

EDITORIAL NOTE: PERSONAL/COMMERCIAL DETAILS ONLY HAVE BEEN DELETED.

**IN THE DISTRICT COURT  
AT CHRISTCHURCH**

**CIV-2016-009-2193  
[2017] NZDC 13710**

BETWEEN CHRISTCHURCH CITY COUNCIL  
Plaintiff

AND LUKE PICKERING  
Defendant

Hearing: 20 June 2017

Appearances: Mr OD Peers and Ms CEF Olds for Plaintiff  
Defendant In Person

Judgment: 27 June 2017

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**RESERVED JUDGMENT OF JUDGE G S MACASKILL  
ON APPLICATION FOR SUMMARY JUDGMENT**

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### **The plaintiff's claim**

[1] The plaintiff seeks summary judgment against the defendant for \$8,808.14 for unpaid rates and accrued penalties levied on the defendant's property at [address deleted] McQueens Valley Road, Christchurch, between the years 2011 to 2016, inclusive.

[2] Except as specifically identified in this judgment, the defendant takes no issue with the calculation and levying of the rates. With that reservation, I find liability and quantum proved. There is no need for me to review the legal formalities, adherence to which I find proved by the affidavits filed in support. The process is fully explained in counsel's written submissions, which were not disputed by the defendant.

[3] The defendant is aggrieved by one aspect of the plaintiff's claim and by what he sees as the plaintiff's neglect to deal with his grievances promptly and, from his point of view, appropriately. The question is whether the plaintiff has shown that those grievances do not give rise to any reasonably arguable defence.

### **Recovery of ECan rates**

[4] I find that the defendant does have a reasonably arguable defence with respect to the plaintiff's claim to recover rates levied by Environment Canterbury Regional Council ("ECan").

[5] According to a memorandum filed by Mr Peers, the rates levied by the plaintiff amount to \$6,463.69 and the rates levied by ECan to \$2,344.45. In *Mangawhai Ratepayers & Residents' Association Inc and Rogan v Northland Regional Council and Kaipara District Council* [2016] NZHC 2192 Duffy J. held that, due to an apparent legislative oversight, the Local Government (Rating) Act 2002 does not authorise a local authority (a regional council) to delegate to another local authority the power to recover unpaid rates by legal proceedings. This Court is bound by that decision and counsel was not able to offer any argument to

demonstrate that this case differs in any legally significant respect. In any event, there is little point in this Court embarking on a review of the issues because it can probably easily be solved by ECan issuing its own proceeding for recovery or, possibly, by applying to be joined as a plaintiff to this proceeding.

[6] The plaintiff is refused summary judgment for the ECan rates. The claim for recovery of ECan rates is not dismissed.

### **Invalidity of rates not a defence**

[7] The other issues raised by the defendant must be considered in the light of s 60 of the Act, which provides:

#### **60 Invalidity of rates not a ground for refusal to pay rates**

A person must not refuse to pay rates on the ground that the rates are invalid unless the person brings proceedings in the High Court to challenge the validity of the rates on the ground that the local authority is not empowered to set or assess the rates on the particular rating unit.

[8] The defendant disavowed any challenge to the rates sought to be recovered from him on the ground that the rates are invalid. He has not brought proceedings in the High Court to challenge the validity of the rates on any grounds.

### **Challenge to waste rate**

[9] The second ground of defence raised by the defendant is that the waste (targeted) rate is not consistently applied and is applied to his rating unit inappropriately. The substance of his argument is that the target of the rate is “waste minimisation” whereas his property is neither used nor inhabited and it does not, and cannot, generate waste. He contends that this rate is not charged to other properties in his neighbourhood and that it is inconsistent and unfair to charge him. He says that the plaintiff’s advertised earthquake remission policy, applicable to his property, is that:

Residential and non-rateable properties left uninhabitable by the earthquakes will be treated as if they have been demolished and rated at land value only. This remission ceases when the property is once again inhabitable.

[10] There is plainly an issue between the defendant and the plaintiff as to the fairness and application of its policy to his property. It is not within the jurisdiction of this Court to determine these issues. *Prima facie* the rate has been lawfully set and levied on the defendant's property and, if there is any legal flaw in the process or if any relevant decision of the plaintiff was so unreasonable as to be *ultra vires*, he must challenge that flaw or unfairness by any alternative dispute resolution procedure available to him under the Act or by judicial review proceedings in the High Court. (I note that his property has been levied with only 25% of the waste minimisation rate normally applicable because his property does not have a collection service but only access to the local waste collection point.) For these reasons, this defence is not available to the defendant.

### **Earthquake remission relief**

[11] The third defence raised by the defendant is that:

Earthquake remission relief should be applied to my rating unit.

[12] Earthquake remission relief is available, but ratepayers must make formal application for relief and they must do so promptly and in accordance with the prescribed procedure. While the defendant contended that he had made such an application, he was not able to point to any evidence that he had done so in fact. I accept the plaintiff's evidence that he has not so applied. That being so, he is not entitled to any remission and he has no reasonably arguable defence.

### **Negligence allegations**

[13] The fourth ground of defence is that the plaintiff has been negligent and has caused him harm. The defendant alleges that the plaintiff:

- (a) Has not responded to enquiries within a reasonable time.
- (b) Has not answered enquiries at all.
- (c) Did not prevent harm to neighbourhood and environment due to nuisance.

- (d) Has not maintained the road network, nor reduced fire danger as required.
- (e) Has pursued punishment to exclusion of duty to consult, consider and be fair.

[14] These allegations overlap and it is difficult to tease them apart on a necessarily short review on this application for summary judgment. The essence of the defendant's complaints appears from his synopsis of argument. The defendant says that the plaintiff has not responded promptly to his various complaints, to his concerns about what he describes at the earthquake issue, the road issue or any other issues raised by him. That is so despite his complaints to the Ombudsman. He complains about a nuisance caused by a noise generator at Gebbies Pass. He says that the generator was operating illegally and without consent but that the plaintiff took no action for 108 weeks, adversely affecting the environment and his enjoyment of his property. He refers to proceedings in the Environment Court. He complains that the plaintiff has not fulfilled its responsibilities for the road by his property and the fire hazard caused by the long grass. He says that he has had to repair the lower road and carry out fire hazard reduction work. He has complained also to the Minister for Local Government and to the plaintiff's area elected representative. He discloses that he has postponed payment of his rates because he considered that there was nothing else he could do to obtain a response from the plaintiff.

[15] The defendant alleges that these wrongs have caused him harm but he does not attempt to quantify or prove that loss in monetary terms. He seeks a determination from this Court that the plaintiff has not acted reasonably and has caused him unnecessary harm.

[16] I unable to discern in these allegations any reasonably arguable defence to the plaintiff's claim. That is not to say that the defendant's complaints have no validity or that, somewhere buried in the confusion of alleged facts, the defendant has no remedy at all. If he wishes to file any claim in this Court or before the Disputes Tribunal to recover any losses he has suffered by reason of any legal wrong committed by the plaintiff, then he may to do so, but he would be wise to first seek

legal advice. For the moment, his present formulation of his complaints, in his synopsis of argument and in the other documents filed, does disclose a recognisable defence, assuming that a defence by way of set-off is available.

### **Settlement**

[17] The plaintiff alleges that he has paid nearly \$6,000 to the plaintiff and seeks a determination that such payment satisfies his full liability to the plaintiff and ECan until June 2017. In fact, the defendant sent a letter to the plaintiff's solicitors dated 20 March 2017, enclosing a cheque for \$5,900, stating:

I would prefer that the tendered amount is accepted in full payment for rates on my property up until June 2017.

The plaintiff declined to accept that proposal and the cheque has been held by the plaintiff's solicitors unbanked.

[18] The defendant has not achieved any settlement of the plaintiff's claim. His offer was conditional and was not accepted. It follows that this argument must fail.

[19] The defendant did not tender the cheque *on account* of his liability to the plaintiff. For that reason he is not entitled to have the tender taken into account in entering judgment or as to costs.

### **Outcome**

[20] The outcome is that the plaintiff is entitled to recover from the defendant judgment in the sum of \$6,463.69 (being the sum of \$8,808.14 particularised in paragraph 15 of the statement of claim, less the ECan rates) together with costs on a category 2B basis and disbursements, as fixed by the Registrar.

[21] I reject the defendant's plea that costs not be ordered against him on the ground of his personal circumstances and post-earthquake problems that identified at the end of the hearing. The plaintiff has done nothing in the context of this proceeding to disentitle it to costs or to justify any reduction in the costs ordinarily recoverable. However, motivated by his strong feelings of injustice and unfairness,

the defendant has resisted summary judgment for rates on grounds that were always untenable, with the exception of his argument concerning the ECan rates.

[22] Although ECan's rates may not be *recoverable* by the plaintiff in this proceeding, the plaintiff is entitled to *collect* them and the defendant is no doubt liable to ECan. He should take legal advice before incurring further liability for legal costs with respect to the recovery of ECan's rates.

**G S MacAskill**  
District Court Judge

Signed in Christchurch on 27 June 2017 at 10:00 am