



[1] The respondents following the dismissal of the applicant's application to set aside the order of this Court of 22 April 2009 putting Ridgeview Properties Limited into liquidation seeks orders for costs against the applicant. The respondents seek full indemnity costs claiming that the applicant acted vexatiously, frivolously, improperly and unnecessarily in commencing and continuing these proceedings and that in all the circumstances it is appropriate that indemnity costs be ordered. In opposing the application the applicant submits that there are unusual circumstances which would justify the Court making no award of costs in favour of the respondents.

[2] The application to set aside the order winding up Ridgeview Properties Limited was based on evidence that the statutory demand upon which the application for winding up was based was not properly served at the registered office of Ridgeview Properties Limited. The registered office of Ridgeview Properties Limited at the relevant time was care of its solicitors Castle Brown of Newmarket, Auckland. According to the records of the Companies Office the situation of the registered office was at level 5, 5 Short Street, Newmarket. However, when the statutory demand was served Castle Brown had changed its offices from 5 Short Street to 19 Morgan Street. Notice of change of the situation of the registered office to 19 Morgan Street was not supplied to the registrar of companies.

[3] Peter John Cains who served the statutory demand deposed that service was effected on Castle Brown at level 5, 5 Short Street, Newmarket. According to Castle Brown that firm at the time of service was situated at 19 Morgan Street. Consequently, Mr Cains evidence as to service was clearly unreliable.

[4] The evidence however established that the proceedings for winding up Ridgeview Properties Limited were duly served at the registered office at that company being 5 Short Street. Consequently, there being proof of service of those proceedings at the registered office of the company the applicant could not obtain an order setting aside the winding up order *ex debito justitiae* namely as a matter of

right because the Court lacked jurisdiction arising from the order being made without proper service on the company.

[5] In the circumstances I have outlined I do not consider that the application to set aside the order winding up Ridgeview Properties Limited was frivolous, improper or vexatious because the evidence of the process server as to service of the statutory demand was clearly inaccurate. As the respondent's were successful in opposing the application to set aside the winding up order and as to a certain extent the applicant as director of Ridgeview Properties Limited must accept some responsibility for the confusion arising out of failure of Ridgeview Properties Limited to give proper notice of change of situation of its registered office I can see no justification for departure from the general principle stated under rule 14.2(a) that the party who fails should pay the costs of the successful party. In the circumstances of this case such principle must apply not only to the costs in successfully opposing the application to set aside the winding up order but also for the costs involved in an unsuccessful opposition to the application for leave to bring those proceedings.

[6] In the circumstances therefore the respondents will be entitled to costs on a 2B basis in respect of the application for leave to bring these proceedings and the application to set aside the winding up order together with disbursements as fixed by the registrar.

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Associate Judge Robinson