

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

CIV 2006-463-000394

BETWEEN KOP-COAT NEW ZEALAND LIMITED
Plaintiff

AND ROBIN WAKELING
Defendant

Hearing: 30 July 2009

Appearances: D Smith for the Plaintiff
In person the Defendant

Judgment: 30 July 2009

**ORAL JUDGMENT
OF ASSOCIATE JUDGE CHRISTIANSEN**

Solicitors/Counsel:

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[1] A report prepared by the defendant is the subject of this proceeding. The report purports to identify the plaintiff's product by reference to certain features. The plaintiff's proceeding challenges the integrity of the defendant and his report. The plaintiff wishes to arrange for chemical testing to determine if the defendant's wood samples were indeed treated by the plaintiff's products. In the outcome that testing could have considerable significance. In December 2008 the plaintiff applied pursuant to rule 322 for an order to inspect, take samples and to test property in the possession of the defendant. A number of affidavits have been filed in support of the application. I am satisfied there is a proper factual basis to grant the orders sought.

[2] The defendant has filed an opposition to the application. Although not opposed in principle to the application he seeks more information about how the testing is to be done.

[3] In the course of my discussions with the defendant regarding his opposition it became clear to me that matters with which he was concerned were matters indeed that should properly be left to trial. It is there that he or any witness on his behalf could raise issues regarding the integrity of the plaintiff's testing and results.

[4] I am satisfied that adequate protection is afforded the defendant by my making orders in terms identified by paragraphs 5, and 6 – 11 off the plaintiff's solicitor's letter dated 17 April 2009 to the defendant. The only change required to that letter affects paragraph 11 where instead of the date of 1 September 2009 the date of 15 September 2009 should be inserted as the date by which the results of testing be made available to the defendant.

[5] The defendant has resisted this application largely on the grounds that he has received insufficient information to enable him to duplicate the tests the plaintiff proposes be done. I am satisfied that the defendant's demands are not valid nor reasonable and I need not to take those into account in deciding this application. He will in due course have an opportunity to cross-examine witnesses and challenge for their findings.

[6] The defendant is self-represented. That notwithstanding it has taken seven months for the plaintiff's application to be heard. The matter is scheduled for trial beginning 2 November 2009. In the circumstances it is appropriate **to award costs to the plaintiff on a category 2B basis, those costs to be payable at the conclusion of trial or by other resolution of the parties' dispute.**

[7] Ms Smith requests pre-trial orders be made. **I direct:**

1. The plaintiff's evidence briefs are to be filed and served by **18 September 2009.**
2. The defendant's evidence briefs are to be filed and served by **2 October 2009.**
3. The plaintiff's reply briefs if any are to be filed and served by **16 October 2009.**
4. The plaintiff's synopsis of submissions, bundles, and a chronology is to be filed and served by **23 October 2009.**
5. The defendant's synopsis of submissions is to be filed and served by **30 October 2009.**

[8] Leave is reserved to the parties to apply on short notice for a telephone conference to be convened for any purpose.

Associate Judge Christiansen