

**IN THE DISTRICT COURT
AT WAITAKERE**

**CIV-2011-090-001953
CIV-2012-090-000481
[2016] NZDC 22917**

BETWEEN ZHZ CORPORATE TRUSTEE LTD
Plaintiff

AND ZHENGANG CAO
Defendant

AND

BETWEEN ZHENGANG CAO
Plaintiff

AND QI ZHANG
Defendant

Hearing: On the papers

Appearances: B O'Callahan for ZHZ Corporate Trustee Ltd and Qi Zhang
D Wilson for Zhengang Cao

Judgment: 18 November 2016

COSTS DECISION OF JUDGE P A CUNNINGHAM

[1] I delivered my reserved decision in the substantive case on 24 August 2016. The defendant in the first proceeding Zhengang Cao who was also the plaintiff in the second proceeding has applied for costs. I gave judgment for Mr Cao in respect of his claim against Mr Zhang.

[2] I said the following at paragraph [79] of my decision:

[79] If Mr Cao wishes to seek costs he is entitled to do so, I suggest that costs should only be claimed in relation to 30 Pleasant Way and his cause of action in relation to the two loans. This is because he has acknowledged that he owed Mr Zhang \$100,000 following the purchase of 8 Virginia Street.

[3] The claim by the ZHZ Corporate Trustee (which is associated with Mr Zhang) had filed a claim for \$100,000.00

[4] Both counsel have filed memoranda in relation to costs. They are agreed that costs should be awarded on a category 2 band B basis.

[5] The differences between the parties arises out of the issue I raised in paragraph [79] of my decision dated 24 August 2016.

[6] Submissions from Mr Wilson (for Mr Cao) calculated that as per the Schedule in the District Court Rules, the claim for costs was for 12.75 days as follows:

Commencement and statement of claim	1.50
Judicial settlement conference	0.75
Preparing for hearing	7.00
Appearance at hearing	<u>3.50</u>
TOTAL	<u>12.75</u>

@ \$1,780.00 per day = \$21,360.00 (in fact 12.75 X \$1,780.00 is **\$22,695.00**)

[7] Mr Wilson submitted that costs on the claim brought by Mr Cao in relation to 30 Pleasant Way had occupied two thirds of the hearing time and therefore submitted that two thirds should be awarded. This would come to \$15,886.50.

[8] In addition he sought disbursements as follows:

(a) Initial filing fee	\$ 169.20
(b) Process service's	\$ 92.00
(c) Filing fee for JSC	\$ 906.30
(d) Filing fee February 2013	\$ 223.50
(e) Filing fee on amended statement of claim	\$ 75.00
(f) Hearing fee	\$5400.00
(g) Interpreter's fee	<u>\$ 400.00</u>
TOTAL	<u>\$7,276.00</u>

My total is **\$7,266.**

[9] Submissions filed by counsel on behalf of the ZHZ Corporate Trustee (“ZHZ”) and Mr Qi Zhang drew attention to the fact that Mr Cao had presented a different version of events in relation to the purchase of 8 Virginia Street when he filed his notice of response on 29 March 2012.

[10] I covered this issue in my decision. Paragraph [61] sets out the version of events in an affidavit of Mr Cao dated 26 March 2013. This amounted to an acknowledgement by Mr Cao that he would only have to pay \$420,000.00 on settlement of the property of 8 Virginia Street because another \$100,000.00 would be set off against Mr Zhang’s debt to him.

[11] In paragraphs [67] – [68] I set out how Mr Cao described this transaction in his brief of evidence, namely that Mr Zhang wanted a separate agreement in which Mr Cao would be borrowing \$100,000.00 from him and would pay it to him. That the sale and purchase agreement would say the deposit had already been paid to cover this. Mr Cao said he signed the acknowledgement of debt for \$100,000.00 and said he did not want to pay it because they never agreed how Mr Zhang was going to repay Mr Cao what he was owed in relation to Pleasant Way.

[12] I agreed that there were differences between the two version of events and identified the issue for me to decide was whether Mr Cao agreed to pay \$620,000.00 for Virginia Street and that the price of \$520,000.00 reflected payment of the \$100,000.00 approximately owed to Mr Cao in relation to 30 Pleasant Way. I noted that the burden of proof was on Mr Zhang/ZHZ as it was the plaintiff in this claim. I found that the ZHZ had not met that burden of proof.

[13] In paragraph [17](iv) I said the following:

I do not need to decide Mr Cao owes Mr Zhang a \$100,000.00 because he acknowledges that he does.

[14] Mr Callahan for ZHZ/Mr Zhang submits that it was only at the hearing of this case on 2 November 2015 that Mr Cao admitted that he did not pay the \$100,000.00. This was the first time in over three years that Mr Cao had accepted the ZHZ’s claim for \$100,000.00.

[15] Further that the defendant had incurred significant expense on the basis that the plaintiff needed to respond to the version of events in Mr Cao's notice of response dated 29 March 2012 when he should have accepted the ZHZ's claim from the outset. Had this occurred then costs would have been payable to the plaintiff.

[16] That the last minute admission by Mr Cao caused unnecessary work for ZHZ. That a further 30% reduction was appropriate to reflect this.

[17] In relation to disbursements, ZHZ paid \$5,400.00 for a three day hearing which should be taken into account. Accordingly each party should bear their own costs in relation to hearing fees. This would reduce disbursements claimed to \$1,800.00 (I make that figure \$1,866.00).

Assessment

[18] The two main claims, *ZHZ v Cao* and *Cao v Zhang* were both about a property transaction. Mr Cao's claim include the claim for the two loans.

[19] I accept that there should be a reduction for the fact that Mr Cao accepted he still owed the \$100,000.00 to Mr Zhang. The issue is whether that is by 30% or some other figure.

[20] The evidence around the two money claims took up a short amount of time compared to the two claims in relation to 30 Pleasant Way and 8 Virginia Street.

[21] In my view a reduction of 45% of the costs on a 2B basis would reflect the preparation and Court time spent on the claim by ZHZ. 45% of \$22,695.00 is \$10,212.75.

\$22,695.00

\$10,212.75

\$12,482.25

[22] I accept Mr Callahan's submission in relation to hearing fees. Had Mr Cao's admission come earlier the payment of \$5,400.00 would not have been necessary.

Result

[23] Mr Zhang/ZHZ is to pay Mr Cao costs in the sum of \$10,212.75 and disbursements of \$1,866.00.

P A Cunningham
District Court Judge