

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2003-404-4113

BETWEEN	WASAN INTERNATIONAL CO LIMITED Plaintiff
AND	SUNG WOO LEE First Defendant
AND	BONG IL KIM Second Defendant
AND	JUNG HAN JIN Third Defendant

Hearing: 4 February 2008

Counsel: G J Kohler for Plaintiff
J Y Song for Defendants

Judgment: 4 February 2008

(ORAL) JUDGMENT OF HEATH J

Solicitors:

Connell & Connell, PO Box 5275, Auckland
J H Song, PO Box 33359, Takapuna, Auckland

Counsel:

G J Kohler, PO Box 4338, Auckland

[1] Wasan International Co Ltd brought proceedings against Sung Woo Lee, Bong Il Kim and Jung Han Jin arising out of the publication of three articles in the Korean Times. Defamation was alleged.

[2] The proceeding was set down for a hearing over five days in July 2006. The hearing began. Evidence was given on a formal proof basis, a memorandum having previously been filed advising that the defendants abandoned defences.

[3] Various declarations were made by Frater J after evidence had been given. While questions of costs were the subject of an agreement among the parties, they were also adjourned for further consideration at a Duty Judge hearing in February this year.

[4] Mr Kohler, for Wasan, advises that no orders are sought in respect of the third defendant, Jung Han Jin. The proceeding against Jung Han Jin is dismissed with no order as to costs.

[5] Mr Kohler advises (and Mr Kang's evidence confirms) that the costs have not been paid in accordance with the agreement reached with Sung Woo Lee and Bong Il Kim.

[6] I am satisfied that although the parties agreed upon a quantum of costs and time for those costs to be paid, the plaintiff nevertheless reserved the ability to seek costs from the Court if the defendants failed to comply with the agreed obligations. That is clear from cls 6 and 7 of the handwritten settlement agreement of 3 July 2006 which provide:

6. Provided the defendants comply with their obligations as set out above then Wasan will accept the payment of costs as set out above in full and final satisfaction re costs. *If they fail to comply in all respects with their obligations Wasan shall be entitled to seek full solicitor-client costs as incurred.*
7. *The costs aspect of the current proceedings shall be adjourned for at least 18 months (save for either party's right to bring the matter on earlier) to enable the agreement to be implemented as above. (my emphasis)*

[7] The agreed costs were \$50,000, stated to be a contribution towards the costs incurred by the plaintiff. That, as Mr Kohler has submitted to me, represents good evidence that that quantum was regarded as reasonable by the first and second defendants.

[8] Mr Song seeks leave to withdraw, having been unable to obtain further instructions from the first and second defendants. However, on their behalf, he submits that one further week should be given to allow them to take advantage of the agreement into which they entered.

[9] I am not prepared to allow that further time given the absence of any instructions to Mr Song to date. If any issues of ability to pay arise, they can be raised with counsel or the solicitors representing the plaintiff.

[10] While the plaintiff reserved the right to seek solicitor and client costs, Mr Kohler responsibly acknowledges that the quantum should be restricted to the amount agreed as reasonable by the parties.

[11] Accordingly, there will be an order for costs in favour of Wasan International Co Ltd in the sum of \$50,000, which is made jointly and severally against Sung Woo Lee and Bong Il Kim. That order is a global order, representing both costs and disbursements.

[12] Leave is granted to Mr Song to withdraw as solicitor on the record for the first and second defendants. That will mean that service of any further Court processes will need to be effected personally on the two defendants against whom costs orders have been made.

P R Heath J