

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2017-004-000444
[2020] NZDC 10380**

BETWEEN

PAUL DESMOND MCGRUDDY
Plaintiff

AND

SPOTLESS FACILITY SERVICES (NZ)
LIMITED
Defendant

Hearing: On the papers

Judgment: 9 June 2020

DECISION AS TO COSTS OF JUDGE G M HARRISON

[1] In my decision of 24 February 2020 I dismissed the plaintiff's claims and directed that costs should follow the event assessed on a category 2B basis. I invited the parties to agree on the incidence of costs failing which I would receive memoranda. No agreement has been reached and memoranda have now been filed.

Applicable date

[2] The daily rate for category 2B costs was \$1780 from 1 July 2015 – 31 July 2019. From 1 August 2019 it was increased to \$1910. The defendant seeks to have that higher rate apply to all attendances even though some occurred before 1 August 2019.

[3] I do not accept that to be correct. I accept Mr Beck's submission that changes in the daily rate do not operate retrospectively. Section 17 of the Interpretation Act 1999 confirms that.

Form of trial

[4] It was agreed by the parties that the proceeding would be a simplified trial. This is confirmed by the joint memorandum of 15 March 2018 which by consent sought directions including the allocation of a simplified trial. That memorandum was prepared after the judicial settlement conference took place on 25 August 2017 and when the issues to be resolved must have been clear, and considered by counsel to be dealt with appropriately by simplified trial.

Assessment of costs

[5] I accept the accuracy of Mr Beck's assessment of costs that are payable. The relevant time allocations are set out in Schedule 4 to the District Court Rules. I note that apart from preliminary steps Schedule 4 makes provision under Item 14 for preparation for a simplified trial at 1.25 days and appearance at hearing at twice the time occupied by the hearing measured in half days.

[6] The hearing occupied 1.5 days and Mr Beck has calculated the appropriate rate as for three days. His total amounts to \$18,619.50.

[7] Mr Harlow for the defendant claims additional items of 16.3 for preparation of evidence briefs, but that is only allowed for a full trial. He further claims under Item 24A for preparation of submissions but is relevant only to appeals. Those items are disallowed. There is also a claim from the defendant for appearance at a case management conference following the unsuccessful judicial settlement conference, and again that item is disallowed, that conference following immediately from and in the same place as the conference.

[8] With the deduction of those disallowed items and the correct application of the applicable daily recovery rates, I accept as I have said Mr Beck's calculation.

Indemnity costs

[9] Mr Harlow seeks increased costs and indemnity costs. I can see no basis upon which an award of indemnity costs would have been justified. This was a relatively

straightforward claim by a painting contractor for alleged non-payment of travelling expenses and other costs associated with a standing contract the plaintiff had with the defendant. The evidence was completed on the first day and submissions completed within half the following day and it could not be said that the plaintiff acted vexatiously, frivolously, improperly or unnecessarily in bringing the proceedings to quote the qualifying criterion of Rule 14.6(4) of the Rules.

Increased costs

[10] Again, I do not accept that the plaintiff took steps that unnecessarily increased the time or expense of the proceedings. As stated the trial was allocated for three days and concluded in 1.5 days.

[11] A further ground on which increased costs are sought is because the plaintiff did not accept without prejudice settlement offers when he should have done so. There were four offers made at various stages of the proceedings. My assessment of them is that at the time they were made they would barely have covered counsel's costs and were generally offers of between one-third and one-half of the increasing amounts claimed by the plaintiff.

[12] I am not satisfied that any of those offers was so clearly requiring of acceptance that any increase in costs is justified.

[13] I note too that before proceedings were commenced the plaintiff had offered to accept a modest amount for his accommodation costs he alleged were incurred in the course of his contractual work for the defendant. That request was refused by the defendant but was subsequently paid in August 2018, the point being that if it had been paid when originally demanded there is every chance that these proceedings would never have been brought.

Reduced costs

[14] The plaintiff seeks a 10% reduction on the costs otherwise calculated by Mr Beck as owing. While he makes the point that the refusal to pay the initial claim

for accommodation costs may have avoided the proceedings altogether, the plaintiff nevertheless incrementally increased the items of his claim in the course of the proceedings requiring the necessary response on behalf of the defendant.

Conclusion

[15] I therefore order that the plaintiff pay to the defendant the sum of \$18,619.50 plus disbursements of \$1566.32 in respect of which there did not appear to be any opposition from Mr Beck.

G M Harrison
District Court Judge