

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**CIV-2015-009-2082
[2016 NZDC 11522]**

BETWEEN COMMISSIONER OF INLAND
REVENUE
Applicant

AND MINH NGOC TRUONG-BEHRING
Respondent

Hearing: (On the papers)

Appearances: P Saunders for the Applicant
Respondent appears in Person

Judgment: 24 June 2016

JUDGMENT (COSTS) OF JUDGE K G SMITH

[1] The applicant has sought an order costs against Mrs Truong-Behring having succeeded in an originating application.

[2] Having been successful, the applicant was entitled to an award of costs. In the absence of agreement leave was reserved to the applicant, and the respondent, to file memoranda.

[3] Agreement has not been reached. Opposition to the application for costs has been described in a combined memorandum by Mrs Truong-Behring and Mr Behring. The areas of agreement and disagreement about costs and disbursements have been set out at length in the related decision on costs between the applicant and Mr Mathias Behring in CIV-2015-009-002081. The same arguments are made on behalf of Mrs Truong-Behring and do not need to be repeated.

[4] As I have indicated in the decision on costs against Mr Behring, the one area that stands out for possible departure from the conventional approach is that these applications were heard and considered together; the applications were at all times treated as if they were essentially one application.

[5] Consequently, I have sympathy for the submission by Mr Behring and Mrs Truong–Behring that the application of the scheduled costs to each of them individually has an effect of duplicating the costs that might otherwise have been awarded.

[6] There is considerable force in the argument that where both applications were, by agreement, run at the same time and the arguments were essentially the same, it would not be appropriate to award a full allocation of costs in favour of the Commissioner against Mr Behring and Mrs Truong–Behring.

[7] A decision has already been made ordering Mr Behring to pay \$3196 in costs calculated on a category 1A basis and \$336.25 in disbursements.

[8] While it was necessary for both applications to be prepared, and there is a degree of overlap, it was still necessary for the Commissioner to put together an application, to prepare for and appear at the hearing, and to seal judgment.

[9] In my view, a just decision would be to remove from the costs claim against Mrs Truong–Behring items (2) and (3) in the schedule attached to the applicant's costs memorandum. That is, to deduct from the costs claimed the preparation for a short trial and appearance at the short trial which, together, total \$1170. Deducting that sum from the schedule of costs produces a balance of \$1416. I think it is reasonable to round that sum down to \$1400.

[10] Likewise, I agree with the submission made that the service fee of \$86.25 is on the high side given that Mr Behring and Mrs Truong–Behring were served at the same time. That amount should be deducted from the disbursements, leaving a total for disbursements of \$249.75.

[11] In conclusion, Mrs Truong–Behring is ordered to pay costs to the applicant on a category 1A basis, as adjusted in this decision, of \$1400. In addition, she is ordered to pay disbursements of \$249.75.

K G Smith
District Court Judge