IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2008-404-5500
NZHC [2012] 32

BETWEEN	GRACE HADEN First Appellant
AND	VERISURE INVESTIGATIONS LIMITED Second Appellant
AND	NEIL EDWARD WELLS Respondent

Hearing: On the papers

Counsel: E Orlov for First and Second Appellants
ND Wright for Respondent

Judgment:

COSTS JUDGMENT OF RODNEY HANSEN J

This judgment was delivered by me on 1 February 2012 at 4.30 p.m., pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: .....

Solicitors Equity Law, P O Box 8333, Symonds Street, Auckland 1150
Brookfields, P O Box 240, Shortland Street, Auckland 1140

[1] In my judgment of 20 November 2009 I dismissed the appellants' appeal against the judgment of Judge Joyce QC in the Auckland District Court, awarding the respondent general damages of $50,000 and exemplary damages of $7,500 for his defamation by the appellants. I ruled that the respondent was entitled to costs on a category 2 band B basis.

[2] On 22 December 2009, counsel for the respondent filed a memorandum quantifying costs (based on 6.7 days at $1,600 per day) at $10,720. Counsel sought an uplift from scale costs of 50 per cent, relying on r 14.6(3)(b)(ii) and (d) of the High Court Rules and *Holdfast NZ Ltd v Selleys Pty Ltd*[1] on the grounds that:

[a] Mrs Haden pursued arguments without merit.

[b] Her attack on earlier interlocutory decisions as part of the appeal 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.

[c] Her repeated attempts to put evidence before the Court, notwithstanding that her application for leave to do so had been refused, significantly increased preparation time for the case.

[d] Mrs Haden had misused the processes of the Court to pursue what was described as "a relentless campaign of misery against the respondent, who is an innocent party pursuing charitable goals".

[3] After reminders from the Registry, Mr Orlov, who had by then been instructed by Mrs Haden, filed a memorandum in response dated 1 April 2010. He referred to affidavits filed by Mrs Haden in review proceedings to support a submission that she had proceeded in the genuine belief that she was doing her civil duty and speaking the truth; the respondent did not personally fund the litigation; and

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

some latitude should be granted as Mrs Haden was self-represented. Counsel asked that costs lie where they fall.

[4] Subsequently, I heard and dismissed an application for leave to appeal and, later in 2010, the Court of Appeal dismissed a further application for leave to appeal. Over the same period the plaintiffs pursued an application to review the District Court proceedings. The application was dismissed by Allan J in his judgment of 25 November 2010.[2]

[5] No further steps were taken until 25 May 2011 when counsel for the respondent filed a further memorandum seeking increased costs but expanding the schedule of costs. The claim is for 12.2 days at the increased rate of $1,880 per day, a total of $22,936. An uplift of 50 per cent was again sought on the same grounds as advanced in the earlier memorandum.

[6] In memoranda dated 7 July 2011, 28 September 2011, 3 October 2011 and 11 October 2011 Mrs Haden submits variously that the costs orders should be "set aside" and, in the last mentioned memoranda, that I "hold off with the cost order". She purports to rely on evidence of a gross miscarriage of justice revealed in further review proceedings which she was attempting to file. She makes no submissions in relation to the claim for increased costs.

[7] There are two relevant costs orders: my order that the appellants pay the costs of the appeal and my order that the intended appellants pay the costs of the unsuccessful application for leave to appeal to the Court of Appeal. They must be dealt with separately. There is, however, no basis on which either should be set aside. The orders were made and, save for the application for increased costs, the time to review the orders is well past. Furthermore, no grounds have been put forward which could justify revoking the orders.

[8] I am satisfied that an order that the appellants pay increased costs as claimed in respect to the appeal to this Court is warranted. As my judgment and the two unsuccessful applications for leave to appeal show, the arguments advanced on

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2 *Haden v Wells* HC Auckland CIV-2010-404-2050, 25 November 2010.

appeal were largely without merit. The appellants contributed unnecessarily to the cost of the appeal by attempting to introduce evidence, having been refused leave to do so, and by the voluminous, duplicitous and confusing submissions filed in support of the appeal. An increase on scale costs of 50 per cent on costs of $10,720 is appropriate.

[9] The costs of the unsuccessful application for leave to appeal in this Court must be dealt with separately. The respondent is entitled to costs on a 2B basis as ordered in my judgment but I decline to order increased costs. The application for leave to appeal was advanced and argued appropriately. There were no steps taken which unnecessarily increased the costs of the application. The additional attendances relating to the appeal, as set out in the schedule in counsel's memorandum of 25 May 2011, amount to 3.5 days which, at the daily rate of $1,880, produces costs of $6,580.

[11] To summarise, the respondent is entitled to costs of $10,720 uplifted by 50 per cent in relation to the appeal and costs of $6,580 in relation to the application for leave to appeal.

Arnaud J.