15/10

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A. 583/73

1263

(Appeal filed from costs judgment)

BETWEEN THE NAURU LOCAL GOVERNMENT COUNCIL

Plaintiff

A N D THE NEW ZEALAND SEAMEN'S INDUSTRIAL UNION OF WORKERS

First Defendant

A N D WILLIAM MARTIN and JAMES WOODS

Second Defendants

A N D THE WELLINGTON AMALGAMATED WATERSIDERS' INDUSTRIAL UNION OF WORKERS

Third Defendant

A N D JAMES WILLIAM MILNE and IAN CRAWFORD SMITH

Fourth Defendants

A N D THE NEW ZEALAND HARBOUR BOARD EMPLOYEES' INDUSTRIAL UNION OF WORKERS

Fifth Defendant

A N D HAMILTON THOMPSON and GERARD GERAGHTY

Sixth Defendants

A N D YVONNE MARY GROVE as executrix of the will of TOBIAS McGLINCHY HILL

Seventh Defendant

Hearing: 17 August 1984

Counsel: R.W. Edgley QC and A.D.D. Mayne for Plaintiff
W.S. Shires QC for Second Deft Woods
C.H. Arndt for Third, Fourth, and Seventh Defts

Judgment: 11 October 1984

DIRECTIONS OF ONGLEY J. AS TO ENTRY OF JUDGMENT

Judgment in this action was delivered on 27 July 1982 but has not yet been sealed. The question of costs was reserved but an amount has now been agreed upon as between the plaintiff and first defendant and I am prepared to adopt their figure of $30,000 in full satisfaction of all claims as between them for costs, disbursements and witnesses' expenses. I have not been asked to deal with costs as between the other defendants and the plaintiff and so that question remains at large.

Counsel for plaintiff and first defendant each seek clarification of points in my reserved decision before judgment is sealed. An appeal is pending on limited aspects of the judgment which is required to be sealed so as to permit the appeal to proceed.

The point raised by Mr Edgley affects the amount for which judgment was given and it is suggested that the amount was in error because of two slips, one favouring the defendant and the other favouring the plaintiff. An amount of $852.00 is said to favour the defendant and a lesser amount of $45.00 is said to favour the first defendant. The first defendant opposes any amendment of the judgment to accommodate either of these alleged discrepancies but if an adjustment is made to remedy the larger error then it submits that the other should be adjusted also. It would not be warranted for me to go through the detailed evidence but I set out hereunder an extract from a letter written by Mr Edgley to the defendants' solicitors which identifies the area of the dispute as follows:

> "Ongley J. at page 43 of his Judgment gave figures for items incurred in any event totalling $137,100, i.e. an increase of $807.00 on Mr McCaw's figure. The first, second and fourth figures given by Mr McCaw were repeated by the Judge, but for victualling and maintenance he increased the figure by $852.00 to make a figure of $7752.00 for this item. This obviously resulted from his taking the total of $7752.00 at the foot of page 2 of the Amended Schedule. Of this amount $852.00 (actually $852.20) was in respect of accommodation for 5 - 6 June 1973 during the unnecessary cyanide fumigation. This amount would not have been incurred in any event. The Judge also omitted to add the $45.00 for the Harbour Board."

It appears to me that Mr Edgley's contention is probably correct and that a mistake has been made in calculating the damages but the first defendant does not concede that this is so. In the circumstances I do not think that I should make any alteration to the amount of the damages at this late stage because the error has not in truth occurred through a slip. The amount found to be payable may be incorrect but it is nonetheless the result of a finding which I made on the evidence as I then interpreted it, albeit mistakenly. Little inconvenience will be occasioned to either party by allowing the finding to stand. There are other points affecting the quantum of damages to be argued on appeal and I have no doubt that this point can be covered at the same time.

The point raised by Mr Shires is one of greater difficulty. At the end of the judgment delivered on 27 July 1982 this passage occurs:

"The damages suffered by the plaintiff therefore are the two amounts $58,568.66 and $5000.00, a total of $63,568.66.

The plaintiff is entitled to judgment on the ninth cause of action against the First Defendant for that amount with interest at the rate of 11% per annum from 23 July 1973 down to the date of judgment. All other claims are dismissed. I will hear Counsel on the question of costs."

On 6th December 1982 I heard Counsel again on a motion for directions as to the form of judgment and for orders as to costs and payment of monies out of Court. The defendants had paid into Court amounts totalling $66,000.00 with a denial of liability, a fact of which I had not been aware when giving my decision in the action. A crucial question therefore arose affecting the award of costs and the form of the judgment the resolution of which depended upon whether interest was to be taken into account in determining whether the plaintiff had failed "to recover a greater sum of money than the sum paid into Court", so as to be deprived of the costs of the trial. I held that the interest was to be taken into account and awarded costs to the plaintiff against the first defendant saying:

"I allow costs according to scale on the amount recovered including interest to today's date which I compute as $65,720.42 making a total amount for which judgment will be entered of $129,229.08. ... I will deal with any matters requiring clarification on application and will enter final judgment when the costs have been fixed."

I also directed that the monies paid into Court which had been invested by the Registrar in an interest bearing account be paid to the plaintiff in partial satisfaction of the judgment. I further expressly directed that interest on the damages cease to run from that date.

Mr Shires points out that that last direction appears to be in conflict with the earlier statement indicating that final judgment would not be entered until the costs had been fixed. Mr Shires' concern is that if judgment is taken to have been entered at 15 December 1982, the date at which the interest was quantified, his client will have been liable under R.305 of the Code of Civil Procedure for interest on the judgment debt since that time with the result that interest is being paid upon interest. It appears to me that to a greater or lesser extent that is inevitable where interest upon damages is awarded but I do not see it as my proper function at this stage to purport to make any pronouncement as to what is or should be the effect in law of the course that has been followed in this long drawn out trial. I should limit myself, I believe, to stating what my intention has been at various stages and to that end I record the following:

1. On 27 July 1982 I pronounced judgment quantifying the damages and fixing the rate of interest and the date from which it was payable.

2. On 15 December 1982 I quantified the interest to that date with the intention that judgment should ultimately be entered for that amount and costs which were not then fixed.

3. On 17 August 1984 the costs were quantified at a figure agreed upon by the parties and adopted by the Court.

What further interest may be payable on those various sums may be calculated by reference to R.305 of the Code of Civil Procedure applied in accordance with the authorities cited in Sim and Cain : Practice and Procedure in the note to the rule at p.305.

It only remains for me to direct that judgment now be entered for the plaintiff against the first defendant for the sum of $129,299.08 plus $30,000.00 for costs making a total sum of $159,299.08.

Solicitors:

Edgley, Robert Whaley, Q.C., P.O. Box 1811, Wellington; Hogg, Gillespie, Carter & Oakley, P.O. Box 241, Lower Hutt for Plaintiff

Shires, William Stuart, Q.C., P.O. Box 835, Wellington for Second Deft Woods

O'Regan, Arndt, Peters & Evans, P.O. Box 807, Wellington for Third, Fourth, and Seventh Defts