

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV-2017-044-000472
[2018] NZDC 9309**

BETWEEN GLASS BOTTOM BOAT LIMITED
 Appellant

AND MARITIME NEW ZEALAND
 Respondent

Costs Judgment: 11 May 2018

JUDGMENT OF JUDGE M-E SHARP ON COSTS

[1] On 8 March 2018 I delivered a reserved judgment in favour of the appellant. The appellant now seeks costs, whilst the respondent (which has appealed to the High Court) submits that costs in this court should be adjourned pending the outcome of the High Court appeal. Failing that however, the respondent accepts that costs should follow the event and the appropriate categorisation is 2B.

The appellant's position

[2] The appellant seeks an order for indemnity costs; failing that, schedule costs on a 3B basis plus reasonable disbursements; in the alternative costs on a 2B basis, to be increased.

Should the issue of costs in this court await the outcome of the High Court appeal?

[3] I see no reason not to finalise this proceeding in the District Court.

[4] Costs normally follow the event and this is not a case where I would envisage that in the event of a successful appeal, there would be a return of the matter to this court. Accordingly, below, I deal with the appellant's application for costs.

[5] There are no matters which would justify costs not following the event. The question is how to calculate them. Rule 14.6 District Court Rules provides that in certain circumstances, the court may make an order for increased or indemnity costs. Rule 14.6(4) provides that the court may order a party to pay indemnity costs if:

- (f) some other reason exists that justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

[6] As counsel for the appellant acknowledges, indemnity costs will only be awarded in truly exceptional circumstances ... - the threshold is high.

[7] The appellant argues that as a Crown agency the respondent had obligations to uphold certain standards of integrity and conduct, which it failed in. Whilst I was critical of some of the behaviour of agents of the respondent, I do not see that they fell within that bracket of truly exceptional circumstances. The respondent's conduct does not meet that threshold.

[8] Rule 14.6(3) provides that the court may order a party to pay increased costs if:

- (d) some other reason exists that justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

[9] Equally I do not find that there was an exceptional breach of a duty or exceptional negligence by officers of the respondent such as would justify the making of an order for increased costs.

Categorisation of proceedings

[10] Rule 14.3 District Court Rules sets out the three categories of proceedings. Counsel for the appellant's alternative submission is that this is a case which should be categorised in category 3 because of its complexity or significance requiring counsel to have special skill and experience.

[11] Generally proceedings will fall into category 2, that is proceedings of average complexity requiring counsel of skill and experience considered average. But I agree with the appellant that this case should be considered to be a category 3 proceeding.

- (a) The proceeding was not of average complexity;
- (b) It was the first appeal ever undertaken under s 135 Health and Safety at Work Act 2015;
- (c) It was the first full appeal of decisions to issue notices under this Act;
- (d) It involved an important question of law relating to the role of the court in such an appeal;
- (e) Consideration of complex legislative texts regarding the issue of notices and the requirements under the Act was required;
- (f) The proceeding was significant and involved a test case with issues that had not previously been considered by New Zealand courts.
- (g) It required analysis of maritime law principles; and
- (h) The overlap of maritime law with the Act.

Those required counsel with special skill and experience in those areas:

Both parties elected to engage counsel with those specialist skills as well as in health and safety law.

Appropriate band

[12] I designate that the reasonable time allowance for each step is band B, pursuant to r 14.5 District Court Rules.

Conclusion

[13] I award the successful appellant costs on a 3B basis, as detailed in annexure 1 to the appellant's memorandum of submissions on costs, and disbursements as per annexure 2.

M-E Sharp
District Court Judge