

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2010-404-006349
[2012] NZHC 679

BETWEEN FRANCISC CATALIN DELIU
 First Plaintiff

AND AMICUS LAWYERS LIMITED
 Second Plaintiff

AND BOON GUNN HONG
 Defendant

Hearing: On the papers

Judgment: 5 April 2012

JUDGMENT OF COURTNEY J

This judgment was delivered by Justice Courtney
on 5 April 2012 at 4:00 pm
pursuant to R 11.5 of the High Court Rules.

Registrar / Deputy Registrar

Date.....

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[1] In my judgment dated 21 December 2011 I considered applications by the first plaintiff (Mr Deliu) and the second plaintiff (Amicus) in respect of a decision by Associate Judge Bell striking out their proceedings against Mr Hong. Mr Deliu's application succeeded and he is entitled to costs against Mr Hong on a 2B basis. Amicus' application failed and Mr Hong is entitled to costs against it on a 2B basis.

[2] In addition to these applications I also heard and dismissed Mr Hong's cross-application striking out the applications to review. Mr Deliu and Amicus are entitled to costs against Mr Hong on that application.

[3] Finally, I also allowed costs to Mr Hong in respect of his successful opposition to an earlier interim injunction application brought by Mr Deliu, a matter that the Associate Judge was asked to determine but failed to consider.

Costs to Mr Deliu from Mr Hong on the application for review

[4] Mr Deliu has sought costs on a 2B basis, which he calculates at \$16,544.00, and of disbursements of \$4,131.26.

[5] I am not prepared to order this entire amount. I consider that the following amounts are properly claimable:

- (a) \$7,886.00 in respect of the strike-out application determined by Associate Judge Bell;¹
- (b) \$5,640.00 in respect of the application for review of Associate Judge Bell's decision;
- (c) \$1,128.00 in respect of Mr Deliu's opposition to Mr Hong's application to strike out. I do not, however, allow the claimed amounts of \$1,880.00 under Items 4.14 and 4.15 for the plaintiffs' preparation and appearance in respect of that application. The grounds for that application were such as to require virtually no

¹ This reverses Associate Judge Bell's order that costs lie where they fall as his order striking out Mr Deliu's claim has been successfully reviewed: High Court Rules r 14.8(2).

additional time or argument over and above the main issues being determined in respect of the application for review.

(d) I allow a claim for disbursements of \$4,131.26.

Costs to Mr Hong from Amicus on the application for review

[6] In his memorandum dated 8 December 2011 Mr Hong appears to have proceeded on the basis that whatever costs he might be entitled to would be offset and extinguished by the costs he was liable to pay Mr Deliu. That is not entirely correct, however, because it is only the costs payable as between Mr Hong and Mr Deliu which are to be offset.² The costs payable by Amicus to Mr Hong will need to be paid separately by that entity.

[7] In the absence of a specific calculation by Mr Hong I have taken the following calculation which largely reflects the steps that were required by the plaintiffs in respect of their application for review:

Preparing and filing opposition to interlocutory application (excluding summary judgment application and supporting affidavits)	\$1,128.00
Responding to amended interlocutory application	\$1,128.00
Memorandum for mention	\$ 752.00
Mention appearance (no appearance for Mr Hong on that occasion)	Nil
Preparation for review hearing	\$ 940.00
Appearance at review hearing	\$ 940.00
Sealing order	<u>\$ 376.00</u>
Total	<u>\$5,264.00</u>

² High Court Rules, r 14.17.

Costs on injunction

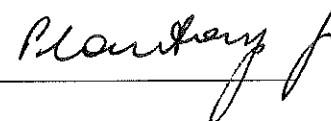
[8] Mr Hong has claimed \$5,640.00 in respect of costs on Mr Deliu's unsuccessful injunction application. This includes one day each for preparation and appearance at the hearing. Mr Deliu resists that aspect of the claim on the basis that the hearing took only half a day. This is correct. I therefore make the necessary adjustment and allow \$3,760.00 in respect of the injunction application.

Result

[9] The result is that:

- (a) Mr Deliu is entitled to \$15,025.26 net from Mr Hong;
- (b) Mr Hong is entitled to \$5,264 from Amicus.

[10] Mr Hong seeks to have me make directions regarding the next step to be taken in this matter. This, however, is better referred back to Associate Judge Bell for a case management conference and I direct that the Registry allocate such a conference.



P Courtney J