

3.2	Entry of Judgment	<u>236.00</u>	1,121.00
3. Disbursements			
4.1 Filing fees			
4.1.1	Notice of proceeding	200.00	
4.1.2	Entry of Judgment	<u>90.00</u>	290.00
4.2	Service Fee		<u>219.65</u>
			\$5,171.14

[4] The registrar wrote to the judgment creditor on 10 May 2017 stating that he had authorised the sealing of this judgment under r 15.7(1) District Court Rules (DCR) 2014. The registrar then stated:

As Deputy Registrars, we have been given guidelines to follow by the Chief District Court Judge which allows us to make decisions around repossession; Therefore the costs claimed in this judgment by default application have been removed. After security is repossessed and sold and the sale of that security has been included to the debt, only disbursements relating to a proceeding will be granted. Disbursements include filing fees and service fees. For this reason I have removed the costs of \$57.50, as well as the solicitors costs of \$1121.

[5] The registrar then sealed judgment in the amount of claim in the sum of \$3,992.64 and costs of \$509.65 and did not allow costs of \$57.50 and solicitors fees of \$1,121.00.

[6] The judgment creditor attempted to resolve the issue with the registry but was unsuccessful.

[7] On 14 June 2017 the judgment creditor filed an application seeking a review of the registrar's judgment on the grounds:

[8] That the registrar has only allowed judgment for the amount claimed, filing fees and service fees;

[9] The plaintiff should be able to claim solicitor's costs in respect of filing fees, solicitors fees for preparation of legal documentation;

[10] Not allowing the judgment creditor to claim costs of issuing legal proceedings is a miscarriage of justice; and

[11] Relying on the affidavit filed in support.

[12] The application now seeks judgment against the judgment debtor in the sum of \$5,171.14 on the basis of:

Amount of claim	\$3,482.99
Costs of issuing letter of demand	57.50
Filing fee	200.00
Preparing notice of claim or statement of claim	885.00
Service fee	219.65
Filing fee – judgment	90.00
Sealing order or Judgment (9.16)	<u>236.00</u>
	\$5,171.14

[13] The judgment creditor relies on clause 9.1 of the contract between the creditor and debtor, dated 9 October 2013, which states:

You must pay as an amount immediately due: any sum of money paid by creditor to remedy any default, including money paid under clause 3.12; the costs of taking possession of the goods or attempting to take possession of the goods; the costs of tracing or attempting to trace you or any guarantor; and all costs, charges, commission fees and expenses (including solicitor/client costs) which a creditor incurs or becomes liable for because of any default or breach by you.

[14] The judgment creditor says that not allowing it to claim the costs of issuing legal proceedings is a miscarriage of justice because the only way the creditor could receive payment from the debtor was to issue legal proceedings.

Discussion

[15] Rule 2.12 of the DCR applies in respect of reviews of the registrar's decision. Under r 2.12(3) of the DCR notice of application for a review must be filed within five working days of the decision if any party was present, or of notice being received if

the party was absent. The judgment creditor received written notice of the registrar's decision on or about 16 May 2017. The notice of application for review was not filed until 14 June 2017. The judgment creditor has filed the application out of time and has complied with r 2.12(3). Between receiving notification and filing, the creditor has been attempting to resolve the issue with the registry.

[16] Under s 83ZM of the Credit Contracts and Consumer Finance Act 2003, the judgment debtor's liability to the judgment creditor under the credit contract is limited to the difference between the amount required to settle the contract as at the date of the sale and the net proceeds of sale.

Limit on creditor's right to recover from debtor

[17] Section 83ZM of the Credit Contracts and Consumer Finance Act 2003 (CCCFA) provides:

83ZM Limit on creditor's right to recover from debtor

- (1) This section applies if—
 - (a) consumer goods (or, where multiple goods are subject to the credit contract, any 1 or more of those goods) are sold under this subpart; and
 - (b) the net proceeds of sale are less than the amount required to settle the contract under [section 83ZE](#) as at the date of the sale.
- (2) If this section applies, the debtor's liability to the creditor under the credit contract is limited to the difference between the amount required to settle the contract as at the date of the sale and the net proceeds of the sale.
- (3) To avoid doubt,—
 - (a) after the sale, the creditor is not entitled to, and must not claim, any amounts in addition to the amount specified in subsection (2), including—
 - (i) any further interest payments that would, had the sale not taken place, have been payable in respect of the credit contract; or
 - (ii) any interest under the [Judicature Act 1908](#); or
 - (iii) any other payments that are in addition to the amount required to settle the contract under [section 83ZE](#);

(emphasis added)

[18] Section 83ZM refers to the amount required to settle the contract calculated in accordance with s 83ZE as at the date of sale. Section 83ZE(2) defines the “amount required to settle the contract”:

83ZE Debtor’s right to settle credit contract

(2) In this section, the amount required to settle the contract means the balance of the advance outstanding, together with any interest charges, credit fees, and default fees payable under the credit contract, and includes—

(a) the reasonable costs of the creditor of, and incidental to, repossessing, holding, storing, repairing, maintaining, valuing, and preparing the sale of the consumer goods and of returning them to the order of the debtor; and

(b) the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor.

[19] Clause 9.1 of the Credit Contract between the creditor and debtor states that the debtor:

Must pay as an amount immediately due: any sum of money paid by Creditor to remedy any default including...all costs, charges, commissions, fees and expenses (including solicitor/client costs) which Creditor incurs or becomes liable for because of any default or breach by you.

[20] Furthermore, s 83ZE(2)(b) CCCFA defines the “amount required to settle the contract” as including the costs reasonably and actually incurred by the creditor in doing anything necessary to remedy any default by the debtor. This definition can be applied to s 83ZM. In order to remedy the default as at the date of sale, the judgment creditor required its solicitors to make demand on the judgment debtor for payment. The only way the judgment creditor could remedy the default was by issuing legal proceedings against the judgment debtor.

[21] Therefore the judgment creditor can claim the costs of issuing legal proceedings against the judgment debtor (letter of demand, solicitors costs, filing fees etc.) and the registrar erred in only awarding judgment in the amount of claim and filing fees. The judgment may be varied by the Court to prevent a miscarriage of justice: r 15.10.¹

¹ However, the default fee must still be reasonable: s 41 CCCFA.

[22] It is not disputed that by virtue of r 83ZM(3), the judgment creditor is unable to claim interest payments pursuant to the credit contract and does not seek to do so.

Conclusion

[23] The judgment creditor's application for review of the registrar's decision is allowed. The out of time filing is explained by the steps the judgment creditor took to get the registrar to change its decision. The judgment creditor is entitled to claim costs.

[24] The judgment creditor is entitled to claim costs. The amount of the judgment is as follows:

	\$
Amount of claim	
Contract	3,482.99
Costs of issuing letter of demand	57.50
Solicitors Costs	
Preparing notice of claim or statement of claim	885.00
Entry of judgment	236.00
Disbursements	
Filing fee – notice of proceedings	200.00
Filing fee – entry of judgment	90.00
Service fee	<u>219.65</u>
	\$5,171.14

M J Callaghan
District Court Judge