IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

CIV 2005-412-000519

BETWEEN	ALAN BRIAN COURT Appellant
AND	TREVOR WILLIAM AITKEN Respondent

Judgment: 2 May 2006

JUDGMENT OF HON JUSTICE JOHN HANSEN
As To Costs

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[1] The successful Appellant seeks costs on a 2C basis.

[2] The Respondent resists costs on the basis that the initial claim by the Appellant was grossly excessive. The memorandum refers to s 43(2) of the Defamation Act in support of this submission. It is submitted that "grossly excessive" simply means something more than excessive, and where the successful award is only one third of the amount claimed it must be said to be grossly excessive.

[3] Furthermore, it is said that the failure of the Appellant to comply with timetable directions is a factor to be taken into account in considering any award of costs.

[4] Section 43(2) reads:

> (2) In any proceedings for defamation, where—
>
> (a) Judgment is given in favour of the plaintiff; and

> (b) The amount of damages awarded to the plaintiff is less than the amount claimed; and
>
> (c) In the opinion of the Judge, the damages claimed are grossly excessive,—
>
> the Court shall award the defendant by whom the damages are payable the solicitor and client costs of the defendant in the proceedings.

[5] The District Court Judge awarded damages of $20,000. That has been increased on appeal. He reserved costs without ordering memoranda to be filed. It appears costs in the District Court have not been fixed.

[6] The 'Shorter Oxford English Dictionary' defines "grossly" as "in a gross manner; plainly; excessively, flagrantly …".

[7] The reference back to the definition of "gross" in the same dictionary is defined as "3. of conspicuous magnitude; palpable, striking; plain, evident … 4. glaring; flagrant; monstrous".

[8] Although the claim in the statement of claim is clearly excessive in light of the award that was made and would appear to ignore the limited level of publication, in my view, in light of the above definition, it could not be said to be "grossly excessive".

[9] Furthermore, I do not consider this case was of such complexity that band C is appropriate. There will be costs on a 2B basis to the Appellant. However, it is proper to take into account the failure of the Appellant to comply with the timetabling orders made in this Court. Accordingly the 2B award is to be reduced by ten percent to reflect this.

[10] There will be disbursements as fixed by the Registrar.

Solicitors:
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(Counsel – C Withnall QC, Dunedin)
L Andersen, Dunedin – counsel for Respondent