

**IN THE DISTRICT COURT
AUCKLAND OFFICE**

CIV-2012-004-696

BETWEEN GRACE HADEN of 23 Wapiti Ave, Epsom, Auckland

First Plaintiff

AND VERISURE INVESTIGATIONS LIMITED of a duly incorporated company having its registered office at 23 Wapiti Ave, Epsom, Auckland

Second Plaintiff

AND NEIL EDWARD WELLS of 1308 State Highway 3, RD 5, Te Kuiti 3985, Barrister

First Defendant

AND WINIFRED NORIEN HOADLEY of 74 Castor Bay Road, Castor Bay, Auckland 0620, Barrister

Second Defendant

AND GRAEME JOHN COUTTS of 15A Saltaire Street, Avondale, Auckland 1026

Third Defendant

**MEMORANDUM OF COUNSEL ON BEHALF OF THE DEFENDANTS
IN RESPONSE TO APPLICATION ON BEHALF OF THE PLAINTIFFS
TO RECALL THE COSTS DECISION OF
JUDGE B A GIBSON, DATED 26TH JUNE 2013**

DATED THE 4th DAY OF July 2013

**NEXT EVENT:
JUDICIAL OFFICER:
CASE OFFICER:**

**BROOKFIELDS
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AUCKLAND**

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IN RESPONSE TO APPLICATION ON BEHALF OF THE PLAINTIFFS
TO RECALL THE COSTS DECISION OF
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MAY IT PLEASE THE COURT

1. Counsel for the defendants refers to the application filed on behalf of the plaintiffs to recall the costs decision of Judge B A Gibson, dated 26 June 2013 ("plaintiffs' recall application").

Background

2. In the judgment of Judge B A Gibson delivered on 10 May 2013, His Honour directed that the parties file memoranda in relation to costs.
3. On 23 May 2013 the defendants filed their memorandum as to costs ("defendants' costs memorandum").
4. On 29 May 2013 the plaintiffs filed their memorandum as to costs ("plaintiffs' costs memorandum").
5. On 24 June 2013, Judge B A Gibson delivered his costs decision awarding indemnity costs to the defendants in the sum of \$15,468.68 plus disbursements of \$603 ("costs decision").

Plaintiffs' Recall Application

6. The plaintiffs' recall application raises issues already addressed by the plaintiffs in the plaintiffs' costs memorandum which was considered by the Judge before he issued the costs decision.
7. In particular, those issues are:
 - (a) The plaintiffs allege that "AWINZ" is not a party to this litigation (see for example paragraph 3 of the plaintiffs' costs memorandum and paragraph 7.1 of the plaintiffs' recall application); and

- (b) The plaintiffs allege that Peter McCutcheon and Translegal were not involved in this litigation (see for example paragraph 8 of the plaintiffs' costs memorandum and paragraphs 7.2 and 7.4 of the plaintiffs' recall application).
- 8. The plaintiffs are clearly seeking to relitigate matters already dealt with by His Honour Judge B A Gibson in his costs decision. Accordingly, the plaintiffs' recall application is an abuse of the Court's process and should be dismissed.
- 9. The plaintiffs have also erroneously alleged errors in the defendants' costs memorandum. Counsel for the defendants responds to those allegations with reference to the paragraph numbering in the plaintiffs' recall application:
 - (a) **Paragraph 7.3**
The attendances extracted from the invoice dated 31 July 2012 do in fact total \$369 (see **attached** and marked "A" time records for those attendances);
 - (b) **Paragraph 7.5**
The attendances for 29 August 2012 do in fact relate to matters at issue in this proceeding. The attendances regarding the settlement offer received from the plaintiffs impacted on this proceeding. However, the bulk of the attendances related to the defendants' strike out application. Both of those attendances were extracted from the invoice dated 31 August 2012 and total \$390; and
 - (c) **Paragraphs 7.6 and 7.7**
The attendances extracted from the invoice dated 28 September 2012 total \$6,232.50, not \$5,197.50 as alleged by the plaintiffs.

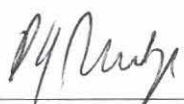
Summary

- 10. The plaintiffs' recall application is clearly an abuse of the Court's process, in that it attempts to relitigate matters already dealt with by His Honour Judge B A Gibson in his costs decision, and makes new assertions which are clearly erroneous.

11. Accordingly, the defendants seek orders:

- (a) dismissing the plaintiffs' recall application; and
- (b) directing that the plaintiffs pay the defendants' actual costs of and incidental to the preparation of this memorandum.

DATED the 4th day of July 2013



D J Neutze
Solicitor for the defendants

Date: 31 July 2012
 Bill No: 289909
 Our Ref: 600154/David Neutze/Lisa Walsh

SCHEDULE OF ATTENDANCES

GRACE HADEN

Date	Details	Solicitor	Hours	\$ Amount
25.06.12	Research procedural rules regarding whether or not substituted plaintiff may rely on original demand and discuss with Lisa.	NFL	1.7	212.50
25.06.12	Attendance on file regarding substituted plaintiff (Hoadley) proceedings	LGH	0.3	78.00
26.06.12	Research and report to Lisa regarding likelihood of bankruptcy application being successful.	NFL	1.4	175.00
26.06.12	Attendance on preparing liquidation proceedings on behalf of substituted plaintiff	LGH	1.0	260.00
26.06.12	Attendance on finalising the liquidation proceedings on behalf of the substituted plaintiff	LGH	0.5	130.00
26.06.12	Attendances checking draft statement of claim for substituted plaintiff to ensure consistency with cases	NFL	0.3	37.50
26.06.12	Attendance on preparing breakdown of calculations for letter to Peter McCutcheon	LGH	0.5	130.00
26.06.12	Reviewing statement of claim and internal conference with Lisa	BXA	0.2	46.00
27.06.12	Telephone from Wyn regarding substituted plaintiff proceedings	LGH	0.2	52.00
27.06.12	Attendance on preparing demand for payment of all further debts	LGH	1.0	260.00
27.06.12	Attendance on email to you attaching letter of demand for your approval	LGH	0.2	52.00
27.06.12	Reviewing letter to Peter McCutcheon and emails to/from Lisa, Grace Haden and Peter McCutcheon	BXA	0.3	69.00
28.06.12	Research cases regarding lodging charging order against funds held in trust account of debtor.	NFL	0.4	50.00
28.06.12	Attendance on various emails with you regarding demand on Haden/Verisure; emails to and from Peter McCutcheon	LGH	1.0	260.00
28.06.12	Attendance on finalising the demand; reviewing email from Grace Haden; responding to the same; attendance on Wyn regarding her affidavit; drafting letter to the Court regarding the substituted plaintiff proceedings	LGH	2.0	520.00
29.06.12	Attendance on reviewing email from Grace Haden; telephone to the High Court regarding security for costs; attendance on drafting settlement letter to Grace Haden; forwarding copy to your for your information	LGH	2.0	520.00
29.06.12	Finalise letter to Grace Haden regarding settlement and memo to court on the bankruptcy application.	DJN	0.4	200.00
29.06.12	Conferences (over several days) with Lisa and Ben regarding strategy on settlement, bankruptcy and liquidation.	DJN	1.2	600.00
29.06.12	Attendance on sorting memo and preparing affidavit in support	LGH	2.0	520.00
29.06.12	Internal conferences with Lisa; review emails from and to Grace Haden; draft memorandum to the High Court	BXA	1.2	276.00
02.07.12	Reviewing letter and information capsule received from Grace Haden	BXA	0.5	115.00
02.07.12	Reviewing affidavit	BXA	0.2	46.00
02.07.12	Attendance on finalising affidavit in support of judgment creditor's memorandum	LGH	0.5	130.00
02.07.12	Reviewing letter and information capsule from Grace Haden; telephone discussion with you regarding the same	LGH	0.5	130.00

SCHEDULE OF ATTENDANCES (continued)**GRACE HADEN**

Date	Details	Solicitor	Hours	\$ Amount
03.07.12	Attendance on file for hearing on 3 July 2012	LGH	0.5	130.00
03.07.12	Attendance on sorting District Court proceedings	LGH	0.3	78.00
03.07.12	Preparation and attendance at High Court	BXA	3.0	690.00
03.07.12	E-mail to you and telephone call with you	BXA	0.5	115.00
03.07.12	Attendances with Ben regarding bankruptcy and finalise report.	DJN	0.4	200.00
04.07.12	Attendance on preparing further order for costs; letter to the Court	LGH	1.0	260.00
04.07.12	Attendance on CT search	LGH	0.2	52.00
04.07.12	Attendance on preparing further demand letter against VIL	LGH	1.0	260.00
05.07.12	E-mail to Peter McCutcheon about money being held on trust	BXA	0.1	23.00
05.07.12	Attendance on LTO and Company search regarding property at Wapiti Ave; email to you to update on the Liquidation and District Court proceedings	LGH	0.5	130.00
05.07.12	Attendance on advertisement for putting company into liquidation	LGH	0.5	130.00
06.07.12	E-mail from Grace Haden	BXA	0.1	23.00
06.07.12	Reviewing email from Grace Haden and conference with Ben regarding strike out strategy.	DJN	0.3	150.00
06.07.12	Attendance on email to the Herald and the Gazette attaching advertisement putting company into liquidation	LGH	0.4	104.00
09.07.12	Attendance on affidavit of service; letter to the High Court enclosing the same	LGH	0.4	104.00
09.07.12	Attendance on email from the Herald attaching proof; reviewing the same; email to the Herald	LGH	0.3	78.00
09.07.12	E-mail to the Gazette following up on proof	LGH	0.1	26.00
09.07.12	Attendance on email from the Gazette attaching proof; reviewing proof and email to the Gazette to confirm the same	LGH	0.2	52.00
09.07.12	Attendance on demand on VIL; preparing appearance in support for you for hearing on 20 July 2012	LGH	1.5	390.00
10.07.12	Attendance on finalising demand and appearance in support	LGH	0.5	130.00
10.07.12	Reviewing minute of AJ Sargisson; preparing costs order	LGH	1.0	260.00
10.07.12	E-mail from High Court; review minute; email to Peter McCutcheon	BXA	0.2	46.00
11.07.12	Attendance on finalising order for costs; letter to the Court	LGH	0.5	130.00
12.07.12	Attendance on Herald advertisement	LGH	0.1	26.00
13.07.12	Attendance on preparing statement of advertising	LGH	0.3	78.00
16.07.12	Attendance on letter to the Court enclosing statement of advertising	LGH	0.2	52.00
16.07.12	Attendance on appearance in support	LGH	0.5	130.00
16.07.12	Attendance on updating amounts owed to you; updating appearance in support; filing the same with the High Court	LGH	1.0	260.00
18.07.12	Research likelihood of successful strike out application to the District Court, and merit of other claims in proceedings filed by Grace Haden for your information capsule.	NFL	1.8	225.00
20.07.12	Preparation and attendance at High Court	BXA	2.3	529.00
20.07.12	E-mail to you	BXA	0.1	23.00
20.07.12	Telephone call from you	BXA	0.2	46.00
24.07.12	Attendance on preparing order for sealing (liquidation)	LGH	0.5	130.00
24.07.12	Attendance on Official Assignee	LGH	0.2	52.00

SCHEDULE OF ATTENDANCES (continued)**GRACE HADEN**

Date	Details	Solicitor	Hours	\$ Amount
25.07.12	Attendances on going through Grace Haden's information capsule/notice of claim for District Court matter to see whether any additional causes of action and finalise research regarding possibility of strike out and deceit.	NFL	2.2	275.00
25.07.12	Attendance on Translegal; attendance on High Court; attendance on memorandum	LGH	1.0	260.00
25.07.12	Attendance on filing memorandum; email to and from Grace Haden; telephone discussion with you	LGH	0.5	130.00
25.07.12	Finalise memo to court, emails to Grace Haden to resolve issues relating to Translegal and payment by Verisure.	DJN	0.4	200.00
26.07.12	Attendance on further memorandum; statement of process server; email to Grace Haden; email to the Court	LGH	2.0	520.00
26.07.12	Attendance on statement on behalf of process server; further memorandum on behalf of substituted plaintiff; attendance on payment; email correspondence with the High Court; email to Grace Haden	LGH	2.2	572.00
27.07.12	Preparation and attendance at High Court	BXA	2.2	506.00
30.07.12	Attendance on email to you regarding hearing on Friday 27 July 2012	LGH	0.3	78.00
30.07.12	Telephone from Translegal Services regarding Haden	LGH	0.2	52.00
31.07.12	Attendance on letter to you	LGH	0.5	130.00
31.07.12	Attendance on preparing statutory demand; calculating amounts up to 31 July 2012	LGH	1.0	260.00
Total time and work performed			52.7	\$12,964.00
GST on fee				\$1,944.60
Total Fee (inclusive of GST)			NZ \$	<u>14,908.60</u>

Time Charged

Solicitor	Position	Hours	Rate	\$ Amount
Benjamin Atkins	Solicitor	11.1	\$230.00	2,553.00
David Neutze	Partner	2.7	\$500.00	1,350.00
Lisa Walsh	Legal Executive - As	31.1	\$260.00	8,086.00
Natalie Lord	Solicitor	7.8	\$125.00	975.00
Total time and work performed		52.7		\$12,964.00
GST on fee				1,944.60
Disbursements and office charges (inclusive of GST)				1,623.57
Total for this account (inclusive of GST)			NZ \$	<u><u>\$16,532.17</u></u>