

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

9/12
C.P. No.16/94

1893

BETWEEN EDGAR GEORGE BRADLEY,
THOMAS TRUMAN WEST
GARY JOHN CLARKE and
JAMES CHARLES LIST

Plaintiffs

**NOT
RECOMMENDED**

A N D CORNELIS KEEMAN
JOHANNES ALBERTUS PUT
and FELICITY ANN PUT

Defendants

Hearing: 1 December 1994

Counsel: D.H. Hicks for Plaintiff Clarke
Miss F.L. Burrows for Plaintiffs Bradley, West and List
C.A. O'Connor for Defendants

Judgment: 1 December 1994

ORAL JUDGMENT OF TIPPING, J.

This is an application to review orders made by Master Hansen on 17 November 1994. The case is an extremely unfortunate one. I think in the circumstances the less I say the better. I therefore do not propose to give an extended or narrative form of judgment.

The problem with which the Master dealt, and in respect of which his orders are challenged, relates to the filing of a list of documents. There was, at best, a misunderstanding as to who was representing, for present purposes, Mr Clarke, one of the Plaintiffs. There has been all sorts of complexity as a result of purported discontinuance by three joint Plaintiffs and the filing of papers with an apparent change of solicitor without the full

formalities being followed. The end result was that the Master gave leave to Mr Clarke to file his list of documents within 7 days of the date of his order otherwise the Defendants had leave to enter judgment on their counterclaim. Mr Clarke has now filed his list of documents so that aspect is no longer formally alive.

The Master, however, made an order for costs against Mr Clarke individually in the sum of \$350.00 and he also made an order that the other three joint Plaintiffs were to pay a similar sum of \$350.00 to the Defendant. These orders, totalling \$700.00, were presumably intended to be some sort of sanction or compensation for the fact that the Defendants had had to chase up the discovery aspect. I have some reservations as to whether or not, where there are joint plaintiffs, as opposed to several plaintiffs, orders for costs can be made against the individuals making up the joint team. The position in the case of joint plaintiffs, as with a firm, is that there is really only one plaintiff and it may be, on closer examination, that the order can only go against the plaintiff as a group, leaving it to the individuals within the group to fight it out amongst themselves as to who actually carries the burden. However, this is not the occasion for any extended consideration of that issue.

It is not my intention to try and apportion blame or excuse people from blame for the terrible mess which has befallen this case on these issues. My view is that the fairest course overall, now that I am apprised of more material than the Master, is to quash both costs orders made by the Master, that is to say the order against Mr Clarke personally and the order against the other three personally. I do so but on the basis that the question of costs in relation to this whole question of discovery is to be reserved. I quash also the Master's order granting leave to the Defendants to enter judgment against Mr Clarke personally. Again I have reservations about whether that order was properly made as against only one of several joint

Plaintiffs. In any event it has been overtaken because the event which was to trigger the leave has not occurred. Mr Clarke has filed his list of documents.

The only other matter that I think it is necessary to consider, and indeed Mr Hicks asked me to address the point, is the question of costs in relation to the application for review. This is the most difficult of the three points. Again I am up against the question of whether one of several joint plaintiffs can get an order for costs against one or more of the other joint plaintiffs. The power to make costs orders is a general power under the Rules and I think there is jurisdiction on the costs front either to exonerate one of several joint parties from costs or to order costs between joint parties inter se. I have a recollection of a case where I had to examine that issue and I came to the conclusion that this course was jurisdictionally open. It is a different point from whether an order can be made in favour of another party against joint plaintiffs individually.

Looking at the matter broadly, in the light of everything that I have been told, I do not think that an order of costs should go against the Defendants in relation to this application for review but I do consider that an order should go against the Plaintiffs Bradley, West and List. It is my assessment of the situation that they have contributed to the difficulties which have arisen in a material way. It is unfortunate that the parties, in relation to a matter of such tiny compass, could not come to some sensible solution. When I was briefly apprised of the circumstances at the call-over on Monday I urged that course but clearly it has not proved possible. I can understand Mr Clarke's position in the matter and I can appreciate why he thought it necessary to move to review in spite of the fact that in substance he was only challenging an order for \$350.00. On this present application for review the Plaintiffs Bradley, West and List are ordered to pay Mr Clarke

the sum of \$500.00. That order is to be for costs in the cause and is not to be enforced until the proceeding, by whatever means, is finally disposed of.

A handwritten signature in black ink, appearing to read "A. J. [unclear]". The signature is written in a cursive style with a long horizontal stroke at the end.

C.P. No.16/94

IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

BETWEEN EDGAR GEORGE BRADLEY
 THOMAS TRUMAN WEST
 GARY JOHN CLARKE
 JAMES CHARLES LIST

Plaintiffs

A N D CORNELIS KEEMAN
 JOHANNES ALBERTUS
 PUT and FELICITY ANN
 PUT

Defendants

ORAL JUDGMENT OF TIPPING, J.
