

NC Law

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

M.19/97

UNDER

The Law Reform  
(Testamentary Promises) Act  
1949

IN THE MATTER

of the estate of ALEXANDER  
MACKINTOSH GORDON-  
GLASSFORD

BETWEEN

DESMOND HAMILTON  
GORDON-GLASSFORD

Plaintiff

AND

BR CHUBB & OTHERS

Defendants

Hearing: 5 June 1998

Counsel: S Harrop for Plaintiff  
Ms C Quinn for Defendants

Judgment: 5 June 1998

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(ORAL) JUDGMENT OF MORRIS J.

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Solicitors:

S Harrop, Billings, New Plymouth, for Plaintiff;  
Ms C Quinn, Govett Quilliam, New Plymouth, for Defendants.

On 7 April I delivered a judgment dismissing the claim by the plaintiff against the defendants. I reserved the question of costs at the request of counsel for the plaintiff. I now have before me an application seeking costs by the plaintiff.

I am not prepared to award costs. This action was really a Law Reform Testamentary Promises action. It is accepted there was combined with it a claim under the Family Protection Act but, in reality, once the plaintiff died and the action was continued by his estate, there was absolutely no prospect of the Family Protection action being successful. Indeed, quite properly, it was not pressed to any extent by Mr Harrop.

The general rule is costs follow the result. The defendants could have applied for costs. They have not done so. Whether any would have been awarded is debatable in view of the plaintiff being legally aided.

It has been submitted, however, there was merit in the claim and I should adopt what is described as the general rule in Family Protection actions of allowing costs to the successful party and making an order they be paid out of the estate. In effect, this means the costs would be paid by the successful defendants.

I can understand the anxiety of the plaintiff to continue despite the death of the father but it must have been known the case from the very beginning was weak. The evidence to support the promises (as discussed in my judgment) was woefully inadequate and my attention has been drawn to the fact the evidence of the defendants was earlier made known to the plaintiff. A number of settlement proposals were rejected.

In the circumstances I am ~~not~~ prepared to exercise my discretion in favour of the plaintiff and the application is accordingly refused.

A handwritten signature in black ink, appearing to be 'R. L. King', written in a cursive style.