IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

CIV 2009-470-77

MARK LEYLAND CHAPMAN
Appellant

v

BRIAN DONALD COUSINS & ROSEMARY RAWINA COUSINS
Respondents

Judgment: 27 May 2009

COSTS JUDGMENT OF KEANE J

Solicitors

Haydens Law, Auckland
Dallas Wood, Palmerston North

[1] On 3 February 2009 Mark Chapman appealed a decision of the Weathertight Homes Tribunal, dated 15 December 2008, removing Mr and Mrs Cousins as fourth respondent from proceedings before the Tribunal in which he was the applicant.

[2] The Adjudicator held that there was no sustainable claim against them as developers of the property in issue. They had engaged a reputable builder and played no part in construction as project manager. They relied on the company engaged. On the appeal Mr Chapman contended that they were liable as vendors in breach of warranties given under the agreement for sale and purchase.

[3] Independently of his appeal Mr Chapman sought to rejoin Mr and Mrs Cousins to the Tribunal proceedings, an application to which it appears an Adjudicator was inclined to accede, and Mr and Mrs Cousins applied for an order staying the proceeding before the Tribunal unit Mr Chapman's appeal was resolved.

[4] On 24 February Mr Chapman discontinued his appeal and the application for stay is no longer to be pursued; and, on 9 March 2009, noting that Mr and Mrs Cousins sought costs, I directed that submissions be exchanged. That is the issue now to be resolved.

[5] In a memorandum dated 23 February 2009 Mr Chapman's counsel explained that he did not wish the Tribunal proceeding stayed. There was to be a mediation on 30 April 2009. A stay could have prejudiced the outcome. Moreover, Mr and Mrs Cousins had signalled that if he pressed his joinder application they would apply again to be removed, if need be to the point of judicial review.

[6] On those pragmatic bases, Mr Chapman said, he decided to discontinue the appeal and not to press for joinder. But, he contends still, Mr and Mrs Cousins remain liable in contract, and had not to take any step on the appeal. They elected themselves to apply for stay. They are not entitled to costs.

[7] Whether the Adjudicator was right to hold that Mr and Mrs Cousins could not be liable, the point to have been raised on the appeal, is not for me to say. That it

seems will never be answered. I must award costs on the basis of the steps taken and the outcome.

[8] Mr and Mrs Cousins are entitled to say, as they do, that their application for stay was forced on them because Mr Chapman was seeking, by the appeal and by fresh application to the Tribunal, to rejoin them to the proceedings. He could not do both at once. They were obliged to respond and their application for stay had the desired result. The appeal would not have been abandoned otherwise.

[9] On that footing, which I accept, and on the ordinary principle that costs should follow the event, Mr and Mrs Cousins will have such costs as they are entitled to, on a Registrar's review, at scale 2B, and disbursements as approved.

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P.J. Keane J