICOLE DICKSON Second Plaintiff
AND	CHRISTINE ANN WOODS Defendant
AND	PAT TE NGAHU RUKETAPU Second Defendant

Appearances: Mr A Holgate for the Plaintiffs  
Defendants are self-represented

Judgment: 8 September 2016

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**JUDGMENT AS TO DISBURSEMENTS ON THE PAPERS OF JUDGE D J  
McDONALD**

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[1] On 12 January 2016 I gave judgment in the above action. I found that the Plaintiffs succeeded in part, they did not succeed in their application for a permanent injunction, for damages for breach of contract and use and restoration of the right of way. Because both parties acted for themselves there was no question of costs. I reserve the question of disbursements. At paragraph [63] I said:

“Although the Plaintiff succeeded in part as they were acting for themselves they are not entitled to costs. They may be entitled to disbursements. In particular Mr Trevor Shaw’s fee, he being an expert witness, a licenced cadastral surveyor.”

[2] On 1 April 2016 Mr Holgate, now acting for the Plaintiffs, filed a memorandum seeking fixing of disbursements. He set out what he said the appropriate disbursements were; namely:

Filing fee: Statement of Claim – Ministry of Justice	\$200.00
Filing fee interlocutory application for injunction	\$250.00
Setting down fee – Ministry of Justice	\$900.00
Judicial settlement conference fee	\$900.00
Hearing fee – Ministry of Justice	\$2,700.00
Sealing fee: Judgment – Ministry of Justice	\$50.00
Fee – expert witness Trevor Shaw initial survey and report 20/11/2015	\$1,991.40
Fee – expert witness Trevor Shaw qualifying expenses, preparation and attending Court	\$5,476.36
Disbursement – Copying, paper and binders for Court	<u>\$106.96</u>
<b>TOTAL</b>	<b>\$12,574.72</b>

[3] Mr Holgate sought to have disbursements awarded against the Defendants jointly and severally. He referred me to *Hong v Deliu*<sup>1</sup>.

[4] Ms Woods responded with a memorandum dated 27 April 2016. Ms Woods seeks that the Plaintiffs application for costs (disbursements) be dismissed; a reversal of the order for costs made by Judge de Ridder on 8 May 2015 and damages against the Plaintiffs. The grounds set out by Ms Woods covers a lot of the issues in the hearing as well as some matters she says have occurred since the date of my judgment.

[5] Mr Holgate filed a memorandum in response dated 20 June 2016 together with an unsworn affidavit by Ms Ajani. In that she purports to outline what she says has occurred in relation to the dispute between her and the Defendants since the date of my judgment.

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<sup>1</sup> [2016] NZCA 75

[6] I am yet to receive a sworn affidavit.

[7] I have directed my Registrar that no further documents are to be received.

### **Discussion**

*Costs and disbursements awarded by Judge de Ridder.*

[8] Judge de Ridder in his judgment of 8 May 2015 dismisses Ms Woods application to set aside an earlier injunction that Judge de Ridder had granted in favour of the Plaintiffs. He awarded costs on a 2B scale and Ms Ajani at that time was represented by Counsel.

[9] Rule 14.8 states:

- (1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,
  - (a) Must be fixed in accordance with these rules and the application as determined; and
  - (b) Become payable when they are fixed.
- (2) Despite sub-clause (1), the Court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.
- (3) ....

[10] Subject the overriding discretion of the Court, costs on an interlocutory applications under this Rule are fixed and payable when they are fixed regardless of the ultimate success of the litigation. The purpose of the rules is to discourage any unnecessary procedural disputes, and to ensure that the successful party to a procedural dispute does not have to await the outcome of the proceedings before getting paid the costs related to the interlocutory matter. The rule makes it clear that the award of costs on an interlocutory application is the norm, and it is not proper for the costs to be reserved and become costs in the cause.

[11] The only provision for reviewing the award of costs is if the particular order is later found to have been wrongly made. Where an order has been made *res judicata* (a matter which has been adjudicated upon) generally applies.

[12] Nothing that I heard and decided leads me to the view that the granting of the interim injunction was wrongly made. Therefore Mrs Woods' application to set aside the earlier interim injunction could not succeed. It is unfortunate, and with hindsight, Mrs Woods agrees, that she filed her application. I am not prepared to discharge a varying order for costs made by Judge de Ridder.

### **Disbursements**

[13] Disbursements are covered by Rule 14.12 of the District Court Rules 2014. That provision states:

- (1) In this Rule disbursement in relation to a proceedings,
  - (a) Means an expense paid or incurred for the purpose of the proceedings that would ordinarily be charged separately from professional services and in a solicitor's bill of costs; and
  - (b) Includes:
    - (i) Fees of Court for the proceedings;
    - (ii) Expenses for serving documents for the purpose of the proceedings;
    - (iii) Expenses for photocopying documents required by these rules or by a direction of the Court;
    - (iv) Expenses incurred in providing or complying with discovery by electronic means in accordance with these rules;
    - (v) Expenses of conducting a conference by telephone or video link; but

- (c) Does not include Counsel's fees.
- (2) A disbursement may be included in the costs awarded for a proceeding to be accepted that a disbursement is:
- (a) Of a class that is:
    - (i) Approved by the Court for the purpose of the proceedings; or
    - (ii) Specified in sub-clause (1) of (b); and
  - (b) Be specific to the conduct of the proceedings; and
  - (c) Necessary for the conduct of the proceedings; and
  - (d) Reasonable in amount.

[14] A Judge may direct the Registrar to exercise the powers of the Court under this Rule.

[15] I have decided because the parties had been acting for themselves and one still is to decide the question of disbursements. All the fees apart from the two fees for the expert witness Mr Trevor Shaw are standard and are payments except for the copying and paper and binders for the Court made to the Ministry of Justice to progress the proceedings.

### **Expert witness**

[16] Expert witnesses when properly calculated are usually payable in full, because the witness owes a duty to the Court not to the client. The general rule is that expert witnesses fees are payable in full subject to the provisions of Rule 14.1(2). The Plaintiff is normally entitled to full costs of its expert, see *Air New Zealand v Commerce Commission*<sup>2</sup>. The amounts must be reasonable.

[17] I have considered both of Mr Shaw's accounts. His account for \$5,476.36 is an account as an expert witness. On the face of it only covers attendances at Court

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<sup>2</sup> [2007] 2 NZLR 494

on 8 May 2015 and not before me. However he did give evidence before me and I infer that that bill covers his attendances then. The other bill of \$1,991.40 I disallow. That appears to be just general work done on the boundaries or right of way of the property 163 Matapouri Road on 9 May 2015 and 13 November 2015 not for the litigation.

[18] I am concerned in relation to the larger bill that some of the work done by Mr Shaw involved reviewing draft affidavits prepared by Mr Ross for the Plaintiffs. Some of the work I find was done in relation to the neighbouring jointly owned land. Disbursements must be reasonable. Some of the work done by Mr Shaw would be useable by Ms Ajani in relation to her ongoing disputes with her fellow shareholders in the adjoining land.

[19] I therefore set the expert witnesses for Mr Shaw at \$4,000.

[20] The disbursements I set are the filing fees, setting down fees, conference fee, hearing fee, sealing fee and the disbursement of copying, paper and bindings for the Court. I also allow \$4,000 as the expert witness fee.

### **Apportionment**

[21] Ms Woods was at all times the owner of the land over which the right of way dispute centred. Mr Rukatapu although named as a second Defendant, and was served, took no steps in the proceedings and no part in it. He did not file an affidavit in support of Ms Woods. He did not give evidence at the trial.

[22] In those circumstances I do not consider that he should be liable for any of the disbursements. Ms Woods will be solely liable for the disbursements.

D J McDonald  
District Court Judge