

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

**CIV-2017-043-000014
[2017] NZDC 21717**

BETWEEN POWERCO LIMITED
 Plaintiff

AND TYRON JAMES VESTY
 Defendant

Hearing: 19 September 2017

Appearances: S Maskill for the Plaintiff
 Defendant Appears in Person

Judgment: 19 September 2017

ORAL JUDGMENT OF JUDGE G P BARKLE

[1] In these proceedings the Plaintiff seeks to recover from the defendant the costs of repair of a power pole and associated costs when he was driving his 1994 Subaru Legacy motor vehicle on 23 February 2016 on Connett Road, New Plymouth and the vehicle collided with the pole.

[2] The affidavit of Celeste Gardner sets out that the damage was caused when Mr Vesty lost control of the vehicle and failed to stay in the correct lane. The transformer power pole of the plaintiff, Powerco Limited was hit and damaged. The police attended and, I understand, charges were laid against the defendant in relation to the accident.

[3] The proceedings were filed in the District Court at New Plymouth on 23 December 2016 and Mr Vesty served on 17 January 2017. He has taken no steps in the proceeding.

[4] In the statement of claim the costs associated with work to replace the power pole and undertaking other necessary repairs amount to \$19,805.02. An invoice attached to the affidavit of Ms Gardner was sent to Mr Vesty on 29 April 2016. The application for judgment by way of formal proof indicates that three payments have been made by Mr Vesty amounting to the sum of \$60.

[5] Apart from the direct costs incurred by Powerco as set out in the statement of claim, the plaintiff also seeks interest in accordance with the invoice that was sent to Mr Vesty.

[6] However, I take the view that while the defendant has taken no steps it is not a situation where any agreement has been made by him to pay such interest. In a claim of this nature which is for recovery of costs and damages as a result of the negligence of Mr Vesty, interest and other credit related costs are not properly recoverable. Rather interest is payable, in my view, in accordance with s 62B District Courts Act 1947 which section remains in law until 1 January 2018.

[7] Accordingly, in my view, the judgement which is to be entered in favour of the plaintiff, on a default basis, will be as follows:

- (a) The total costs involved with replacement of the power pole and undertaking other repairs, as set out in the statement of claim at paragraph 9, amounting to \$19,805.02, less the sum of \$60 having been paid by Mr Vesty.
- (b) Interest at the prescribed rate of 5 percent in accordance with s 62B District Courts Act, from the date when proceedings were filed at the District Court at New Plymouth being 23 December 2016.
- (c) Costs and disbursements in accordance with the memorandum of the plaintiff's counsel Ms Waugh dated 25 August 2017, the costs amounting to \$1239 and disbursements of \$360.

G P Barkle
District Court Judge