

**IN THE EMPLOYMENT COURT
AUCKLAND**

**[2012] NZEmpC 148
ARC 18/12**

IN THE MATTER OF an application for security for costs

BETWEEN SANDY ZHOU
 First Plaintiff

AND NEW TIMES PRESS LIMITED
 Second Plaintiff

AND LING LIN
 Defendant

Hearing: By way of submissions dated 13 July and 20 July 2012

Counsel: Tonderai Mukusha, counsel for first and second plaintiff
 May Moncur, advocate for defendant

Judgment: 31 August 2012

**INTERLOCUTORY JUDGMENT OF JUDGE CHRISTINA INGLIS
IN RELATION TO COSTS ON APPLICATION
FOR SECURITY FOR COSTS**

[1] The defendant brought a successful application for security for costs,¹ and now seeks costs on that application. The plaintiffs accept that a contribution towards costs is appropriate, but submit that the actual costs claimed by the defendant are unreasonable and that a contribution of \$850 would be appropriate in the circumstances.

[2] The Court has a broad discretion to award costs. The discretion is to be exercised in accordance with principle. It is well established that the usual starting

¹ [2012] NZEmpC 108.

point for assessing costs in this Court in ordinary cases is 66 percent of actual and reasonable costs.²

[3] Ms Moncur, advocate for the defendant, filed material in support of the application for costs. It shows that the defendant has been invoiced the sum of \$3,036 (GST inclusive) for attendances relating to the application for security for costs. That figure is based on an hourly rate of \$220 and disbursements of \$30.00. It follows that approximately 12 hours work was incurred in taking instructions, drafting the application and affidavit filed in support, preparation and attendance before the Court on 18 June 2012. Ms Moncur submits that a costs award of 66% of the actual costs incurred by the defendant would be reasonable. She states that the defendant is in financial difficulty and that “every single dollar is crucial to her survival in New Zealand.”

[4] Counsel for the plaintiffs, Mr Mukusha, takes issue with the reasonableness of the actual costs said to have been incurred by the defendant, referring in particular to the claimed hourly charge out rate.

[5] I accept that the defendant has incurred actual costs of \$3,036 (GST inclusive). I turn to consider whether they were reasonable, in the circumstances. The application and affidavit filed in support of the application were very brief. The affidavit ran to only three paragraphs. No written submissions were provided to the Court. Brief oral submissions were advanced, without reference to legal authorities. The hearing took approximately one and a half hours. That was longer than it might otherwise have been as both parties cross-examined the deponents of the affidavits filed. Much of the cross-examination was of peripheral relevance.

[6] I consider, based on the documentation filed and the submissions advanced on the defendant’s behalf, that the claimed costs of representation were unreasonably high. Having regard to the overall circumstances of the case and what was involved in pursuing the application, I am satisfied that costs of around \$1,500 would be reasonable. I do not discern any reason for adjusting the costs awarded from the 66% starting point.

² *Binnie v Pacific Health Ltd* [2002] 1 ERNZ 438 (CA) at [14].

[7] I order the plaintiffs to pay \$1,000 by way of a contribution to the defendant's costs on the application.

[8] Disbursements of \$30 are also sought. It appears that these relate to general office expenses (cited as "incidental phone calls and copying etc"). General office expenses are not generally recoverable,³ and I see no reason for departing from the usual approach in this case. I decline to make an order in relation to the claimed disbursements.

Christina Inglis
Judge

Judgment signed at 1pm on 31 August 2012

³ *Jinkinson v Oceana Gold (NZ) Ltd* [2011] NZEmpC 2 at [47].