

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

**CIV-2010-485-2395
[2013] NZHC 1124**

BETWEEN ALBACORE FISHERIES LIMITED
Applicant

AND SUNSAI LIMITED
Respondent

Hearing: On papers

Counsel: K Smith for Applicant
No appearance for Respondent
R Gordon for Ian Pharaoh

Judgment: 17 May 2013

*In accordance with r 11.5, I direct the Registrar to endorse this judgment
with the delivery time of 10.30am on the 17th May 2013.*

**JUDGMENT OF WILLIAMS J
(COSTS)**

[1] On 10 February 2012, I made an order restoring Sun sai Limited to the register of companies to allow Albacore Fisheries Limited to pursue it in respect of a dispute over defective product that it purchased. I understand that Albacore Fisheries Limited has taken no steps in that respect in the interim.

[2] Meanwhile however, Mr Gartrell, has applied for costs in respect of his successful application. His application is sparse to say the least.

[3] In rejoinder, Mr Gordon for Mr Ian Pharaoh (a non-party but former director of Sun sai Limited), submits that Sun sai Limited has now been put into voluntary liquidation. The effect of that is that s 248(1)(c)(i) is engaged. This provides that no person may commence or continue legal proceedings against Sun sai Limited or in

relation to its property unless the company's liquidator agrees or this court orders otherwise.

[4] That presents a significant obstacle for Mr Gartrell. Clearly applying for costs in a successful application amounts to continuing legal proceedings against the company or in relation to its property.

[5] Although presented with this significant obstacle, it appears that Mr Gartrell has gone to ground.

[6] I issued a minute on 29 April 2013 asking Mr Gartrell for any submissions on these points by 3 May 2013. He requested an extension until 6 May which I granted. That date has come and gone without further response.

[7] I am satisfied therefore that no award of costs should be made. I see no basis upon which I would make such an order in this case.

[8] The applicant has taken no steps since the original order was made and counsel has not seen fit to make submissions to the court on the question.

[9] The application for costs is dismissed accordingly.

Williams J