

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CIV-2017-004-000194  
[2017] NZDC 21263**

UNDER THE CONSTRUCTION CONTRACTS  
ACT 2002

IN THE MATTER OF AN APPLICATION FOR  
ADJUDICATOR'S DETERMINATION  
TO BE ENFORCED BY ENTRY AS  
JUDGMENT UNDER RULE 20.86  
DISTRICT COURT RULES 2014

BETWEEN NAYLOR LOVE CONSTRUCTION  
LIMITED  
Plaintiff

AND BODY CORPORATE 200012  
Defendant

Judgment: 25 September 2017  
(On the papers)

---

**DECISION OF JUDGE G M HARRISON  
[AS TO CORRECTION OF JUDGMENT SUM, INTEREST AND COSTS]**

---

**Judgment sum**

[1] In my decision of 5 July 2017 I entered judgment in the sum of \$2,840,189.94 on the basis that I understood that figure to be agreed by the parties.

[2] They are now agreed that that figure is incorrect, and the correct figure is \$2,788,111.07. I therefore correct the judgment sum pursuant to r 11.10 District Court Rules 2014 to the latter sum.

### **Contractual interest**

[3] Again the parties are agreed that contractual interest payable up to the date of the Adjudicator's determination is \$268,529.45 for which it is entitled to judgment. I will summarise the respective amounts for which judgment is to be formally entered at the conclusion of this decision.

### **District Court interest**

[4] I note that the District Court Act 2016 (the Act) preserves the operation of ss 62B and 65A of the District Courts Act 1947, until 1 January 2018, when those sections are repealed and the Interest on Money Claims Act 2016 comes into force.

[5] Section 62B(1) provides:

Subject to subsection (2), in a proceeding for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate, not exceeding the prescribed rate, as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of judgment.

[6] The body corporate opposes any award of interest on the ground that the application by Naylor Love for the Adjudicator's determination to be enforced by entry as a judgment of this Court is not a proceeding for the recovery of any debt or damages.

[7] I do not accept that proposition. Interest may be awarded "in the sum for which judgment is given". The application to register the Adjudicator's determination is plainly a proceeding that results in a judgment being entered in this Court which may then be enforced. Interest may therefore be awarded pursuant to s 62B up to the date on which judgment is entered.

[8] The amount of interest sought on the amended judgment sum has been calculated by Naylor Love at \$87,461.97 for which it seeks judgment.

[9] On 8 March 2017 I entered judgment in favour of Naylor Love against the body corporate for \$905,085.67 which represented that part of the Adjudicator's determination which was not challenged by the body corporate. Interest on that amount was reserved for calculation when any final amount owing was determined. Naylor Love now seek interest on that sum of \$13,637.80.

## Costs

[10] Section 59(2) of the Construction Contracts Act 2002 provides:

- (2) The consequences are that the party who is owed the amount (**party A**) may do all or any of the following:
  - (a) recover from the party who is liable to make the payment (**party B**), as a debt due to party A, in any court,—
    - (i) the unpaid portion of the amount; and
    - (ii) the actual and reasonable costs of recovery awarded against party B by that court: ...

[11] This is in exactly the same terms as s 23(2)(a)(ii) of that Act which permits a payee to recover from a payer “the actual and reasonable costs of recovery against [the payer] by that court”.

[12] It is clear that the legislature intended the same right of costs recovery to apply whether a payer initiated a claim in this Court to recover an amount payable under the Construction Contracts Act, as for the registration of an Adjudicator's determination.

[13] In *Auckland Waterproofing v TPS Consulting Limited*<sup>1</sup> Duffy J said at [69]:

When I take into account the Act's policy and purpose, I am driven to conclude that Parliament intended all payees to be able to pursue recovery of s 23 debts through court process and, provided the quantum of those costs was reasonable and not excessively high, to obtain the actual cost of doing so. It follows that “reasonable” in s 23 can only relate to an assessment of the quantum of the legal fees incurred in obtaining summary judgment for the purpose of seeing if they are within the range of fees that are reasonably charged for work of that type. Once the recovery costs are seen to come within the range of amounts usually charged for work of that type they are recoverable under s 23.

---

<sup>1</sup> *Auckland Waterproofing v TPS Consulting Limited* (2007) 18 PRNZ 797.

[14] Applying that reasoning to the claim for costs in this case it is clear that Naylor Love is entitled to recover its actual costs provided they are reasonable.

[15] The solicitors for Naylor Love have broken down their claim for costs into eight parts, some of which are not contested by the body corporate. I have assessed the amounts claimed. Taking into account the complexity of the proceeding, and the significant sums of money involved it seems to me that the actual costs claimed of \$72,631 are reasonable and within the range of fees that are reasonably charged for the type of work that was carried out.

### **Conclusion**

[16] I amend the judgment sum to \$2,788,111.07.

[17] Judgment is entered against the body corporate for contractual interest of \$268,529.45.

[18] Judgment is entered against the body corporate in respect of District Court interest in the sum of \$87,461.97 calculated on the amended judgment sum, and for \$13,637.80 on the amount for which judgment was entered on 8 March 2017.

[19] Judgment is entered against the body corporate for Naylor Love's actual and reasonable costs in obtaining judgment in the sum of \$72,631.

[20] Judgment is entered against the body corporate for disbursements in the sum of \$1,826.09.

G M Harrison  
District Court Judge