

CASE SUMMARY

High Court awards costs on 2A basis – issues on appeal limited and procedural in nature

Decision date: 13 December 2024

CSUM 25/02

CASE

Goodricke v Commissioner of Inland Revenue [2024] NZHC 3818 (Costs)

LEGISLATIVE REFERENCES

High Court Rules 2016, rr 14.1, 14.5(2)(a), 14.10, 14.11

Evidence Act 2006, s 57

Taxation Review Authorities Regulations 1998, reg 36

LEGAL TERMS

Calderbank, without prejudice, privilege, costs, procedural in nature

Summary

The Commissioner was the successful party in *Goodricke v Commissioner of Inland Revenue* [2024] NZHC 3639 and entitled to costs.

The parties were unable to agree on the quantum to be paid. Mr Goodricke said no costs should be paid to the Commissioner because a Calderbank offer had been made. The Commissioner said the Calderbank principles do not apply and sought costs on a 2B basis.

The High Court awarded costs on a 2A basis on the basis that the issues on appeal were limited and procedural in nature.

Impact

The outcome of this case confirms costs are at the discretion of the court. Costs will be awarded based on what the court considers is appropriate in the case.

For an offer to be a Calderbank offer it needs to meet the requirements in r 14.10 of the High Court Rules 2016.

Facts

On 2 December 2024 the High Court dismissed the appeal by Wendy and Peter Goodricke of a decision of the Taxation Review Authority (TRA). As the successful party, the High Court found the Commissioner was entitled to claim costs.

The parties were unable to agree on the quantum to be paid. Mr Goodricke also said that no costs should be paid to the Commissioner because a Calderbank offer had been made.

On 4 September 2022 Mr Goodricke had sent an email to the Commissioner which read:

Craig

If we walk away from the business and Wendy pays \$13,581.88 are we able to put this to an end not have anything more to do with IRD over this.

Peter

The above offer was rejected by the Commissioner.

The Commissioner said Mr Goodricke's argument was misguided, and the Calderbank principles do not apply. The Commissioner sought costs on a 2B basis.

Issues

1. Is Mr Goodricke's email of 4 September 2022 a Calderbank offer; and
2. Should costs be awarded to the Commissioner on a 2B basis.

Decision

1. Calderbank offer

Calderbank offers are provided for in rr 14.10 and 14.11 of the High Court Rules 2016.

There are a number of reasons why the purported settlement offer made by Mr Goodricke (the email of 4 September 2022) is not a Calderbank offer for the purposes of rr 14.10 and 14.11.

First, it is not clear that the offer is one intended to be “without prejudice except as to costs”. Such an express statement is required by r 14.10(1)(a). While the offer appears to be an offer to settle if the outstanding tax liability is paid, Mr Goodricke does not communicate an intention to rely on the offer in relation to the issue of costs should it have been rejected. This means that the privilege to settlement communications in s 57 of the Evidence Act 2006 applies, and Mr Goodricke’s offer is inadmissible.

Second, the appeal that was determined did not actually concern Mr Goodricke’s tax liability. It was, in a general sense, procedural. This meant that the offer to pay the outstanding tax liability did not actually relate to an issue in the proceeding before the court, which is required by r 14.10(1)(b).

Further, Mr Goodricke’s position misunderstands r 14.11(4)(b) which allows a party to rely on a Calderbank offer where the amount offered is “close to the value or benefit of the judgment obtained” by the other party. The “value or benefit of the judgment obtained” does not mean the value of costs a successful party would otherwise be entitled to receive.

2. Costs

Costs are at the discretion of the Court. Despite the Commissioner seeking 2B costs, 2A scale costs are appropriate in this case.

While the proceeding was of average complexity and would have required counsel of average skill and experience, responding to Mr Goodricke’s claim would likely have taken such counsel a comparatively small amount of time. The issues on appeal were limited and procedural in nature.

3. Anonymisation

The Commissioner raised an issue as to anonymisation in the substantive decision of the name of the company that was one of the disputants in the TRA (but not a party to the appeal) given that reg 36 of the Taxation Review Authorities Regulations 1998 (Regulations) provides that published reports of TRA decisions may not contain the name of the disputant.

The Regulations are not applicable to the High Court, and it is relatively commonplace for disputants in TRA appeals to be named in appellate court decisions. In the absence of any special reason why the disputants in this case should not be named, the Court declined to make an order for anonymisation.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation Review Authority, the District Court, the High Court, the Court of Appeal, or the Supreme Court in matters involving the Revenue Acts. For Taxation Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.