

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2007-404-430

BETWEEN OMNI MARKETING GROUP, ASIA PTE
LIMITED
Plaintiff

AND TRANSACTOR TECHNOLOGIES
LIMITED
Defendant

Hearing: 17 March 2009 (on the papers)

Judgment: 17 March 2009 at 3.30 pm

JUDGMENT OF WINKELMANN J

*This judgment was delivered by me on 17 March 2009 at 3.30 pm pursuant to
Rule 11.5 of the High Court Rules.*

Registrar/ Deputy Registrar

Simpson Grierson, Auckland
Bell Gully, Auckland

[1] I have received counsel's memoranda dated 11 March 2009 in relation to the plaintiff's application for costs. The plaintiff seeks an award on a wasted costs basis, to reflect its costs in defending the defendant's application for interest in respect of late payment of an agreed settlement amount. That application for costs is opposed by the defendant.

[2] The plaintiff is correct that the defendant was unsuccessful in its claim for an award of interest on the plaintiff's late payment. The defendant's application for an award of interest would undoubtedly have involved the plaintiff in expense in responding to the memoranda filed by the defendant on that issue. However, against that I balance the fact that the payment was late in terms of the Tomlin order and that the defendant had to commence steps to pursue payment through the procedure envisaged in the Tomlin order. For this purpose it filed the memorandum of 15 January 2009.

[3] In all the circumstances I consider that the just outcome is for costs to lie where they fall in relation to the various applications made in relation to the Tomlin order, including all memoranda filed in January and February 2009. Accordingly, the plaintiff's application for costs is dismissed.

Winkelmann J