

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

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

**CIV-2016-409-000780
[2019] NZHC 2341**

BETWEEN SETTLERS CRESCENT PARTNERSHIP
 Plaintiff

AND IAG NEW ZEALAND LIMITED
 Defendant

Hearing: Determined on the papers

Counsel: S P Rennie and WAL Todd for Plaintiff
 BRD Cuff and C Halliday for Defendant

Judgment: 17 September 2019

**JUDGMENT OF GENDALL J
As to Costs**

This judgment was delivered by me on 17 September 2019 at 10:30 a.m. pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: 17 September 2019

[1] Following a four day hearing in this Court in September 2018, on 25 October 2018 I issued a judgment in favour of the defendant, IAG New Zealand Limited, on the claim against it by the plaintiff, Settlers Crescent Partnership.

[2] In doing so, at para [52] of that judgment I reserved costs. I had noted there the usual principle that costs should follow the event. Then I went on at para [52] to request that counsel discuss this issue of costs between themselves and I specified that:

If they are unable to agree, they may file (sequentially) memoranda on costs (a maximum of five pages each). These are to be referred to me and, in the absence of either party indicating that they wish to be heard on the issue, I will decide the question of costs based on the memoranda filed and the material then before the Court.

[3] Almost one year has elapsed since my judgment of 25 October 2018. In that time:

(a) On 22 November 2018 the plaintiff, Settlers Crescent Partnership, filed an appeal against my 25 October 2018 decision in the Court of Appeal.

(b) On 20 March 2019 the Court of Appeal issued a Notice of Result with respect to that appeal which stated:

Pursuant to r 43 of the Court of Appeal (Civil) Rules 2005, [this] appeal filed on 22 November 2018, has expired and is now deemed abandoned as at 20th day of March 2019.

(c) Nearly six months later, on 6 September 2019, counsel for the defendant, IAG New Zealand Limited, has filed in this Court a memorandum seeking costs and disbursements totalling \$297,621.72 against the plaintiff, Settlers Crescent Partnership, on the High Court proceeding and trial before me.

(d) On 13 September 2019 counsel for the plaintiff, Settlers Crescent Partnership, filed in this Court a memorandum in response relating to the defendant's claim for costs and disbursements.

[4] Essentially, as the successful party in this Court, the defendant seeks an order for category 2B scale costs plus an uplift. Taking into account an allowance for second counsel appearance at the hearing, this amount is said to total \$51,067. Together with a 50 per cent uplift of scale costs for hearing matters which totals \$10,035, the total amount, therefore, sought by way of category 2B costs with the requested uplift comes to \$61,102.

[5] In addition to this costs amount, substantial disbursements in accordance with invoices which have been attached to counsel's memorandum are sought by the defendant. These total \$236,519.72.

[6] In all, therefore, the total amount sought by the defendant for costs and disbursements in this matter, as I have noted above at [3](c) is therefore, \$297,621.72.

[7] In response, counsel for the plaintiff in his memorandum essentially sets out two competing positions:

- (a) His primary position here is that the entitlement of the defendant should be capped by what the Partnership says is the defendant's abandonment of a (two day) separate question hearing which was originally to take place in this matter but was superseded by the full trial. This primary position, according to counsel for the plaintiff, would result in an award of category 2B scale costs, limited to that two day scheduled hearing of \$29,090 (or reduced to \$26,700 if the plaintiff is awarded a costs entitlement for providing the costs memorandum itself). In addition to this costs figure, counsel for the plaintiff suggests limited disbursements comprising factual witness' expenses of only \$941.68 and other disbursements of only \$220 should be awarded under this primary position.
- (b) Counsel then indicates that if the Court does not accept the plaintiff's primary position then the Partnership's secondary position is that the defendant is entitled at most only to a sum of \$157,108.06 calculated as follows:

(i)	Category 2B scale costs for the four day hearing (excluding an allowance for second counsel and with no uplift)	\$45,960.30
(ii)	Factual witness disbursements	\$6,437.33
(iii)	Expert witness disbursements	\$104,490.43
(iv)	Other disbursements	\$220.00
		\$157,108.06

[8] At the outset I note, as I have outlined at para [2] above, that my directions at para [52] in the 25 October 2018 judgment indicate that the memoranda on costs to be provided by counsel were to be for a maximum of five pages each.

[9] The memorandum from counsel for the defendant occupied a little over six pages. It was accompanied by two and a half pages of schedules and copies of a significant number of attached tax invoices.

[10] In response, counsel for the plaintiff provided his memorandum on costs totalling some 11 pages with a further one page schedule and a number of additional attachments.

[11] Although I have read and considered all of the material provided in these memoranda, at this point I intend to provide a reasonably brief results judgment only.

[12] In doing so, I make it clear that:

- (a) I reject the plaintiff's primary position on costs advanced to me as outlined at para [7](a) above. This matter proceeded to a four day hearing and scale costs for that hearing are appropriately awarded to the defendant as the successful party.
- (b) Those scale costs are not to attract any uplift in all the circumstances here, but there is to be an allowance for second counsel.
- (c) As to an amount for the defendant's disbursements to be awarded in this case, I am satisfied that factual witness disbursements of \$6,437,33,

expert witness disbursements of \$104,490.43 and the other disbursements of \$220 as suggested by counsel for the plaintiff are appropriate here.

- (d) That said, category 2B scale costs for this matter, including the four day hearing and an allowance for second counsel (but without any uplift) totalling \$51,067 are awarded to the defendant.
- (e) In addition, disbursements totalling \$111,147.76 (calculated as outlined at para [12](c) above are also to be awarded to the defendant.

[13] An order is now made that the plaintiff is to pay to the defendant costs calculated on a category 2B schedule basis totalling \$51,067 together with disbursements totalling \$111,147.76, making a total for High Court costs and disbursements on this matter of \$162,214.76.

[14] I have noted above that this is largely a results judgment. If further reasons may be required, then counsel are to discuss this together and an appropriate request memorandum is to be filed.

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Gendall J

Solicitors:
Rhodes & Co, Christchurch
DLA Piper, Auckland