

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

CIV 2006-404-1827

BETWEEN	WORLDWIDE NZ LLC First Plaintiff
AND	J J GOSNEY Second Plaintiff
AND	QPAM LIMITED First Defendant
AND	JACOBSEN VENUE MANAGEMENT NEW ZEALAND LIMITED Second Defendant
AND	JACOBSEN F.T. PTY LIMITED (ACN 108 254 440) Third Defendant
AND	JACOBSEN VENUE MANAGEMENT PTY Fourth Defendant

Counsel: M J Fisher for Plaintiffs
A C Sorrell & S L Robertson for First Defendant
C P Browne & K J Sparrow for Second, Third and Fourth Defendants

Judgment: 22 December 2009

COSTS JUDGMENT OF KEANE J

This judgment was delivered by Justice Keane on 22 December 2009 at 4pm
pursuant to Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Date:

Solicitors:

Brookfields, Auckland
S Germann Law Office, Auckland
Wilson Harle, Auckland

[1] In my decision dated 15 May 2009 I resolved three threshold issues. Two concerned issues of scope. One was as to the issues for trial. The second was as to discovery. The third issue concerned the need, if any, for the Court to appoint a valuer.

[2] As to the first, I held that an issue for trial ought to be what rights if any Worldwide retained if the Jacobsen interests now have title but are unable to pay a fair price. That, I said, was not in issue on the pleadings as they were. I proposed that counsel agree questions, or that Worldwide file a further amended statement of claim. I made no order.

[3] As to the scope of discovery, I held that QPAM was to make further discovery but not in the fullest sense sought by Worldwide. I held that it was to have complete discovery by category not by document and that Worldwide was to be given access to the documents.

[4] As to the appointment of a valuer, I held that this came too late to assist in resolving the principal issue or to narrow its scope and could prove complicating. I proposed that the experts on either side meet, identify the issues agreed, and give their evidence in the presence of each other.

[5] Worldwide seeks costs in category 3C against QPAM in relation to the discovery issue. It seeks costs against the Jacobsen companies in category 3B/C as to the separate question issue and the appointment of an expert. QPAM and the Jacobsens oppose such an order, contending that costs should lie where they fall.

[6] QPAM contends that the discovery I gave Worldwide was not, in the regime I set in place, all Worldwide was seeking. The Jacobsens, equally, contend that the separate question issue, which occupied most time, exposed a gap in the pleadings and resulted in no formal order. The question as to an expert occupied very little time.

[7] Each contends that if Worldwide is to have costs they should not lie within category 3B/C. Each contends that category 2B, the category applying to this point, should be adhered to.

[8] On balance Worldwide succeeded on the three issues. It is to have the ability to raise the separate issue as to its rights. It is to have greater discovery. It opposed an expert being appointed and there too was vindicated. It is entitled to costs under HCR 14.2(a).

[9] Worldwide is not entitled to costs in category 3B/C. The case has undeniable complexity and, it may be, at trial will attract that category. But the issues resolved were of the usual interlocutory order. Worldwide will have costs in category 2B and disbursements as fixed by the Registrar.

P.J. Keane J