

#91

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

**CIV 2009-404-004075**

IN THE MATTER OF    Section 290 Companies Act 1993  
BETWEEN                NORTHERN HOLDINGS LIMITED  
                                 Applicant  
AND                        EAGLEN HOMES CONSTRUCTION  
                                 LIMITED  
                                 Respondent

Hearing:            ON THE PAPERS  
Appearances: E St John for Respondent  
                         D Smith for Applicant  
Judgment:        16 December 2009 at 2.30 pm

---

**JUDGMENT OF ASSOCIATE JUDGE ROBINSON ON COSTS**

---

This judgment was delivered by me on 16 December 2009 at 2.30 pm,  
Pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date.....

Solicitors:            Mayne Wetherell, PO Box 3797, Shortland St, Auckland  
                                 D Connor, Barrister, PO Box 3897, Shortland St, Auckland

[1] Following payment by the applicant to the respondent of the amount claimed in a statutory demand served by the respondent on the applicant the statutory demand was set aside. Counsel have now filed memoranda as to costs.

[2] The statutory demand was issued to recover a sum due pursuant to s 24, ss2 Construction Contracts Act 2002.

[3] It is accepted by the applicant that the respondent is entitled to its actual and reasonable costs pursuant to s 24, ss 2(a)(ii). Counsel for the applicant however contends that the respondents claim for costs of \$7,164 plus GST to be excessive. In making that submission no issue is taken with the charge out rates claimed by counsel and the solicitor for the respondent. Issue is taken with the amount of time claimed by the respondent in preparing its defence to the application to set aside the statutory demand. It is pointed out by the applicant that the respondent filed a relatively brief affidavit of some two pages.

[4] However, counsel for the respondent points out that considerable time was spent analysing the evidence because of the attempt by the applicant to draw the respondent into a wider and general dispute rather than focus upon the purposes and wording of the Construction Contracts Act and the established authorities. Counsel for the respondent made the tactical decision to largely ignore that which had been raised by the applicant and focus instead upon the Act. That decision clearly was successful because shortly after filing the affidavit in reply the applicant decided to pay the amount claimed and not proceed with its application.

[5] In the circumstances therefore I am satisfied that the respondents claim for costs amounting to \$7,164 plus GST is entirely appropriate and reasonable. Accordingly therefore there will be an order that the applicant pay the respondent's costs of \$7,164 plus GST.

---

**Associate Judge Robinson**