IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2014-404-00240
[2014] NZHC 2109

BETWEEN	DAMIEN MITCHELL GRANT and JOHN MICHAEL GILBERT as Liquidators of Hunter Gills Road Limited (In Liquidation) First Plaintiff
	GILLS ROAD VILLAGE LIMITED Second Plaintiff
AND	GOLDENCOURT INVESTMENTS LIMITED First Defendant

Continued, over page

Hearing: On the papers

Counsel: A R Nicholls for the Plaintiffs
J K Goodall for the Second Defendant

Judgment: 3 September 2014

JUDGMENT OF ELLIS J

This judgment was delivered by me on 3 September 2014 at 11.00 am pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date:……

Counsel/Solicitors:
A R Nicholls, Edwards Clark Dickie, Auckland
J K Goodall, Barrister, Auckland
D Wein, Stace Hammond, Auckland

LY INVESTMENT (NO 1) LIMITED as trustee of the LY INVESTMENT (NO 1) TRUST
Second Defendant

MARMANDE PROPERTY INVESTMENT LIMITED
Third Defendant

125 GILLS LIMITED
Fourth Defendant

125 GILLS ROAD LIMITED PARTNERSHIP
Fifth Defendant

[1] This judgment relates to a claim by the second defendant, LY Investment (No 1) Ltd (LY), for indemnity costs in the sum of $39,611.88 against the plaintiffs, including against the first plaintiff liquidators personally. In the alternative, scale costs of $13,134 plus disbursements are sought.

[2] In general terms, the background is that on 10 February 2014 the plaintiffs filed a claim against the defendants and obtained a freezing order over funds contained in the trust account of LY's solicitors. LY subsequently applied to have that freezing order set aside. That application was opposed by the plaintiffs and given a date. The plaintiffs then abandoned their opposition on the eve of hearing. A little later the plaintiffs also discontinued their substantive claim.

[3] LY seeks indemnity costs on the basis that the plaintiffs knew or should have known that their claim was misconceived from the outset and that there were no grounds upon which the freezing order could be sustained.

Background

[4] On 16 June 2010 Hunter Gills Road Limited (HGRL) was appointed the corporate trustee of the Gills Road Village Trust (GRVT). HGRL's primary role as corporate trustee was to undertake land developments and acquire investments on behalf of the GRVT.

[5] In that capacity, HGRL became the owner of a property at 125 Gills Road, Albany, which was part of an investment project involving the development of residential townhouses. HGRL borrowed around $2.5 million from Crown Finance Ltd (CFL) for the purposes of the development, by virtue of which CFL held a first ranking security over the property as security.

[6] In October 2012 Mr William Yan agreed to contribute a further $3 million to the development through one of his companies, the first defendant, Goldencourt Investments Limited (GIL). It seems he did so on the basis that the development would be moved to a new partnership entity, the fifth defendant, 125 Gills Rd Limited Partnership (Gills LP), and that his contribution would have priority over that of all the other partners. HGRL (as trustee of the GRVT) was one of the

partners. HGRL was replaced in that role by the second plaintiff, Gills Road Village Ltd (GRVL) on 13 January 2013.

[7] Pursuant to the partnership arrangement, in December 2012 HGRL sold the Gills Rd property to Gills LP for six million dollars. This price was based on an independent valuation that had been procured earlier that year by CFL. On settlement:

(a) CFL lent Gills LP $2.5 million which was secured by a first ranking registered mortgage;

(b) those funds were used to repay the money previously borrowed by HGRL from CFL;

(c) HGRL/GRVL advanced $2 million to Gills LP as its partnership contribution; and

(d) GIL agreed to advance $3 million to Gills LP as its partnership contribution. This was agreed to be a secured loan which would rank in priority only behind CFL's loan.

[8] On 21 March 2013 GIL's rights in the partnership were assigned to LY.

[9] On 27 March 2013 HGRL was placed into liquidation by special resolution of its shareholders. Damien Grant and Steven Khov were the original liquidators but on 30 April 2013, Mr Khov was replaced by John Gilbert. I note at this point that Mr Gilbert is also a director of the second plaintiff.

[10] In April and June 2013 caveats were lodged over the Gills Rd property. The basis for the caveats was agreements that the caveators had entered into with HGRL when it had owned the property, about which LY apparently had no knowledge. As I understand it, the caveators were all investors who were resident overseas. Proceedings were then filed by the caveators to maintain their caveats. They also asserted that their interests took priority over the CFL mortgage. This prompted CFL to then call up its loan.

[11] As a result of these events, in August 2013, LY executed formal loan and security documentation in relation to its $3 million contribution to the partnership. At around the same time, LY also purchased the CFL mortgage for $2.7 million. Shortly afterwards it served a PLA notice on Gills LP and obtained two independent valuations of the property. Both gave value of approximately $4.35 million, but of only approximately $3.55 million in the event of a forced sale. Although at some point HGRL/the liquidators became aware of the purchase of the mortgage, it seems that they may not have known about the other matters to which I have just referred.

[12] In order to realise its securities by selling the Gills Rd property, LY needed to resolve the claims by the caveators. An arrangement with them was reached which permitted LY to sell, provided that the sale proceeds were to be applied first to the CFL mortgage (acquired by LY), but with $2 million to be paid into the trust account of LY's solicitors (Stace Hammond):[1]

> … to be distributed either by agreement as between the applicant (LY), HGRL, the Second Respondents [the caveators] and any other party making a claim on the funds or by order of the Court or arbitrator.

[13] On 21 November 2013 LY exercised its rights as mortgagee and sold the Gills Rd property to Marmande Property Investments Limited for $4,300,000.

[14] The plaintiffs were aware of these events and were concerned to protect their claim against the partnership for their contribution to it. On 22 November 2013, the first plaintiffs' solicitors wrote to Stace Hammond regarding the sums held on trust. They said:[2]

> Our clients would be satisfied if an undertaking was provided ensuring that the funds so held cannot be distributed without the written consent of the liquidators of Hunter Gills Road Limited so that Hunter Gills Road Limited's claim can be determined along with other claims.

[15] The initial indication in response was that LY would be willing to provide such an undertaking but, on 13 December 2013, Stace Hammond informed the liquidators that LY would not do so. Later that day, a statement was instead made by Stace Hammond in the following terms:

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1 Consent memorandum filed in CIV 2013-404-3134.

2 Affidavit of Damien Mitchell Grant dated 10 February 2014 (exhibit 10).

> I undertake that the $2M in our trust account can only be released upon agreement by all parties to the proceedings or by order of the Court or an arbitrator.

[16] Neither HGRL nor the liquidators were "parties to the proceedings", which were between LY and the caveators. The fact that the caveators did not live in New Zealand gave rise to a concern by the plaintiffs about dissipation of the trust account funds overseas.

[17] The plaintiffs say that after a meeting failed to result in a compromise they commenced proceedings to protect their position by seeking a freezing order. As I have said, that application was filed on 10 February 2014. Undertakings as to damages were given by Messrs Grant and Gilbert.

[18] The basis upon which the freezing order was sought was a claim by the plaintiffs that LY had breached duties owed under ss 176 and 185 of the Property Law Act 2007 when exercising its right as mortgagee to sell the Gills Road property. In particular, it was alleged that:

(a) LY sold the property at an undervalue of $1.7 million (the plaintiffs said it was worth $6 million); and

(b) LY was only owed $2.5 million under the CFL mortgage and it therefore had failed to account for $1.8 million of sale proceeds.

[19] The plaintiffs' statement of claim sought an order for payment of the alleged $1.7 million undervalue and/or the alleged $1.8 million of unaccounted sale proceeds.

[20] As I understand it, shortly before the freezing orders were made, all but $325,000 of the $2 million was paid out of the trust account, as a result of a settlement reached at a mediation between LY and some of the caveators in early February.[3] The remaining $325,000 was earmarked as settlement funds in relation to the claim by the other caveators.

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[3] A proportion of these funds were paid to the caveators, with the rest going to LY.

[21] On 17 February 2014 LY applied to set aside the freezing order.

[22] On 18 February 2014 LY's solicitors wrote to the plaintiffs' solicitors explaining why they considered that the plaintiffs' claim was misconceived. The response included a bundle of supporting materials, including the two valuations obtained by LY prior to the sale and details of the sums owed to LY. The letter also stated that if the plaintiffs agreed to withdraw their claims by 21 February 2014, then no costs would be sought. The letter advised that indemnity costs would be sought if the claims were not withdrawn.

[23] Timetable orders in relation to LY's application to rescind the freezing order were made on 19 February 2014. Under those directions, LY was required to file and serve its affidavits in support of its application by 26 February 2014. A one-day fixture was allocated for 13 March 2014.

[24] On 21 February 2014 the plaintiffs filed a notice of opposition to the application to set aside the freezing orders. Their solicitor also responded to the letter of 18 February stating that:

> We are cognisant that you required a reply by midday today.
>
> However, given that there is a timetable for the proceedings in the High Court now and we await receipt of the affidavit of Wei Yu, we propose that we will reply on before the date for filing of our affidavit in reply, being 5 March 2014.

[25] The second defendant subsequently prepared and filed two affidavits, one from Mr Yan and one from an expert, Mr Colcord.

[26] The plaintiffs filed a reply affidavit dated 7 March 2014 taking issue with Mr Yan's evidence that $4,819,655 had been advanced under the first mortgage (being the mortgage arising from LY's partnership contribution). Mr Grant said:

> However, I dispute that the sum incurred under the First Mortgage is now $4,819,655. I note that whilst Mr Yan has annexed a complete statement of the first mortgage account, he has failed to provide individual invoices to support the account…

> Accordingly, I dispute Mr Yan's affidavit as outlined above, until such a time that the defendants' are able to provide the evidentiary documents to support their position.

[27] LY then approached the director of 125 Gills Limited, Craig Thorburn, to provide a further affidavit. Mr Thorburn swore an affidavit dated 11 March 2014 attaching the loan variation agreements which was further evidence that the first mortgage had increased to $4,819,655.

[28] At 4.35 pm on 12 March 2014 the plaintiffs withdrew their opposition to the application to set aside.

Indemnity Costs

[29] Rule 14.6(4) of the High Court Rules sets out the circumstances in which indemnity costs may be ordered. In the present case LY relies on r 14.6(4)(a) and says that the plaintiffs acted "improperly or unnecessarily in commencing, continuing, or defending a proceeding". It contends that the plaintiffs:

(a) took no steps to assess whether or not the property sale at $4.3 million was at an undervalue and did not write to LY requesting for information to support the sale price; and

(b) had every opportunity to carry out an investigation into the debts owed to LY by the partnership but did not do so.

[30] In other words, LY's claim for indemnity costs is essentially predicated on its contention that if the liquidators had investigated matters properly and/or made appropriate inquiries of LY's solicitors then they would have known that their claims were hopeless. LY says that the plaintiffs could have exercised HGRL/GRVL's partnership rights and accessed the relevant material in that way. In particular they say there was readily available information that would have established that:

(a) LY had obtained two independent valuations of the property prior to the sale that supported the sale price (thus disposing of any basis for the $1.7 million claim); and

(b) the value of LY's registered and unregistered first ranking securities over the property was in excess of $8 million. Accordingly even if the sale had been at undervalue (which was denied), there was no possibility that HGRL had an entitlement to any part of the proceeds (thus disposing of the entirety of the plaintiffs' claim).

[31] LY relies as well on its solicitor's letter dated 18 February 2014 and the offer made at that point to waive any claim to costs if the claim was withdrawn.

[32] In response, the plaintiffs essentially say that:

(a) they were entitled to require LY to establish those matters to their satisfaction and, more specifically, to require LY to provide all supporting documentation before agreeing to the rescission of the freezing order;

(b) they acted at all times in the best interests of the creditors of HGRL; the proceedings were not instigated to benefit the first plaintiffs personally and were filed in good faith;

(c) LY's contention that they made no attempt to request the relevant information is not correct. The plaintiffs refer, in particular, to a letter written by them to the members of the partnership exercising their right to call for a meeting of the partners in September 2013. They say no response was received to this request.

[33] As has been noted on other occasions the word "unnecessarily" in r 14.6(4)(a) must be interpreted in light of the preceding three adverbs ("vexatiously, frivolously, improperly").[4] The word therefore represents a high threshold. As the Court of Appeal said in *Bradbury v Westpac Banking Corporation*:[5]

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4 *Saunders v Winton Stock Feed Ltd* [2009] NZCA 148, (2009) 19 PRNZ 342 at [30].

5 *Bradbury v Westpac Banking Corporation* [2009] NZCA 234, [2009] 3 NZLR 400 at [28] citing *Prebble v Huata* [2005] 2 NZLR 467, (2005) 17 PRNZ 581 (SC) at [6].

> …[i]ndemnity costs… are exceptional and require exceptionally bad behaviour. That is why to justify an order for such costs the misconduct must be "flagrant"…

[34] And at [29] the Court said:

> We therefore endorse Goddard J's adoption in *Hedley v Kiwi Co-op Dairies Ltd* (2002) 16 PRNZ 694 (HC), at para 11, of Sheppard J's summary in *Colgate-Palmolive Co v Cussons Pty Ltd*, at para 24. While recognising that the categories in respect of which the discretion may be exercised are not closed (see r 14.6(4)(f)), it listed the following circumstances in which indemnity costs have been ordered:
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> > (a) the making of allegations of fraud knowing them to be false and the making of irrelevant allegations of fraud;
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> > (b) particular misconduct that causes loss of time to the Court and to other parties;
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> > (c) commencing or continuing proceedings for some ulterior motive;
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> > (d) doing so in wilful disregard of known facts or clearly established law;
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> > (e) making allegations which ought never to have been made or unduly prolonging a case by groundless contentions, summarised in French J's "hopeless case" test.

[35] While it is possible to understand LY's sense of frustration, I do not consider that the plaintiffs' conduct comes anywhere near the indemnity costs threshold discussed by the Court of Appeal in *Bradbury*.[6] In particular I do not accept that they knew or should have known from the outset that the claim was hopeless. It has not, for example, been alleged that there was a breach by the plaintiffs in their disclosure obligations to the Court when obtaining the freezing orders.

[36] Moreover it would, I think, be going too far to say that plaintiffs had an extensive duty to investigate before commencing the proceedings. As my traversal of the history above makes clear, they did take pre-litigation steps to try and ensure that the plaintiff companies' interests/creditors were protected, but their request for a meaningful undertaking was not met. And while in hindsight it might be said that they should have known that intervening events made it likely that the value of the property would have dropped significantly since the $6 million valuation in 2012,

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6 Above n 5.

their belief that it was worth considerably more than $4.3 million was not without some historical foundation.

[37] That said, however, I accept that the plaintiffs position became less tenable once they had been fully advised of the position by LY's solicitors and even more so on receipt of Mr Yan's affidavit. Without information as to the basis (if any) upon which the plaintiffs' might reasonably have disbelieved the factual information they were given, it is difficult not to conclude that they may have dug their toes in more than was strictly necessary. But in my view those are not matters that should give rise to liability for indemnity costs.

Scale costs

[38] Although the plaintiffs submitted that costs should lie where they fall, I do not agree. No reasons were advanced as to why costs should not follow the event. And here, the relevant "event" is the concession by the plaintiffs of the application to set aside on the eve of the hearing. I am unable to see why LY should not be entitled to costs in the normal way.

[39] The plaintiffs say that if costs are awarded against them they should be calculated on a 2B basis as follows:

Item	Description	Daily Rate	Number of days	Total
22	Filing interlocutory application to rescind freezing order dated 17.02.14	$1,990	0.6	$1,194
12	Attendance at callover on 19.02.14	$1,990	0.2	$ 398
24	Preparing written submissions dated 07.03.14	$1,990	1.5	$2,985
25	Preparing the bundle for hearing	$1,990	0.6	$1,194
11	Filing memorandum dated 12.03.14	$1,990	0.4	$ 796
Total				**$6,567**

[40] In opposition LY submits that Category 2C is appropriate under r 14.5 for the steps in relation to LY's application, evidence and bundles. They say a substantial

amount of time was required in relation to these steps due to the volume of material and complexity of the background events that needed to be explained to the Court. Their calculation looks like this:

Step	Particulars	Category	Time	Rate	Total
22	Filing interlocutory applications to rescind freezing order dated 17.02.14	2C	2	1,990	3,980
12	Attendance at callover on 19.02.14	2B	0.2	1,990	398
24	Preparing written submissions dated 07.03.14	2C	3	1,990	5,970
25	Preparing the bundle for hearing	2C	1	1,990	1,990
11	Filing the memorandum dated 12.03.14	2B	0.4	1,990	796
Total					**$13,134**

[41] LY also seek an order for payment of the following disbursements:

(a) the filing fee of $500;

(b) costs relating to the evidence of Ian Colcord in the sum of $2,760.

[42] In light of the history of the matter which I have set out above, I consider that LY's submission is to be preferred. The plaintiffs chose to take a stance which required LY to give a very full account of what had occurred and for all the underlying documentation to be produced. As I have indicated, it is not entirely clear to me (particularly in light of their own ability to investigate or ask questions) why they took that stance, particularly after receiving the solicitors' letter of 18 February. Accordingly, I consider that costs and disbursements of $13,134 and $3,260 respectively are properly payable to LY.

Should costs be awarded against liquidators personally?

[43] Although there appears to be a (short) line of High Court authority to the contrary,[7] the starting point is that liquidators will only personally be liable for costs when their participation in a proceeding arises as a consequence of their performance of their duties as liquidators. They will not be personally liable when they participate in a proceeding merely as agents of the company that is in liquidation.

[44] In *Mana Property Trustee v James Developments Ltd (No 2)* the Supreme Court said this:[8]

> [10] A non-party like a director or liquidator is not at risk of a costs award in other than exceptional circumstances, that is, circumstances outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. In the case of a liquidator that is a principle of very long standing. There is certainly jurisdiction to order a liquidator as a non-party to pay costs personally but such an order will not be made unless there has been some relevant impropriety on the part of the liquidator. The courts recognise that the other party can protect its position, should it be successful, through its ability to seek in advance an order for payment of security for costs. In *Metalloy Supplies Ltd (in liq) v MA (UK) Ltd* Millett LJ summarised the position:
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> > "The court has a discretion to make a costs order against a non-party. Such an order is, however, exceptional, since it is rarely appropriate. It may be made in a wide variety of circumstances where the third party is considered to be the real party interested in the outcome of the suit. It may also be made where the third party has been responsible for bringing the proceedings and they have been brought in bad faith or for an ulterior purpose or there is some other conduct on his part which makes it just and reasonable to make the order against him. It is not, however, sufficient to render a director liable for costs that he was a director of the company and caused it to bring or defend proceedings which he funded and which ultimately failed. Where such proceedings are brought bona fide and for the benefit of the company, the company is the real plaintiff. If in such a case an order for costs could be made against a director in the absence of some impropriety or bad faith on his part, the doctrine of the separate liability of the company would be eroded and the principle that such orders should be exceptional would be nullified.
> >
> > The position of a liquidation is a fortiori. Where a limited company is in insolvent liquidation, the liquidator is under a statutory duty to collect in its assets. This may require him to bring proceedings. … If he brings the proceedings in the name of the company, the company

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7 See *Managh v Jordan* HC Napier CIV-2008-441-547, 17 November 2009 at [7], and *Vance v Lamb* (2009) 19 PRNZ 512 at [9].

8 *Mana Property Trustee v James Developments Ltd (No 2)* [2010] NZSC 124, [2011] 2 NZLR 25 (footnotes omitted).

> is the real plaintiff and he is not. He is under no obligation to the defendant to protect his interests by ensuring that he has sufficient funds in hand to pay their costs as well as his own if the proceedings fail. It may be commercially unwise to institute proceedings without the means to provide any security for costs which may be ordered, since this will only lead to the dismissal of the proceedings; but it is not improper to do so. Nor (if he considers only the interests of the company, as he is entitled to do) is it necessarily unreasonable. "

> [11] That passage has the approval of the Privy Council in what is now the leading case in this country on costs orders against a non-party, *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2)*. The Privy Council recognised that in some cases where a non-party may have both controlled the proceeding and funded it, or is to benefit from it, justice will require that if the proceeding fails, the non-party will pay the successful party's costs:
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> > "The non-party in these cases is not so much facilitating access to justice by the party funded as himself gaining access to justice for his own purposes."
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> Such a person is the real party to the litigation. But that is not ordinarily the position of a liquidator, although it may be the position of a creditor or shareholder who funds a liquidator. As the Privy Council remarked, where the non-party is a liquidator, he or she can realistically be regarded as acting rather in the interests of the company (and more especially its shareholders and creditors) than in his or her own interests. The reluctance of courts to make awards against liquidators who are non-parties is for the very good reason that otherwise they may not be prepared to take on the role and enter into litigation that may be beneficial for the company and thus for creditors.

[45] But the Court qualified its observations at [10] above with the following footnote:

> … It is different when the liquidator is required, or chooses, to bring a proceeding or application in his or her own name, for example an application to set aside an insolvent transaction under s 292 of the Companies 1993, which is a right given to the liquidator and not to the company in liquidation. In such a case, if the liquidator is unsuccessful, he or she may be exposed to a costs award personally - whether or not he or she is able to obtain reimbursement from available company assets …

[46] In the present case, the nature of the proceedings would ordinarily suggest that the liquidators were acting as agents of the companies when instituting them.[9] The proceedings were not commenced pursuant to the particular duties and powers conferred on them by Part 16 of the Companies Act 1993.

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[9] The two Property Law Act causes of action and the cause of action for breach of the partnership agreement were each claims that could have been brought by the companies themselves.

[47] On the other hand, however, the application for the freezing order and the statement of claim names the liquidators personally as the first plaintiffs, not HGRL.[10] Entituling was regarded as relevant by Randerson J when awarding costs against the liquidators personally in *Hart v Stiassny*.[11] And in the present case, counsel for the liquidators has confirmed that the undertakings as to damages (that were conditions precedent of obtaining a freezing order) were given by the liquidators personally.

[48] Relatedly, the urgent nature of the freezing order application meant that there was no opportunity for the defendants to apply for security for costs against HGRL.[12] Had such an application been made and security ordered, then it presumably would have been paid by the liquidators personally, or the claim could not have continued.

[49] In the end, I consider that my conclusion would be the same whether the liquidators are properly to be regarded as parties or non-parties to these proceedings. If they are parties, then they are prima facie liable for costs. If they are non-parties, then I consider that justice favours an award against them in any event.

[50] Although the Court in *Mana Property* has confirmed that non-party awards against liquidators are "exceptional", the Privy Council in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No2)* observed that:[13]

> … exceptional in this context means no more than outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. The ultimate question in any such "exceptional" case is whether in all the circumstances it is just to make the order. It must be recognised that this is inevitably to some extent a fact-specific jurisdiction

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10 Counsel for the plaintiffs has also recently advised that notwithstanding the entituling, the proceedings were commenced by the liquidators on behalf of HGRL. But I have noted above that the liquidator, Mr Gilbert, is also a director of the second plaintiff.

11 *Hart v Stiassny* (1998) 12 PRNZ 240 (HC) at 245. That case had its origins in action taken by the liquidators to set aside a voidable transaction (which had resulted in Mr Hart filing proceedings against them) but also involved a counterclaim by the liquidators under the Credit Contracts Act 1981.

12 The ability to apply for security is often regarded as factor militating against awarding costs against liquidators personally: *Mana Property Trustee v James Developments Ltd (No 2)*, above n 8 at [10], *Metalloy Supplies Ltd (in liq) v MA (UK) Ltd* [1997] 1 WLR 1613 at 1618.

13 *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No2)* [2004] UKPC 39, [2005] 1 NZLR 145 at [25].

> and that there will often be a number of different considerations in play, some militating in favour of an order, some against.

[51] And here, it seems to me that:

(a) the fact that the liquidators chose to commence the proceedings, presumably in the knowledge that HGRL would not have the funds to meet a costs award; [14]

(b) the practical inability of the defendants to obtain security for costs in relation to the application for the freezing order (or the application to have it set aside);

(c) the preparedness of the liquidators to give the requisite undertakings personally; and

(d) the existence of those undertakings;

all favour a non-party costs order here. The further matters I have referred to at [36] and [37] above merely reinforce that view.

Conclusion

[52] Accordingly, I order that costs in the total sum of $13,134, together with disbursements of $3,260 are payable to LY by the second plaintiff and the first plaintiff liquidators personally, subject of course to any indemnity which the liquidators may have against the assets of the HGRL.

Rebecca Ellis J

[14] The relevance of matters of this kind has been referred to in *Re Wilson Lovatt and Sons Ltd* [1977] 1 All ER 274 at 285 and by Randerson J in *Hart v Stiassny*, above n 11.