

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

CIV-2008-404-007420

BETWEEN	PATRICK JOSEPH MCCORMICK Plaintiff
AND	THE OAKS LAW CENTRE SOLICITORS NOMINEE COMPANY LIMITED First Defendant
AND	MACKY ROBERTON Second Defendant
AND	PAUL PERCY CHAPMAN Third Defendant

Hearing: 31 March 2009

Appearances: No appearance for plaintiff
Mr Broad for first defendant
Mr M C Smith for second defendant
Mr Jones (Official Assignee representative)

Judgment: 31 March 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE

Solicitors:

*Kensington Swan, Private Bag 92101, Auckland for first defendant
Gilbert Walker, P O Box 1595, Shortland Street, Auckland for second defendant
Counsel
D J Chisholm, P O Box 2629, Auckland*

*Also to: P J McCormick, P O Box 11-679, Ellerslie, Auckland 1542
Official Assignee, Insolvency and Trustee Service, Private Bag 92513, Auckland*

[1] Mr McCormick has been adjudicated bankrupt and has left New Zealand. The Official Assignee succeeds to the right to continue the proceedings under s 101 of the Insolvency Act 2006. Leave is required to continue the proceeding but the Assignee does not seek leave to continue. The Official Assignee does not oppose the proceedings being struck out. The defendants both seek orders striking out the proceedings and seek the payment of indemnity costs. Mr Jones for the Official Assignee says that the making of any costs order post adjudication would impact only on the bankrupt's post-adjudication estate.

[2] Under Rule 14.6 the Court may order a party to pay indemnity costs in a number of situations including where the party has acted vexatiously, frivolously, improperly or unnecessarily in commencing a proceeding. Mr Smith has drawn my attention to the minute of Judge Abbott given at the first case management conference in this matter in January. In that minute the Judge made some comments upon the difficulties in understanding what the pleadings were about and also expressed the view that it was difficult to discern any factual basis for bringing the claims against the defendants. As the Judge noted it was difficult to see how the alleged duties can be owed particularly in the case of the second defendant when the plaintiff himself pleaded that the second defendant was not acting for him.

[3] I consider these are appropriate proceedings in which to make the costs order sought under 14.6(4) and I so order. The first defendant and second defendant are to be entitled to costs under that Rule and disbursements in both cases as approved by the Registrar.

[4] The proceedings are struck out.

J.P. Doogue
Associate Judge