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

**CIV-2012-409-2536**
**[2014] NZHC 3357**

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| BETWEEN | AVONSIDE HOLDINGS LIMITED<br>Plaintiff |
| AND | SOUTHERN RESPONSE EARTHQUAKE SERVICES LIMITED<br>Defendant |

Hearing: On the papers

Counsel GDR Shand and AME Parlane for Plaintiff
C R Johnstone and S E Waggott for Defendant

Judgment: 19 December 2014

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**COSTS JUDGMENT (N° 2) OF MACKENZIE J**

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*I direct that the delivery time of this judgment is 11.30 am on the 19th day of December 2014.*

Solicitors: Grant Shand, Christchurch, for Plaintiff
Wynn Williams Lawyers, Christchurch, for Defendant

[1] The plaintiff applies for costs following its successful appeal to the Court of Appeal.[1]

[2] In my costs judgment delivered on 6 September 2013, I made no order as to costs, on the grounds that both parties had a measure of success, that the plaintiff had not received a monetary award as a result of the judgment, and that it was in the interests of both parties to obtain a determination from the Court of the maximum amount payable under the policy.[2]

[3] That assessment needs to be revisited following the larger measure of success which the plaintiff has had in the Court of Appeal.

[4] Counsel for the plaintiff submits that costs should now be awarded, on a 2B basis.

[5] Counsel for the defendant submits that had this Court reached the same conclusions the Court of Appeal subsequently did, the plaintiff and defendant would still each have had a measure of success, and the reasons for my original determination would have remained valid.

[6] I consider that the measure of success which the plaintiff has had requires a reassessment. It is clear that the Court of Appeal was of that view, when it said that the outcome of the appeal will necessitate a different costs outcome in the High Court.[3]

[7] The proposition that each party had had a measure of success, so that the plaintiff could not be regarded as a successful party, was the most important reason for my earlier judgment. The other matters referred to were of less significance. They are now outweighed by the measure of success which the plaintiff has had, and do not by themselves justify a departure from the general principle in r 14.2(a) of the High Court Rules that a successful party is entitled to costs.

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1 *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd* [2014] NZCA 483, (2014) 18 ANZ Insurance cases 62-040

2 *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd* [2013] NZHC 2322.

3 *Avonside Holdings Ltd v Southern Response Earthquake Services Ltd*, above n 1, at [66].

[8] I consider that the question of costs should now be approached on the basis that the measure of success which the plaintiff has had should result in it being treated as a successful plaintiff for the purposes of costs.

[9] The plaintiff is accordingly entitled to costs on a 2B basis.

[10] The amount claimed is $48,158. The defendant does not challenge that calculation. Disbursements of $29,485.47 are also claimed. Again, that amount is not challenged.

[11] Counsel for the plaintiff submits that interest should run from the date of my earlier costs judgment dated 6 September 2013. I consider that that is appropriate. Counsel for the plaintiff also seeks an award of costs for preparation of the costs memorandum. I allow a half day at the category 2 rate, the sum of $995.

[12] There will accordingly be an award of cost in the amounts specified in [10] and [11], plus interest at the prescribed rate from 6 September 2013.

**"A D MacKenzie J"**