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**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY**

**CIV 2010-406-235**

IN THE MATTER OF      the Construction Contracts Act 2002

BETWEEN                      PAUL MARK COKER  
    Appellant

AND                                PHIL BROWN BUILDING LIMITED  
    Respondent

Hearing:                      2 May 2011

Counsel:                      D J Clark for Appellant  
    Q A M Davies and M Sandom for Respondent

Judgment:                      2 May 2011

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**COSTS JUDGMENT OF RONALD YOUNG J**

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[1]      This was an appeal from the District Court. It related to the Construction Contracts Act 2002. I conclude that payment claims under the Act were fatally flawed and no valid payment claim had ever been made, in any event, the District Court had approved of the wrong procedure to bring the case before it, and finally that the payment claims were invalid because the arrangements between the parties had no due date and the default provision of the Act did not apply.

[2]      In my Judgment I also said as to costs the following:

[89]      Two aspects counsel should keep in mind when making submission on costs. Firstly, one of the appeal points required leave not being argued in the District Court. This favours a reduced order for costs in favour of the appellant. Secondly, some of the difficulty arose in this case because of Mr Coker's failure to serve a payment schedule albeit Mr Brown's process was imperfect.

[3]      The appellant now seeks costs on the appeal. Total costs sought are on a 2B basis being \$4,845.51 (including disbursements).

[4] The respondent says that costs should be reduced by fifty per cent because of the new point raised on the appeal together with the contribution made by Mr Coker because of his failure to serve a payment schedule. The appellant says that if any reduction at all is justified no more than one third is appropriate. Further, they say the disbursements should not be subject to the one third rule.

[5] For reasons given in my original judgment it is appropriate that there be some reduction from the costs properly payable by the respondent to the appellant given the appellant's success in the appeal. That reduction, however, in my view should not apply to the disbursements being the setting down fee, the filing fee and photocopying.

[6] I agree with the appellant that a reduction of one third is the appropriate reduction in the circumstances. The 2B costs, therefore, should be reduced by one third from \$3,196 to \$2,109.36. I approve the setting down fee, filing fee and photocopying as sought by the appellant.

[7] The appellant should provide a draft judgment as to costs for sealing to the Registrar.

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Ronald Young J

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