IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2017-004-002861
[2019] NZDC 15492

IN THE MATTER OF	THE HARASSMENT ACT 1997
BETWEEN	JACQUELINE ANNE VERONICA TURNER Applicant
AND	KAZUFUNI IKEDA Respondent

Hearing: On the papers

Judgment: 9 August 2019

DECISION AS TO COSTS OF JUDGE G M HARRISON

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[1] Mr Ikeda, as the successful party in opposing the application by Ms Turner for a restraining order, now seeks costs.

[2] In my decision of 28 June 2019, I reserved leave for an application for costs to be made by Mr Ikeda within 10 days of delivery of that decision, those submissions having now been received. I then directed that any submissions on behalf of Ms Turner were to be filed within a further 10 days, that is by 18 July 2019. No submissions have been filed.

[3] Mr Ikeda firstly seeks indemnity costs. I note that Rule 14.4 District Court Rules 2014 (the Rules) provide that all matters are at the discretion of the Court if they relate to costs of a proceeding.

[4] The principles on which indemnity costs are awarded are set out in *Bradbury v Westpac Banking Corporation*[1]. Generally speaking indemnity costs will be appropriate whenever a party has behaved either badly or very unreasonably.

[5] I do not regard the conduct of Ms Turner in this case as falling within that category.

[6] As far as increased costs are concerned, I am of the view that an award in that regard is appropriate.

[7] Rule 14.6(3) provides that the Court may order a party to pay increased costs if—

> (b) The party opposing costs has contributed unnecessarily to the time or expense of the proceeding.
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> One relevant factor is specified by R 14.6(3)(b) of failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under Rule 14.10 or some other offer to settle or dispose of the proceeding.

[8] Subsection (d) also authorises an award of increased costs if "some other reason exists that justifies the Court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious."

[9] Late in the piece, this matter being heard on 11 June 2019, Mr Ikeda's solicitors wrote to Ms Turner's solicitors proposing a settlement whereby the application for restraining orders would not proceed and that other conditions should be accepted. This included Ms Turner stepping down as Chairman of the Body Corporate and a significant 80% contribution towards costs incurred to that point by Mr Ikeda. The offer was not accepted.

[10] In all the circumstances, particularly with the offer being made at the eleventh hour, that refusal may have been justified.

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[1] [2009] NZCA 234.

[11] But, in my decision of 28 June, I expressed the concern that the proceedings may have been brought for a side purpose, there being at the time considerable dissension between Mr Ikeda and Ms Turner over the proper functioning of the Body Corporate.

[12] This received some support from the continued adjournment of the application at Ms Turner's request.

[13] The application was first set down for hearing on 18 July 2018. Ms Turner sought to adjourn that hearing which was refused. The hearing however did not proceed on the basis that the parties had reached a settlement.

[14] That was not finalised and the matter was set down for a case management conference on 6 September 2018. The proceeding was further adjourned on that day to await the outcome of the Annual General Meeting of the Body Corporate to take place on 12 September 2018.

[15] Whatever the point was to be resolved at that meeting, no settlement resulted and a further one day fixture was allocated.

[16] That was set for 7 March 2019. That hearing was also adjourned, that time because of the medical condition of the applicant.

[17] The application was then set down for hearing on 11 June 2019. Again, extraordinarily Ms Turner sought an adjournment which I declined for reasons given in my minute of that day and the hearing proceeded.

[18] The delays and failed settlements all appeared to be as a consequence of Ms Turner's actions. There is no doubt that additional attendances were required on the part of Mr Ikeda's legal advisors as a consequence of those delays. Consequently in my view an award of increased costs is justified by reason of the refusal of Ms Turner to accept the settlement offer proposed, but also because of her obvious reluctance to proceed with the application in a timely fashion.

[19] Increased costs are generally awarded with a 50 percent uplift on scale costs.

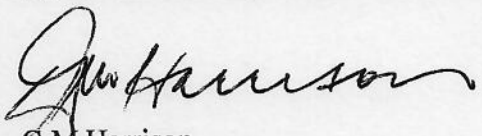
[20] Randerson J in *Radisich v Taylor*[2] said--

> [28] In Holdfast, the Court of Appeal made it clear at [46] - [48] that where conduct of a party of the kind described in the Rules is established, the Court's normal response should be to provide an uplift on scale costs for the particular step or steps at issue. An uplift of up to 50 percent should ordinarily be regarded as the maximum logically required by the scheme of the rules. While the Court of Appeal did not rule out the possibility of an uplift of more than 50 percent, the Court clearly regarded that as an unusual or exceptional course.

[21] Mr Ikeda's solicitors have submitted a Schedule of Costs sought by reference to the time allocations in Schedule 4 to the Rules assessed against a Category B daily rate of $1780 per day.

[22] I have not allowed all amounts claimed. For instance a claim is made for the filing of a statement of defence and separate claims for the filing of affidavits. No statement of defence was filed. A notice of opposition was filed whereby item 6 of Schedule 4 allows 1.5 days for that step. The notice of opposition is only a few lines long but was supported by the filing of affidavits. In my view the filing of the notice of opposition should include the filing of those affidavits and an amount of $1780 is allowed in that regard. The preparation of written submissions and appearance at the judicial settlement conference that did not proceed are also allowed. I also allow item 13 for appearance at the hearing but not item 12 being preparation for the short trial because that is already covered by item 9.12, the preparation of written submissions. I do allow however for the appearance of second counsel, where both counsel were actively involved in the hearing. Preparation of closing submissions is also allowed but not the final claim for preparing submissions in support of the application for costs, the general rule being that costs are not awarded on applications for costs.

[23] Consequently costs are awarded in favour of Mr Ikeda according to Category 2B in the sum of $10,324 with a 50 percent uplift of $5,162 for a total of $15,486. Disbursements of $57.84 are also awarded.



G M Harrison
District Court Judge

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[2] High Court Auckland CIV-2007-404-007578, 16 April 2008.