IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2013-404-2890
[2013] NZHC 3421

BETWEEN	GRACE HADEN Appellant
AND	NEIL EDWARD WELLS First Respondent
	WINIFRED NORIEN HOADLEY Second Respondent
	GRAEME JOHN COUTTS Third Respondent

Hearing: (On the papers)

Appearances: Appellant in person
DJ Neutze for Respondents

Judgment: 17 December 2013

JUDGMENT OF BREWER J
(Costs)

Solicitors: Appellant in person
Brookfields (Auckland) for Respondents

Introduction

[1] On 22 October 2013 I delivered my judgment in this matter finding in favour of the respondents.[1] I invited memoranda as to costs. The respondents seek increased costs and the appellant opposes this.

Background

[2] My judgment decided an appeal against a decision of Judge BA Gibson in the District Court at Auckland delivered on 10 May 2013.

[3] I set out in my judgment the history of litigation between the appellant and the respondents. There is no need to repeat that history here. I mention it because it is relevant to the decision I make on costs.

[4] The appellant had failed in her litigation against the respondents. She had exhausted every possible step available to her. Nevertheless, she persisted. The case she brought in the District Court, which Judge Gibson struck out, alleged that the original judgment made against her in the District Court was procured by fraud. If a judgment has been procured by fraud then it can be set aside even if the options for appeal have been exercised. This is to prevent a party benefiting from an abuse by fraud of the process of the Court. It is a narrow exception to the principle of finality of judgments.

[5] The appellant pleaded that she had acquired recently documents which raise at least a prima facie case of operative fraud. Judge Gibson disagreed that they did and struck out her claim.

[6] In the appeal before me, the appellant took issue with every aspect of Judge Gibson's decision. In effect, the appellant re-argued her case. The appellant did not focus on the new evidence but repeated all of the arguments she had made in other Courts going to her affirmative defences to the proceeding first brought against her by the respondents.

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1 *Haden v Wells & Ors* [2013] NZHC 2753.

[7] The chief – and really only – new document of significance was an audit of an organisation associated with the respondents dated 20 July 2009 and carried out by the Ministry of Agriculture and Forestry (MAF) Assurance and Risk Strategy – Performance Group. That document goes nowhere close to raising the spectre of fraud.

Discussion

[8] I start by observing that the costs regime in the High Court Rules is based on the principles that costs should be readily ascertainable and consistently awarded. The costs regime does not operate to reimburse to the successful party their actual costs.

[9] In every case, there is a winner and a loser. Losing badly or comprehensively is not a ground for being required to pay indemnity or increased costs.

[10] The jurisdiction to award increased costs is set out in r 14.6(3). That rule states, relevantly:

> The court may order a party to pay increased costs if—
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> ...
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> (b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in it by—
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> ...
>
> (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
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> (iii) failing, without reasonable justification, to admit facts, evidence, documents, or accept a legal argument; or ...

[11] The respondents submit, and I agree, that this case should be classified as category 2, with band B applying to each step in the proceeding. The respondents seek a 50% uplift from the scale. This would increase the costs award from $10,049.50 to $15,074.25.

[12] The respondents submit that increased costs should be awarded because:

(a) The appeal was entirely lacking in merit.

(b) The appellant pursued unnecessary steps by opposing an application for security for costs and initially seeking to exclude counsel from acting.

[13] The appellant, in her memorandum, repeats, bitterly, the injustices to which she feels she has been subjected.

Decision

[14] In my view, this is clearly a case where scale costs would be inadequate. The appellant's case had no foundation, either on the facts as put before the District Court or on the law as it was argued. Strike out in the District Court was inevitable. There was no prospect that the appellant's appeal to this Court could succeed.

[15] The case brought in the District Court was a collateral attack on the finality of the judgments which had gone before. These included judgments of this Court and of the Court of Appeal. I find that the appellant is completely sincere in her belief in the perfidy of the respondents. But the fervour of that belief has blinded her to the realities of her position.

[16] The respondents have acted with restraint in applying for an increase in scale costs.[2] I have no hesitation in granting the application. The appeal itself was unnecessary and lacked any merit. It was a continuation of a collateral attack on other decisions of the Courts and was accordingly an abuse of process. The respondents should not have been put to the cost of defending themselves yet again.

[17] The respondents are awarded increased costs totalling $15,074.25 as per their application.

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Brewer J

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2 *Redcliffe Forestry Venture Ltd & Ors v CIR* [2013] NZHC 3411.