

**IN THE DISTRICT COURT  
AT AUCKLAND**

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

**CIV-2019-004-000075  
[2020] NZDC 2162**

BETWEEN

GAUTAM JINDAL  
Plaintiff/Applicant

AND

OM FINANCIAL LTD  
Defendant/Respondent

Hearing: 10 February 2020

Appearances: Mr Jindal in Person  
A Lloyd and J Spring for Defendant

Judgment: 12 February 2020

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**DECISION OF JUDGE G M HARRISON**

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[1] Mr Jindal claims damages of \$148,346 from OM Financial Ltd (OMF) for trading losses in the finance investment industry.

[2] There are two applications before the Court:

- (a) Mr Jindal's application against OMF and a non-party NZX Ltd (NZX) seeking to disqualify Minter Ellison Rudd Watts Solicitors of Auckland from acting for both clients; and
- (b) OMF's application for security for costs and a stay until that security is paid.

## **The disqualification application**

[3] NZX is not a party in this proceeding. Mr Jindal however is concerned that if MERW continue to act there is the possibility that relevant documents harmful to the case of OMF might not be discovered.

[4] Mr Jindal has no evidence to support such a serious allegation.

[5] I discern no conflict of interest between OMF and NZX. As far as the latter is concerned, if an order is made for non-party discovery Mr Jindal will have to particularise the documents he wishes to inspect. He is likely to be directed to pay NZX the cost of producing the relevant documents, as is generally the case in non-party discovery applications.

[6] In the course of the hearing I pointed out to Mr Jindal the obligations incumbent on solicitors with regard to the discovery of documents.

[7] Rule 8.13 provides:

As soon as practicable after a party becomes bound to comply with a discovery order, the solicitor who acts for the party in the proceeding must take reasonable care to ensure that the party-

- (a) understands the party's obligations under the order;
- (b) fulfils those obligations.

[8] That obligation in this case relates to OMF and there is no suggestion that MERW has failed in any way to observe that requirement.

[9] This is reinforced by the Lawyers: Conduct and Client Care Rules 2008 which are made pursuant to the Lawyers and Conveyancers Act 2006. Rule 13.9 provides:

In relation to discovery, a lawyer is to do his or her best to ensure that all obligations are complied with, including advising the client as to the scope of the obligations. If the client breaches and will not comply, the lawyer is to refuse to act. A lawyer is to protect privilege but not claim privilege in the absence of proper grounds or try to obtain privileged information other than applying to the Court without first obtaining an informed waiver of privilege.

...

[10] Again, there is no suggestion that MERW has failed to comply with that obligation.

[11] Mr Jindal's only concern is that MERW act for NZX, which is not a party to the proceeding and OMF which is a party. Therefore there is no conflict between parties to the proceeding which might disqualify MERW from acting.

[12] The application to disqualify MERW from acting for OMF, is therefore dismissed.

[13] Costs according to category 2B are awarded in favour of OMF.

### **Security for costs**

[14] On 22 October 2019 I made the following direction:

The plaintiff agrees to deposit security for costs according to category 2B or such other sum as the Court directs. The plaintiff is to pay into Court \$4000 by 15 November 2019 as part security for costs with leave reserved to defendant to seek further security. If payment is made the case management conference for 3 December 2019 will proceed. If not it will be vacated and a fixture for the hearing of the defendant's application for security will be made.

[15] Mr Jindal paid the security directed.

[16] OMF now seek further security. Mr Jindal acknowledges that he does not have funds to pay costs which might be awarded against him. That provides a basis for an award of further security.

[17] OMF have submitted a schedule of costs calculated according to category 2B indicating that to this point costs in excess of the sum of \$4000 currently deposited as security have been incurred. Anticipated costs have also been calculated with both categories totalling \$42,000.

[18] It would be prohibitive to direct that security in that sum be provided.

[19] It is a common practice when directing that security be provided that it be given in various tranches.

[20] In my view it is appropriate to award 50% of the total amount calculated and there is accordingly a direction that Mr Jindal deposit further security in the sum of \$21,000 by 10 April 2020. The proceedings are otherwise stayed with one exception until that security is provided.

[21] The exception is that a half day judicial settlement conference is to be allocated. In the event of settlement significant costs will be avoided both in the requirement to pay security, and in the cost Mr Jindal will inevitably incur if his application for non-party discovery is successful.

[22] Costs on this application are to lie where they fall on the basis that Mr Jindal did not oppose an order that further security be provided.

G M Harrison  
District Court Judge