

**IN THE DISTRICT COURT
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA**

**CIV-2016-044-000245
[2018] NZDC 26934**

BETWEEN

DIANA JANE WHYTE
Applicant

AND

CRAIG RICHARD COUGHLAN
Respondent

Appearances: The Applicant in person
L Huang for the Respondent

Judgment: 20 December 2018

COSTS DECISION OF JUDGE NICOLA MATHERS

[1] This is an application by Ms Whyte for costs. Ms Whyte, who now represents herself, successfully obtained an order against Mr Coughlan in the Disputes Tribunal for \$7,000. Ms Whyte had to enforce the order and initially obtained an attachment order against Mr Coughlan's earnings but she received no payment. She then secured a charging order over Mr Coughlan's property that would be discharged once he paid a liquidated sum of \$8,525.33 comprising the \$7,000 original order plus interest and costs. Mr Coughlan has paid most of the sum under the charging order, only \$745.49 remains outstanding. Ms Whyte has also filed an application against Mr Coughlan for contempt of enforcement proceedings.

[2] Ms Whyte disputes Mr Coughlan's entitlement to a discharge of the charging order once the outstanding amount has been paid on the basis that she has incurred further costs to enforce the order. In effect she is seeking full indemnity costs and a variation to the charging order to cover these additional costs until they are paid by Mr Coughlan.

[3] At the hearing in relation to the charging order application Ms Whyte was represented by counsel but she was self-represented in relation to the application for contempt of enforcement proceedings. The parties have tried to resolve the issue of costs but have not been able to.

[4] The established rule in New Zealand is that lay litigants are not entitled to recover costs although they will be awarded reasonable disbursements in the discretion of the Court. Muir J in *Robinson and Whangarei Heads Enterprises Limited*¹ said:

The general rule is that in the absence of extraordinary circumstances no award of costs will be made in favour of a litigant in person.

[5] In the present case the registered charging order already covers costs of \$280 for previous enforcement action, \$233.33 for interest, \$300 filing and sealing fees, and \$712 for solicitors costs. Therefore any subsequent legal costs that Ms Whyte has incurred would need to be recoverable as reasonable disbursements. Apparently the Disputes Tribunal registry staff advised Ms Whyte that she could apply to the Court for reimbursement of her legal costs. However Ms Whyte is representing herself in relation to the contempt proceedings which is the matter before the Court. The principal bill of costs which Ms Whyte seeks to be reimbursed is an invoice dated 24 August 2018 for \$3,337.88. It is clear from perusing that bill that none of the advice given by her lawyer appears to relate to the contempt application. In fact from the description of the legal work completed for Ms Whyte, the time spent by the lawyer is in relation to preparing settlement documents and corresponding with Ms Whyte and the respondent's lawyer over disputed legal fees. There are two further bills from Ms Whyte's lawyer dated 31 May 2018 and 29 June 2018. Neither of those described the work actually done by her lawyer.

[6] Mr Huang, counsel for Mr Coughlan, submits that Ms Whyte is effectively seeking costs on costs in relation to some of the work completed by Ms Whyte's lawyer and it is difficult to apportion the time/costs into what may be considered as a reasonable disbursement and what are effectively costs on costs. Mr Huang submits that the only amount that should be awarded to Ms Whyte is the sum of \$200 being

¹ *Robinson and Whangarei Heads Enterprises Limited*¹ [2017] NZHC 206

the filing fee for the contempt application, obviously the outstanding payment of \$745.49 on the charging order.

[7] I have a great deal of sympathy for the position that Ms Whyte finds herself in. However I am unable to ascertain what is a reasonable disbursement in relation to Ms Whyte's legal bills and, as I have said, in relation to the contempt proceedings she has been representing herself. I am prepared to allow the reasonable disbursements that can be identified, being \$200 for the court filing fee of the contempt application, and \$74.75 being the courier, registration and agency charges to register the charging order.

Nicola Mathers
District Court Judge