

**IN THE HIGH COURT OF NEW ZEALAND  
PALMERSTON NORTH REGISTRY**

**CIV-2008-454-389**

IN THE MATTER OF     the Law Reform (Testamentary Promises)  
                                  Act 1949

BETWEEN                KAY SAUNDERS, CAROL LATIMER  
                                  AND PAULINE BROWN  
                                  Plaintiffs

AND                      THE NEW ZEALAND GUARDIAN  
                                  TRUST COMPANY LIMITED AS  
                                  TRUSTEE AND EXECUTIVE OF THE  
                                  ESTATE OF CLARICE BARBARA  
                                  GREENBANK  
                                  Defendant

Judgment:     9 December 2009 at 4.30 pm

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**JUDGMENT OF ASSOCIATE JUDGE D.I. GENDALL**

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*This judgment was delivered by Associate Judge Gendall on 9 December 2009 at  
4.30 pm pursuant to r 11.5 of the High Court Rules.*

Solicitors:     Jacobs Florentine, Solicitors, PO Box 237, Palmerston North  
                          Loughnans, Solicitors, PO Box 1257, Palmerston North

[1] In a judgment I issued in this proceeding on 6 November 2009 I awarded Category 2B costs and disbursements to the applicants being the defendant, the Cancer Society of New Zealand, New Zealand Society for the Intellectually Handicapped, The New Zealand Heart Foundation and Ms. Christine Guy against the plaintiff with regard to an application for further and better particulars and for inspection orders.

[2] In that 6 November 2009 judgment I specifically provided:

“[6] In the present case the applicants noted above as the successful parties in my view are entitled to an order for costs on their application for further and better particulars and inspection on a Category 2B basis together with disbursements. Those costs are to be paid with respect to both the bringing of the application and all incidental matters. This is to include the judicial conferences which took place on 14 October 2008, 11 November 2008, 10 February 2009 and 23 March 2009 where issues concerning the plaintiffs’ pleadings and inspection were under consideration.

[7] For the avoidance of doubt, costs on a Category 2B basis are also to be paid to these applicants with regard to memoranda filed by their counsel in response to the plaintiffs request for an adjournment of the 15 June 2009 hearing of the application.

[8] An order is now made for the plaintiff to pay to the applicants on this first application being the defendant, The Cancer Society of New Zealand, New Zealand Society for the Intellectually Handicapped, The New Zealand Heart Foundation and Ms. Christine Guy costs on a Category 2B basis with respect to the application for further and better particulars and inspection and the matters related thereto which I have outlined above. In addition disbursements as approved by the Registrar are to be paid.

[9] Calculation of the awarded Category 2B costs should be a reasonably straight forward exercise, but in the event there is any disagreement or difficulty in making this calculation, leave is reserved for any party to approach the Court further on 24 hours notice for additional directions.”

[3] On 3 December 2009 counsel for the plaintiff filed a memorandum dated 2 December 2009 querying the amount for which the applicant sought an order for costs and seeking additional directions pursuant to para. 9 of my 6 November 2009 judgment.

[4] Counsel for all the applicants in turn have filed a joint memorandum in response dated 7 December 2009.

[5] I now turn to deal with the issues raised by counsel for the plaintiff.

[6] Under the draft order for costs submitted by the applicants total costs of \$8,960.00 and disbursements of \$600.00 are sought.

[7] The first issue of concern raised by the plaintiff appears to be that the application before the Court should have been dealt with on a joint basis in that all claims for costs for case management conferences should be treated as being an appearance from one person on behalf of the applicants.

[8] On this it appears that Mr. Manktelow as counsel for the defendant has claimed for appearances at five case management conferences, Mr. Cleary as counsel for the charities for appearance at two case management conferences and Mr. Ryan for Ms. Christine Guy for appearance at four case management conferences. The plaintiffs effectively say that these individual appearances should not be recoverable in total but instead a single party award per conference should suffice. Similarly the plaintiffs contend that memoranda submitted in relation to these attendances should not be treated severally.

[9] In my view the proper position here is for counsel for the defendant, counsel for the charities and counsel for Christine Guy to be entitled to claim on an individual basis for the judicial conferences attended because each individual party was put to a separate cost in relation to that attendance. In so far as it may be necessary to do so, I find in terms of r 14.15 High Court Rules, that there is good reason here to allow the several sets of costs claimed for the individual attendances at each of the judicial conferences in question. It is noted that Mr. Cleary for the charities has claimed for attendance at only two conferences and Mr. Ryan for Ms. Christine Guy has claimed for attendance at four conferences.

[10] Similarly, in my view it is appropriate for the three counsel involved to make a claim for memoranda provided for the conferences as these reflected the parties' individual positions relating to the proceeding generally. It is contended by counsel for the applicants that neither appearances nor memoranda would have been necessary were it not for the plaintiff's failure to provide the information sought at the outset. To a certain extent there is some substance in that contention.

[11] It follows therefore that I approve the costs claim in the applicant's draft order of the sub-total amount of \$5,280.00 for attendance at case management conferences and for a sub-total of \$1,920.00 for filing memoranda for the case management conferences.

[12] In his memorandum dated 2 December 2009 counsel for the plaintiffs takes no objection to the one claim by all applicants for costs in relation to the joint interlocutory application for further and better particulars and inspection orders or the adjournment application.

[13] The total costs sought of \$8,960.00 together with the filing fee disbursement of \$600.00 are therefore approved. An order for these amounts may now be sealed.

**'Associate Judge D.I. Gendall'**