

IN THE COURT OF APPEAL OF NEW ZEALAND

CA424/2012
[2014] NZCA 580

BETWEEN NEW ZEALAND CARDS LIMITED
Appellant

AND COLIN RAMSAY
Respondent

Court: Miller, Heath and Dobson JJ

Counsel: No appearance for Appellant
S G Wilson for Respondent

Judgment: 1 December 2014 at 11.30 am
(On the papers)

JUDGMENT OF THE COURT

- A The respondent's application for increased costs is declined.**
- B The appellant must pay the respondent's costs as for a standard appeal on a band A basis.**
- C The quantum of the costs is \$7,612.**
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REASONS OF THE COURT

(Given by Dobson J)

[1] This appeal had a somewhat protracted history before it was dismissed in the absence of submissions in support of the appeal. The circumstances in which that occurred are explained in our judgment dismissing the appeal, delivered on 23 October 2014.¹ Costs were reserved pending memoranda.

¹ *New Zealand Cards Ltd v Ramsay* [2014] NZCA 512.

[2] We have subsequently received memoranda, first on behalf of the respondent dated 29 October 2014 seeking increased costs, and a reply on behalf of the appellant from Mr Beresford dated 12 November 2014.

[3] For the respondent, Mr Wilson sought increased costs for pre-hearing steps in responding to the appeal on the basis that the appellant's conduct, and in particular Mr Beresford's conduct in failing to comply with directions from the Court, unnecessarily contributed to additional costs incurred on behalf of the respondent. Although the respondent was excused from the formal requirement to file submissions given the non-filing of submissions for the appellant, Mr Wilson has submitted that additional costs were incurred in monitoring Mr Beresford's numerous contacts with the Registry, undertaking a measure of preparation for hearings that did not proceed in February and July 2014, and in considering earlier unsuccessful interlocutory applications by the appellant in July and August 2012 and January 2013.

[4] Mr Wilson sought an uplift of 75 per cent on costs as for a standard appeal on a band A basis for pre-hearing attendances, the effect of which would be to add \$447.75 to the costs entitlement.²

[5] Mr Beresford opposed the costs sought on the basis that the claims are excessive, often factually wrong and often spurious. Mr Beresford urged the Court to undertake a further inquiry as to the work actually done on behalf of the respondent by Mr Wilson, and also an inquiry into the failings of counsel and solicitors previously instructed by the appellant. If we were minded to accept Mr Beresford's criticisms of those acting for him, they would not be relevant to quantification of the successful respondent's costs entitlement. In any event, we are not inclined to accept that the criticisms Mr Beresford makes of counsels' conduct had a material bearing on the pre-hearing steps where Mr Wilson claims that additional or unnecessary work was required on behalf of the respondent.

[6] The largest component of the scale costs relates to preparation for hearing of the appeal, where band A for a standard appeal allows for three days at \$1,990 per

² Court of Appeal (Civil) Rules 2005, ss 53B and 53C.

day. That allowance is intended to include the work in settling submissions in final form and filing them with the Court. Mr Wilson has submitted that in preparing for the hearing he had to prepare a draft of submissions in response to the appeal. However, the respondent did not have to file submissions so the level of work ordinarily reflected in that item of scale costs was not required.

[7] We are satisfied that that consideration balances out the larger extent of response required on other pre-hearing aspects. It follows that we do not consider increased costs are justified.

[8] Accordingly, we order costs as for a standard appeal on a band A basis. However, we are not prepared to award the scale costs claimed for the preparation of the costs memorandum, \$995, given the application for increased costs is declined. We consider that amount should be halved. The quantum is therefore \$7,612: the \$8,109.50 specified in appendix 1 to Mr Wilson's memorandum (which includes the sealing fee for judgment) with a reduction of \$497.50.

[9] We add by way of postscript that Mr Beresford has very recently made further unsolicited submissions. We reject them. To the extent he complains about costs, those complaints do not justify departure from scale. To the extent he complains about not being heard when he went to court, unrepresented, on 22 October, we refer to the narrative in our judgment of 23 October 2014.

Solicitors:
Duncan Cotterill, Christchurch for Respondent