

BETWEEN:     REM PUBLICATIONS LIMITED

Plaintiff

AND:           DAVID JOHN BEVAN and NAVIN  
CHHOTU HIRA

First Defendants

AND:           FIDELITY PRINTING COMPANY  
(1974) LIMITED (In Receivership)

Second Defendant

Date:           6 June 1991

Counsel:       Mr Werry for Plaintiff  
                  Ms Mikklesen for Defendants

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JUDGMENT OF TOMPKINS J

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The plaintiff has applied to review a decision of Master Hansen made on 14 May 1991. The application relates solely to the order for costs then made. The first defendants had applied to strike out the plaintiff's statement of claim on the grounds that no reasonable cause of action was disclosed. In his judgment the Master made it clear that he was satisfied that the statement of claim was defective, in particular because of the absence of a proper pleading relating to s 345(2) of the Companies Act 1955. However, having considered the authorities relating to striking out, he decided that the proper course was to allow time for the plaintiff to file an amendment subject to the plaintiff complying with a costs order.

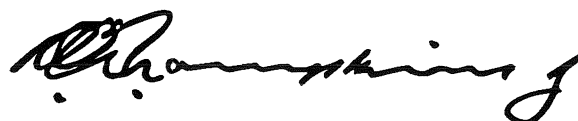
Having heard submissions on costs he pointed out that the matter had been before the court on three occasions, that the opposition by the plaintiff was without merit, that the plaintiff had the opportunity to file an amended statement of claim but did not do so, and accordingly he struck out the statement of claim, made an order for costs of \$2,000 plus disbursements and ordered that the plaintiff be entitled to file an amended statement of claim within seven days

of all costs having been paid. If they were not paid within 21 days the matter was to be relisted before him. An amended statement of claim has been filed, but because of the challenge to the amount of the costs order the costs have not been paid.

It is Mr Werry's submission that in the circumstances surrounding the application to strike out the amount of the costs order of \$2,000 is excessive. He raised the possibility that it would be more than the first defendants' solicitor and client costs. It turns out that in that respect he is correct. Ms Mikklesen advises me that after the hearing before Master Hansen the first defendants' solicitor and client costs on the application to strike out were \$1,500. Ms Mikklesen submits that in the circumstances as found by Master Hansen he was entitled to award costs in excess of the amount prescribed in the scale. Item 16 of the second schedule of the scale provides for costs up to \$460 as certified for on an interlocutory application of this kind.

I accept Ms Mikklesen's submission that the Master was justified in ordering costs in excess of \$460. But although there can be a number of factors to take into account in assessing an appropriate amount, it is on my understanding well established that costs should not be awarded for punitive reasons. So that it is difficult to see any basis upon which an award of costs could exceed the solicitor and client costs of the party in whose favour they were made. Nor, at least in the circumstances of this case, should the costs represent the full solicitor and client costs. Of course I have an advantage that the Master did not, in that I am aware of the first defendants' solicitor and client costs.

Having regard to the factors to which I have referred I consider that an appropriate award for costs would be \$1,000, plus disbursements as fixed by the Registrar. The costs will be fixed accordingly. They are to be paid within seven days. If they are not, that default would provide persuasive grounds for the first defendants to move to strike out the amended statement of claim and the action.



Solicitors for Plaintiff: Howard Smith & Co. (Auckland)  
Solicitors for All Defendants: Holmden Horrocks (Auckland)