IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

CIV 2009 412 000713

BETWEEN	DEAN ROBERT LAWRENCE Plaintiff
AND	GLYNBROOK 2001 LIMITED First Defendant
AND	CRAIGADEAN DAIRY FARMS LIMITED Second Defendant
AND	CRAIG LAWRENCE Third Defendant
AND	ALFRED NORMAN WILLIAM LAWRENCE Fourth Defendant
AND	BEVERLY DIANE LAWRENCE Fifth Defendant
AND	ALFRED NORMAN WILLIAN LAWRENCE AND BEVERLEY DIANE LAWRENCE IN THEIR CAPACITIES AS TRUSTEES OF THE A N W LAWRENCE FAMILY TRUST Sixth Defendants

Hearing: 7 December 2009

Appearances: H McIntosh for Plaintiff
D R Tobin for Defendants

Judgment: 16 December 2009 at 10.30am

JUDGMENT OF ASSOCIATE JUDGE OSBORNE
As to Security for Costs

Background

[1] Given the family relationships involved in this litigation I will refer to the parties by their first names.

[2] The plaintiff, Dean, is suing his brother, Craig, and their parents, Alfred and Beverly. Alfred and Beverly are sued both in their personal capacities and as trustees of the family trust. Also sued are two companies involved with the family's farming interests, Glynbrook 2001 and Craigadean.

[3] Dean pursues two causes of action. The first is against Glynbrook 2001 and all the defendants other than Craigadean. He seeks to establish an entitlement to a 12.5% shareholding in Glynbrook 2001. He also seeks compensation from Glynbrook 2001 under s174 Companies Act 1993 for distributions not paid to him. He says he holds these rights by reason of a deed entered into around June 2002. In the alternative to the two remedies mentioned, he seeks damages for what he says was a breach of the deed (the failure to transfer the shareholding to him).

[4] Dean's second cause of action is against Craigadean. Dean and Craig were 50% shareholders in Craigadean. Dean has requested records and information from Craigadean. He says that there has been a breach of the statutory obligations of Craigadean to supply information to him as a shareholder. He seeks orders under the Companies Act 1993 for provision of information.

[5] The entire family and its interests have, on the evidence, been through a difficult financial period from 2003 at the latest. Dean himself was adjudicated bankrupt on 16 May 2008. Bank demands led to the sale of the farm assets and put the other members of the family and company interest under significant financial pressure.

[6] Dean was automatically discharged from bankruptcy on 16 May 2008. Before then he had initiated inquiries of the accountants for Glynbrook 2001 as to the fate of his 12.5% shareholding. In 2009 he recommenced those inquiries upon the basis he was a shareholder in Glynbrook 2001 and required information pursuant

to his Companies Act rights. Glynbrook 2001 responded that Dean had never been a shareholder of the company and was not entitled to any information. After some further correspondence concerning the Deed of Family Arrangement, to which I will return, a draft statement of claim was provided to the intended defendants in July 2009. The draft indicated that a proceeding of the nature now before the Court would be pursued, with a first cause of action seeking enforcement of the deed in relation to Glynbrook 2001 and the second cause of action seeking company records and information from Craigadean.

[7] In the covering letter before action dated 27 July 2009 the plaintiff, through his solicitor, indicated that he would prefer not to litigate against his family if that could be avoided. His solicitors made a one-off offer of mediation, with the mediation to occur no later than 15 September 2009. A choice of one of two leading commercial mediators was suggested. The defendants chose not to reply to the letter before action. This proceeding was then issued.

Application for security for costs

[8] The defendants apply for security for costs pursuant to High Court Rule 5.45.

A risk that the plaintiff will be unable to meet an award of costs

[9] Rule 5.45(1) contains what is generally referred to as the "threshold requirement".

[10] In this case, on Dean's own evidence, it is clearly established that there is a real risk that Dean would be unable to meet any significant award of costs. His notice of opposition does not assert that the threshold requirement is not met. He emerged from bankruptcy in mid-2008. He is now in a share-milking partnership and has very limited finances. He describes his position in this way:

> I therefore cannot myself put up any significant security for costs at this time.

Security -the discretion under r 5.45(2)

[11] Where the threshold test is satisfied under e 5.45(1), a Judge may, if the Judge thinks it is just in all the circumstances, order the giving of security for costs.

[12] This discretion is not to be fettered by constructing "principles" from the facts of previous cases: *A S McLachlan Ltd v MEL Network Limited* (2002) 16 PRNZ 747 (CA) at [13] and [14]. As the Court of Appeal indicated in the *McLachlan* case, what is called for is a careful assessment of the circumstances of the particular case.

[13] It is common ground in this case that I should have regard to the merits and bona fides of the plaintiff's case. Where a case has merit, the court must take into account the issues of access to justice which are involved: *Ambrose v Pickard* [2009] NZCA 502 at [40]. Issues of access to justice may arise, for instance, where the plaintiff has no remedial route other than through the court: *Eastern v Wellington City Council* [2009] NZC 503 at [19(c)].

First cause of action – specific performance of the deed

[14] This is not a case in which, at this early interlocutory stage, it is possible for the court to say that the legal merit of either plaintiff's or defendants' respective cases is demonstrably stronger than the other. I deliberately refrain from expressing conclusions on matters which would ultimately be for the trial Judge upon the hearing of full oral and documentary evidence. This is a case in which part of the plaintiff's grievance is that accounting decisions within the relevant companies have been taken by the defendants or the defendants' advisers, and the full records relating to those companies are not available to the plaintiff. The defendants' position, through Craig, is that in relation to Craigadean; they have supplied all of the documents that they have been able to locate. By contrast, they took the position from the time information was sought in relation to Glynbrook 2001 that Dean was never a shareholder of Glynbrook 2001 and he was not entitled to any information.

Factual and legal issues in the first cause of action

[15] In assessing both the bona fides and the merits of the plaintiff's first cause of action, I have regard to the following steps in the plaintiff's claim:

Dissolution of family farming partnership

[16] The family from 1995 to 2001 farmed in partnership. They farmed the property then owned by the family trust. In January 2001 Dean received from Craig, Alfred and Beverly notice of dissolution of the partnership. There is disagreement as to exactly when the partnership came to an end (which it did) but that does not directly affect the issues surrounding the deed which is the subject of the first cause of action.

[17] As a result of the dissolution notice, a number of events occurred including:

- In August 2001 a contract was entered into for a $5,700,000.00 property purchase at Edendale with Craigadean being incorporated in October 2001. (Craigadean subsequently took possession of the Edendale properties in June 2002).

- A family meeting was convened, with Dean attending by telephone, on 29 August 2001. Arrangements for Craigadean and for its shareholding and funding were discussed – although Dean refers to this as the "August agreement" he does not sue on it. It is background. In relation to it, however, there is the seed of an issue raised in this proceeding by the defendants who say that in addition to being the person to manage the Craigadean properties Dean committed himself to working on the farm for a minimum of five years. Dean denies that commitment and notes that a memo of understanding signed at that time did not refer to such a commitment.

- In October 2001 (as well as Craigadean) Glynbrook was incorporated.

- A further family meeting occurred on 26 October 2001. Detailed shareholding arrangements for both companies were discussed and recorded in a facsimile which Dean's solicitor sent to the solicitor for the rest of the family. The facsimile records that the ownership of the shares in what was to become Craigadean was to be 50/50 between Dean and Glynbrook and that the entire entity comprising the farming operation at Clydevale was to be transferred into Glynbrook, with Dean holding 12.5%. There was to be provision for call and put options after five years. The family's solicitor sent a letter to the bank shortly afterwards advising of various matters which had been "resolved" at the family meeting, including that Dean was to receive 12.5% of the shareholding in Glynbrook. As between the family, appropriate documentation was to be prepared. The resolutions reached at this family meeting are also background – Dean does not sue on these agreements but rather on the deed which he says subsequently came into existence.

- In November 2001 Dean's solicitor drafted a Deed of Family Arrangement and between November 2001 and May 2002 letters were exchanged by the solicitors in relation to the terms of the deed. The deed was to be between all the parties to the present litigation except Craigadean.

Status of the Deed of Family Arrangement

[18] It is Dean's case (first cause of action) that the Deed of Family Arrangement became binding in or around July 2002.

[19] The status of the document signed by the parties as a deed is critical to Dean's first cause of action. The statement of claim makes no pleading in simple contract. For Dean, Mr McIntosh concedes that any simple contract claims (based on the earlier family discussions or "resolutions") would be statute-barred by the Limitation Act 1950.

[20] Dean's case that the document which he signed around June 2002 is by no means clear-cut. Counsel will need to overcome the following difficulties:

- While all other parties (including Glynbrook 2001) signed correctly for the purposes of a deed, Dean simply placed his signature on the document without having a witness subscribe a signature and details. It is Dean's case that his wife was present and witnessed the signature. Mr McIntosh will have to satisfy the Court on authority that the details of witnessing can be proved so as to make the deed effective.

- Dean's evidence is that after signing the document he forwarded it to his solicitor. He said the solicitor kept the original signed deed in his possession and that Dean got it back from him some years later when Dean requested his files from him. There is no evidence before me from the solicitor either as to a direct recollection of holding the deed or as to his firm's documentary record as to the original deed. The defendants do not accept Dean's evidence as to when his signature was placed on the deed. Craig deposes that the defendants had no idea that the deed had been signed by Dean, if he did sign it, until early 2009. The defendants wish to have the original of the document submitted to a document examiner. Any determination of the circumstances of the execution of the document can only occur upon trial.

- The defendants further assert that the deed, even if signed by Dean at the time, was never physically delivered. Dean's evidence appears to confirm that. Counsel for Dean at trial will have to satisfy the Court that notwithstanding the established requirement that a deed be not merely be signed but also delivered, the holding of the deed in this case by the firm which drafted it was sufficient for its efficacy.

- In Dean's amended statement of claim he alleges that the defendants' breach of the terms of the deed lay in the fact that they failed to do all things necessary to give effect to the deed – a reference to a standard clause (cl 6.2) in the "Miscellaneous" section of the deed. The further allegation is contained in the amended statement of claim that:

> Pursuant to the October Agreement and the Deed, Dean is entitled to 12.5% of the shares in Glynbrook

As Mr Tobin has submitted, the operative clauses of the deed do not expressly stipulate that Dean is to receive a 12.5% shareholding in Glynbrook (or that any other family member is to receive a particular shareholding). Rather, the shareholdings in Glynbrook 2001 are specifically dealt with in the recitals to the deed, including in this particular passage:

> B …The shareholding in Glynbrook is (or will be immediately following this Deed) as follows:
>
> Craig 40%
> Alfred 20%
> The Trust 7.5%
> Beverley (sic) 20%
> Dean 12.5%
> 100%

The absence of express operative provisions for the shareholding in Glynbrook 2001 is in contrast to provisions in the early clauses of the Deed which specifically deal with agreements to sell land and other property to Glynbrook 2001. Mr McIntosh however notes the particular wording of (the operative) clause 1.1 of the Deed which reads (emphasis added):

> The parties hereby confirm the entry into an agreement to sell all of the Land at the date of that agreement to Glynbrook and take all reasonable steps necessary to affect the transfer and put in place the proposals set out in the Background recitals above.

Mr McIntosh submits that this Deed contains an unusual example of a recital which has been made operative by incorporation through an operative provision. The parties have a duty to put in place the proposals in the recitals. Therefore the distinction between recitals and operative provisions is a hurdle which the plaintiff may be able to overcome. The defendants themselves have signalled a possible application for rectification of the Deed (in another respect) – a similar

plaintiff's rectification amendment might be envisaged even if the plaintiff's argument as to operative provisions is not accepted.

- In his evidence, Dean asserts that his family can hardly say that the deed was ineffective when all of its requirements have been carried out, other than the issue of his shareholding in Glynbrook 2001 – while this is an argument that might properly have been better contained in submissions rather than an affidavit, it does fit with equity's striving to give effect to a transaction which has been fully implemented save in one regard.

[21] While as plaintiff Dean may have potential difficulties with his case, the defendants' case is not without its difficulties. In particular, Craig Lawrence through his second affidavit has placed this on record (having said that he is authorised to make the affidavit on behalf of the other defendants):

> We accept that there was an agreement between us which included a provision that Dean was to obtain 12.5% of Glynbrook (with an option for me to purchase it after five years) provided he did certain other things in respect of Craigadean and Edendale.

[22] Craig's admission of the basic 12.5% deal (with an argument over the associated detail) is likely to lead a court in equity to strive to find the related terms of the deal and to uphold the deal as a whole.

[23] As the subsequent paragraph in Craig's affidavit indicates, the issue the family has with Dean over the Glynbrook 2001 deal is that Dean "did not do those things" which he had committed to do. As Craig puts it:

> The shareholding was not a stand-alone agreement but part of a larger agreement which the Plaintiff failed to comply with.

As Craig's first affidavit makes clear, a central grievance of the defendants is that Dean "walked off the Edendale Farm" leaving "the defendants …to sort out the financial mess that resulted". This assertion of some form of commitment by Dean

to stay on the farm for five years cannot, as Mr Tobin points out, be identified in any of the contemporary documents.

[24] Further, there is an emphasis in the defendants' evidence that when Dean left the Edendale farm to take up another farming opportunity on the West Coast (October 2003) the ensuing financial crisis left Craig not merely trying to manage Craigadean's Edendale properties through to the settlement on 1 June 2004 but also arranging for Glynbrook 2001 to financially assist Craigadean in the interim. By May 2005 Glynbrook was left with a significant surplus of liabilities over assets. Craig refers to the following period as one in which Glynbrook 2001 had to spend three to four years trading its way out.

[25] There is a suggestion in the defendants' case as put on this application that the Court should have regard to the fact that Craig was always to have the opportunity to take over (after five years) Dean's shares in Glynbrook 2001. There is an apparent suggestion that the Glynbrook shares should be treated as now belonging to Craig for nil value by reason of the fact that following Dean's departure from the farming operations Glynbrook 2001 had a nil value (and have only subsequently acquired value through steadily increasing land values). There may be arguments that the defendants can advance of that nature. But to do so they will have to overcome the express provisions of the deed which stipulate that the put and call options were to take place "for cash at the Market Value".

Effect of Dean's adjudication in bankruptcy

[26] Dean, as I have said, was adjudicated bankrupt on 16 May 2005.

[27] Given that it is Dean's case in this proceeding that he has enforceable rights arising under a Deed of Family Arrangement entered into in 2002, then he had such rights at the date of his bankruptcy. At that date all his property vested in the assignee: see s42 Insolvency Act 1967, being the legislation in place at that time.

[28] The defendants note the absence of any evidence of disclaimer by the Official Assignee or any surrender of an interest back to Dean.

[29] For his part, Dean has produced a letter which the Ministry of Economic Development sent him on 6 March 2009. The writer of the letter confirms that at the time of Dean's adjudication Glynbrook 2001 was mentioned by him as a family company in which he was involved and was likely a shareholder. The letter says that following normal checks of the Companies Office Register "this proved not to be the case with Glynbrook [2001] and was taken no further".

[30] Based on this correspondence, Mr McIntosh submits that the allegation that any shareholding of the plaintiff in Glynbrook 2001 passed to the Official Assignee is baseless. Mr McIntosh first suggests that any interest was only a prospective interest, a proposition which may be difficult to have upheld given that a contractual right or chose in action would be involved. Alternatively, Mr McIntosh suggests that this would properly be seen as a case in which the Official Assignee had abandoned any cause of action he had against the defendants. Again, this submission may have difficulties because it suggests that the Official Assignee has (once and for all) abandoned the cause of action and is brought it to an end. This is a different concept from the Official Assignee transferring to the bankrupt rights in a continuing cause of action.

Glynbrook 2001 – overall merits

[31] Against this background, this is not a case where short of trial one can say that the substantial legal and factual merits of the first cause of action are with the plaintiff.

Second cause of action – Craigadean

[32] It is common ground that Dean is and has been from the outset registered as the holder of 50 of the 100 ordinary shares in Craigadean. The other 50% shareholder is and has been Glynbrook 2001.

[33] This is the shareholding proportion which was intended under the family discussions and is referred to in the recitals to the Deed of Family Arrangement.

[34] Dean does not need to seek specific performance or such orders in relation to getting this shareholding as the shareholding is already in his name.

[35] The defendants have denied that Dean was entitled to his 50% shareholding. They say that he did not put up the full $1,750,000.00 in cash or kind as required and they say further that he did not stay working for five years on the farm as they say was required. Those appear to be the pleaded matters of defence.

[36] They cannot be considered strong grounds of defence as Dean is already the registered shareholder under the Companies Act. As such, he is entitled to access to records and information as specified under the Companies Act.

[37] There is no evidence before me as to the knowledge of the Official Assignee of the shareholding in Craigadean or his attitude to the ownership of that shareholding, but as matters stand the shareholding continues to be in the name of Dean.

[38] All that Dean seeks as plaintiff in his second cause of action is an order that he be provided with copies of Craigadean's company records and all information Craigadean holds, or is reasonably able to obtain, pertaining to Craigadean' shareholding in two other companies. Given that such request is made by the registered shareholder under s172 Companies Act, the second cause of action appears to have substantial merit.

Responsibility for Dean's impecuniosity

[39] Mr McIntosh submits that the Court (applying *Ambrose v Pickard*) should excuse the plaintiff from having to provide security on the grounds that his financial position has resulted from the defendants' actions complained of in this proceeding.

[40] The Court has been provided with conflicting evidence from Dean and Craig as to what went wrong with the farming operations. Craig paints a picture of Dean as having put approximately $380,000.00 less cash into the property purchase than required; failing to control expenditure at a time when the income of all the farming

operations was substantially reduced; and then walking off the farm in October 2003 leaving his brother to manage it through to the sale settlement in June 2004. Craig says that he was left by Dean with huge problems with stock left in poor condition, with poor calving and poor milk production, and with poor records in relation to the stock. Somewhat startlingly Craig deposes to having later established that Dean had gone into business with a Mr Kinkaid as half owner in a company called Dry Ridge Limited. The family knew that the West Coast property to which Dean moved in October 2003 had been bought by Dry Ridge. What Craig has subsequently established is that Dry Ridge had bought a Franz Josef property (April 2003), a Waihoaka, Southland property (April 2003) and a Middlemarch property (September 2003). (Those being the dates on which each title was transferred). Craig says he has no idea where Dean would have got any money to contribute to those purchases. He says that his brother was apparently taking risks buying farms. He suggests that it is wrong for his brother to suggest that his bankruptcy came about as a result of something done by the Lawrence family on their farms. Craig does not know what price was paid for the farms Dean was purchasing but having regard to their size Craig believes that it would have been in the millions.

[41] Dean's presentation of the causes of his bankruptcy is altogether different. While he recognises that Craigadean's first year of operation at Edendale was marked by some difficulties with lower dairy prices, he refers to a period of deteriorating relationship with his family on company matters, during which period his salary was twice reduced by 50%. He refers to the pressure from banks in mid-2003 and the resulting family decision (despite his view that Edendale had much better potential than Clydevale) to sell Edendale and to keep only Clydevale. He refers to an expectation when he left to farm on the West Coast that he would receive something in the order of $800,000.00 from the sale of the Edendale properties – he refers to his family having indicated that figure. He says that the money never came through and in the meantime he had extended the term of his loans for his West Coast farm in reliance on the money. When he was eventually unable to meet his debts in 2004 it was because his bank debts were too high and he had never received any money out of Craigadean. That resulted in his bankruptcy.

[42] Craig in response to that evidence denies that a figure of $800,000.00 was ever indicated as Dean's likely receipt from Craigadean. Craig says that because of the position with Westpac Dean knew as well as the family that from the middle of 2003 on the family would be lucky to get anything out of Craigadean when it sold. Craig says that when it was sold Glynbrook was left having to pay off left over debts from Craigadean. Mr McIntosh notes that, whether or not an $800,000 pay-out was mentioned, if the facts indicate that no money was eventually available to anyone, the Dean's financial situation follows from that financial problem and not from what anyone said.

[43] There is no clear evidence to sustain Dean's argument that his insolvency was brought about by the very wrongs of which he complains in this proceeding. Rather, the evidence from both sides indicates that the farming ventures encountered extremely difficult financial times which led to difficult decisions. There must also be a significant likelihood that the extent of commitment which Dean entered into through Dry Ridge Limited was at least as significant as any other cause in Dean's bankruptcy.

[44] This is not a case in which the plaintiff can point to evidence which clearly points towards the defendants on which the proceeding is based having caused the plaintiff's insolvency.

Ability to raise security

[45] When the defendants' solicitors properly raised the issue of security by correspondence with the plaintiff's solicitors, those latter solicitors advised that Dean was and is being charitably assisted financially in respect of this proceeding by a Mr Grant Paterson. In his submissions, Mr McIntosh again referred to Dean's open acknowledgement that he is impecunious. Mr McIntosh went on to submit that Dean cannot personally put up security for costs.

[46] I take the wording of that submission to have been carefully phrased.

[47] In terms of access to justice, the Court should recognise the role played by litigation funders who are acting purely charitably. However, in a case such as this where on the main cause of action on which litigation cost is likely to be incurred where there is not in the court's view a strong prima facie case, then it is appropriate that if a funder is prepared to be involved with the costs of the plaintiff's litigation, then from the defendants' perspective it is fair that the charitable funder be looked to for some contribution to the defendant's security for costs. Obviously, the court will not insist that the security come from the funder – it is for the plaintiff to arrange security from whence he can – but if the funder is not prepared to assist with security as well as the plaintiff's costs, then the consequence for the plaintiff may be that he faced with a stay.

The appropriate orders in this case

[48] There is a distinction in this case between the first and second causes of action.

The second cause of action

[49] On the second cause of action, Dean by reason of his being the registered shareholder has a strong claim. Furthermore, he through his solicitors appropriately suggested mediation before the proceeding was issued. The defendants' solicitors chose not to respond to that request with regard to either cause of action.

[50] The comprehensive records of the company must be in the hands of those who have acted for and advised the company. Rights of a shareholder to access records arise under the Companies Act. By the nature of those rights, Parliament must have considered them to be fair and not unduly burdensome.

[51] I would not regard it as just in these circumstances to allow an order for security to stand in the way of the completion of discovery on the second cause of action.

The first cause of action

[52] It is just that there be an order for security relating to the proceeding, with its focus on the first cause of action, but an order which has regard to the plaintiff's personal financial inability to bring this case; the role of the charitable third party provider; access to justice considerations; and a case which is at least arguable underpinned by the terms of a Deed which expressly refers to the shareholding which the plaintiff pursues.

Quantum

[53] In his submissions, Mr Tobin set out a 2B calculation as follows

Step		***Days***
2	Defence	2
3.6	Amended Defence	.6
4.1	Interrogatories	1
4.5	List of Documents	1.5
4.6	Production	1
4.7	Inspection	1.5
4.10	Memoranda (say 4)	1.6
4.11	Case Management Conference (say 4)	1.2
4.12	Further Interlocutory Application	.6
8	Preparation for hearing (assuming 3 day hearing)	6
9	Hearing (assume 3 days)	3
	Total	**20**

[54] Mr Tobin's submission, having regard to a 2B calculation of $32,000 ($1.600 x 20), was that the circumstances of this case with substantial issues of discovery and inspection and with other special factual and legal issues (such as the Limitation Act issues; the plaintiff's bankruptcy; proof of earlier agreements; and proof of the plaintiff's performance of his obligations under the agreements) an increased order for security in the sum of $40,000.00 would be appropriate.

[55] Mr McIntosh submitted that if there were to be security for costs the starting point should be a standard (i.e. 2B) costs order and that the amount should be lower and security staggered.

[56] I regard the case as appropriately a category 2 case, as was recorded at the first case management conference on 2 November 2009. An assumption of 2B overall appears reasonable at this point. On the information at present available to the court it is not appropriate to anticipate an increased categorisation. It is also inappropriate to order security for steps already taken (in this case the filing of the defence in September). I view a modest allowance for interlocutory applications, as provided in Mr Tobin's table, as appropriate. I also regard a 3 day hearing as a realistic and arguably modest estimate.

[57] Standing back, and weighing the access to justice issues in a case where the plaintiff urged mediation before issuing the proceeding but without response, I view a figure struck at approximately 50% of a 2B calculation as just. A total sum of $14,000.00 by way of security is just. I also view it as just that the requirements for security be staggered in two stages, the first to deal with matters up to the completion of interlocutories and the second for the period from setting down.

Discovery and inspection

[58] It is appropriate that there be immediately an order for discovery and inspection to be completed in relation to the second cause of action. As well as paying regard in a security context to the strength of the plaintiff's case on that cause of action, the early completion of discovery and inspection in relation to the second cause of action may assist the parties towards an earlier resolution of any issues in that regard.

[59] The security arrangements which are covered by the following order therefore do not impact on discovery and inspection in relation to the second cause of action

Orders

[60] I order:

(a) The parties shall file and serve verified lists of documents relating and confined to the second cause of action by 28 January 2010.

(b) The parties shall complete inspection of the documents so discovered by 11 February 2010.

(c) The plaintiff shall provide security for costs in the sum of $14,000.00 to the satisfaction of the Registrar, to be provided in two tranches, with the first tranche of $7,000.00 to be provided on or before 11 February 2010 and the second tranche of $7000.00 to be provided by the setting down date.

(d) Except as to discovery and inspection on the second cause of action, this proceeding shall be stayed (i.e. as to its first cause of action) until the first tranche of security is provided. In the event that the second tranche of security is not provided by the setting down date, then the proceeding will also be stayed in that event until such security is provided.

Costs

[61] The greatest part of this proceeding is likely to be taken up with the first cause of action. In relation to security for costs on that cause of action the defendants have been successful. On the other hand, the plaintiff has been successful to some extent in relation to the second cause of action.

[62] There will be an order that the plaintiff pay the costs of and incidental to this application in any event at two thirds of a 2B award, together with disbursements to be fixed by the Registrar.

Solicitors:
Russell McVeagh, Wellington
Rodgers Law, Dunedin