

**IN THE DISTRICT COURT  
AT NELSON**

**I TE KŌTI-Ā-ROHE  
KI WHAKATŪ**

**CIV-2023-042-000452  
[2024] NZDC 9781**

BETWEEN TASMAN DISTRICT COUNCIL  
Plaintiff

AND RAYMOND NEALE HELLYER  
PHILIPPA JOAN HELLYER  
Defendants

Hearing: 2 May 2024

Appearances: K J Simonsen for the Plaintiff  
T A Babe for the Defendant

Judgment: 2 May 2024

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**ORAL JUDGMENT OF JUDGE A A ZOHRAB**

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[1] The Tasman District Council is suing the Hellyers for unpaid rates. They filed a statement of claim seeking judgment in the sum of \$2,692.17.

[2] Those proceedings were served on Mrs Hellyer by Mr Milne and there is a dispute amongst the papers as to whether or not there has been valid service. What is clear, however, from the fact that a counterclaim has been filed by the Hellyers and they have filed a significant amount of material with the courts, what is clear is that the Hellyers knew very quickly about the case and have filed a significant amount of material, as I say, with the courts and also with the Tasman District Council seeking to advance their arguments.

[3] In any event, the Council filed and served a statement of claim. The Hellyers have then filed what they call a statement of counterclaim, and that purports to be a defence as well.

[4] In those circumstances, what happened was that the matter was set down today for a case management conference, and both parties have filed a memorandum for the callover.

[5] What was proposed by the Council was that the matter should be adjourned off to give Council an opportunity to make application for summary judgment on the basis that there was no fairly arguable defence to the claim.

[6] Having read the file carefully, looking at the material that had been filed by the Council and also by the Hellyers, it appeared to me that there was no reasonably arguable defence in the statement of counterclaim filed by the Hellyers. Similarly, I did not believe that there was a fairly arguable cause of action in their counterclaim. So, I indicated to counsel for the Council, Mr Simonsen, that I would be prepared to hear an argument under r 15.1 of the District Court Rules 2014 as to whether or not the pleadings should be dismissed.

[7] To enable the Council to take that opportunity, I took a five-minute break. Then what happened is that I heard argument from the Council, and the basic submissions were that the statement of counterclaim failed to disclose a reasonably arguable defence, because it did not address the claim made by the plaintiff; rather, it relied upon the fact that the Council had not answered a number of questions which were purportedly posed by the Hellyers seeking clarity, and until those questions were answered they were not going to respond. However, they reserved their right to respond to such a claim once full disclosure and a complete set of answers to questions had been provided.

[8] In the meantime, they intended to proceed with the counterclaim, the counterclaim being invoices rendered by them which effectively were to claim for the time spent asking questions or dealing with the claim.

[9] So, the Council's submission was that there was complete failure to address the claim in the statement of claim, and the counterclaim similarly disclosed no reasonably arguable cause of action.

[10] The Hellyers maintained that they had the right to ask questions of the Council and to expect a response from the Council. In particular, they noted that they had provided to the Council “conditional acceptance affidavits”, that it was not about them not wanting to pay all of their rates, but to pay part of the rates, and to engage in some dialogue with the Council, and they felt that the Council was not willing to engage in dialogue.

[11] So, the Council’s submission was that the defence should be struck out because it discloses no reasonably arguable defence, and that the counterclaim should be struck out because it discloses no reasonably arguable cause of action.

[12] The Hellyers were aggrieved that this Court could entertain such an argument at this point because their point was that they had been paying rates for a long period of time, over 50 years, without issue. They felt that they were not being treated with respect by the Council and they characterised this case as not being a case about unpaid rates, rather it was a case about withheld rates, and they wanted the opportunity to explain the reasons why they had withheld payment, and they wanted the Council to treat them with respect by way of responding to their queries or questions. They expected a mutual dialogue, as it were.

[13] In terms of the law, on the face of it, the Council have filed a simple and straightforward claim for unpaid rates. It is clear that the plaintiff is empowered to set, assess and collect rates. It is clear that the defendants are the owners of the property. It is clear that the property is located within the regions that the plaintiff controls and regulates. It is clear pursuant to s 12 of the Local Government (Rating) Act 2002 (“the Act”) that the defendants are liable to pay the rates that the plaintiff levies.

[14] It is also clear pursuant to s 57 of the Act that the plaintiff is entitled to charge penalties on rates that are levied and not paid by the due date. It is also clear on the evidence that the defendants have failed to pay the amount claimed in the statement of claim. It is clear that demand has been made for unpaid rates and that they failed and refused to comply with the payment of rates. They might argue that, well, that is not an accurate assessment because it is a difference between unpaid rates and

withheld rates, which might then provide a basis for an argument on their part. But for the purposes of a claim such as this, they have failed to pay the rates, and on the face of the document the Council are entitled to relief sought, and costs.

[15] As far as the defence is concerned, r 5.50 of the District Court Rules 2014 provides that the statement of defence must either admit to or deny the allegations of fact in the statement of claim. A denial of an allegation of a fact in the statement of claim must not be evasive. Points must be answered in substance. An allegation not denied is treated as being admitted, and an affirmative defence must be pleaded, and a statement of defence must give particulars at time, place amounts, et cetera, and other circumstances sufficient to inform the Court, the plaintiff and any other parties of a defendant's defence.

[16] Here, the defendants, that is, the Hellyers' statement of defence is woefully inadequate in terms of addressing the claim made by the Council. Now, I appreciate they are lay people, and so as a rule, this Court will bend over backwards when we have lay people who cannot be expected to know how exactly the law works and what the requirements are as far as pleadings are concerned, because lawyers have difficulty with pleadings as well, as do judges. But this is not a complicated claim. This is a claim for unpaid rates. So as I say, it is not complicated.

[17] So, I bent over backwards to try and see if there is a defence, and when I am talking about a defence I am talking about here a reasonably arguable defence, because it is not a very high threshold for pleadings to remain alive. So, I have looked at the statement of counterclaim, I have looked carefully at the Hellyers' "notice of inability to proceed". I have looked carefully at the volumes of material that have been filed, and what I see is a potpourri of legal concepts and historical events with a little bit of pseudo legal language and Latin thrown in, which somehow people expect to be taken seriously.

[18] There is no fairly arguable or reasonably arguable cause of action discernible. This is a situation whereby there are a combination of matters which seem to be of concern to the Hellyers, and their submissions seem to address wider issues and

concerns in our community, and also their dealings with the Council, rather than this simple claim.

[19] So, as I said, standing back and looking at it, bending over backwards to see if I can try and find a fairly arguable or a reasonably arguable defence, similarly adopting an analytical approach as far as the counterclaim is concerned, it is not possible for me to see any reasonably arguable cause of action. It is simply not possible to see any reasonably arguable defence.

[20] So, regrettably, I am in the position where I have to strike out your defence and the counterclaim. As I said, if I had adjourned this matter off for summary judgment you would be “in the hole” for another five or six thousand dollars because you would be liable to pay the legal fees of the Council for any further actions if this case went beyond that point.

[21] So, in those circumstances, in my view it is appropriate to enter judgment as sought by the plaintiff in the sum of \$2,692.17.

[22] There will be costs on a 2B basis.

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Judge AA Zohrab

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 23/05/2024