

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

CIV 2008-425-000354

BETWEEN	NINE PADDOCKS LIMITED Plaintiff
AND	TASMAN LIQUOR COMPANY LTD Defendant
AND BETWEEN	TASMAN LIQUOR COMPANY LTD Defendant
AND	NINE PADDOCKS LTD Plaintiff
AND	STANLEY WILLIAM JONES Counterclaim Defendant

Hearing: (On Papers)

Counsel: ADG Hitchcock for Plaintiff and Counterclaim Defendant
N F Flanagan for Defendant

Judgment: 26 November 2009

COSTS JUDGMENT OF FOGARTY J

[1] There are two issues on which the parties cannot agree on costs:

- (a) Whether the defendant's costs in the summary judgment should be awarded to it;
- (b) Whether the plaintiff claimed time allocation for statements of defence to the defendant's counterclaim is "*reasonable*" for the purposes of r 14.2(c).

[2] There are authorities which suggest that where the plaintiff is ultimately successful it should get costs on the summary judgment notwithstanding it has failed to achieve a summary judgment. In this case, however, Associate Judge Christiansen refused summary judgment on the grounds that there was a substantial factual issue that had to be resolved by trial. I agree with that reason. That was apparent in the trial before me. In my view the plaintiff knew or ought to know that and should not have pursued the summary judgment.

[3] Accordingly, I accept the compromise solution suggested by counsel for the defendant that costs in respect of the summary judgment lie where they fall.

[4] The plaintiff is seeking 2.6 days for the filing of statements of defence to the original counterclaim (two days) and amended claim (0.6 day). The plaintiff's counsel acknowledges that this allowance is in excess of the time actually taken but is reasonable as an unders and overs allowance given that the amount of time allowed by the schedule for the summary judgment preparation and hearing was wildly outside the time actually spent.

[5] But as I have found that the plaintiff is not entitled to costs on the summary judgment, this argument of the plaintiff in respect to the statement of defence to the counterclaim falls away.

[6] I allow 1.6 days for the filing of these statements of defence.

Solicitors:
AWS Legal, Invercargill, for Plaintiff and Counterclaim Defendant
Kensington Swan, Auckland, for Defendant