EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS]

IN THE DISTRICT COURT
AT CHRISTCHURCH

CIV-2016-009-2130
[2018] NZDC 7572

BETWEEN	ANDREAS VINCENZ LAGEDER Applicant
AND	CHRISTCHURCH CITY COUNCIL Respondent

Hearing: 19 April 2018

Appearances: Applicant in Person
A Hutton for the Defendant

Judgment: 20 April 2018

RESERVED JUDGMENT OF JUDGE T J GILBERT

Introduction

[1] A default judgment was entered against Mr Lageder on 2 November 2016 after he failed to take any steps in relation to a claim the Christchurch City Council brought against him. The claim related to unpaid fees associated with a resource consent for which he applied. Mr Lageder now applies to have that default judgment set aside, something the Council opposes. Essentially, for Mr Lageder to be successful, he must establish:

(a) First, that there is a substantial ground for defending the claim for unpaid consenting fees; and

(b) Second, that there was a reasonable explanation for his failure to file a statement of defence within the prescribed time.

[2] After briefly detailing the relevant background and law, I will deal with these two key issues in turn.

Background

[3] On 9 February 2015, Mr Lageder's agent, Phil Dewar, who is a surveyor with Fox and Associates, filed an application for a resource consent with the Christchurch City Council ("the Council"). This sought to subdivide Mr Lageder's 35.5 hectare parcel of land in Robinson's Bay.

[4] Mr Lageder says he was interested in doing so to try and get rates relief on the basis of hardship from the Council. Up to that point, Mr Lageder says relief had been denied because the land was seen as a business. By dividing the bulk of the land from the residential dwelling, Mr Lageder believed his application for rates relief might succeed.

[5] Prior to the consent application being submitted, there was interaction between Fox and Associates and Mr Lageder. This resulted in a letter of engagement being drawn up dated 10 September 2014 in which Fox and Associates outlined the services they would provide to him. Those services included preparing an application for a resource consent and submitting it to the Council.

[6] The letter of engagement provided an estimate of $24,400 + GST for Fox and Associate's services. It specifically noted that any Council fees were in addition to their fees and said that the minimum Council application fee would be $2,050 with the final costs to be notified.

[7] Given the relatively substantial costs involved, it seems to me that there must have been some additional motive for subdividing other than rates relief which would save, at best, approximately $600 per year under the Council's rates rebate scheme.

[8] In any event, on 12 September 2014, Mr Lageder signed an "Acceptance of Contract" confirming his retention of Fox and Associates on the basis set out in the letter of engagement.

[9] As noted, Mr Lageder's resource consent application was signed by Phil Dewer as his agent on 9 February 2015. It specifically notes that "The applicant is responsible

to the Council for all costs associated with its application". Attached to the back of the application was a schedule of relevant "Fees and Charges"

[10] On 15 April 2015, Mr Lageder paid a deposit of $1,550 for consenting fees. His application was then processed which, in this case, involved amongst other things a site visit, general assessment of the application, and discussion with various consultants about geotechnical and environmental issues.

[11] In processing the application, the Council formed the view that several adjoining properties were potentially affected and as part of that, requested Mr Lageder to obtain their written approval to short-circuit what would otherwise have required a limited notification. One or more of the neighbours did not consent.

[12] As a result, on 1 October 2015, council officers met with Mr Lageder on-site to discuss options for proceeding with his proposed subdivision in the absence of consent from neighbours. I have seen minutes of that meeting and it is clear that various possibilities were considered. The Council never heard back from Mr Lageder about which, if any, options he wished to pursue. On the face of it, it looked like he had lost interest in the proposal.

[13] On 19 April 2016, the Council issued an invoice to Mr Lageder for fees incurred during the processing of his application. These totalled $5,483.50 less the deposit of $1,550 that had been paid a year prior. The outstanding balance, including GST, was $3,933.50.

[14] Mr Lageder failed to pay that amount. Debt management processes bore no fruit and as a result the current proceedings were issued. A Statement of Claim and Notice of Proceeding were received by the Court on 7 September 2016.

[15] These documents were duly served on Mr Lageder on 19 September 2016. The Notice of Proceeding clearly alerted Mr Lageder to the requirement to file a Statement of Defence within 25 working days and indicated that the failure to do so would entitle the Council to judgment.

[16] No Statement of Defence was filed by Mr Lageder and as a result, on 2 November 2016, judgment by default was granted under Rule 15.7 of the District Court Rules 2014 for the sum sort. Costs and disbursements calculated on a 1A basis totalling $1,660.55 were also ordered.

[17] Mr Lageder subsequently applied to set aside the default judgment. That application was filed on 30 November 2016. Due to various administrative issues and general court delays (none of which were the parties' fault), it took some time to be argued.

The Law

[18] Rule 15.10 permits the Court to set aside any judgment obtained by default "if it appears to the court that there has been, or may have been, a miscarriage of justice".

[19] In this case, the judgment was obtained in a regular fashion. As a result, there are three dominant considerations in determining whether or not to set aside the default judgment. These were discussed by the Court of Appeal in *Patterson v Wellington Free Kindergarten Association Inc* [1966] NZLR 975 at 983 and are as follows:

(a) Is there a substantial ground of defence available to the person seeking to set aside the default judgment?

(b) Is the failure to file a Statement of Defence reasonably explained?

(c) Would setting aside the judgment cause "irreparable injury" to the plaintiff.

[20] The final one of those considerations - whether or not the Council would be caused irreparable injury in the event that the judgment is set aside - is easily disposed of. The amount in question is a small sum of money and it cannot reasonably be said the Council would suffer irreparable damage in the event judgment was set aside. This shifts the focus of the current matter to the first two of the considerations above.

Is there a substantial ground of defence?

[21] Mr Lageder has filed a document purporting to be a Statement of Defence along with affidavits sworn on 30 November 2016, and 16 April 2018. I have done my best to distil the essential points.

[22] Mr Lageder takes issue with the service he received from Fox and Associates. That, however, is not relevant to his liability to the Council.

[23] Mr Lageder has some historic grievances with the Council. He feels he has traditionally received little service for his annual rates. For example, despite requests, he has never been connected to mains water whilst others in the area have. Again, historic grievances are irrelevant to the current dispute which relates to liability for consenting fees incurred in 2014 and 2015.

[24] Mr Lageder says that he has never signed anything from the Council in relation to the subdivision consent and has never agreed to pay fees which he knew nothing about.

[25] Whilst it is true that Mr Lageder personally never signed the application for subdivision consent, it is clear from the documents I have seen that he authorised Fox and Associates to do so as his agent. There is simply no other way of interpreting the very fulsome letter of engagement sent to Mr Lageder in relation to the services Fox and Associates intended to provide to him. His unambiguous request for those services to be provided is evidenced by the Acceptance of Contract he signed on 12 September 2014.

[26] Further, on 15 April 2015, Mr Lageder paid $1,550 as a deposit to be set against consenting fees the Council was to levy. There is no other plausible explanation for him having done that other than to get the consenting process initiated by his application underway.

[27] The fees charged by the Council are legally able to be levied under s 150 of the Local Government Act 2002. They have not been paid despite demand to do so.

[28] In my assessment, Mr Lageder has failed to demonstrate that there is a substantial ground of defence, or indeed any ground of defence. He simply does not want to pay because, as things have turned out, the subdivision idea has hit snags around neighbourly consents and increasing costs. As such, it has lost its appeal. That is not a defence to the costs the Council seeks to recover for services it provided as a result of Mr Lageder applying to subdivide his land.

Was Mr Lageder's failure to file a statement of defence reasonably explained?

[29] Given my finding above, this issue is moot, but I will briefly consider it in any event.

[30] Mr Lageder's explanation for the delay in filing his defence is set out in his affidavits. The thrust of his argument is as follows:

(a) He had other "… commitments, like removing, digging out and disposing of a 53m long hedge and building two new paling fences" at one of the three rental properties he owns;

(b) He was "under medical advice related to the stress brought on by this emotionally draining circumstances";

(c) He was in the Philippines having a dental implant procedure between 14 and 25 October 2016; and

(d) He misunderstood his obligation to file a statement of defence within 25 working days and was waiting for the allocation of a hearing date prior to doing so.

[31] The fact that Mr Lageder might have had other commitments relating to fencing at a rental property is, in my view, a patently insufficient reason for not complying with his obligations to file a Statement of Defence.

[32] In relation to the stress that Mr Lageder says he was under, he has provided a receipt for a medical appointment on 31 October 2016 along with a prescription for

[drug name deleted] which he says was prescribed to help with [a stress disorder]. I note, however, that the date of his visit to his doctor was after the time for filing the Statement of Defence had passed and there is no evidence at all from his doctor. I also note that for 11 days preceding this - the period between 14 and 25 October - Mr Lageder was in the Philippines having an elective dental procedure.

[33] On the basis of the evidence presented to me, I do not consider that there were medical grounds preventing Mr Lageder from attending to his obligation to file a Statement of Defence. On his own evidence, he was certainly able to undertake fencing work and significant international travel during the relevant period.

[34] I also do not consider that his absence overseas for part of the 25 day period during which he was supposed to file a Statement of Defence provides a reasonable excuse for his failure to do so. He was present in New Zealand for almost a month prior to departing overseas and having received the proceedings, he ought to have responded in the knowledge that he was going to be in the Philippines for the final few days of the relevant period.

[35] Finally, I turn to Mr Lageder's contention that he did not understand his obligation to make a reply within 25 working days. That obligation is absolutely clear on the face of the documentation served on him. Whilst he is a Dutch immigrant, he has lived here for more than 30 years, has quite substantial property interests and has been involved in subdivisions and the like before, is clearly comfortable dealing with councils, and other official agencies, and as he explained to me, has been in the Court system before. Accordingly, a simple assertion that he did not understand his obligations, despite them being set out in black and white, is insufficient.

[36] In summary, Mr Lageder's delay in filing his Statement of Defence is not reasonably explained by the factors he raises, either individually or cumulatively.

Conclusions and Costs

[37] The application to set aside judgment is declined. Mr Lageder is to pay costs on this application to the Council on a 1B basis which can be certified by the Registry.

T J Gilbert
District Court Judge