IN THE HIGH COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

CIV-2012-454-469
[2012] NZHC 3380

IN THE MATTER OF	section 72 of the District Courts Act 1947
BETWEEN	PIONEER FARMS LIMITED Appellant
AND	HAMISH ALEX STODDART AND LYNETTE ANNE RITCHIE Respondents

Counsel: E J H Morrison for Appellant
J G Krebs for Respondents

Judgment: 14 December 2012

In accordance with r 11.5, I direct the Registrar to endorse this judgment with the delivery time of 11.00am on the 14th December 2012.

JUDGMENT OF WILLIAMS J
(COSTS)

Solicitors:
Kirkland Morrison, Lawyers, PO Box 1290, Auckland
Jonathan Krebs, Barrister, PO Box 754, Napier

[1] On 5 June 2012, Judge Ross allowed an application by Mr Stoddart and Ms Ritchie (respondents) to set aside a default judgment entered on 27 February 2012, obtained by Pioneer Farms Ltd (appellant). The appellant appealed to this court against the decision to set aside. I refused the appeal and noted that, while I was minded to leave costs where they fell, memoranda should be filed if counsel felt the position should be otherwise.[1]

[2] Memoranda have since been filed. For the respondents, Mr Krebs submits that costs should follow the event and should be awarded on a category 1A basis. In support, he says:

(a) the appellant delayed significantly in lodging its initial claim;

(b) that claim was minor and should have been dealt with in the Disputes Tribunal;

(c) the respondents were successful in having the default judgment obtained in relation to that claim set aside;

(d) there has been no disentitling conduct on the respondents' part.

[3] The appellant opposes that course. Mr Morrison submits costs should instead lie where they fall, because:

(a) to the extent the respondents incurred costs getting the default judgment set aside, they were the masters of their own misfortune. They delayed significantly after the appellant's claim was lodged. In particular, they lodged no formal response until after the default judgment had been obtained and served on them *and* bankruptcy notices had been taken out against them and had expired;

(b) the appellant, by contrast, complied with all relevant timetabling requirements;

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[1] *Pioneer Farms Ltd v Stoddart* [2012] NZHC 3114.

(c) there was never any suggestion the respondents were keen to resolve the dispute through the Disputes Tribunal; and

(d) the respondents only succeeded in showing an arguable case in relation to a counter-claim for set-off. They accepted they owed the appellant money; the issue was only by how much that should be reduced (if at all).

[4] I agree with Mr Morrison. This is not a case where the successful respondents should get costs. Costs must lie where they fall. Put simply, there has been fault and delay on both sides. While the respondents succeeded on appeal, their delay in responding to the appellant's initial claim until the very last minute must be recognised. That is appropriately recognised by requiring each party to bear their own costs.

[5] There will be no costs order accordingly.

Williams J