

IN THE COURT OF APPEAL OF NEW ZEALAND

CA549/2010
[2011] NZCA 65

BETWEEN GILBERT DALE CHAPMAN AS
LIQUIDATOR OF EAST TAMAKI
CURRY HOUSE LIMITED
Appellant

AND RAMAKRISHNA KULOOR RAI
Respondent

Counsel: A M Swan for Appellant
R J Hollyman for Respondent

Judgment: 14 March 2011 at 11:00 AM

JUDGMENT OF CHAMBERS J

- A The appellant must pay to the respondent costs of \$500.**
- B The Registrar is directed to disburse the \$5,560 held as security for costs as follows:**
- (i) \$500 to be paid to the respondent's solicitors in payment of the costs award;**
 - (ii) The balance to be refunded to the appellant's counsel, Mr Swan.**

REASONS

[1] Gilbert Chapman, the appellant, has abandoned his appeal. Ramakrishna Rai, the respondent, sought costs of \$500 with respect to the now abandoned appeal. Mr Swan, for Mr Chapman, consents to costs in that sum. Accordingly, I so order.

[2] Mr Chapman paid security for costs on this appeal in the sum of \$5,560. Mr Hollyman, for Mr Rai, has sought that that sum be paid to his instructing

solicitors in part payment of unpaid costs in Mr Rai's favour in the High Court. Mr Swan opposed such a direction. What Mr Hollyman wants is not possible. Security for costs is payable in this court as "security for the respondent's costs in the Court [of Appeal]".¹ That is the only purpose for which the money so paid can be used. Accordingly, it is appropriate for me to direct that the Registrar should disburse from the money held \$500 to Mr Rai in full payment of the costs I have awarded in his favour. But the balance must be returned to the person who paid the security. At Mr Chapman's direction, I order that the balance be paid to his counsel, Mr Swan.

[3] Mr Rai will have to look to other methods of enforcement of the High Court award of costs in his favour.

Solicitors:

Whitlock & Co, Auckland, for Appellant

Holmes Dangen & Associates Limited, Auckland, for Respondent

¹ Court of Appeal (Civil) Rules 2005, r 35(2).