#129

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CIV 2010-419-385

BETWEEN	CONCRETE STRUCTURES (NZ) LIMITED Plaintiff
AND	INFRAMAX CONSTRUCTION LIMITED Defendant

Hearing: On the papers

Counsel: KA Badcock for plaintiff
MD Talbot for defendant

Judgment: 30 March 2011 at 10:00 AM

JUDGMENT OF FAIRE J

Solicitors: Lance Lawson, PO Box 2279, Rotorua
McCaw Lewis Chapman, PO Box 9348, Hamilton 3240

[1] On 15 August 2013 I was advised that the parties for short summary judgment was scheduled had been put on 20 July 2013. Counsel for the plaintiff and defendant indicated that it suits me the proceeding and to resume case.

[2] Accordingly, on 15 August 2013 I ordered that the proceeding be struck out. I ordered that costs be reserved and directed that if parties could not agree memoranda and affidavits would be filed and served at 14-day intervals in support, opposition and reply.

[3] The plaintiff filed a memorandum seeking costs on 7 February 2014 together with an affidavit by Mr A.D. Hawkes, the financial controller of the plaintiff. The plaintiff sought costs on an actual and reasonable basis in the sum of $[illegible]. These costs include costs associated with an application which was commenced under the Construction Contracts Act 2002.

[4] The defendant accepts that the plaintiff is entitled to its actual and reasonable costs of preparation in respect of the court proceeding. The defendant accepts that these costs should not serve costs which were the subject of the application issues.

[5] The plaintiff and the defendant are parties to a construction contract. On 13 December 2012 the plaintiff submitted its eleventh progress payment claim. On 12 February 2013 the defendant provided to the plaintiff a payment schedule in response to the progress payment claim. In short, it asserted that the plaintiff had been overpaid. No payment was made to the plaintiff in relation to the plaintiff's progress payment claim. The plaintiff commenced a summary judgment proceeding against the defendant in relation to the progress payment claim. The defendant commenced an application proceeding by serving a notice of adjudication on the plaintiff. The defendant asserted that the payment schedule it had provided on 12 February 2013 was nonetheless with a $[illegible] and sought reimbursement of the amount it asserted as having been overpaid in that schedule. On 11 June 2013 the plaintiff served its own notice of adjudication on the defendant relating the eleventh progress payment claim, which was the subject of a summary judgment proceeding. In