

**IN THE DISTRICT COURT
AT WHANGAREI**

**CIV-2013-011-000020
[2016] NZDC 4246**

BETWEEN SELINA NEIGHBOURS
Plaintiff

AND BRIAN STUTT
Defendant

Hearing: 8 March 2016

Appearances: Mr R Mark for the Plaintiff
No appearance by the Defendant - Plaintiff on the Counterclaim

Judgment: 16 March 2016

RESERVED DECISION ON COUNTERCLAIM OF JUDGE D J McDONALD

[1] I have already given a decision in relation to Ms Neighbours, the Plaintiff, claim. I do not propose to repeat the history of the proceedings and other matters raised in that decision.

[2] This decision only relates to the counterclaim filed by Mr Stutt. Mr Stutt, the Defendant, did not pay the setting down fee for the counterclaim. He did not file or provide any briefs of evidence in support of the counterclaim in terms of the directions made. He did not appear at the hearing on 8 March 2016.

[3] The Plaintiff seeks dismissal of the counterclaim. I consider that it is appropriate that the counterclaim be dismissed. The Defendant, Mr Stutt, did not appear at the hearing. Rule 15.2 allows for dismissal for want of prosecution of a counterclaim.

[4] The other two matters raised may not of themselves lead to a dismissal. However they add to the failure of the Defendant to prosecute his counterclaim.

Result

[5] The counterclaim is dismissed.

Costs

[6] If the Plaintiff seeks costs on the dismissal of the counterclaim she is to file a memorandum within ten days of today's date setting out the reasons why costs should be awarded, the Plaintiff having succeeded in her substantial claim upon which I awarded costs, and the amount sought.

D J McDonald
District Court Judge