

IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CIVIL DIVISION)

PLAINT No: 48/2003

BETWEEN

WORLDWIDE BAIT
LIMITED T/AS BLUE
REEF PILCHARDS

Plaintiff

AND

RAROFISH CO
LIMITED (IN
RECEIVERSHIP)

Defendant

JUDGMENT FOR COSTS

25 June 2005

1. Counsel for the Applicants seeks costs on the basis of 66% of solicitor-client costs in the sum of \$8569.16 including GST and disbursements and witness expenses. In addition a late claim is made for a similar proportion of costs incurred by the Plaintiff in New Zealand before it instructed Mr Little. That is a sum of \$1257.75
2. The amount at stake in the proceedings was about \$43314.50. That represented the proceeds of fish bait and a sum claimed in respect of storage. The main issue in the case was the ownership of the fish bait. The receivers had claimed ownership on the basis of documents purporting to document a sale. It was reasonable for them to pursue the claim under their duty as receivers. They were unsuccessful and ought to bear the costs as those in principle follow the event. The hearing of the case took place over two days. It was necessary for the plaintiff to call as its principal witness an officer of the company from New Zealand. It was not in my opinion a difficult or complicated case.
3. The scale set out in the High Court Fees Costs and Allowances Regulations is a guide as to what a reasonable contribution might be. On that basis I estimate the Plaintiff would be entitled to about \$4000.00 plus disbursements and witness expenses. That scale is now long out of date and bears little relationship to current monetary values or costs. At the same time costs calculated on a solicitor/client basis are the exception rather than the rule. Certainly the Courts have recognised,
“the scale of costs was a legislative direction as to what is to be regarded as a reasonable contribution in the ordinary kind of case. If in the circumstances of a

particular case compliance with that direction would not achieve the purpose of an award of costs, the Court is entitled to award more (or less). While the nature and course of the proceedings must always be the dominant consideration, there was room for recognising the amount of solicitor and client costs actually and reasonably incurred in the particular case." *Morton v Douglas Homes Ltd (No 2)* [1984] 2 NZLR 620. The Court has an unfettered discretion but must endeavour to achieve a reasonable award on a party party basis.

A perusal of the costs claimed shows that they include numerous attendances which though connected to the case precede the litigation and seem to refer to matters only indirectly connected with the latter. There are also costs claimed in respect of work done after the judgment which cannot be recoverable for costs in the action. The costs incurred before instructing Mr Little are also out of proper consideration as merely preliminary advice pending decision to proceed.

7. Among the considerations which I believe to be relevant in this case are the amount of time involved; the importance of the litigation; length and complexity of the proceedings; the amount involved. None of these singly or together persuade me that a solicitor/client basis is appropriate.
8. Having considered the matter I have come to the conclusion that an award of \$5000.00 would be a reasonable contribution to the costs of the Plaintiff.

In addition the Plaintiff is entitled to disbursements which I allow as follows:

Filing Statement Claim	45.00
Interim Injunction	22.50
Court costs fax telephone	109.00
Telephone and postage	150.00
Witness expense	40.00
Air fare	<u>840.00</u>
Total	1206.50

Order for costs to Plaintiff in the sum of \$5,000.00 plus disbursements \$1206.50

Laurie Greig CJ

