

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

**CIV-2007-404-700**

BETWEEN PEACE AND GLORY SOCIETY  
LIMITED (IN LIQUIDATION)  
First Plaintiff

AND DAVID STEWART VANCE AND HENRY  
DAVID LEVIN LIQUIDATORS OF  
PEACE AND GLORY SOCIETY  
LIMITED (IN LIQUIDATION)  
Second Plaintiffs

AND STEFANO SAMSA  
Defendant

Hearing: By memoranda

Appearances: Mr S Wimsett for second plaintiffs  
Mr A M Swan for defendant

Judgment: 20 April 2011 at 10:00 AM

---

**JUDGMENT OF LANG J  
[as to costs]**

---

*This judgment was delivered by me on 20 April 2011 at 10 am, pursuant to Rule 11.5 of  
the High Court Rules.*

*Registrar/Deputy Registrar*

*Date.....*

[1] On 2 December 2008 Hugh Williams J delivered a reserved judgment in which he dismissed claims by the plaintiffs alleging breaches by the defendant of ss 131, 135, 136, 137 and 194 of the Companies Act 1993.

[2] The Court of Appeal subsequently upheld the Judge's decision, although it held that a breach of s 136 had been made out. It was not satisfied, however, that compensation should be awarded in respect of the breach. For that reason it dismissed the appeal. The breach of s 136 led the Court of Appeal to conclude that costs should lie where they fall in relation to the appeal.

[3] The defendant now seeks costs in relation to the trial in this Court. He claims that he was the successful party, and that the second plaintiffs ought to pay costs and disbursements to him on a Category 2B basis. Given that Hugh Williams J has retired, it now falls to me to deal with the issue of costs on the papers.

[4] The Court of Appeal has now finally determined the issue of liability. That determination informs the approach to be taken in relation to costs in this Court.

[5] Although the Court of Appeal was not prepared to award compensation in respect of the breach, nevertheless counsel for the defendant had conceded a clear breach of s 136 on the part of the defendant. That concession formed the basis for the Court's conclusion that no order for costs should be made.

[6] No justification exists for adopting a different approach to costs in this Court. It is clear, in fact, that Hugh Williams J did not anticipate that the defendant would seek an award of costs even though he was the successful party. At [118] he noted that it was "unlikely" that he would take that step. I take that comment to relate to the fact that the Judge had found that the defendant had been tardy in producing documents to the liquidator. He had also failed to keep proper records, although the Judge did not consider this to be causative of the company's loss.

[7] Added to this is the fact that the defendant was guilty of significantly breaching his obligations regarding discovery in this Court on two occasions. This led to a trial being vacated in March 2010, and to further problems when he

produced more undiscovered documents just before the commencement of the trial before Hugh Williams J in October 2010.

[8] For these reasons I have concluded that costs should lie where they fall.

---

Lang J

Solicitors:  
Meredith Connell, Auckland  
Walker Associates, Auckland  
Counsel:  
Mr A M Swan, Auckland