

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

CIV-2008-488-000053

BETWEEN I A MIKITASOV
 Plaintiff

AND B J COLLINS
 Defendant

Hearing: By memoranda

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

Judgment: 16 April 2009 at 3 pm

**JUDGMENT OF LANG J
[as to costs]**

*This judgment was delivered by me on 16 April 2009 at 3 pm, pursuant to Rule 11.5 of
the High Court Rules.*

Registrar/Deputy Registrar

Date.....

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

[1] On 16 March 2009 I delivered an oral judgment in which I made a freezing order in respect of one of the defendant's assets. I limited that order to the sum of \$30,000. At the conclusion of the judgment I indicated that my preliminary conclusion was that costs should lie where they fall. I reserved leave, however, for counsel to file memoranda in relation to the issue of costs should they not agree with that assessment.

[2] Counsel for the plaintiff has now filed a memorandum seeking costs in relation to the application. That is opposed by the defendant. Counsel for the defendant submits that costs should lie where they fall.

[3] I based my initial assessment on the fact that many of the grounds that the plaintiff advanced were not upheld. In particular, I did not accept that the plaintiff had established a good arguable cause of action in relation to two of the three proceedings in respect of which he sought the freezing orders. In addition, the freezing order that I did make was for an amount that was much smaller than the amount that the plaintiff had sought.

[4] My preliminary view was therefore that each party had succeeded to some extent, and that costs should lie where they fall.

[5] Having reviewed the matters that counsel advance in their respective memoranda I remain of that opinion. Indeed, the severely reduced scope of the order that I made makes it strongly arguable that the defendant achieved a greater degree of success than did the plaintiff.

[6] The principal reason that an award of costs in favour of the defendant would not be appropriate (apart from the fact that the defendant does not seek an award of costs) is he ought to have explained in greater detail the manner in which he dealt with the Warkworth property. That aspect of the plaintiff's property affairs was the principal factor that led me to conclude that there was a real risk that the defendant was dissipating his assets.

[7] I therefore remain of the view that costs should lie where they fall. There will therefore be no order as to costs in relation to the application.

Lang J