

**IN THE DISTRICT COURT
AT AUCKLAND**

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

**CIV-2020-092-003988
[2024] NZDC 6928**

BETWEEN

INLET STORAGE LIMITED
Plaintiff

AND

UNITED MOVERS LIMITED
Defendant

Hearing: 1 December 2023

Appearances: C R Johnstone for the Plaintiff
P Davies & D Vautier for the Defendant

Judgment: 28 March 2024

RESERVED JUDGMENT OF JUDGE NICOLA MATHERS

Background

[1] The plaintiff, Inlet Storage Limited (“Inlet”) owned the land and a large warehouse building situated at 23 Inlet Road, Takanini. The defendant United Movers Limited (“United”) leased the land and building. United is a domestic carrier of customer goods and used the building as a freight and storage facility for long-term storage delivering items as instructed by its customers. The majority of items stored were for furniture suppliers but also some fridge, freezers and office equipment. Some vehicles were also stored.

[2] On 4 December 2019 a large fire broke out and destroyed the premises.

[3] Inlet incurred significant cost after the fire to demolish, clean-up and remove the debris of the building and its contents. Part of the building roof was clad with

materials containing asbestos which meant extra cost was incurred in relation to the clean-up and disposal of the fire debris and materials from the site.

[4] The issue before the Court is the recovery of part of the total clean-up costs, relating to the apportioned costs to dispose of United's fitout, stored contents, equipment and vehicles. Inlet sues United in negligence, waste and trespass.

[5] Inlet engaged Ward Demolition Limited ("Ward") who subsequently invoiced United's insurance company Ando Insurance ("Ando") \$20,092.80 for the removal of vehicles and \$123,914.80 for the removal of the building remnants. This is the amount in issue along with interest and costs.

[6] On the last day of the hearing counsel for Inlet, Mr Johnstone, sought leave to file a third amended statement of claim, in order to adjust a date. Ms Davies had no objection and accordingly I gave leave for the amendments to be made.

Negligence allegation/evidence

[7] Inlet says that the fire was carelessly caused by employee/s of United by dropping or throwing a cigarette onto the concrete floor or on the exterior concrete outside the roller door on the western elevation of the building. The cigarette was then blown into or against cardboard boxes stored in the mesh screen area called the cage. The heated ash embers of the cigarette caused one or more of the cardboard boxes to heat and then catch alight. Inlet pleads that United, as the employer, is vicariously liable for the tortious actions of its employee/s. It says at paragraph 35 of the statement of claim:

35. The Defendant itself negligently caused the Fire by :

- (a) Allowing employed staff to smoke on the afternoon of 4 December 2019 and at other times during the course of their employment inside and adjacent to the Building, and
- (b) Failing to have a formal and enforced no-smoking policy for its employees, contractors and visitors to the Building, or

- (c) Alternatively, if a no-smoking policy was in place, failing to enforce or apply such policy on 4 December 2019 and at other times, and
- (d) Failing to provide any or adequate fire-safe cigarette disposal facilities for smokers inside and outside the Building, and
- (e) Failing to identify and protect against the risk of fire igniting stored contents and materials within the Building caused by discarded cigarettes.

Fire

[8] There is no doubt that a fire started on 4 December which caused considerable damage and loss to both Inlet and United. As a result of the asbestos in the roof a large area surrounding the warehouse was contaminated and had to be cleaned up at the request of WorkSafe.

[9] What is in dispute is how the fire started. It is accepted by the experts for the parties that the fire was not started by an internal source of ignition near to the identified point or area of origin.

[10] Nobody actually saw how the fire started. However, Mr Penny a car groomer who was cleaning Mr Stretton's car, Mr Stretton being the branch manager of United at the time, saw smoke and then found that a fire had started.

[11] Mr Penny made a number of statements. He has not been able to be located and served with a witness summons. Inlet seeks to admit his hearsay statements pursuant to s 18 Evidence Act 2006. That application is opposed. It is accepted by both parties that if I exclude his statements then the claim in negligence must fail.

[12] The hearsay evidence that United wish to admit is a video recorded oral statement to Mr Hape, an employer of Waste Management Limited ("Waste"). Mr Hape, Mr Heremaia and Mr Hurst, all employees of Waste, saw the fire and Mr Hape and Mr Hurst used their phones to record the progress of the fire. One of Mr Hape's videos shows Mr Penny standing by the wire fence on the perimeter of the Inlet building recording the fire. Mr Penny then walked over to where Messrs Hape, Hurst

and Heremaia were standing and Mr Penny spoke to them. The conversation has been enhanced and a transcript provided. Mr Penny said:

“Yeah, yeah, yeah, yeah, yeah. I saw who, I saw who lit it to ... Someone had a cigarette and they, and as it got thrown out the door, it didn't go out of the door and it, and it stuck in a corner. Where the, where these cardboard boxes are ... and I saw the smoke, I was like ah dude, dude, dude and I shouted out to someone, and then and then no one was coming, so I ran back to my van to grab the fire extinguisher, but it was only one of those small ones that you have in cars that only runs like 4 seconds”.

[13] Mr Hape saw Mr Penny drive off in his van to move it from the building and then he returned on foot.

[14] It appears that Mr Penny was spoken to by a Mr Bracegirdle an investigator from Scope Investigations who were employed by Ando Insurance on behalf of United. That statement referred to in the Scope report given on 8 December 2019 has not been adduced in evidence. Mr Penny was then interviewed on 16 December 2019 by Mr Hoy an investigator for IAG Insurance on behalf of the plaintiff. Mr Penny told Mr Hoy that on the day of the fire he was working as a car groomer for All Service Group. He went to the premises of United to do a full interior valet on Mr Stretton's vehicle. He told Mr Hoy that he had followed Mr Stretton in his vehicle to the back of the building where there was more room to do the cleaning. He said at some stage a truck driver pulled up which meant that Mr Penny had to move his van and Mr Stretton's vehicle. Mr Stretton moved his vehicle to one side of the roller door on the west side of the building and Mr Penny said he moved his to the other side of the roller door. The truck came in and picked up the container. As Mr Penny started to pack up his things he said there were a couple of guys by a truck and they went inside the building. He said he then saw:

“a big puff of – like, a big huge puff of smoke. And I thought – I thought it might have been like vapour, you know and I thought it might have been a couple of people, but yeah it was like really big. And then I – so I just carried on. I just actually – didn't think it was a fire or anything. I just went to have a look to see who was vaping and there was no one there. ... That was just like – just inside, and I had a look and there was no one there, and then I sort of looked down and I saw a little bit more smoke, and I saw a cigarette butt. So, like, this is the corner here of the box. There was a metal – Jason and this other guy had put it in the cage, but it's just like a chicken fence type thing, going along here, and then roughly about here is the exterior of the wall. ... Yeah, yeah, the external wall of the building. There's only just a small gap to this first box. There's a metal case thing here, and this corner had been like –

so it was like a round circle here, eaten away on both sides and just here there was an orange butt, and I had a look, because I saw the butt there, but it was out. And it was – the cardboard box had like just a black line along here, and then I saw a little, a little flame, and then I saw a little bit more smoke, and then I was thinking oh, I wonder – I wonder if the flames going to go out but it didn't go out, and then it was about half a food and I was thinking I was going oh nah, that's a fire. ... Then I was going dude, dude because I thought there might have been some guys that are around, because they only just – maybe just, you know half a minute, minute, just walked in there. That's why I sort of know what happened. He finished his cigarette, threw it out, and then the wind blew it back in.

[15] Mr Penny then said that he rushed back to his van to get a fire extinguisher but it only lasted about 3 seconds and he had a bad angle and the fire had spread.

[16] Mr Penny said he jumped into his van and reversed it. He said he was rushing and panicking to move the van. He got out and started taking a video and walking back around. Mr Penny was asked if he had seen anybody smoking. He said:

“there were a couple of guys, and I do know that Derek was right there, but he wasn't the one who may have been smoking, but I do know if anyone knows who was smoking he will know, but – it really is – I can't remember. So – but if I do remember, I'll try to help you on that, but I do know that Derek would know who these guys were”.

[17] When Mr Penny was asked again if he saw one of the two guys smoking he said:

“I can't remember seeing anyone – but if I do remember – but I do know that Derek will be the one who will be able to tell you about this, because – look what happened was, I was talking with him. There were a couple of guys there”.

[18] Mr Penny said he did not remember smelling any cigarette smoke and he did not smoke. Mr Penny late in the interview said:

“what I think happened is because the wind is blowing that way, I am sure someone – because it was windy, I am sure someone had their cigarette, finished off their cigarette, meant to go throw their butt out and then it just blew back in. That is what I think anyway”.

[19] When Mr Penny was asked whether he had definitely seen the cigarette, he said “yep” and then to the question “little tiny butt?” he said “yep” and then “right next to the-?” he answered “yep. The -yeah, it was eaten away. The butt was out and

the corner of the box was out as well but”, but he said had not seen anybody smoking nor had he smelt anything.

[20] Messrs Heremaia, Hape and Hurst gave evidence. They were all workers for Waste. They all saw the fire. They all saw Mr Penny and Mr Hape, and Mr Hurst took videos. Mr Heremaia said that at the time of the fire he was in the lunchroom with Mr Hurst and his son Mr Hape winding down for the day. He looked over to United’s building and saw flames coming off the sidewall of the building. The flame was just by the entrance of the doorway that was open. They went outside and stood and watched. He saw the person we know was Mr Penny getting out of his van and then walking to the fence filming the fire on his cell phone. Mr Penny then came over and started to talk to them talking about how he had seen the fire start. Mr Heremaia continued and said that as he was making his way to the lunchroom just before the fire he had seen two United staff over in the doorway where the fire started. He knew they were United staff because of the orange tops they were wearing. He said the two males seemed to be sitting on chairs just inside the entrance of the doorway where the fire had started. He had also seen Mr Penny. He explained where the Waste staff smoking area was which was well away from the roller door. He said on previous occasions he had seen United staff gathering and smoking in the doorway where the fire had started. This would be around 6 and 7 am and then in the afternoons around knockoff time. On the day of the fire he said did not see whether the two males that were on the chairs were smoking or not. He said Mr Penny was shaken up and did not know what to do. In cross-examination Mr Heremaia initially said two people were smoking in the doorway. Then he said “Nah, it was just a area that they smoked in. Whether I did or didn’t see them smoking, I can’t say I did but it’s just a smoking area for them”. He confirmed that he could not be absolutely sure whether he saw them smoking that day or not.

[21] Mr Hape said that he was in the lunchroom when he heard yelling. He looked out of the window and saw people running out of the doorway in the warehouse building and he saw the fire. He said the people running around were United workers because he recognised the United uniform. He saw a person we know as Mr Penny get into a van, drive it away and come back on foot. It was Mr Hape’s phone that recorded what Mr Penny said while Mr Hape was videoing the fire. Mr Hape said that

the roller door on the west side of the building where the fire started was always open during the day but closed at night. He said the wind was quite strong.

[22] Mr Hurst gave evidence that he was in the lunchroom of Waste waiting to clock out. He heard an emergency siren and he looked out towards the United building. He said he saw light grey smoke coming out of the doorway which became thick and shortly after turned into flame. He recorded some videos of the fire. He saw a male who we know as Mr Penny filming near the depot gates. Mr Penny then came over to where Mr Heremaia had moved to stand and told them what he had seen. Mr Hurst said it was quite windy and they were lucky that the wind was blowing in the other direction.

[23] Mr Stretton, who at the time was the local branch manager of United gave evidence that he was at the site all day and his car had been booked in for a commercial clean. Mr Penny arrived at about 2 o'clock and parked his van next to Mr Stretton's car. A swing lift truck arrived so the cars had to be moved. He said that he remembered walking towards the roller door and seeing the fire, he also saw Mr Penny using a small fire extinguisher. The fire happened very quickly and by the time he had run over to the other side of the warehouse there were flames. He told everyone to clear the building and get out of there. He said that he did not see a cigarette where the fire was. If somebody had been smoking by the cage he would have smelled the smoke. He said there were strict rules around smoking at United and they were enforced. There was a designated area for those who smoked, away from the building. He said because of the vicinity of the cage to his office and the main office it would have been very risky for anyone from United to have tried to smoke there. He had never seen anyone smoking by the cage. He explained that there was cane furniture, cardboard boxes and possibly refurbished chairs in the area close to the roller door and the cage. The roller door would only be open to move furniture into the cage or to allow for air to flow through the building. The roller door only opened from the inside so it was not normally used for general access. Mr Stretton said it was an extremely windy day and the wind was funnelling directly through the roller door. At the time of the fire Mr Stretton had been working for United for two and a half weeks. He said the site was very busy with trucks and containers coming and going.

[24] The two experts Mr Joseph and Mr Noble agreed over the area of origin and likely cause of the fire. Both of them having considered all potential fire causes took the view that there were two possible scenarios for an introduced ignition source. Mr Joseph was of the view that the more likely cause of the fire was a burning discarded cigarette that had blown inside the building near the roller door, coming to rest amongst fine fuel or vegetation debris at the base of the cardboard box or boxes, likely the second or third box in from the external wall, stored inside the wire cage. His view was that the fire had started at the base. Mr Joseph relied on the evidence of Mr Penny and the statements given by Mr Heremaia, Mr Hape and Mr Hurst and the video footage taken by Mr Morunga, Mr Hape and Mr Hurst showing the development of the fire. When asked what his view would be if Mr Penny's account was ruled out, he said the cause of the fire would be undetermined.

[25] Another suggested source of the fire was a discarded cigarette blown across from the Waste site however both experts dismissed that possibility.

[26] When questioned as to whether the fire could have been started deliberately Mr Noble said that he could not rule out the possibility that Mr Penny may have started the fire. Mr Joseph said that based on all of the evidence he could rule that possibility out because there was nothing in the evidence that would suggest that it was a deliberately set fire. Mr Noble who had carried out cigarette testing in the past was of the view that he did not believe that a butt could generate sufficient heat to initiate smouldering. He went on to say that "Smouldering requires specific conditions that a cigarette is unlikely to generate, including sufficient airflow to keep the glowing tobacco alight, a target fuel that has a low ignition temperature; and normally, a bed of fine fuels such as small twigs, dry leaves, needles, desiccated grass or other lightweight, small diameter materials. There was nothing about that site that made me consider that such a bed would have been present within the area of origin plus, as I have already said, the fact that a butt would be lying on a concrete floor would have significantly cooled the tip to the point where the cigarette would go out". He went on to say that he was unable to determine how the fire started.

[27] The question of fine debris was raised during the evidence of the experts. Mr Usher the director of United gave evidence that because there was so much new

furniture in the warehouse it was important to keep the warehouse very clean. When furniture came in it was generally wrapped or laid on furniture blankets. If there was any debris or mess on the floor it would get onto shoes and onto the blankets and then it would end up in the trucks and on to the furniture itself and that would cause complaints from the customers. Because of this the floor was swept very regularly. He also said that workers did not congregate round the roller door. He did not believe that anyone from United would have been smoking in the area where the fire started because there was a designated smoking area next to the loading dock at the southern end of the property. He said if people had been smoking by the roller door then they would have been easily seen by himself or other staff. He said he had never seen anyone smoking in that area and no-one had ever reported to him that they had caught anyone smoking. He also said that the roller door was normally closed.

[28] The plaintiff now seeks to recover the costs involved in cleaning up part of the fire damaged material after the fire had been put out.

The insurance cover

[29] An agreement to lease was entered in to and the plaintiff was required to take out full replacement and reinstatement material damage insurance cover, including loss, damage or destruction of windows and other glass, plus cover for fire, flood, explosion, lightning, storm, earthquake and volcanic activity. The defendant was to pay the annual rent and outgoings including any insurance excess in respect of a claim and insurance premium.

[30] The plaintiff duly purchased from NZI a material damage insurance policy.

[31] It is important to note that the defendant operated a freight and storage business. There were various items stored in the warehouse on behalf of the defendant's customers which included household and office contents including fridges, furniture and vehicles.

[32] The plaintiff claims that the fire was caused by the defendant's employees' negligence. Importantly, for what is to follow it is alleged that employees were

smoking near where the fire commenced and that cigarette butt/s were blown into the warehouse and allegedly started the fire by igniting material in the warehouse.

[33] For an understanding of what happened next it is important to read the reserved judgment of Judge Clark of this Court, dated 22 December 2021, where he decided on a strike out application covering all four of the plaintiff's causes of action. Judge Clark struck out three of the four causes of action in a detailed and helpful decision evaluating ss 268, 269 and 270 of the Property Law Act 2007. I set out below those sections.

The strike out decision

[34] Section 268 of the Act provide application of ss 269 and 270:

268 Application of sections 269 and 270

- (1) Sections 269 and 270 apply if, on or after 1 January 2008, leased premises, or the whole or any part of land on which the leased premises are situated, are destroyed or damaged by 1 or more of the following events:
 - (a) fire, flood, explosion, lightning, storm, earthquake or volcanic activity;
 - (b) the occurrence of any other peril against the risk of which the lessor is insured or has covenanted with the lessee to be insured.
- (2) Section 269 applies even though an event that gives rise to the destruction or damage is caused or contributed to by the negligence of the lessee or the lessee's agent.
- (3) In this section and sections 269 and 270, **lessee's agent** means a person for whose acts or omissions the lessee is responsible.

269 Exoneration of lessee if lessor is insured

- (1) If this section applies, the lessor must not require the lessee—:
 - (a) to meet the cost of making good the destruction or damage; or
 - (b) to indemnify the lessor against the cost of making good the destruction or damage; or
 - (c) to pay damages in respect of the destruction or damage.
- (2) If this section applies, the lessor must indemnify the lessee against the cost of carrying out any works to make good the destruction or

damage if the lessee is obliged by the terms of any agreement to carry out those works.¹

270 Rights of lessor if insurance for leased premises or land is affected by negligence of lessee or lessee's agent

- (1) If this section applies and the destruction or damage is caused or contributed to by the negligence of the lessee or the lessee's agent, the lessor may—
 - (a) terminate the lease, on reasonable notice to the lessee, if the lessor's ability to obtain or retain insurance cover on reasonable terms for the leased premises or the land on which the premises are situated has been prejudiced by the destruction or damage; or
 - (b) recover from the lessee any increased insurance costs incurred by the lessor in relation to the leased premises or the land on which the premises are situated as a result of the destruction or damage (including, without limitation, any increases in the insurance premium that are, or become, payable by the lessor or, as the case may be, any insurance excess that the lessor may be required to pay in relation to any future claims for destruction or damage of that kind).
- (2) This section overrides section 269.

[35] The fourth cause of action, which in this case before me relates to an invoice for \$123,914.80. An earlier invoice for \$20,092.80 was paid by the defendant. Judge Clark described the disputed invoice as follows:

... it seems to me that the work was clean-up/removal work of United's assets, or United's customers' assets which were stored on the premises, all work being undertaken in consultation with United (Mr Ussher).

[36] Judge Clark then added "what is not clear on the pleaded facts is whether the parties discussed or agreed that United's assets would or would not be covered by insurance taken out by Inlet". For these reasons Judge Clark did not strike out the claim regarding this invoice. Judge Clark, when considering, a strike out application, posed for himself the following issue, which is now before me together with an allegation of negligence, waste and trespass. He stated that arguably the reform was not intended to place the responsibility on the landlord to insure the tenants' assets and accordingly was not prepared to strike out this part of the plaintiff's claim.

¹ Subsection (3) of section 269 refers to the situation where a lessee is not exonerated from liability if the destruction or damage was intentionally caused by the lessee or was caused as a result of an imprisonable offence. The section is not relevant to this application.

[37] The evidence of Mr Monteith, a director of the plaintiff, in relation to the invoice in dispute of \$123,914.80 arose as follows:

“Also, Inlet Storage incurred significant costs for the clean up and debris removal work. I asked Chris Harrison of Ward Demolition to break down the clean up and removal costs for presentation of their invoices to IAG and United Movers and to properly record the basis of and purpose of the works carried out. Mr Harrison suggested a portion based on total tonnage using weight readings taken from the Ward Demolition trucks, that carted materials from the site to landfill, which I was comfortable with because we had a reasonable idea of the total weight of the structural and cladding elements of the building which we could use to distinguish the contents stored within the building”.

Discussion and decision

[38] In a discussion between Mr Monteith and Mr Ussher, Mr Monteith was endeavouring to persuade Mr Ussher to reach a common front with the insurer who had declined to pay the invoice in question. I accept on the evidence that no agreement was reached to attend any meeting and accordingly the insurer continued to refuse to pay the invoice. I should add at this stage that I am satisfied on the evidence that the defendant agreed to arrange its own insurance to cover its own assets being customers’ furniture etc and its own vehicle. So I am left to consider what Mr Monteith says is the apportioned debris after the fire and as removed by Ward Demolition. So in effect I have found on the evidence the two matters that were of concern to Judge Clark such that on a strike out application he felt there was insufficient evidence for him to conclude the strike out application in respect of the fourth cause of action.

[39] At paragraph [78] of Judge Clark’s decision he records that counsel for the defendant Mr Langstone submitted that the whole claim fell within s 269(1)(a) and/or (c) of the Act. Mr Langstone apparently submitted:

“There has been destruction of the leased premises and the cause is an insured event (fire) and the destruction or damage in respect of which the damages are sought is in respect of the physical damage. It is arguable then in terms of the definitions of damage and the obligation to insure, the exoneration provisions could apply”.

[40] From a practical point of view the issue before me can be reduced to the extent as to whether or not the debris from the fire, which Mr Monteith has apportioned with help from Ward Demolition, is covered or not by the exoneration provisions of the

Property Law Act and/or that these exoneration provisions do not include damage to the defendant's assets. To assist me to resolve this issue I have had careful regard to the discussions by Judge Clark of the various decisions of *Galbraith v Alderson Logistics Limited*, *Linklater v Dickison* and the Court of Appeal in *Sheehan v Watson*.² In these decisions the Courts were at pains to give a plain reading to the exoneration provisions of the Property Law Act and to include damage or cleanup costs in relation to asbestos, or whether or not the cleanup costs related to the actual boundary of the fire damaged premises. I particularly note the decision of Venning J in the *Galbraith* decision, where the landlord chose not to extend its business interruption insurance and the further comments of Nation J in the *Linklater* decision where he said "The protection for the tenant is not limited to the extent of the indemnity or cover which a lessor is entitled to under the insurance policy".

[41] In my view, after considering the cases as mentioned above and the Law Commission Review considerations, s 269(1)(c) exonerates the defendant for any losses that may be sued for at law. I take the view that any claim for damages includes the costs incurred in the general cleanup of the fire damaged property. I cannot see why the insurance cover that the parties agreed should be taken out and was taken out and in the context of the loss by fire, that the resultant cleanup costs should not be covered, and that the plaintiff cannot now sue for damages because of the Property Law Act provisions.

[42] That being the view that I have reached I turn now to consider the causes of action in negligence, waste and trespass. In my view the actions for negligence and waste fail because of the view I have taken of the Property Law Act provisions. In my view it is artificial to now attempt an apportionment of the debris and in circumstances where that debris has been removed to landfill and cannot now be checked. The attempt to apportion that debris is unsatisfactory and, in any event, should be covered by the exoneration provisions within the plain meaning of the Act. It is debris from the fire damage, there was insurance and it is artificial to try and limit the fire loss in terms of the insurance that was agreed. Also the defendant had its insurance

² *Galbraith v Alderson Logistics Limited* [2013] NZHC 3102; *Linklater v Dickison* [2017] NZHC 2813 and the Court of Appeal in *Sheehan v Watson* [2011] NZLR 314.

cover for vehicles and other assets which were removed after the fire to the extent that they could.

[43] Likewise it is artificial to allege trespass when the evidence that I accept of Mr Monteith, whereby he agreed that any so called trespassing property was on the site with his approval.

[44] In relation to the negligence claim and for the sake of completeness I have reached the view that the evidence of Mr Penny should not be admitted pursuant to s 16 of the Evidence Act 2006 due to, in my view, its unreliability and the lack of reasonable diligence after a two year gap in trying to find Mr Penny, due to the importance the plaintiff places on his evidence to support the negligence claim, also I was not satisfied as to the changing nature of Mr Penny's statements, various inconsistencies and suppositions and the failure by Mr Penny to cooperate or deliberately evade a witness summons. In assessing the weight to be placed on his statements I could not be satisfied that it was reliable or credible. Furthermore, after listening to the various experts on the cause of the fire I was not satisfied on the evidence that I could properly assess on the balance of probabilities as to how the fire started. In any event Mr Johnstone very properly accepted that if I rejected Mr Penny's evidence then the negligence claim must fail.

[45] For all the above reasons the plaintiff's claim has not satisfied me on the balance of probabilities and it is therefore dismissed.

[46] The plaintiff's claims are therefore dismissed. That leaves the issue of costs. In the event that the parties are not able to agree on quantum, I reserve leave for the parties to file memoranda. Any application for costs must be filed within 21 working days of delivery of this judgment. Any memoranda in response must be filed within a further 14 working days.

Signed at Auckland this 28th day of March 2024 at 4 pm.

Judge NJ Mathers

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 28/03/2024