IN THE HIGH COURT OF NEW ZEALAND **CIV 2010-404-2050**
AUCKLAND REGISTRY

BETWEEN	**GRACE HADEN** **First Plaintiff**
AND	**VERISURE INVESTIGATIONS LTD** **Second Plaintiff**
AND	**NEIL EDWARD WELLS** **First Defendant**
AND	**WYN HOADLEY** **Second Defendant**
AND	**GRAEME JOHN COUTTS** **Third Defendant**

Judgment:	On the papers
Date:	27 September 2011
Counsel:	First plaintiff in person N D Wright for first to third defendants No appearance for fourth defendant

---

COSTS JUDGMENT OF ALLAN J

Solicitors/counsel/party
Grace Haden, 23 Wapitit Ave, Epsom, Auckland
Wright Solutions Law nick@wrightsolutionslaw.co.nz

[1] On 25 November 2010, I delivered a judgment in which I struck out the plaintiff's claim in its entirety. My findings were summarised as follows:

> [130] In relation to the causes of action questioning the unless order and Judge Sharp's striking out of the plaintiff's defence, I have made the following findings:
>
> a) The striking out of the plaintiffs' defence was not unlawful or in breach of natural justice;
>
> b) The present proceeding amounts to an abuse of process, insofar as it is concerned with the circumstances surrounding the making of the unless order;
>
> c) Any procedural error of Judge Sharp was not material, because the unless order would have been made even if the Court had heard from Ms Haden beforehand;
>
> d) No review argument based on Ms Haden's alleged impecuniosity could succeed in the present case.
>
> [131] In relation to the causes of action questioning Judge Joyce's substantive decision, I have made the following findings:
>
> a) The matters of which the plaintiffs complain were either addressed in Rodney Hansen J's judgment or should properly have been raised during that appeal. It would be an abuse of process to relitigate them now;
>
> b) The same considerations apply to the issue of whether there was a denial of natural justice in the substantive proceedings;
>
> c) The cause of action raising issues of unlawfulness or apparent bias by Judge Joyce cannot succeed. The Judge's criticisms of Ms Haden were solidly founded in his factual and legal findings.
>
> [132] The plaintiffs' claim is accordingly struck out in its entirety.

[2] I directed that the defendants were entitled to costs, and that counsel might file memoranda if they were unable to agree. Since that time, Mrs Haden has dispensed with the services of Mr Orlov and is now self-represented.

[3] In a memorandum dated 25 May 2011, Mr Wright for the defendants sought costs totalling $16,638. That figure was reached by claiming a daily allowance for 5.9 days at $1880 per day, in accordance with the category 2B scale, and seeking an uplift of 50% for scale costs.

[4] Subsequently the Registrar corresponded with Mrs Haden, with a view to obtaining her submissions in opposition. Ultimately she filed a memorandum dated 11 July 2011, in which she advised the court that:

[a] Information had now come to light through the Law Society which proved her "innocence";

[b] That discovery had been made only three days earlier;

[c] The unravelling of the matter would take some time;

[d] In the meantime, the court was asked to put aside the question of costs until such time as she could file an affidavit showing that there had been a "gross miscarriage of justice".

[5] Some two and a half months later, nothing further has been filed by Mrs Haden. It is appropriate therefore to deal now with the defendants' costs application. There can be no dispute that the defendants are entitled to costs in accordance with the category 2B scale. That produces a figure of $11,092. But the defendants seek an uplift of 50% in accordance with the principles laid down in *Holdfast NZ Ltd v Selleys Pty Ltd*,[1] and r 14.6(3)(b)(ii) and (d) of the High Court Rules.

[6] Mr Wright takes several points in support of his claim to an uplift. First, it is said that Mrs Haden pursued arguments without merit; that her application for review was late and that it largely covered matters already addressed in the context of her appeal proceedings.

[1] *Holdfast NZ Ltd v Selleys Pty Ltd* (2005) 17 PRNZ 897.

[7] In my opinion there is substance in these points. At [130](b) I held that Mrs Haden's proceeding amounted to an abuse of process, insofar as it was concerned with the circumstances surrounding the making of an unless order which led to the striking out of her defence in the District Court. An associated point made by Mr Wright is that the attack on the earlier interlocutory decisions made in the District Court was in effect an attempt to relitigate her earlier failed attempts to have those decisions reviewed and stayed, and then to appeal them out of time.

[8] It is unnecessary to canvas the history of the proceedings afresh. The detail is set out in my earlier judgment. I agree with Mr Wright's contention that the defendants have been put to significant additional costs by reason of the approach adopted by Mrs Haden.

[9] Mr Wright supplements his submissions by complaining about Mrs Haden's reliance on inadmissible evidence, of her failure (and that of her counsel) to meet timetable orders, and the filing of reply submissions to reply submissions. Again, there is substance in the contention that these factors also increased the defendants' costs.

[10] Finally Mr Wright refers to the history of the litigation and to the animosity between the parties. That would not of itself have led to an order for increased costs, but it forms the backdrop to the matters outlined above which, in combination, support an order for increased costs.

[11] I allow an uplift in scale costs of 50%. Accordingly, there will be an order for costs against the plaintiffs in favour of the defendants in the sum of $16,638.

C J Allan J