

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2023-485-48
[2023] NZHC 2990**

BETWEEN

GAUTAM JINDAL
Plaintiff

AND

IMRAN MOHAMMED KAMAL
First Defendant

LIQUIDATION MANAGEMENT
LIMITED
Second Defendant

KEVIN JOHN DAVIES
Third Defendant

PRINCIPLE INSOLVENCY GP LIMITED
Fourth Defendant

Hearing: On the papers

Counsel: Plaintiff In Person
S Price for First and Second Defendants
F E Geiringer for Third and Fourth Defendants

Judgment: 25 October 2023

JUDGMENT OF ASSOCIATE JUDGE SKELTON

[1] On 9 October 2023 I ordered that the plaintiff was to provide security for the defendants' costs in the total sum of \$60,000 for all defendants.¹ I ordered costs in favour of the defendants on a 2B basis, together with disbursements as fixed by the Registrar.

¹ *Jindal v Kamal* [2023] NZHC 2820.

[2] On 17 October 2023, counsel for the defendants filed a joint memorandum setting out a schedule of costs which calculates the defendants' costs on a 2B basis. Counsel for the defendants advised that the plaintiff did not agree with the schedule but had not provided any detail concerning what part of it he disputes.

[3] In a minute dated 20 October 2023 I directed that the plaintiff had until 1.00 pm on Tuesday 24 October 2023 to file and serve any memorandum (not exceeding three pages) in response to the joint memorandum of counsel for the defendants dated 17 October 2023.

[4] At 12.36 pm on Tuesday 24 October 2023 the plaintiff filed a memorandum regarding costs.

[5] The plaintiff contends that the costs position should be reversed and that he should be awarded 2B costs with a 25% uplift. He says that is because he made a *Calderbank* offer to the defendants on 26 June 2023 and the defendants acted unreasonably in not accepting the offer and in not indicating the quantum of the security for costs sought at an early stage.

Legal principles

[6] Costs are ultimately a matter of the Court's discretion, the overall objective being to achieve an outcome that best meets the interest of justice.² That discretion is qualified by the applicable costs rules, contained in pt 14 of the High Court Rules 2016. The primary principle applying to the determination of costs is that costs follow the event – meaning that a party who is unsuccessful pays costs to a party who is successful.³

[7] The Court may order a party to pay increased costs where that party has contributed unnecessarily to the time or expense of the proceeding or a step in it.⁴

² High Court Rules 2016, r 14.1; *Manukau Golf Club Inc v Shoye Venture Ltd* [2012] NZSC 109, [2013] 1 NZLR 305 at [7] and [16]; *Glaister v Amalgamated Dairies Ltd* [2004] 2 NZLR 606 (CA) at [21]–[24] and [28]; and *Mansfield Drycleaners Ltd v Quinny's Drycleaning (Dentice Drycleaning Upper Hutt Ltd)* (2002) 16 PRNZ 662 (CA) at [27].

³ High Court Rules, r 14.2(1)(a).

⁴ Rule 14.6(3)(b).

Increased costs may be awarded where there is a failure by the paying party to act reasonably.⁵ An example is failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under r 14.10 or some other offer to settle or dispose of the proceeding.⁶

[8] Where a settlement offer is made under r 14.10, the party who made the offer may be entitled to costs on steps taken in the proceeding after the offer is made if the amount of the offer exceeds the amount of any judgment obtained by the other party, or would have been more beneficial to the other party than the judgment obtained by the other party, or is close to the value or benefit of any judgment obtained by the other party.⁷

[9] The Court may also refuse, or reduce, costs otherwise payable to a party if that party, for example, contributed unnecessarily to the time or expense of the proceeding or step in it by failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under r 14.10 or some other offer to settle or dispose of the proceeding.⁸

Discussion

[10] The plaintiff opposed the defendants' applications for security for costs. The defendants were successful in obtaining an order that the plaintiff pay the total sum of \$60,000 as security for costs for all defendants. On this basis, the defendants are entitled to costs on a 2B basis.

[11] The plaintiff's *Calderbank* offer appears to have been for a total sum of \$30,000 to be paid as security for costs for all defendants. This offer was not accepted by the defendants. The order for security for costs obtained by the defendants is twice the value or benefit of the plaintiff's offer.

⁵ See *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [27].

⁶ High Court Rules, r 14.6(3)(b)(v).

⁷ Rule 14.11(3) and(4).

⁸ Rule 14.7(f)(v).

[12] In the circumstances, rule 14.11 of the High Court Rules does not apply to reverse the costs position.

[13] Nor do I consider that the defendants acted unreasonably in not accepting the offer, and in not indicating the amount of security sought at an early stage, such that costs should be refused or reduced. Regarding the first point, the plaintiff's offer was low given that there are two defendant groups in this proceeding, and the offer did not include payment of the defendants' costs incurred at that stage. Regarding, the second point, the plaintiff contends that Ellis J requested that the applicants were to quantify the amount of security for costs sought during a telephone conference on 12 June 2023. However, having reviewed the minute of Ellis J dated 12 June 2023, it is not apparent that there was any request or direction to this effect. The defendants subsequently quantified the amount sought as security for costs in their submissions dated 20 July 2023, nearly two weeks in advance of the hearing.

[14] It follows that the order for costs on a 2B basis in favour of the defendants stands.

[15] The defendants have provided a schedule of costs and disbursements with their joint memorandum dated 17 October 2023. The calculation of costs and disbursements in the schedule appears to be in accordance with the High Court Rules and reasonable. The plaintiff has not raised any issues with the defendants' calculation of their costs and disbursements. Accordingly, the defendants are entitled to costs and disbursements as calculated in the schedule of costs attached to their joint memorandum.

[16] The defendants have sought a direction to the effect that they are not put in the position of having to undertake significant work on this proceeding until these costs have been paid. Pursuant to r 14.8(1) of the High Court Rules, costs on interlocutory applications become payable when they are fixed. I make an order in this regard below.

Result

[17] The first and second defendants are entitled to costs in the sum of \$11,494 and disbursements in the sum of \$500.

[18] The third and fourth defendants are entitled to costs in the sum of \$13,719 and disbursements in the sum of \$813.

[19] I make an order pursuant to r 7.48 of the High Court Rules that, if these costs are not paid within 14 days of the date of issue of this judgment, then the defendants are not required to progress any further steps in the proceeding unless and until the costs are paid.⁹

Associate Judge Skelton

Solicitors:
Langford Law, Wellington for Third and Fourth Defendants

⁹ See *Kidd v Van Heeran* HC Auckland CIV-2004-404-6352, 16 November 2006, at [23].