

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA653/2023  
[2024] NZCA 699**

BETWEEN

JIAWEN MAO  
First Applicant

LIANSEN MAO  
Second Applicant

AND

HESKETH HENRY  
First Respondent

ARA KIM / COOPER & CO REAL  
ESTATE LIMITED  
Second Respondents

HYUN BIN KIM  
Third Respondent

DUK YOUNG LEE  
Fourth Respondent

Court: Mallon and Collins JJ

Counsel: D Zhang for Applicants  
F B Barton for First Respondent  
K D Perry for Second Respondents  
R D Butler for Third and Fourth Respondents

Judgment: 20 December 2024 at 12 pm  
(On the papers)

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**JUDGMENT OF THE COURT**

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**Costs are awarded to the second respondents on a Band A basis with usual disbursements.**

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## REASONS OF THE COURT

(Given by Mallon J)

[1] The applicants brought proceedings in the High Court against the respondents arising out of losses they incurred following a guarantee they had given. Their proceedings were struck out as an abuse of process. The High Court ordered indemnity costs in favour of the first and second respondents and increased costs in favour of the third and fourth respondents. The applicants sought a stay of execution of the costs judgment.<sup>1</sup> This was also struck out by the High Court as an abuse of process.

[2] The applicants then filed in this Court an application for an extension of time to appeal against the main High Court judgment striking out their proceedings.<sup>2</sup> They also applied for a stay of enforcement of that judgment and the costs judgment. These applications were set down for hearing for the week of 27 May 2024. On 23 May 2024 the applicants filed a notice of abandonment. The applications were therefore deemed abandoned.

[3] The second respondents now seek costs on the abandoned applications. They say that they should have indemnity costs in the amount of \$13,790.<sup>3</sup> Alternatively, they seek scale costs with a 100 per cent uplift, being an amount of \$4,302.<sup>4</sup> The applicants oppose costs and note that the other respondents all agreed that costs would lie where they fell.

[4] The abandonment of the applications does not affect the power of the Court to make an order for costs in respect of them.<sup>5</sup> Having considered the submissions and the file, we consider it is appropriate to order costs on a Band A basis with usual disbursements in the second respondents' favour for the steps taken in this Court.<sup>6</sup>

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<sup>1</sup> *Mao v Hesketh Henry* [2023] NZHC 813.

<sup>2</sup> *Mao v Hesketh Henry* [2022] NZHC 2084. There had been other decisions in connection with the dispute.

<sup>3</sup> Court of Appeal (Civil) Rules 2005, r 53E.

<sup>4</sup> Rule 53E(2)(a).

<sup>5</sup> Rules 27C and 26A(3).

<sup>6</sup> Schedule 2.

Although indemnity costs were awarded in the High Court, the steps taken in this Court were limited and then sensibly abandoned.

[5] The costs order is made against the first and second applicants on a joint and several basis. Section 76 of the Insolvency Act 2006 does not stand in the way of a costs order.<sup>7</sup>

Solicitors:

Advent Ark Lawyers, Auckland for Applicants

Anderson Lloyd, Dunedin for First Respondent

Heaney & Partners, Auckland for Second Respondents

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<sup>7</sup> See *Rabson v Chapman* [2016] NZCA 45 at [13]; *Skelton v Howcroft* [2018] NZCA 140 at [22]; *Tea Custodians (Bluestone) Ltd v TJ Barnett* HC Wellington CIV-2011-485-17, 6 December 2011 at [17]; and *Rakich v Rakich* HC Auckland CIV-2010-404-1654, 28 October 2010 at [3].