EDITORIAL NOTE: NO SUPPRESSION APPLIED.

IN THE DISTRICT COURT
AT WELLINGTON

CIV: 2009-085-001280
[2017] NZDC 9753

BETWEEN	ROBERT LOGAN Plaintiff
AND	DANIEL THOMAS RIDDIFORD

Hearing: 9 May 2017

Appearances: M Whitlock for the Plaintiff
Defendant in person

Judgment: 24 May 2017

RESERVED JUDGMENT (No 2) OF JUDGE C N TUOHY

Introduction

[1] This is a claim for barrister's fees totalling $55,567.81 brought in the name of the solicitor who nominally instructed him. The claim has a chequered procedural history. Indeed, it is the last active claim before the District Court which is subject to the District Court Rules 1992, which were repealed as from 1 November 2009. The reasons for the antiquity of the proceeding can be gleaned from a series of previous minutes and judgments, viz.

- Minute of Tuohy DCJ dated 18 September 2015
- Minute (No 2) of Tuohy DCJ dated 8 October 2015
- Judgment of Tuohy DCJ dated 23 February 2016
- Judgment of Davidson DCJ dated 16 May 2016

Factual Background

[2] In mid-2000, Dr Taylor, who is an experienced barrister, agreed to represent Mr Riddiford (who himself was previously in practice as a lawyer), in a claim for compensation in the Land Valuation Tribunal arising from the taking by the Crown of the esplanade reserve at Te Awaiti Station. Te Awaiti Station is a large rural property on the Wairarapa coast owned by Riddiford family interests, which is occupied and managed by Mr Riddiford.

[3] Throughout the period during which Dr Taylor was representing Mr Riddiford, a barrister sole could only accept instructions from a solicitor and could not accept instructions directly from a client. The plaintiff, Robert Logan, a solicitor practising in Wellington, agreed to instruct Dr Taylor on Mr Riddiford's behalf, but essentially his role was as a mere *"post box"*. Dr Taylor and Mr Riddiford dealt with each other directly. However, in accordance with the formal arrangement, his invoices for the work he carried out on Mr Riddiford's behalf were addressed to Mr Logan.

[4] Dr Taylor's file number for the Land Valuation Tribunal claim was 0034. Invoices were regularly rendered for work done on this file starting in September 2000, at first monthly and then quarterly. At 9 December 2005, the date when the Land Valuation Tribunal issued its decision, the balance outstanding was $96,667.39. The only payment that had been made up until then was $1,000 on 23 December 2003.

[5] Between 2002 and 2004, Dr Taylor also represented Mr Riddiford on two other matters relating to the Wellington Regional Council (File 2073) and the South Wairarapa District Council (File 2058). At the date of the Tribunal's decision the balance outstanding on these invoices was $3,240 and $13,471.85 respectively. The only payment that had been made was $3,000 on 31 March 2003 on the latter file.

[6] Thus the total amount outstanding for Dr Taylor's fees at the date of the Tribunal's decision was:

File 0034	-	$ 96,667.39
File 2073	-	$ 3,240.00
File 2058	-	$ 13,471.85
		$113,379.24

[7] The Tribunal's decision was a disaster for Mr Riddiford. The claim was always a matter of quantum. The Crown had paid Mr Riddiford $120,000 as an interim payment on 22 December 2003. He had sought more than $13,000,000 at the six day hearing before the Tribunal. The Tribunal awarded him $156,200 which meant that there was only a further $36,200 payable to him subject to any adjustment for interest and costs.

[8] Prior to the delivery of the Tribunal's decision, no demand had been made for payment of any of the invoices which had been rendered since Dr Taylor started acting for Mr Riddiford. Both Dr Taylor and Mr Riddiford agreed that that was because it was known that an award of compensation at some level would be made from which it was anticipated that payment could be made. Both were in accord that their agreement was that payment would not be required until the end of the process, although Mr Riddiford's case is that even that agreement was conditional on *"full compensation"* being paid by the Crown.

[9] In his evidence, Dr Taylor stated that *"the end of the process"* in terms of when payment was required meant the time when any compensation inclusive of interest and costs was actually received by Mr Riddiford. Despite that, the contemporary documentation shows that he requested and then demanded payment of his outstanding fees shortly after the Tribunal delivered its disappointing decision and prior to any further payment of compensation being made to Mr Riddiford.

[10] In an undated email to Mr Riddiford (which was replied to by an email dated 21 December 2005), Dr Taylor addressed the matter of his outstanding fees. He said that the total outstanding was *"a little over $110,000"* and that he could not leave that amount outstanding any longer. He asked whether Mr Riddiford could pay $20,000 by the end of January, $20,000 by the end of April, $20,000 by the end of June and the remainder by the end of October (2006).

[11] In Mr Riddiford's reply, he said that he regretted that *"as previously"* he was unable to pay until the Crown paid out counsel and witness expenses. It is a very strong inference from the syntax of the relevant sentence that there is a missing word and that Mr Riddiford meant to write *"as previously advised"*, or possibly *"as previously agreed"*.

[12] Both emails confirm that Mr Riddiford was considering appealing the Tribunal's decision to the High Court and that Dr Taylor was prepared to act for him on the appeal.

[13] On 30 January 2006, Dr Taylor sent Mr Riddiford another email which is set out in full below. (There must have been intervening communications, but no evidence of them is before the Court):

> Dear Dan,
>
> Thank you for your e-mail and telephone call. I refer also to earlier e-mail and oral communications between us.
>
> Being the unconventional person I am, I am prepared to offer you two alternatives:
>
> 1. You pay $16,000 by 4 p.m. 1 February, $16,000 by 1 April, $16,000 by 1 June, $32,000 by 1 April 2006 = $80,000.
>
> 2. I instruct Robert Logan to pursue you for the full amount ca $110,000 with interest from 1 February.
>
> 3. If I receive payment of the $16,000 by 4 p.m. on 1 February, I will take this as confirmation of a contract in terms of option 1 between us.
>
> 4. There is no room for negotiation on this.

[14] Dr Taylor said that he meant 1 August 2006 for the $32,000 final payment and the subsequent conduct of the parties showed that they understood that.

[15] Mr Riddiford replied by a letter dated *"1.2.05"*, although it obviously should have been dated 1 February 2006. After outlining his farming financial difficulties, he wrote:

> I have not yet reviewed the correspondence from the outset of the case, but would note that those agreements should continue to influence our

> relationship. I do recall that I was always candid about my limited finances and this lead me to obtain from you an opinion on my exposure to costs and to deliberate before meeting the high cost of expert witnesses. That was important since the contingent cost of litigation could financially destroy me.
>
> This morning you said that if $16000 was not paid you would not proceed with the appeal and would instruct Robert Logan to sue and there was no time latitude over the first payment of $16000. However I do thankyou for your offer to reduce your invoice for $110,000 to date to $80,000 and allow for payment over time.
>
> I now enclose "$16,000" blind in response to your generous offer of a discount. Please bear in mind that these are now difficult times and I must spend some money on farm to preserve my credibility if there is a judicial site visit.

[16] The invoices show that Dr Taylor was continuing to expend significant amounts of time on these files up to 30 June 2006. There were further invoices rendered on them in September 2006 and March and June 2007, but for relatively small sums.

[17] The invoices indicate that it was in June 2006 that Dr Taylor ceased to carry out significant amounts of work on Mr Riddiford's behalf. That change is explicable by the history of payments made following the exchange of correspondence at the end of January 2006, recorded above. As that shows, Mr Riddiford did make the $16,000 payment demanded on 1 February. He made a further $14,000 payment on 3 April. On being contacted about this by Dr Taylor, Mr Riddiford explained that he thought the amount due was that sum. However, he then promptly paid the balance of $2,000 which was received on 7 April. The payment of $16,000 due on 1 June was not paid on that date.

[18] Dr Taylor stated that when the 1 June payment was not paid, he *"cancelled the arrangement"* (of 30 January/1 February). There were further communications between the parties at that time because further correspondence is in evidence (but obviously not all of it). Dr Taylor wrote to Mr Riddiford (and Mr Logan) in the following terms:

> Dear Robert and Dan,
>
> …

> As a final "throw" to protect Dan, I will not withdraw if (a) $16,000 is in my account on Wednesday, 14 June, or a cheque is with me by 4 p.m. that day, and (b) Dan agrees in writing to further payments of $8,000 on 1 July, 1 September 2006, 1 November 2006, 1 January 2007, 1 March 2007 and 1 April 2007. This represents an extra $16,000 in total over the previous arrangement. Time is of the essence. Should any payment be missed or short, my withdrawal will be automatic and notice will be given to the Court, Tribunal and Crown forthwith. If this schedule is complied with I will regard payment as full and final settlement of fees incurred up to 31 December 2005 on the Tribunal case (my reference 0034). The fees incurred starting from 1 January 2006 on 0034 and fees on the High Court appeal (my reference 5052) will need to be paid in full on 1 April 2007 with the final instalment of pre-April 2006 fees.

[19] The sum of $16,000 was paid by Mr Riddiford to Dr Taylor on 13 June, so it is a reasonable inference that that payment was a response to that letter. There is no evidence that Mr Riddiford ever agreed either in writing or otherwise to making the further instalment payments totalling $48,000 which were proposed. Indeed there is an undated letter from Mr Riddiford to Dr Taylor (CBD 113) in evidence in which he wrote:

> Graham,
>
> …
>
> I repeated what I had said previously that it was extremely difficult for me to find unbudgeted money between now and the first sale of lambs in Spring (typically at the end of November). That makes your request for payments on 1 July 2006, 1 September 2006 and 1 November impractical to say the least. From the beginning of this case I have always been candid as to my lack of income and the limitations on extracting cash from Te Awaiti. For this reason I obtained from you an opinion on Crown reimbursement of all fees in compensation cases to ensure that I would be able to carry the claim to a successful conclusion without being compromised in the process.
>
> I see the way forward in your absence with Robert's help is to ask the Crown to pay the interest due (first) and $32600 of the outstanding judgement so that I will be able to pay you the $32000 earlier than might otherwise have been expected.

[20] Dr Taylor's evidence was that when the 1 June payment was a week late he sent memoranda to the High Court and the Tribunal seeking leave to withdraw for non-payment of fees. In fact the memorandum to the Tribunal (CBD 119) was dated 26 March 2007. The memorandum records that at that time the parties were awaiting a decision of the Tribunal as to interest in respect of which Dr Taylor had

filed submissions as the decision later issued recorded. The memorandum also recorded that an application by the Crown for costs was still to be dealt with.

[21] The Tribunal issued its decision, both as to interest and costs, on 18 May 2007. It transformed what had been a disaster for Mr Riddiford into a catastrophe. While he was awarded interest later calculated at $81,712.92 as at 4 September 2007, there was an order for costs made against him of $100,000. That meant that the net payment to be made to him (additional to the interim payment of $120,000 made on 23 December 2003) was $17,912.82.

[22] That sum was paid by the Crown to Mr Riddiford's solicitor, Mr Logan on 5 September 2007 and he paid it to Dr Taylor on 19 September 2007. Contemporary correspondence from Mr Logan shows (CBD 132) that that was apparently done with Mr Riddiford's authority, although he appears to have forgotten that over the succeeding decade. (The evidence of both parties demonstrated the fallibility of human memory in regard to events of a decade or more ago and I have preferred contemporary documentation wherever it contradicts the memories of the parties). The Crown's payment was the last payment Dr Taylor received on account of his fees.

[23] To complete the history of the litigation in respect of which the fees were incurred (which I have gathered from published Court reports), Mr Riddiford's appeal to the High Court against the Tribunal's decision both on compensation and on costs was heard in June 2008 and a judgment issued later that month. The appeal failed in all respects except that the valuation of a small piece of land not dealt with by the Tribunal was referred back to it[1]. Mr Riddiford advised at the hearing that he had not pursued that matter.

[24] With commendable determination, Mr Riddiford pursued the matter to the Court of Appeal, representing himself throughout. Despite a series of procedural knockbacks, he eventually succeeded in overturning the costs order on jurisdictional

---

1 *Riddiford v Attorney-General* (CIV-2006-485-000833, 23/6/08)

grounds[2] and then obtaining interest on the unpaid $100,000 until it was paid[3]. It is not possible to calculate from the various judgments what further amount Mr Riddiford received by virtue of these efforts. Mr Riddiford said in evidence it was about $90,000 net.

[25] Dr Taylor chose to allocate the payments Mr Riddiford made totalling $65,912.92 first to the amounts outstanding on Files 2073 and 2058 and then to the oldest invoices on File 0034. This left a balance of $55,567.81, which is the amount sought in the claim together with interest and costs.

[26] There is no evidence that Mr Logan had ever formally demanded payment of Dr Taylor's invoices from his client, Mr Riddiford, prior to 6 August 2007 when he wrote a formal letter requiring payment of the current balance on the invoices (the final payment from the Crown had not then been received).

[27] On 17 August 2007, not having received any further payment, Mr Logan wrote again to Mr Riddiford stating:

> In regard to my correspondence of 6 August, I note that although I had requested payment from you, I had not recorded Dr Taylor's costs in an invoice of my own. I am therefore enclosing an invoice recording Dr Taylor's invoices and the total owed.

[28] No further payment having been received apart from the final amount paid by the Crown, Mr Logan instructed Baycorp to recover the debt. They filed this proceeding (naming Dr Taylor as the plaintiff) on 30 October 2009.

The Issues

[29] The basis of Mr Logan's case is simple. He claims the total of the amounts invoiced by Dr Taylor on the four files referred to above (adjusted for write-offs of $1,110 on File 2073), less the total of the payments made by Mr Riddiford recorded above.

---

2 *Riddiford v Attorney-General* [2012] NZCA 112
3 *Riddiford v Attotney-General* [2014] NZCA 435

[30] In his statement of defence, Mr Riddiford denied many of the allegations in the statement of claim and also raised an affirmative defence that the whole of the claim was statute-barred and a counterclaim and set-off based on Dr Taylor's negligence. No specific sum in damages is sought on that counterclaim.

[31] The import of the various denials in the statement of defence is hard to precisely identify, but I consider that they are sufficient to put in issue both the nature of the agreement to pay fees and the quantum due and owing.

Limitation

[32] It is convenient to deal first with the affirmative defence and the counterclaim/set-off because they can be briefly disposed of. Both Dr Taylor and Mr Riddiford were agreed in their evidence that Mr Riddiford was under no obligation to pay the sums recorded in Dr Taylor's invoices until *"the end of the Land Valuation Tribunal claim"* (although on Mr Riddiford's case even that liability was contingent). Although there was some ambiguity in the evidence about when *"the end"* was reached, it could not have been earlier than the date of the Tribunal's decision, 9 December 2005.

[33] In terms of the Limitation Act 1950, which continues to apply to this claim[4], the cause of action on this claim for a simple contract debt accrues when there is a breach of the contract, ie. when the debtor fails to pay the debt on the agreed date[5]. That date arose not earlier than 9 December 2005, well within the six year limitation period prescribed by s 4(1) of the Limitation Act 1950.

[34] Indeed, there are good arguments that the cause of action arose even later, either when the solicitor with whom Mr Riddiford contracted, Mr Logan, first rendered a bill of costs to him showing the fees as a disbursement in August 2007[6],

---

4 See s 59 Limitation Act 2010

5 *Driver v Learmonth* (1873) 1 NZ Jur 41; *Eyre v O'Rorke* (1905) 25 NZLR 182; *DFC New Zealand Ltd v McKenzie* [1993] 2 NZLR 576

6 See s 140 Law Practitioner's Act 1982 in force at the time.

or when the Crown made its final payment in September 2007 at which time, according to Dr Taylor's evidence, the liability to pay his invoices arose.

Negligence

[35] The short answer to the claim in negligence provided by Mr Whitlock is that Dr Taylor is not a party to this proceeding. Therefore any negligence claim against him would have to be brought in a separate action (which would now be long time-barred).

[36] While that is an answer to the counterclaim, it may not constitute an answer to a claim for an equitable set-off of any loss suffered by Mr Riddiford by reason of Dr Taylor's negligence. Equitable set-off is a defence and the Limitation Act 1950 is generally applicable only to claims not defences. Section 30 of the Limitation Act does provide a limitation period for counterclaims and set-offs. However, in *Henriksens Rederi A/S v PH2 Rolimpex*[7], Lord Denning stated that the identically worded United Kingdom provision applied only to legal set-offs and not to equitable set-offs, a view which found favour in our High Court in *ASB Bank v Hall*[8].

[37] Furthermore, it is possible to claim an equitable set-off even where mutuality is lacking provided the necessary relationship between claim and cross-claim exists[9]. That relationship will exist where the cross-claim is so closely connected with the claim that it goes to impeach the plaintiff's title to be paid and raises an equity in the defendant, making it unfair that he should pay the plaintiff without deduction. The link between the two must be such that they are in effect interdependent[10].

[38] However, even though in principle an equitable set-off could be advanced based on Dr Taylor's alleged negligence in carrying out the work for which the fees are claimed, it falls well short of being established on the evidence.

[39] The statement of defence particularises the negligence as follows:

---

7 [1974] QB 233
8 (HC Akld, CIV-2010-404-006381, 8 April 2011, Matthews AJ)
9 *Meates v Taylor* (1989) 4 NZCLC 65, 127
10 *Grant v NZMC Ltd* [1984] 1 NZLR 8

22.1 Incorrect advice over Crown reimbursement of fees and expenses in a formal opinion dated 12 February 2001.

22.2 Failure to follow an agreement over fees

22.3 Failure to inform the defendant of a claim by Crown Law for fees and disbursements allowing the Tribunal to make an order unopposed that some $100,000 should be paid by the Defendant.

22.4 Failure to report and account

[40] While Dr Taylor's opinion over Crown reimbursement of fees and expenses was in evidence, there was no evidence that that advice was negligently given, or even incorrect. The prospect of recovery of costs and witnesses expenses was never expressed in the opinion in the absolute terms in which Mr Riddiford appears to now read it.

[41] As to the alleged failure to follow the agreement over fees, that is discussed below. However, that is not an allegation of negligence in the manner in which Dr Taylor represented Mr Riddiford in the litigation. In any event, there is no allegation that such failure resulted in pecuniary loss to Mr Riddiford.

[42] There is insufficient evidence for the court to be able to establish exactly what happened prior to the Tribunal's adverse costs decision. It seems clear from that decision and the memorandum seeking leave to withdraw, that while Dr Taylor presented submissions to the Tribunal regarding interest, he did not do so in relation to costs. He had withdrawn from representing Mr Riddiford before the issue of costs was dealt with.

[43] In any event, as recorded above, Mr Riddiford was eventually successful in having the costs order almost entirely set aside on jurisdictional grounds which were apparently not identified by anyone (including the judge in the High Court) until the application for leave to further appeal to the Court of Appeal was heard.

[44] No failure to report and account during the engagement or at the end of it has been established. Nor was there any evidence of pecuniary loss resulting from any such failure.

[45] In summary, no negligence which would found an equitable set-off has been established.

The Agreement as to Payment of Fees

[46] Both Dr Taylor and Mr Riddiford stated in evidence that they discussed and agreed on the payment of Dr Taylor's fees at the beginning of the engagement in 2000. The result of their discussion was not recorded in writing. So the primary evidence as to their agreement came from the evidence of the two parties to it of a conversation (or conversations) which took place about 17 years ago.

[47] Nevertheless, their versions of the agreement largely coincide. Both are agreed that an hourly rate of $250 plus GST was agreed. Both are agreed that Dr Taylor agreed to wait for payment until payment of compensation by the Crown was actually made. Obviously that would not happen until after the Tribunal decided the quantum (unless the claim was earlier settled).

[48] Mr Riddiford's case is that there was a rider on that agreement, viz. that it was contingent on what he termed *"full compensation"* being paid, by which he meant that the compensation would be inclusive of reimbursement of his legal fees and expert witnesses' fees. In support of that, he pointed to letters which he sent to Dr Taylor on 5 September and 16 October 2000.

[49] In the former, he wrote:

> We spoke on 17 8 00 and again this morning. Thankyou for your agreement to represent me in the claim for compensation resulting from the taking by operation of law of the esplanade reserve at Te Awaiti Station. I note your fee at $250 per hour. While the concept of "full compensation" always includes full fees paid at the conclusion of a case, I am conscious (relative to my circumstances) of the need to use your time carefully. I believe that it would be wisest for me to do what I can myself, subject always to your advice.

[50] In the latter, he wrote (after receiving a copy of the first invoice dated 30 September 2000):

> …

> I noted your account at some $2500. Thankyou for your acceptance that legal fees $250 per hour (GST exc) might be paid at the conclusion of matters as part of "full compensation". …

[51] I am not satisfied that the agreement for payment did include the additional term contended for by Mr Riddiford. First, an objective observer aware of the background, would not have given the construction to Mr Riddiford's letters which he asserts. If the Intention was that Dr Taylor's fees would only be payable to the extent that they were later reimbursed as part of the compensation payable to Mr Riddiford, then that could easily have been clearly stated in those terms. It was not.

[52] Mr Riddiford may have wanted to impose such a term, but he cannot achieve that without Dr Taylor's agreement. No such agreement can be inferred from Dr Taylor's lack of apparent response to letters to him which do not convey to an objective reader the meaning which Mr Riddiford says that he intended.

[53] Furthermore, it is very unlikely that Dr Taylor would ever have agreed on a contingent fee of this nature. He said that it was not his practice to do so and he never would have. I accept that evidence, not only because it was given by Dr Taylor, but because it is inherently plausible that an experienced barrister, aware of the risks of litigation, would not have carried out so much work on such an uncertain basis.

[54] In addition, the subsequent conduct of Mr Riddiford in making substantial payments towards the outstanding fees before the award of any compensation for his legal fees is inconsistent with the term he alleges. While he explains that as motivated by the overriding need to retain Dr Taylor's services on the appeal, that does not explain why he did not even mention any such term at the time.

[55] While rejecting Mr Riddiford's version of the initial agreement, I find, nevertheless, that Dr Taylor has not established that the whole of the sum he is now claiming is payable. That is because I do not accept his interpretation of the new agreement as to payment made at the beginning of February 2006 and recorded above.

[56] That it was a new agreement replacing the existing agreement is clear from the terms of Dr Taylor's letter of 30 January. That its terms were accepted by Mr Riddiford is shown by his letter of 1 February and payment of $16,000 on that date. He specifically accepted the offer to reduce the balance then outstanding to $80,000.

[57] When the payment due on 1 June 2006 was not paid, Dr Taylor said that he cancelled the agreement. Nevertheless, he accepted payment on 13 June of the sum due on 1 June.

[58] In cancelling the agreement immediately after 1 June, Dr Taylor obviously took the view that payment on due date was an essential term of the agreement, although that was not stated in it except in relation to the initial payment of 1 February. It is certainly arguable that he was right about that.

[59] It is also implicit in his claim, that there was a term in the new agreement that if **any** payment was missed, he would be entitled to claim the full balance owing on the original invoices, thus reversing in full the agreed reduction to $80,000. There was certainly no express term to that effect and I am not satisfied such a term should be implied.

[60] The question of whether a term should be implied in a contract is one which often comes before the Courts. Prior to the judgment of the Privy Council in *Attorney-General of Belize v Belize Telecom Ltd*[11], the test commonly applied by New Zealand Courts for the implication of contractual terms was that set out in the *B P Refinery* case[12]:

> … for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable; (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; (3) it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract."

---

11 [2009] 2 All ER 1127

12 *BP Refinery (Westenport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266.

[61] The way in which that list of conditions should be viewed was explained by Lord Hoffman in delivering the judgment in *Attorney General of Belize v Belize Telecom Ltd*:

> … this list is best regarded, not as a series of independent tests which must each be surmounted, but rather as a collection of different ways in which judges have tried to express the central idea that the proposed implied term must spell out what the contract actually means or in which they have explained why they did not think that it did so.

[62] While agreeing with that approach, the Court of Appeal in *Hickman v Turn and Wave Ltd*[13] confirmed that each of the *BP Refinery* elements remains a useful indicator relevant to the ultimate question of what a reasonable person with knowledge of the relevant background would have understood the contract to mean. The Court also cited with approval passages from the judgment of the Privy Council in which the formulations *"necessary to give business efficacy"* and *"goes without saying"* were explained.

[63] Applying those principles, I am unable to say that the new agreement did have the implied term which Dr Taylor thought it did, that he could go back to the original balance even though several payments had been made based on the new reduced figure. It is obviously not necessary to give the new agreement business efficacy.

[64] Nor does it go without saying. According to Dr Taylor's own evidence, Mr Riddiford was under no obligation to pay any of Dr Taylor's fees at the end of January 2006 when he demanded them. That is because Mr Riddiford was yet to receive the compensation ordered by the Tribunal the previous month. Whether Dr Taylor thought he had received it, or whether he had simply overlooked what the original agreement was, is not clear. But for whatever reason, he offered a reduced balance if that reduced balance was paid by instalments, the last of which was payable over a year prior to when Mr Riddiford did actually receive his compensation (less $100,000 for costs).

---

13 [2011] 3 NZLR 318

[65] Mr Riddiford paid all the agreed instalments except for the last, albeit a few days late. It by no means goes without saying that on payment of the penultimate instalment late, or on failure to pay the last instalment, Dr Taylor was entitled to reverse the discount which was no doubt an incentive for Mr Riddiford to enter into the new agreement and to make the payments required by it – except for the last by which time Dr Taylor had purported to cancel it.

[66] Therefore, I find that it has been established that Dr Taylor's fees are due and owing, but only in the amount of the last instalment $32,000 together with the amounts in any invoices rendered after 30 December 2005 (from which the subsequent payment in September 2007 must be deducted).

Interest and Costs

[67] There is no reason in principle that Dr Taylor should not receive interest from the date when such fees were payable. In respect of the $32,000 balance, that was 1 August 2006. As to any invoices subsequent to the new agreement, there seems to have been no specific agreement about payment. They should bear interest from the date of the invoice by Mr Logan, 17 August 2007. Interest will be at the rate payable pursuant to s 62B of the District Courts Act 1947 from time to time.

[68] The principle that interest should be paid should not apply during the period of unjustifiable delay by the plaintiff. I assess this period as from 1 January 2010 to 28 June 2013, when the plaintiff finally (and in my view unnecessarily) applied for substituted service.

[69] The plaintiff is also in principle entitled to costs, but in my view, not for those steps necessitated by its delay, its application to extend time for service, its application for substituted service, or the interlocutory processes relating to the amendment of the plaintiff's name.

[70] Counsel for the plaintiff should file a memorandum as to the amount for which judgment should be entered including costs in accordance with this judgment.

[71] Such memorandum should be filed and served within 14 days.

[72] Any memorandum in response by the defendant should be filed within a further 7 days.

C N Tuohy
District Court Judge