IN THE HIGH COURT OF NEW ZEALAND
WHANGAREI REGISTRY

CIV-2008-488-000053

BETWEEN	I A MIKITASOV Plaintiff
AND	B J COLLINS Defendant

Hearing: 16 March 2009

Appearances: Mr D R James for plaintiff
Mr R T Mark for defendant

Judgment: 16 March 2009

(ORAL) JUDGMENT OF LANG J
[on application for freezing order]

Solicitors:
Palmer Macauley, Kerikeri
Counsel:
R C Mark, Kerikeri

[1] Mr Mikitasov and Mr Collins are neighbours. They live on neighbouring sections in Paihia overlooking the Veronica Channel. The present proceeding represents but one of several interrelated disputes between them. These have led to litigation that has already occupied the attention of the Court of Appeal and Supreme Court.

[2] Mr Mikitasov purchased two properties, to which I shall refer for convenience as Lots 1 and Lot 2, from Mr Collins pursuant to an agreement for sale and purchase dated 24 November 2004. He completed the purchase in or about March 2005.

[3] Lot 1 has a substantial residence situated upon it. Lot 2 is currently bare land, although construction works have been carried out in relation to the section so that in the future a house may be built upon it.

[4] Mr Collins and one of his companies own two neighbouring sections, Lots 3 and 4. He owns Lots 3 in his own name, and his residence is located on it. Lot 4, which is currently bare land, is owned by his company International Recruitment Partners Limited.

[5] A paper footpath runs between Lots 1 and 2 on the one hand and Lots 3 and 4 on the other. This is designed to allow the owners of other properties in the neighbourhood, and their invitees, to have access to an Esplanade Reserve that is situated in front of the four sections owned by Mr Mikitasov and Mr Collins.

[6] Mr Mikitasov and Mr Collins are currently involved in litigation on three separate fronts. First, they are involved in the present proceeding, which has been allocated a three-day trial commencing on 16 November 2009. Secondly, they are involved in two proceedings that, up until very recently, were being conducted in the District Court at Kaikohe. One of those proceedings has now been transferred to this Court, and counsel anticipate that it will be tried at the same time as, or immediately following, the trial of this proceeding. The remaining proceeding will be tried in the District Court.

[7] It appears to be common ground that Mr Collins has been trying to sell Lots 3 and 4 for approximately two years. Mr Mikitasov has also recently learned that Lot 3 is also to be the subject of an auction in April 2009 at the hands of Mr Collins' mortgagee. Mr Mikitasov does not wish to prevent Mr Collins or his mortgagee from selling either property. He believes, however, that the sale or sales may realise more than Mr Collins owes his mortgagee. He is concerned that, if any surplus is paid to Mr Collins, Mr Collins will dissipate or dispose of those monies in a way that will put them out of reach of any judgment that Mr Mikitasov may obtain. For this reason Mr Mikitasov has applied for an order under r 32.2 of the High Court Rules freezing any surplus proceeds of sale.

[8] Mr Collins opposes the application. He disputes the notion that he is engaged in any dissipation or disposal of his assets. He also says that Mr Mikitasov does not have a good arguable case in any of the proceedings that are currently before this Court and the District Court. He therefore contends that the Court should not make the order that Mr Mikitasov seeks.

Relevant principles

[9] Before dealing with the issues that the proceeding raises, it is appropriate to briefly set out the principles that the Court must apply when considering whether or not to make a freezing order. There is no dispute between counsel in relation to this aspect of the matter.

[10] In short, an applicant for a freezing order must establish three essential elements:

a) That the applicant has a good arguable case on its substantive claim. This requirement is more onerous than merely establishing that there is a serious question to be tried.

b) That there are assets of the defendant within the jurisdiction to which the freezing order can apply; and

c) There is a real risk that, if an order is not made, the defendant will dissipate or dispose of assets so as to render himself or herself "judgment proof".

[11] It goes without saying that the risk of dissipation is fundamental to the jurisdiction to make a freezing order. The process is not designed to give one creditor an advantage over other creditors. Moreover, it is not sufficient for the applicant to merely assert a belief that the defendant might dissipate his or her assets. The applicant must also provide evidence that justifies the sufficiency of that belief. That evidence must satisfy the Court that there is, in fact, a real risk that assets may be dissipated if the order is not made.

[12] Mr Collins' opposition to the application was based primarily upon an assertion that he is not involved in the dissipation of his assets. I therefore propose to consider this aspect of the matter first.

Is there a real risk that Mr Collins may dissipate or dispose of his assets so as to render himself judgment proof?

[13] Mr Mikitasov relies on several factors as providing evidence of Mr Collins' intention to dissipate his assets. These can be summarised as follows:

a) Mr Collins has conducted his affairs through numerous different companies. In doing so, he has transferred several assets into and out of the names of these companies in circumstances where there is no apparent explanation for the transactions.

b) A degree of mystery surrounds the manner in which Mr Collins recently disposed of a house property situated at 18 Hauiti Drive, Warkworth.

c) Similar mystery surrounds the acquisition by Mr Collins' partner and his son of a property situated at 123 Aotea Street, Orakei.

d) There is no dispute that Mr Collins is currently trying to sell both Lots 3 and Lot 4.

[14] Mr Mikitasov says that, when these factors are considered in combination, they paint a picture of a person who is disposing of his assets. He is doing so after Court proceedings have commenced, and in knowledge that he may be at risk of an adverse judgment in one or more of them. It is therefore understandable that Mr Collins might wish to render himself judgment proof.

a) Conducting business through several companies

[15] I accept that the evidence establishes that Mr Collins has conducted his person through the medium of several different companies. He has also entered into transactions by which he has transferred one or more of his properties into the name of one or more of the companies. On occasions, this has been followed by a further transfer back into Mr Collins' name or into the name of another company. An example of this is Lot 4, which remains in the name of a company called International Recruitment Partners Ltd.

[16] Mr Collins has, however, provided an affidavit in which he explains why he has used different companies to conduct his business affairs. I accept that there may well be valid reasons why a person in his position may wish to adopt such a practice. It is in fact reasonably common in this country, particularly in the case of property developers who may be involved in developing more than one property. I do not consider that this factor, whether standing alone or viewed in combination with others, assists Mr Mikitasov in relation to the present application.

b) The property at 18 Hauiti Drive, Warkworth

[17] Mr Mikitasov points to the fact that Mr Collins was formerly the owner of a property situated at 18 Hauiti Drive, Warkworth. It appears that he bought that property in or about November 2007 for the sum of $380,000. Thereafter, in June 2008, he transferred the property to his partner and to his son. His son and his partner each held an undivided one half share in the property until 5 September

2008, when they transferred the property to a nominee, or trustee, company called Insight Legal Trustee Company Limited. That company is evidently the adjunct of a law practice situated in the Rodney area.

[18] Mr Collins has not provided any explanation as to why he transferred the property to his son and his partner, or as to the circumstances in which that transaction occurred. The public record of the transaction records that he sold the property for the sum of $300,000, which means that he lost approximately $80,000 on the transaction. The only evidence, in fact, that he provides in relation to this property is as follows:

> 14. The property at 18 Hauiti Drive, Warkworth is not owned by me. I sold it in 2008 after owning it for about six months or so. I previously owned a yacht and I traded the yacht for that property. I only took ownership of the property as a way of selling the yacht.

[19] Mr Collins does not refer at all to the intervening transfer to his son and his partner. I consider that this aspect of the matter is of particular relevance when the next issue is considered.

c) 123 Aotea Street, Orakei

[20] Mr Collins' partner and his son were at about the same time involved in another property transaction. This involved the purchase of a house property situated at 123 Aotea Street, Orakei. They appear to have completed the purchase of that property on or about 17 July 2008. The transaction therefore occurred approximately one month before they sold the Warkworth property to the trustee company.

[21] There appears to be no dispute that Mr Collins is presently residing in the Orakei property with his partner and, possibly, his son. In explaining the acquisition of this property, Mr Collins says:

> 15. 123 Aotea Street, Orakei is owned by Angelina and my son Sean. Both Angelina and Sean work as immigration advisers for Bay of Islands Immigration Consulting Ltd. They both earn their separate incomes and are therefore capable of servicing the outgoings on a house in Auckland. There is nothing untoward about the fact that

> Angelina and Sean have purchased a house in Orakei. It is none of the plaintiff's business.

[22] I accept that the acquisition of the Orakei property did not occur contemporaneously with the Warkworth property. There is, as I have said, a gap of approximately one month between the two transactions.

[23] Nevertheless, I consider that questions arise in relation to a possible link between the two transactions. It would have been a simple matter for Mr Collins to have explained in his affidavit why he transferred the Warkworth property to his son and his partner. It would also have been a simple matter for him to confirm that he had no beneficial interest in that property at the time that his son and his partner sold the property to the trustee company.

[24] It would also have been a simple matter for Mr Collins to have confirmed in his affidavit that he did not assist his son and his partner financially in relation to the purchase of the Orakei property, and that he holds no beneficial interest in that property.

[25] Even making allowance for the fact that Mr Collins' counsel did not have a great deal of time to prepare the affidavit, it is clear to me that the affidavit has been very carefully worded. It completely omits any reference at all to the transfer of the Warkworth property to his son and his partner and says merely that he does not currently own that property. It also emphasises the fact that Mr Collins does not presently own the Orakei property, and that his son and his partner have the ability to service the outgoings on that property. It seems to me, however, that Mr Collins has been careful to avoid confirming whether or not he contributed to the purchase price of the property and whether or not he has any beneficial interest in it.

[26] These matters lead me to the conclusion that there may well be a link between the Warkworth and Orakei Road transactions notwithstanding the gap between the acquisition of the Orakei property and the sale of the Warkworth property. It must at least be arguable, on the evidence as it stands, that Mr Collins deliberately transferred the Warkworth property to his son and his partner and that he did so in order to divest himself of one of the assets that could have been the subject

of attack in the event that Mr Mikitasov obtained a judgment in this proceeding or one of the other proceedings. The purchase of the Orakei property, in the absence of further explanation, may also have been structured in such a way as to achieve the same result.

d) The sale of the Paihia properties

[27] Mr Collins makes the point that the two Paihia properties have now been on the market for some considerable time. He has been quite open about this and the sales activity has been evident to Mr Mikitasov who after all is his neighbour. This points to the fact that he has not tried to conceal the sale process from anybody, including Mr Mikitasov. He says that this is hardly the act of a person who is engaged in the deliberate dissipation or disposal of assets.

[28] I accept this argument as far as it goes. It does not, however, address the situation that may arise in the event that a sale is achieved to one or both of the properties and surplus funds are made available. In that event, given what appears to have happened in relation to the Orakei and Warkworth properties, there must be, in my view, a risk that the surplus sale funds may be dissipated so that they are beyond the reach of any judgment that Mr Mikitasov might obtain.

[29] These factors suggest that Mr Collins has in fact engaged in the dissipation of assets by transferring them, or his beneficial interest in them, to his son and his partner.

Conclusion

[30] I accept that the Court cannot make an order directly affecting either the Warkworth property or the Orakei property. Both of those properties are now owned by third parties who have not had an opportunity to be heard in relation to the present application. As a result, neither has been able to answer Mr Mikitasov's allegations.

[31] I consider, however, that I am entitled to take into account what Mr Collins has done in the past when considering what he is likely to do in the event that he receives surplus monies from the sale of one or both of the Paihia properties. Based on his past conduct I have reached the conclusion that there must be a real risk that, if he receives surplus monies from the sale of the Paihia properties, Mr Collins will take steps to divest himself of those monies in order to render himself judgment proof.

[32] It follows that Mr Mikitasov has established the first of the disputed elements necessary to obtain a freezing order.

[33] I therefore turn to the second issue, which is whether Mr Mikitasov has established that he has a good arguable case in relation to one or more of his claims against Mr Collins.

Does Mr Mikitasov have a good arguable case against Mr Collins in any of the proceedings?

[34] I begin by considering Mr Mikitasov's claims in this proceeding.

The claims in the present proceeding

[35] As I have indicated, Mr Mikitasov completed the purchase of Lots 1 and 2 in or about March 205. After he completed the purchase Mr Mikitasov learned for the first time that the house on Lot 1 had earlier been subject to water-tightness issues. He also learned that Mr Collins had issued proceedings against the Far North District Council in relation to those issues. That litigation was resolved by means of a deed of settlement that Mr Collins had entered into with the Council in May 2005, approximately two months after Mr Mikitasov had completed the purchase of the two properties from Mr Collins.

[36] In this proceeding Mr Mikitasov makes two claims against Mr Collins. First, he claims that the agreement for sale and purchase was subject to an implied term as follows:

> 9. It was an implied term of the agreement that if there were any weather-tightness or damage concerns about the property, which were not obvious on reasonable inspection by the plaintiff, that such concerns would be disclosed to the plaintiff.

[37] Mr Mikitasov contends that Mr Collins breached the implied term because he made no mention of the weather-tightness issues prior to the point at which the parties entered the agreement for sale and purchase in November 2004.

[38] The second claim arises because Mr Mikitasov believes that no building consent or permit, let alone certificate of compliance, has ever been issued in respect of two forms of construction work that had earlier been carried out on the house situated on Lot 1. First, a heated swimming pool at the property has been installed in the absence of any permit or consent. Secondly, an office has been created at the basement level of the property, and below a balcony, when that was not shown in the original plans in respect of which the original building permit was granted.

[39] I deal first with the latter claim.

Claim for failure to obtain building permits or consents for construction of the office and swimming pool

[40] At the time that Mr Mikitasov negotiated to purchase the property the swimming pool had only been partly constructed and was apparently covered by a wooden deck. The agreement required Mr Collins to remove the deck and complete the installation of the heated swimming pool to a workmanlike standard.

[41] The office had also been partly constructed at the time that Mr Collins originally purchased the property. He then took steps to complete that work. This required him to line the walls and the ceiling, to install carpet and to paint the walls and ceiling.

[42] Mr Mikitasov contends that Mr Collins is in breach of sub-clause 6.2 of the sale and purchase agreement, which provides as follows:

> 6.2 The vendor warrants and undertakes that at the giving and taking of possession:

…

(5) Where the vendor has done or caused or permitted to be done on the property any works for which a permit of building consent was required by law:

(a) The required permit or consent was obtained; and

(b) The works were completed in compliance with that permit or consent; and

(c) Where appropriate, a code compliance certificate was issued for those works; and

(d) All obligations imposed under the Building Act 1991 were fully complied with.

…

[43] Mr Mikitasov appears to accept that the swimming pool and the office may have been partly built before Mr Collins became the owner of the property. He says, however, that once Mr Collins elected to complete the work in relation to those items he became liable under sub-clause 6.2. His liability arises because the work was ultimately completed in circumstances where there was no building permit or consent in relation to either aspect of the work.

[44] Mr Collins argues that he cannot be liable under this head. He says that he only accepted liability under the agreement for work that he personally carried out or that he caused to be carried out. He says that he merely carried out finishing work on the swimming pool and that this work did not need a building permit or consent. Likewise, he claims that the work that he carried out on the office did not require a building permit or consent either. As a result, he contends that he cannot be liable under sub-clause 6.2.

[45] This is ultimately a legal issue that will need to be determined at trial. At present I am operating under a handicap because I do not have a proper appreciation of the work that Mr Collins was required to carry out in relation to either the swimming pool or the office. That is an aspect of the matter that may have some considerable bearing on the ultimate resolution of the issue.

[46] For present purposes, however, I am prepared to accept that it is arguable that the clause may come into play when a person elects to complete work in the manner that Mr Collins did in relation to the office and swimming pool. It is arguable, in my view, that clause 6.2 may impose liability on a person who elects to complete work in respect of which a building permit or consent was originally required but where no such permit or consent is ever obtained.

[47] It may not be sufficient for a person in Mr Collins' position to rely merely upon the fact that they completed finishing work that, standing alone, would not require a building permit. It must be arguable that a person who elects to complete a non-complying work becomes liable ultimately for the fact that no permit was issued in respect of that work.

[48] I am therefore satisfied that Mr Mikitasov has established a good arguable case in respect of this aspect of the claim. I will return shortly to the extent to which, if at all, that should be recognised by any order that the Court might make.

b) Claim for breach of implied term regarding weathertightness

[49] I see difficulties for Mr Mikitasov in relation to this aspect of his claim. First, the parties elected to enter into a detailed agreement for sale and purchase that contained express warranties on the part of the vendor. It may therefore be difficult for Mr Mikitasov to persuade the Court to the view that any further warranty should be imposed by way of an implied term. The Court will not readily imply terms into a contract. The leading authority in relation to implied terms remains the decision of the Privy Council in *B P Refinery (Westernport) Pty Ltd v Shire of Hastings* (1977) 180 CLR 266 at 283.

[50] In that case the Privy Council outlined the elements that a claimant will need to establish in order to persuade a Court to imply a term into a contract. These include showing that the proposed implied term is necessary to give the contract business efficacy. No term will be implied if the contract is effective without it. In addition, the proposed term must be reasonable and equitable in all the circumstances.

[51] I consider that Mr Mikitasov will find it very difficult to establish that the implied term for which he contends was necessary to give the contract business efficacy. I say this because the contract is already complete and operable without that term forming part of it. Secondly, there must be a real issue as to whether, in all of the circumstances of the case, such a term would be reasonable. It is distinctly arguable that the parties have allocated responsibility for various matters as between themselves through the express terms of the agreement for sale and purchase. It was open to Mr Mikitasov to include the term as an express term of the contract but he chose not to do so. There were also other ways in which he could have minimised his risk in relation to weather-tightness issues.

[52] In addition, Mr Collins contends that all weather-tightness issues have now been resolved. He says that he carried out all remedial work on the property and completed it well before he entered into the contract with Mr Mikitasov. He has exhibited to an affidavit a code compliance certificate that he says relates to the remedial work that he carried out. If he correct in this regard it would seem that Mr Mikitasov's claim has no basis because remedial work has been carried out and the local authority has issued a certificate of compliance in respect of that work.

[53] This, too, suggests that Mr Mikitasov's claim under this head may have very real hurdles to overcome.

[54] The doubts surrounding this aspect of Mr Mikitasov's claim are such that I cannot say, on the information presently available, that he has established it to the standard of a good arguable case.

[55] I turn now to consider the two proceedings in the District Court. These are summarised in Mr Mikitasov's affidavit.

The claims in the District Court

[56] Mr Mikitasov describes the first of these claims as being a claim for "building works compensation". He points out that this proceeding was commenced on 10 July 2008 against Mr Collins and a company by the name of Pacific View

Properties Limited. He says that the claim relates to construction works that Mr Collins allegedly carried out on Lot 2. He says that Mr Collins wrongly installed a manhole and drainage works on Lot 2 when he should have established those facilities on Lot 3. Mr Mikitasov says that this required him to install an extra drain at his own expense on his own property in order to avoid overland water drainage on Lots 1 and 2.

[57] Mr Mikitasov claims for out of pocket costs totalling $36,776 together with other claims totalling approximately $12,500. In addition, he has sought general damages amounting to approximately $13,300.

[58] The position I reach in relation to this particular proceeding is that I have insufficient factual material before me to make any real judgment as to whether or not the claim is established to the standard of being a good arguable case. The claim is hotly contested by Mr Collins. He says that he made an inadvertent mistake by placing the manhole on Mr Mikitasov's property. He says he will say that Mr Mikitasov acted unreasonably by physically removing the drainage works. Mr Collins also says that he has removed certain landscape works that encroached on Mr Mikitasov's property.

[59] I find the situation in relation to this particular claim to be so confused that I would not be prepared, for present purposes, to reach a conclusion either way in relation to the sustainability of Mr Mikitasov's claim.

[60] The second claim arises as a result of encroachments onto the paper footpath referred to above at [5]. Mr Collins has apparently erected a retaining wall on Lot 2 that encroaches on to the paper footpath. Secondly, the house on Lot 1 (now owned by Mr Mikitasov) has a deck that encroaches onto the paper footpath. The deck was apparently in situ well before Mr Collins purchased the house from the previous owners.

[61] Mr Mikitasov has co-operated with nearby landowners for whose benefit the paper footpath was apparently intended. He has filed a proceeding in the District Court at Kaikohe in which he has sought a modification of the easement creating the

paper footpath. This will involve a realignment of the easement so that it avoids existing structures such as the retaining wall and the deck. This may involve the use of a driveway or right of way that attaches to Lot 3. Alternatively, Mr Mikitasov has sought an order extinguishing the easement. At present the parties are unable to reach agreement as to the way in which an acceptable outcome can be achieved. The District Court will therefore need to determine that issue.

[62] Mr Mikitasov says, however, that he will be entitled to obtain compensation from Mr Collins as a result of these proceedings, particularly if the Court orders the footpath to be realigned. As I understand his claim he says that this will come about because of a diminution in value of his property if third parties are permitted to use the realigned footpath so as to gain access to the Esplanade Reserve.

[63] It seems to me that matters are finely balanced in relation to this particular claim. On the present material I am unable to say with any degree of certainty that Mr Mikitasov may be able to establish a claim for compensation against Mr Collins. Even if he succeeds in persuading the Court that the footpath should be realigned, there is no guarantee that the Court will award costs and compensation. This may well be the type of case in which the Court endeavours to determine the most suitable outcome for the parties but then declines to make further orders of the type that Mr Mikitasov seeks.

[64] For this reason, I am not satisfied that Mr Mikitasov has established this aspect of his claim to the required standard either.

What orders should the Court make?

[65] It remains for me to determine the extent to which, if at all, I should make an order so as to protect Mr Mikitasov's position in relation to that aspect of his claim that I have found to be arguable to the required standard.

[66] In terms of quantum, Mr Mikitasov relies on a valuation that he has obtained from a firm of valuers. The valuers point out that it is open (under s 96 of the Building Act) to an owner in Mr Mikitasov's position to apply to the local authority

for a certificate of acceptance in respect of the non-complying works. They observe that this process would require him to provide the Council with plans and specifications. This would involve providing the Council with reports from an architect and an engineer, together with any other information that the Council might reasonably require. It is also likely that the Council would charge fees in relation to the application.

[67] The valuers expect that this would result in a minimum cost to Mr Mikitasov of approximately $20,000. The valuers also say that there is an "added uncertainty factor." They expect that this "could be an additional $30,000". As a result, they believe that a best case scenario will be a loss to Mr Mikitasov in the sum of $50,000.

[68] The valuers then go on to assess matters on a worst case scenario. They say that, if the swimming pool and other improvements had to be removed and rebuilt, those costs may add another $100,000 to Mr Mikitasov's loss. In a worst case scenario Mr Mikitasov may therefore sustain a loss of up to $150,000.

[69] It seems to me, at this stage in any event, that the Court's orders should not reflect a worst case scenario. The valuers say that they have inspected the basement area and the new swimming pool complex. They observe that the work appears to have been well completed. They also say that it is likely that the works will comply with the building code and the Council's requirements.

[70] In those circumstances it seems to me that there must be a reasonable chance that Mr Mikitasov will be able to obtain a certificate of acceptance if he applies for one. He has an obligation, of course, to mitigate his loss so I anticipate that he will ensure that he has undertaken this process well before the trial of the present proceeding.

[71] I am not sure how the valuers reached their conclusion that an uncertainty factor will add a further $30,000 to the loss that Mr Mikitasov is likely to suffer. I consider that, even taking a conservative approach, the certificate of acceptance

should not cost more than $30,000. For this reason any freezing order should only protect Mr Mikitasov's position up to this level.

[72] This leads me to consider the form of the order, if any, that I should make.

[73] Viewing the matter overall, I do consider that a freezing order is warranted. I reach this conclusion because of the unexplained way that Mr Collins has approached his dealings with the Warkworth and Orakei properties. I am satisfied that an order needs to be made to protect Mr Mikitasov's position in relation to any surplus monies from the sale of Lot 3.

[74] I am not satisfied, however, that the order needs to extend to Lot 4. Although the company that owns Lot 4 appears to be under the control of Mr Collins, that is not to say that its assets will be directly available in the event that Mr Mikitasov obtains judgment against Mr Collins in this proceeding.

[75] I therefore consider that a freezing order should issue and that it should relate to any surplus monies that might be realised as a result of the sale of Lot 3. That order should attach to the first $30,000 out of any net proceeds of sale of Lot 3. By net proceeds I refer to the sum that remains after taking into account the repayment of any mortgage against the property, together with the costs of sale including real estate agents commission and legal costs.

Result

[76] I make an order accordingly. Counsel are to confer regarding the form of the order. In the event that they cannot reach agreement on this aspect of the matter, counsel should present their competing submissions to me within 14 days.

[77] I reserve leave to both parties generally to apply further in relation to the implementation of the order.

Costs

[78] Both parties have succeeded to some extent in relation to the application. My initial impression, therefore, is that costs should lie where they fall. Should either counsel wish to advocate a different approach, he should file a memorandum within seven days dealing with the issue of costs.

[79] A memorandum (or memoranda) in response can then be filed within 14 days thereafter and any reply memorandum within seven days after that. I will then deal with the issue of costs on the papers.

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Lang J