

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

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2018-009-001205
[2019] NZDC 11525**

UNDER THE	Credit Contracts and Consumer Finance Act 2003
BETWEEN	EMOSI BURE Plaintiff
AND	CREDIT UNION SOUTH First Defendant
AND	FINANCIAL SERVICES COMPLAINTS LIMITED Second Defendant

Hearing: In Chambers

Appearances: Mr Bure in Person
MOW King for the First Defendant
M Leggat for the Second Defendant

Judgment: 20 June 2019

COSTS JUDGMENT OF JUDGE A P CHRISTIANSEN

[1] Mr Bure purchased a vehicle but was unable to fund loan repayments. His request to the funder, (CUS) the defendant for restructure of that debt was declined. Mr Bure's stepfather, Mr Flavell, on behalf of Mr Bure filed a complaint with the Financial Services Complaints Limited (FSCL). While that process was underway Mr Bure's vehicle was repossessed by CUS.

[2] With Mr Flavell's assistance Mr Bure sued CUS and the FSCL. FSCL filed to strikeout Mr Bure's claim on the grounds it disclosed no reasonably arguable cause of action and/or was vexatious and an abuse of the process of Courts.

[3] Mr Flavell filed an affidavit in opposition explaining why he was assisting his stepson.

[4] Then CUS applied for security for costs. An affidavit in opposition was filed.

[5] By a notice of opposition signed by Mr Flavell he requested the Court's approval to represent his stepson in the proceedings and upon that application. He made that request under s 107(3) of the District Courts Act 2016.

[6] The hearing of that application occurred on 21 January 2019 and a judgment issued on 14 February 2019.

[7] When the matter came to a hearing Mr Flavell changed his request and sought an order of the Court appointing an amicus or standby counsel to represent Mr Bure. Mr Flavell explained that he was 78 years of age and had had several [health episodes] and felt unable to cope with dealing with the defendant's lawyers.

[8] Evidence provided on behalf of Mr Flavell asserted that attempts had been made to engage the services of lawyers but none were able to assist.

[9] There is no doubt that Mr Flavell has acted earnestly and shown appropriate respect for the Court process when attempting to assist his stepson.

[10] The Court's hearing focused on whether an amicus ought to be appointed. The Court noted such an appointment would occur only in exceptional circumstances, and would seldom occur for a civil proceeding process, and that it is usual for such an appointment to be refused to assist a person whose application for legal aid had been declined.

[11] For the reasons provided by the Court's decision it held the appointment of an amicus or standby counsel should be refused.

[12] Only the first named defendant CUS i.e. the vehicle purchase funder, has applied for costs.

[13] In the Court's view such an application should be dismissed.

[14] The application for an amicus/standby counsel was filed by a non-party. There can be no doubt about the sincerity of its purpose. Clearly it was not a vexatious proceeding brought by Mr Bure, nor by his stepfather.

[15] The plaintiff is of limited financial services. He has a young family to support and he and his wife and children live with his wife's parents.

[16] The plaintiff would be unable to pay any order for costs.

[17] In the circumstances it is not appropriate to make such an order.

[18] The application for costs is dismissed.

A P Christiansen
District Court Judge