IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CIV 2010 409 2654

BETWEEN	PEH KIM POH AND LIEW YIEN PHIN Plaintiffs
AND	COUSINS & ASSOCIATES First Defendant
AND	FIVE MILE HOLDINGS LIMITED (IN RECEIVERSHIP) Second Defendant

Hearing: 24 January 2011

Counsel: S M Dwight for Plaintiffs
K W Clay for First Defendant
S Graham for Receivers of Second Defendant

Judgment: 4 February 2011

JUDGMENT OF ASSOCIATE JUDGE OSBORNE
as to release of stakeholding and as to non-party and other costs issues

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Background

[1] The second defendant (Five Mile) was in 2007 developing Five Mile Township as Queenstown The plaintiffs and Five Mile entered agreements for sale and purchase of two units. The plaintiffs paid deposits on their purchases totalling $172,907.00. Cousins & Associates, Five Mile's solicitor, was constituted stakeholder under the agreements. Cousins & Associates was to hold the deposits invested through an interest bearing trust account. The stake-holding agreement provided that:

> **3.2 Accounting for deposit:** The Stakeholder shall hold the Deposit on the following terms and conditions:
>
> …

(b) On the Settlement Date or if the Vendor otherwise becomes entitled earlier, the Stakeholder will pay to the Vendor the Deposit and all interest accrued on it, less withholding tax, and any bank and Stakeholder handling charges ("Net Interest").

(c) The Stakeholder will pay the Deposit and Net Interest to the Purchaser if this Agreement is avoided by reason of any condition subsequent not being satisfied, or is lawfully cancelled under clause 4.12 or clause 9.3 by the Purchaser or by reason of any default or breach by the Vendor.

(d) The Vendor and Purchaser hereby irrevocably and unconditionally authorise the Stakeholder to make the payments referred to in clause 3.2(b) and (c) as the case may be, without further authority from, or reference to, them.

[2] All did not go well for Five Mile in its development of Five Mile Township. It managed to obtain the issue of a resource consent for the subdivision on March 2008. However, Five Mile was placed into receivership on 9 July 2008. The land underlying the units to be sold was sold at mortgagee sale with the transfer registered on 20 November 2009. Against this background, unsurprisingly the plaintiffs gave notice of the cancellation of both agreements on 4 March 2010 and called for repayment of the deposit. They relied expressly upon the provisions of s 225(2)(b) Resource Management Act 1991, two years having elapsed since the issue of the resource consent.

[3] Cousins & Associates referred the plaintiffs' solicitors to the receivers. The refund of the deposits was unsuccessfully chased by correspondence and telephone calls through the following half year.

[4] The receivers by September 2010 must have instructed their solicitors in relation to the matter as those solicitors wrote to the plaintiffs' solicitors on 30 September 2010. Their letter indicates that the receivers were aware that the plaintiffs wanted confirmation from the receivers that the plaintiffs' obligations under the agreements had been terminated and/or confirmation that their deposits could be released under the agreements.

[5] Five Mile's solicitors advised the plaintiffs to take advice from their lawyer as to their continuing obligations, if any. They explained the receivers' position in this way:

> While the receivers wish to cooperate with and assist purchasers to the extent they reasonably can, the receivers cannot provide either of the confirmations set out above. The receivers have an incomplete set of documents relating to the transactions in question, and are therefore not in a position to conduct the review required to be able to provide unqualified confirmations in the form sought. Also, the receivers' duties and obligations require that they not invest time and resource for the benefit of purchasers where to do so does not result in a better recovery for the parties that appointed them.

[6] In short, the receivers did not wish to erode the money which would be available to their appointor by undertaking the research and analysis of documents which might clearly inform them as to the correct contractual position.

[7] The practical effect of the position taken by the receivers of Five Mile, in the interests of their appointor, was that the plaintiffs were left with no alternative but to issue this proceeding for the recovery of the deposits unless they could persuade Cousins & Associates as stakeholder to exercise its own judgement so as to release the deposits.

[8] The plaintiffs' solicitors attempted by letter to have Cousins & Associates release the deposit, warning that if it was necessary to issue proceedings then their final letter of demand would be produced to the Court in support an application for costs. Cousins & Associates immediately responded by reference to the correspondence between the receivers and the plaintiffs' solicitors, noting that if the receivers refused to address the position and the plaintiffs were forced to litigate the matter, then Cousins & Associates' client's position would be that any costs awarded should be payable by the receivers personally.

[9] That correspondence was then copied by the plaintiffs' solicitors to the receivers' solicitors, noting the Cousins & Associates comment that a costs award might be made against the receivers personally. The receivers were again requested to provide confirmation that they accepted the agreements were at an end, failing which proceedings were to be issued without delay.

[10] In the absence of any further response from the receivers the plaintiffs were forced to issue this proceeding which they did promptly in November 2010. Predictably, the plaintiffs sought summary judgment.

[11] By their statement of claim the plaintiffs sought costs against the defendants on a 2B basis, together with disbursements to be fixed by the Registrar. They further sought costs against the receivers of Five Mile on an indemnity basis, together with disbursements to be fixed by the Registrar. The proceeding was allocated a hearing on 24 January 2011.

Entitlement to summary judgment

[12] Neither defendant took any step to defend the proceeding and the summary judgment is therefore unopposed.

[13] Against the factual background which I have summarised and is fully traversed in the affidavit of Jennifer Loming in support of the application, I am satisfied that neither defendant has any arguable defence to the substance of the plaintiff's claims which is for return of the deposits, together with all interest accrued.

Order - summary judgment

[14] I order that the first defendant pay to the plaintiffs the deposits, in the total sum of $172,907.00, together with all interest accrued on that sum in the stakeholder account, less withholding tax and any bank and stakeholder's handling charges.

The costs applications

[15] The costs applications as now before the Court are as follows:

a. The application of the plaintiffs for a (2B) order for costs against Cousins & Associates, to which Cousins & Associates has filed opposition.

b. An application by the plaintiffs for costs against Five Mile (second defendant) on a 2B basis, to which there has been no opposition.

c. An application by the plaintiffs for costs on a 2B basis (revised from an indemnity basis) against the receivers personally, against which counsel for the receivers has made submissions.

d. Applications on behalf of the receivers and on behalf of Cousins & Associates (first defendant) for costs to be paid by the plaintiffs in relation to the costs hearing should the plaintiffs be unsuccessful in obtaining costs awards.

[16] I will deal with costs applications in order.

Costs against the first defendant/Cousins & Associates?

Basis of plaintiffs' application

[17] Cousins & Associates was a stakeholder with carefully drafted contractual provisions applying to the stake-holding. I have already set out certain of the provisions (above at [1]). It was the plaintiffs' case that the plaintiffs became entitled to payment of the deposit and net interest because the contract had been "lawfully cancelled. Ms Dwight noted the irrevocable authority given to the stakeholder to make such payments without further authority from or reference to the parties to the contract: see cl 3.2(d) – above at [1].

Position of Cousins & Associates

[18] It was the position of Mr Clay for Cousins & Associates that Ms Dwight's submissions begged the question – Five Mile as the vendor, had not conceded that the agreements had been lawfully cancelled. The irrevocable authority given by the parties to Cousins & Associates was to make the payments referred to in the previous sub-clauses (if the grounds existed) and did not involve an authority to make a decision, binding on all parties, as to whether such grounds existed.

Discussion

[19] Cousins & Associates was in this case a stakeholder caught in the middle with no agreement between vendor and purchaser as to the parties' rights. This case is a typical example of that intended to be covered by the procedure of a stakeholder's interpleader, in Part 4, Sub-Part 10 (rr 4.57 – 4.64) High Court Rules. Had it not been clear to Cousins & Associates that the plaintiffs would be issuing this proceeding in order to resolve the issue, Cousins & Associates would have had its right under r 4.58(1) High Court Rules to interplead. A stakeholder is not required to take a risk even where a particular argument of law or mixed fact and law is strongly likely to succeed. The stakeholder accepts his or her position with a concomitant right to interplead where any uncertainty exists. A refusal by one party to concede the entitlement of the other will often create or contribute to such uncertainty. Cousins & Associates as stakeholder was entitled to take the position as set out in its letter of 15 October 2010, namely:

> The receivers have not advised their acceptance that the agreement is at an end. Under those circumstances, we cannot, as stakeholder, independently determine which parties (sic) position is correct irrespective of what our professional opinion, as solicitors, may be.

[20] In short, Cousins & Associates effectively abided the outcome, as is appropriate for a stakeholder. They have maintained that position in the proceeding.

Conclusion

[21] In these circumstances, it would not be appropriate or otherwise just to order that the first defendant pay the costs of this application. There will be no order as to costs in that regard.

Costs against the second defendant Five Mile?

The plaintiffs' position

[22] The plaintiffs assert that this litigation was occasioned by the refusal of Five Mile, as the other party to the agreements, to acknowledge that the agreements were at an end. Costs should follow the event.

Lack of opposition

[23] Five Mile neither entered a formal appearance in this proceeding nor sought to address the Court on the issue of costs.

Conclusion

[24] The usual principle is that costs follow the event.

[25] As against Five Mile, there is no reason that costs should not follow the event. Although the plaintiffs have obtained an order directed to the first defendant as the stakeholder of the funds, the issues as to entitlement to the stake-holding were as between plaintiffs and second defendant.

[26] There will therefore be an order for costs and disbursements as set out below.

Costs against the receivers?

The plaintiffs' position

[27] There has been some emphasis in case law on the importance of the giving of notice to non-parties, before litigation is commenced, if there is later to be an application for costs to be paid by a non-party. The plaintiffs in this case met such expectation by including within the relief sought in their statement of claim an order for costs against the receivers personally. Ms Dwight filed in advance of the hearing a synopsis of submissions in support such an award of costs. Ms Dwight referred to authorities which establish that this Court has jurisdiction to award costs against a non-party (which jurisdiction is not disputed by the receivers). She submitted that the over-arching principle is whether in all the circumstances it is fair to make an order for such costs. She submitted that the case falls within the category of non-parties who have caused proceedings to be brought and continued because the

receivers, by failing to provide the confirmation requested by the plaintiffs' solicitors, left the plaintiffs no alternative but to sue.

Position of receivers

[28] Mr Graham for the receivers spoke to written submissions. His central submission was that although the jurisdiction exists to award non-party costs, the discretion is exercised only where a non-party has promoted, funded or controlled litigation. The control of the litigation in this case was entirely in the hands of the plaintiffs as neither the receivers nor the second defendant took any steps in the proceeding. Alternatively, Mr Graham submitted that the receivers had acted reasonably and that no exceptional circumstances existed to make it just to make an award of non-party costs.

[29] Mr Graham emphasised the default nature of the outcome in this proceeding. He suggested there is a lack of case law in which a non-party has been ordered to pay costs in relation to what has become a default judgment.

[30] Referring to previous cases, Mr Graham developed further propositions, namely that the Courts have set clear guidelines as to the circumstances in which the costs discretion may be exercised against non-parties and the underlying rationale of any award is that it would be wrong to allow funders of litigation to pursue their own interests without any risk to themselves should they ultimately fail.

[31] Then, developing the proposition that the receivers had acted reasonably, Mr Graham referred to the 30 September 2010 letter reply sent by the receivers' solicitors, above at [5]. Mr Graham submitted that it was apparent that the receivers did not have all the necessary information to properly assess the position, yet the plaintiffs' solicitors did not pick up a suggestion by Cousins & Associates that documents be supplied to the receivers' solicitors. Furthermore, Mr Graham submitted that the receivers' decision to refuse to divert funds and resources to investigate the plaintiffs' request was consistent with the receivers' duties to their appointor (the secured creditor): reliance was placed on s 18 Receiverships Act 1993. Mr Graham submitted that an award of non-party costs against the receiver on the

basis of litigation threats would be inconsistent with the priority of the interests of the secured creditor under s 18 of the Act.

[32] Mr Graham's submission was that the receivers had not acted unreasonably or in bad faith – they had simply reserved their position as to whether or not the agreements were at an end.

The jurisdiction and the discretion - generally

[33] The Court has jurisdiction to order a non-party to pay costs: see *Carborundum Abrasives Ltd v Bank of New Zealand (No 2)* [1992] 3 NZLR 757 (HC) at 763 – 764 and *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2)* [2005] 1 NZLR 145 (PC).

[34] The general approach to the discretion is that contained in the judgment of their Lordships in *Dymocks* (above) at [25](1),as delivered by Lord Brown:

> (1) Although costs orders against non-parties are to be regarded as "exceptional", exceptional in this context means no more than outside the ordinary run of cases where parties pursue or defend claims for their own benefit and at their own expense. The ultimate question in any such "exceptional" case is whether in all the circumstances it is just to make the order. It must be recognised that this is inevitably to some extent a fact-specific jurisdiction and that there will often be a number of different considerations in play, some militating in favour of an order, some against.

[35] Many of the reported cases in New Zealand and elsewhere involve consideration of the position of funders of litigation and draw a distinction between those who are "pure funders" and those funders who also control or at any rate are to benefit from a proceeding. The present case requires a focus not on the funding aspect of litigation but rather on the benefit aspect.

[36] It is not a prerequisite of an order of a non-party costs order that the non-party has acted with impropriety or mala fides. On the other hand, conduct in the nature of impropriety or mala fides may be a persuasive reason for exercising the discretion to order costs – see *Carborundum Abrasives (No 2)* per Tompkins J at 764, disagreeing with the observations of Master Hansen at first instance, reported at [1992] 3 NZLR 187 at 193.

[37] Where the case involves an alleged interest of the non-party in the proceeding it is the quality and degree of connection between the non-party and the dispute which most informs the discretion: see *Mark Winter Waikato Ltd v Tracy International New Zealand* (1999) 13 PRNZ 259 at [38].

The jurisdiction and the discretion – receivers in particular

[38] Direct financial interest, combined with initiation and control of proceeding will be a powerful combined factors. In *Carborundum Abrasives (No 2)* Tompkins J put the matter in these terms at [765] :

> Where proceedings are initiated by and controlled by a person who, although not a party to the proceedings, has a direct personal financial interest in their result, such as a receiver or manager appointed by a secured creditor, a substantial unsecured creditor or a substantial shareholder, it would rarely be just for such a person pursuing his own interests, to be able to do so with no risk to himself should the proceedings fail or be discontinued. That will be so whether or not the person is acting improperly or fraudulently.

[39] Decided cases illustrate that approach. In *Dymocks* itself the non-party (Associated Industrial Finance Pty Ltd) was a secured creditor of parties, an appointor of receivers to the parties' company, and a funder of the litigation: In *Asset Building M Pritchard Ltd v Hambeg Ltd* HC Auckland CIV 2008-404-3781, 21 November 2008, Asher J, the non-party was a shareholder, director and a funder of the litigation.

[40] The circumstances in which it would be appropriate to award costs to a non-party are necessarily confined, but that that is a question of discretion, not jurisdiction – per Dawson J in *Knight v F P Special Assets Ltd* [1992] 174 CLR 178 (HC). In that case the Full Court of the Supreme Court of Queensland (*sub nom Forest Pty Ltd (recs & mgrs apptd) v Keen Bay Pty Ltd* (1991) 4 ACSR 107 had dismissed an appeal against Supreme Court decisions to award costs against the receivers and managers of companies which were parties. The appeal to the High Court concerned whether the jurisdiction existed rather than whether the discretion had been correctly exercised. Mason CJ and Deane J, at 192 – 193, recognised the jurisdiction in these terms:

> For our part, we consider it appropriate to recognize a general category of case in which an order for costs should be made against a non-party and which would encompass the case of a receiver of a company who is not a party to the litigation. That category of case consists of circumstances where the party to the litigation is an insolvent person or man of straw, where the non-party has played an active part in the conduct of the litigation and where the non-party, or some person on whose behalf he or she is acting or by whom he or she has been appointed, has an interest in the subject of the litigation. Where the circumstances of a case fall within that category, an order for costs should be made against the non-party if the interests of justice require that it be made.

[41] In his judgment, Dawson J at 204 collected a number of cases which were authority for the making of such an award, those cases being decisions of English, Canadian and New South Wales courts.

[42] In relation to proceedings brought by persons such as receivers, managers and directors, the Courts have repeatedly recognised that the availability of security for costs against the company which is a party will often be a powerful if not determinative factor against the subsequent award of non-party costs. See *Knight's* case at 190 – 191 per Mason CJ and Deane J and at 204 – 205 per Dawson J; see also *Dolphin Quays Developments Ltd v Mills* [2007] 4 All ER 503 (ChD) at 513 and 516. Such considerations will arise only where the company is plaintiff or counterclaim plaintiff, and is susceptible to a security order.

The jurisdiction and the discretion – the non-party element of control

[43] In relation to cases involving insolvent companies, the jurisdiction arises whether the litigation is commenced by or against the company. References (such as in *Dymocks Franchise Systems* (HC) at 156) to proceedings which are initiated and controlled by a particular person are statements in the context of their own facts and do not limit the jurisdiction to a case where the company in question is plaintiff. I adopt the broader formulation of Mason CJ and Deane J in *Knight's* case (above at [40]) which for jurisdiction requires simply that the company in question is a party to the litigation.

The jurisdiction and the discretion – directors and liquidators

[44] As the case does not involve a claim for costs against directors or liquidators, I refrain from any detailed development of considerations which would apply to persons in those categories. It is sufficient to note in this context a tension between courts which might tread warily by reason of corporate veil considerations (see for instance *Premier Soft Goods Ltd v Warnock* (1996) 10 PRNZ 150) and courts by whom the corporate veil might be more willingly lifted to reflect the Court's view of justice(see for instance *Mark Winter Waikato Ltd v Tracy International New Zealand Ltd* (1999) 13 PRNZ 259). In short, the duties owed by individuals to a company may not in the costs context be a complete answer to an award of non-party costs. It may be that in relation to such officers, precisely because of their duty to the company, the Court may require an additional element such as impropriety or bad faith: see *De Vries v Queenstown.com Ltd* HC Invercargill CIV 2003-425-836, 23 December 2004 Panckhurst J at [7] – [8], applying *Metalloy Suppliers Ltd (in liq) v M A (UK) Ltd* [1997] 1 All ER 418 at 424 – 425. The same passage in *Metalloy Suppliers* was referred to with approval by the Privy Council in *Dymocks Franchise Systems*, per Lord Brown at 158, where his Lordship said (having recognised the jurisdiction):

> That is not to say that orders will invariably be made in such cases, particularly, say, where the non-party is himself a director or liquidator who can realistically be regarded as acting rather in the interests of the company (and more especially its shareholders and creditors) than in his own interests.

[45] Receivers, with their duties to their appointor, are not in the situation as directors and liquidators.

Application of the principles – the jurisdiction

[46] The jurisdiction to award non-party costs against the receivers exists in this case.

[47] It is not an answer for the receivers to say that the company they manage is not the plaintiff or that the judgment obtained was obtained "by default".

[48] The financier by whom the receivers were appointed stood to benefit from the litigation if the Court refused to make the orders sought by the plaintiffs and

settlement discussions or other litigation had to ensue. In this case, there was a stake-holding involved. The receivers had distinct degree of control over the proceeding both as to whether it was necessary in the first place and as to how it was resolved.

Application of principles – the discretion

The use of the Court to resolve the stake-holding entitlement

[49] The contractual entitlements of the plaintiffs in this case were uncomplicated. The agreements were cancelled by the plaintiffs because Five Mile could not perform its agreements and could not transfer to the plaintiffs that which Five Mile had contracted to transfer.

[50] The plaintiffs, having obtained judgment pursuant to the proceeding they were forced to issue, have established to the satisfaction of the Court their right to the relief they sought. There was no complex documentation trail or process of reasoning required to lead to this outcome. It was an outcome which could have been recognised by the receivers (with or without the express approval of their appointor) with little effort or time.

[51] In his submissions in opposition, Mr Graham invited the Court to envisage a path by which the Five Mile may have had a defence in relation to the plaintiffs' claims flowing from purported cancellation of the agreements.

[52] This particular aspect of his submissions did not form part of Mr Graham's written submissions. Rather he articulated it orally. I understand it to be as follows: The plaintiffs purported to cancel the agreements pursuant to s 225(2)(b) Resource Management Act. Two years had elapsed since issue of the resource consent. The statutory provision involves a consideration as to whether a vendor has made reasonable progress towards submitting a survey plan for approval or depositing the survey plan within a reasonable time. Mr Graham submitted that (although there was no evidence on which he could argue that Five Mile had made reasonable progress on a survey plan) it was possible that the party to whom the Five Mile land

had been sold could have taken over the plaintiffs agreements by assignment. The submission appeared to imply that the purchaser of the land may have been making satisfactory progress after assignment.

[53] The submission is without merit. No factual foundation was put before the Court for the speculation as to an assignment of the vendor's rights and obligations. It is an inherently unlikely event given that the sale way by a mortgagee. . There is no suggestion that any notice of assignment of the contract was ever given to the purchasers. There is no suggestion that any evidence of progress on the survey plan was produced to the purchasers.

[54] In these circumstances I conclude that the factual background and legal considerations which determine the rights of the plaintiffs and of Five Mile respectively were readily capable of resolution in a very short time.

[55] The receivers, through counsel, have been unable to point to any complexity in the background to this case which would have created the need for any significant time spent in resolving out of Court the issue which the plaintiffs had to have resolved in Court.

[56] The care with which the Court must examine any application for non-party costs must not be allowed to become a charter for those who have some control over the need for Court proceedings to sit on their hands regardless of the circumstances. The receivers in this case chose to sit on their hands. I ask myself whether that was reasonable?

[57] I take judicial notice of the fact that the financial failure of Five Mile was a major failure. It attracted great publicity in relation to its extent and that publicity continued while the receivers subsequently realised assets.

[58] While the receivers by their response to the plaintiffs' solicitor in September 2010 suggested possession of an incomplete set of documents, they went on in the next sentence to indicate that they would not be investing time and resource "for the

benefit of purchasers" as that would not "result in a better recovery for the parties that appointed them".

[59] Thus, the position of the receivers as they expressly put it was to make the interests of their appointor paramount, to the exclusion of even modest enquiries which might produce a benefit to the plaintiffs through recognition of their rights.

[60] On the facts of some cases the receivers' duty to their appointor may be a sufficient factor to weigh against awarding non-party costs.

[61] On the facts of this case, however, where there was no tenable argument against the plaintiffs' claims and where, with a very modest amount of time spent on research (even carrying with it a modest financial impact upon the appointor), the need for litigation would have been avoided.

[62] While the plaintiffs seek costs on a 2B basis, their initial prayer (in their statement of claim) had been for costs to be paid by the receivers on an indemnity basis. That approach was perhaps understandable when one remembers that r 14.6(b)(iii) High Court Rules, which provides for increased costs (rather than indemnity costs), expressly allows the Court to award increased costs if the party opposing costs contributed unnecessarily to the time or expense of the proceeding by failing, without reasonable justification, to admit the facts or to accept a legal argument.

[63] Court resources are finite. Some delay of remedy is inevitable for plaintiffs who are forced to come to this Court. Costs are incurred both directly and through passage of time until recovery.

Outcome

[64] It is just in the circumstances of this case that the receivers pay the plaintiffs' costs on a 2B basis, together with disbursements. Other cases may exist where the conduct of receivers in effectively forcing a matter to Court is found to be reasonable because of greater complexity or cost of private resolution. This is not such a case.

The correct answer to the plaintiffs' requests was straight-forward. It should not have required resolution through Court proceedings. As between the plaintiffs and the receivers a just outcome is that the receivers contribute to the plaintiffs' costs by making a 2B payment. It is just that the costs award in favour of the plaintiffs includes a certificate to cover the costs argument.

[65] There will be an order for costs and disbursements as set out below.

Costs in favour of the receivers against the plaintiffs?

[66] The submission of Mr Graham that the plaintiffs should be ordered to pay costs to the receivers in the event the receivers succeeded in resisting a non-party costs award falls away. The receivers have failed in their resistance to an award of costs against them.

Costs in favour of Cousins & Associates against the plaintiffs

[67] Cousins & Associates had to defend the application for costs made against them. Argument was required and submissions filed. The plaintiffs have failed in their pursuit of a costs order. It is just that Cousins & Associates have costs on the basis of one quarter day.

Costs orders

[68] I order:

a. The second defendant shall pay to the plaintiffs the costs of the proceeding on a 2B basis, together with disbursements, but in relation to the appearances on 24 January 2011 such appearance being dealt with as Item 4.17 Schedule 3 (0.2 days). I fix the costs and disbursements as against the second defendant (and as calculated in the memorandum of counsel for the plaintiffs) in the total sum of $8,539.33.

b. The receivers, namely David Stuart Vance and Rodney Gane Pardington, as non-parties, shall pay to the plaintiffs the costs of the proceeding on a 2B basis, together with disbursements with a certificate for one quarter day (0.25) in relation to the appearance and argument on the costs application. I fix the costs and disbursements as against the non-parties in the total sum of $8,633.33.

c. By analogy to r 14.14 the liability of the costs and disbursements liability of the second defendant and of the non-parties shall be joint and several to the extent of the total sum awarded against the second defendant (namely $8,539.33).

d. The plaintiffs shall pay to the first defendant the costs of the hearing in relation to costs, with a certificate for a quarter day (0.25) for the appearance and argument. I fix the costs in the sum of $470.00.

e. There are no further orders as to costs.

Solicitors
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