IN THE DISTRICT COURT
AT WELLINGTON

I TE KŌTI-Ā-ROHE
KI TE WHANGANUI-A-TARA

CIV 2018-085-912
[2020] NZDC 25219

UNDER	Section 162 of the Plumbers, Gasfitters and Drainlayers Act 2006 and the District Court Rules 2014
BETWEEN	KEVIN ANGUS Appellant
AND	PLUMBERS, GASFITTERS AND DRAINLAYERS BOARD Respondent

Appearances:	M Stephens for the Appellant M Hodge for the Respondent
Judgment:	7 December 2020

COSTS DECISION OF JUDGE A I M TOMPKINS

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[1] For the past eight years or so Kevin Angus has been engaged in New Zealand's courts on a quixotic and, in the end, unsuccessful, bid to become registered as a certifying plumber, despite having failed in 2012 the relevant certifying plumber examination.

[2] In my appeal decision dated 9 October 2019, to which this costs decision relates, I noted:

> The Board has repeatedly urged Mr Angus to resit the [certifying plumber] examination, to seek to obtain the pass mark he needs to be entitled to register. Like the Board, I see no impediment to Mr Angus sitting the examination again. He would be wise, perhaps, to spend his time studying for the examination rather than filing further appeals in Court.

[3] Despite that, Mr Angus appealed to the High Court. Her Honour Justice Clark dismissed the appeal, noting:

> In dismissing the appeal I have upheld Judge Tompkins' reasoning. Had I found that he erred in holding the District Court lacked jurisdiction, I would have declined to remit the matter to the District Court. Mr Angus cannot succeed in his current application to be registered as a certifying plumber when he lacks the essential prerequisite for a valid application, namely, a pass mark in the qualifying examination.

[4] Undeterred by that advice in both this Court and the High Court, Mr Angus sought leave to appeal to the Court of Appeal. The Court of Appeal declined leave, saying:

> Mr Angus does not meet the criteria for registration as a certifying plumber. This will remain the case until he passes the requisite examination, …
>
> It would be an affront to common sense and justice to allow the present application in all the circumstances. Mr Angus should regard himself as fortunate that we have chosen not to require him to pay increased or indemnity costs on this application. His application for leave to bring yet another appeal on the same core issue borders on being an abuse of process of the Court.

[5] Determination of costs arising from the unsuccessful appeal to the District Court, dismissed by my judgment dated 9 October 2019, had been delayed until the High Court appeal, and the application for leave to appeal to the Court of Appeal, were determined. Accordingly, I now determine those costs.

[6] The respondent seeks indemnity or increased costs, arguing that:

> Mr Angus has needlessly wasted the resources of the respondent (which is funded by industry levies) by choosing to pursue a hopeless appeal, [the hopelessness of the appeal] borne out by the emphatic findings of the Court of Appeal.

[7] It is agreed by the parties that Schedule 2B scale costs are $8,786. Mr Angus accepts that those scale costs should be awarded, but opposes the award of indemnity or increased costs, particularised and quantified by the respondent, and not critiqued or disputed by Mr Angus, as $16,217.50.

[8] Both parties filed brief memoranda in relation to costs in this Court, between November 2019 through to January 2020. Latterly both have been given an

opportunity to file additional memoranda, following the High Court and Court of Appeal decisions. Counsel for the respondent filed an additional memoranda, reiterating its submission, particularly in light of Mr Angus' failure in both the Court of Appeal and prior to that the High Court, for indemnity or increased costs. Mr Angus did not file any additional submissions.

[9] Counsel for the respondent submitted, succinctly:

> The merits are clearly in the respondent's favour. This was a misconceived appeal which should never have been brought. Increased or indemnity costs should be awarded.

Decision

[10] I consider that in relation to Mr Angus' second appeal to the District Court, dismissed by my judgment dated 9 October 2019, Mr Angus should pay indemnity costs. In terms of District Court Rule 14.6(3)(b) and 14.6(4)(a) I note, as identified by all the Courts who have dealt with Mr Angus' repeated challenges to his non-registration and adopting the words of Her Honour Justice Peters in her August 2018 decision (prior to the appeal decision in respect of which costs are now determined):

> Parliament's intention to restrict rights of appeal to the Courts to specific matters must be respected.

[11] Against that, the advancing of a second appeal by Mr Angus to this Court in the face of the earlier contrary jurisdictional decisions by both Judge Harrop in this Court, and Justice Peters' decision in the High Court, constitutes an unnecessary, wasteful and time-consuming contribution to the time or expense of the proceedings. Despite both the respondent Board and the Court urging him to do so, Mr Angus displayed a misplaced and stubborn refusal to take the obvious remedial step of resitting and passing the certifying examination.

[12] Accordingly, indemnity costs in the amount of $16,217.50 are payable by Mr Angus to the respondent Board.

A I M Tompkins
District Court Judge