

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

[LAND 306/1997]

**Application No. 3/2011**

IN THE MATTER of Section 390A of the Cook Islands  
Act 1915

AND

IN THE MATTER of the land known as **AREAU  
SECTION 35, ARUTANGA, AITUTAKI**

AND

IN THE MATTER of an Application by Ngaoa Ranginui  
Trustee for **MATA URI PUATI** for a  
rehearing of an order given by Mr  
Justice Dillon given on 8 January 1998  
Applicant

AND

IN THE MATTER of **MAINA TRADERS LIMITED**  
Respondent

**JUDGMENT OF THE COURT AS TO COSTS**

**Background**

- [1] In my Judgment dated 9 September 2011, delivered orally following argument that day, I dismissed the application. In paragraph [33] I recorded that the respondent had succeeded on all fronts and was entitled to costs.
- [2] Mrs Browne's note of costs dated 26 September 2011 in the sum of \$2,432.62 was sent to Mr Moore on 30 September 2011. The parties were not able to reach agreement on costs.
- [3] Thereafter, Mrs Browne filed submissions dated 30 April 2012. Mr Moore responded on 18 May 2012.
- [4] The Registry omitted to forward the submissions to me and they languished on the Court file. Mrs Browne chased the matter up on 9 July 2012 by way of memorandum and a copy of that was sent to me.

[5] I then made numerous enquiries of the Registry asking for the file to be forwarded to me.

[6] That eventually occurred and on 4 February 2013 I received the relevant materials. On the same day I issued a Minute recording that fact and asking for a copy of Mrs Browne's fee note which had not been attached to her submissions. Mrs Browne filed a further memorandum shortly thereafter enclosing the fee note.

#### **Mrs Browne's fees**

[7] Mrs Browne's fee covers attendances in relation to the interim injunction application sought to protect the status quo pending resolution of the Section 390A Application including arguing the matter on 9 September 2011.

[8] The fee appears to me extremely modest for what was a significant body of work, much of it undertaken in circumstances of urgency.

#### **Mrs Browne's submissions**

[9] Mrs Browne refers to the usual authorities to the effect that the Court should fix costs representing a reasonable contribution to solicitor/client costs actually incurred. She refers to the two thirds rule which she suggests is appropriate in this case.

[10] Mrs Browne addresses a foreshadowed argument raised by Mr Moore that the costs incurred in relation to the interim injunction should not have been included.

[11] Mrs Browne's submissions concluded with a claim for 70% of the actual solicitor/client costs. Although she does not undertake the calculation that works out at \$1700.00.

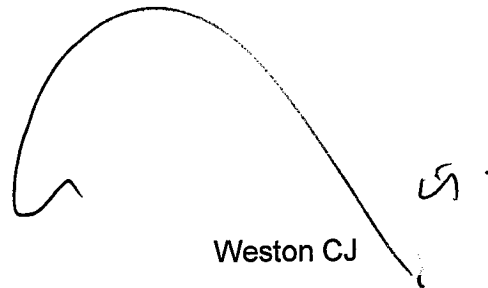
#### **Mr Moore's submissions**

[12] Mr Moore accepts that the respondent is entitled to costs. He points out that the urgency was, in part, created by the respondent itself having filed an application with the LAT which needed to be responded to urgently. Mr Moore submits that the application was properly filed. He refers to my acknowledgement that there was arguably an error in the calling of the meeting. Mr Moore goes on to say that costs should not include anything on account of the interim injunction. Ultimately, he concludes that costs should be awarded in the sum of \$400.00.

**Discussion**

- [13] I am quite satisfied that costs awarded in favour of the respondent should include costs on the interim injunction. The interim injunction was intimately connected with the Section 390A Application and was not withdrawn until the hearing on 9 September 2011.
- [14] The question of urgency is more nuanced. It is true that the respondent's application to the LAT at least superficially, created the urgency. However, as I noted in my Judgment, the applicant had effectively sat on her rights.
- [15] I believe that all the relevant factors can appropriately be accounted for in an award of \$1600.00. Accordingly, the applicant is to pay to the respondent costs in the sum of \$1600.00.

Dated 26 February 2013 (NZT)



Weston CJ