

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

**CIV-2012-404-1482
[2012] NZHC 1605**

BETWEEN RJ VIALL BUILDERS LIMITED
 Plaintiff

AND LYNDA DIANE PARTRIDGE
 Defendant

(On the papers)

Counsel: GD Stringer for plaintiff
 KF Gould for defendant

Judgment: 6 July 2012

**JUDGMENT OF ASSOCIATE JUDGE FAIRE
[on costs]**

Solicitors: Inder Lynch, PO Box 72 045, Papakura
 Alastair C Wright, PO Box 99 172, Auckland 1149

[1] On 24 May 2012 I entered judgment against the defendant for \$29,713.13. I reserved the question of interest and costs. I ordered that “if counsel cannot agree memoranda in support, opposition and reply shall be filed and served at seven day intervals”.

[2] Counsel for the plaintiff filed a memorandum setting out the basis for an order for interest and costs on 6 June 2012. There was no response from counsel for the defendant. On 15 June 2012 I issued a minute as follows:

I am advised by Mr Stringer that his memorandum setting out the terms of judgment for costs on this proceeding was served on Mr Gould on 28 May 2012. Unless Mr Gould files a memorandum opposing the application for costs by 22 June 2012, I will deal with the matter on an unopposed basis and based on Mr Stringer’s memorandum.

[3] The Deputy-Registrar who has responsibility for this file forwarded an email to counsel for the defendant on 21 June 2012 as follows:

Please be reminded that per minute of Faire Aj (attached herewith), you are required to file a memorandum opposing the application for costs by **22 June** 2012, otherwise His Honour will deal with the matter on an unopposed basis.

Your compliance is appreciated.

[4] A reply was received from counsel for the defendant’s office as follows:

Receipt acknowledged, thank you Mel.

There has been no memorandum filed on behalf of the defendant.

[5] The plaintiff and defendant are parties to a construction contract. On 13 December 2011 the plaintiff issued a payment claim for \$29,713.13. It is pleaded that the defendant did not serve a valid payment scheduled within the meaning of s 21 of the Construction Contracts Act 2002. On that basis, in accordance with s 23(2) of the Construction Contracts Act 2002 the plaintiff is entitled to recover from the defendant, as a debt due, the amount of the claim, \$29,713.13, together with the actual and reasonable costs of recovery awarded against the defendant, plus interest in accordance with the Judicature Act 1908.

[6] Counsel for the plaintiff has submitted the tax invoices for legal costs incurred, plus disbursements. I am satisfied that they represent the actual and reasonable costs of recovery of the amount for which judgment was entered. Counsel's memorandum has also calculated the interest due to the date on which judgment was entered in accordance with the rate prescribed pursuant to the Judicature Act 1908. His calculation is correct.

[7] Accordingly, I enter judgment for costs and interest as follows:

Interest	\$496.57
Costs	\$8,709.12

[8] I record that counsel's calculation has excluded any GST content in respect of the order that I have made in this case. In case that should cause a problem I reserve that issue.

JA Faire
Associate Judge