DISTRICT COURT OF QUEENSLAND

CITATION:	*Deputy Commissioner of Taxation v Bhela* [2015] QDC 181
PARTIES:	**DEPUTY COMMISSIONER OF TAXATION** **(Plaintiff)** **V** **SONA SINGH SAINI BHELA** **(Defendant)**
FILE NO/S:	2019/14
PROCEEDING:	Application
DELIVERED ON:	16 July 2015 (*ex tempore* reasons given); 17 August 2015 (order made)
DELIVERED AT:	Brisbane
HEARING DATE:	16 July 2015 and 17 August 2015 (further hearing in relation to order only)
JUDGE:	Bowskill QC DCJ
ORDER:	**1. Pursuant to rule 292 of the *Uniform Civil Procedure Rules 1999* (Qld) judgment be entered in favour of the Plaintiff in the amount of $442,613.38, inclusive of further interest.** **2. That the Defendant pay the Plaintiff's costs on the standard basis fixed in the sum of $4,300.00.**
CATCHWORDS:	TAXES AND DUTIES – Proceedings to recover unpaid income tax and director penalties imposed – Summary judgment – Whether reasonable prospects of defending the claim on the basis that the defendant did not receive notices of amended assessment, that the notices of amended assessment were incorrect, that the defendant complied with the relevant obligations on a director, and that the notices of assessment for the administrative penalties were not served and incorrect. *Evidence Act 1995* (Cth), ss 160 and 163 *Income Tax Assessment Act 1936* (Cth) *Income Tax Regulations 1936* (Cth) *Taxation Administration Act 1953* (Cth) *Taxation Administration Regulation 1976* (Cth) *Uniform Civil Procedure Rules 1999* (Qld), r 292 *Deputy Commissioner of Taxation v Broadbeach Properties Pty Ltd* (200) 237 CLR 437 *Deputy Commissioner of Taxation v Scott* [2015] QDC 99

SOLICITORS: Mr M Cuskelly, Australian Taxation Office, for the Plaintiff

Mr S Bhela, the Defendant, represented himself

[1] These reasons comprise, firstly, reasons given *ex tempore* on 16 July 2015 for granting the plaintiff's application for summary judgment and, secondly, brief further reasons for making the order, consistent with those reasons, on 17 August 2015.

Ex tempore reasons given on 16 July 2015

[2] By proceedings commenced in this Court on 29 May 2014 the plaintiff, the Deputy Commissioner of Taxation, seeks to recover from the defendant: firstly, amounts in respect of unpaid income tax assessed for the years ended June 2007, 2008, 2009 and 2010; secondly, director penalties imposed in respect of failure to ensure that a company, Bhela Investments Pty Ltd, of which the defendant was at relevant times a director, met its obligation under section 16-70 of the *Taxation Administration Act 1953* to pay certain PAYG amounts withheld by the company to the Commissioner; and thirdly, administrative penalty amounts in respect of tax shortfalls for those same financial years, 2007, 2008, 2009 and 2010. By this application, which was filed on 15 May 2015, the Commissioner seeks summary judgment under rule 292.

[3] The defendant represents himself in these proceedings and he appeared by telephone at the hearing. He has also filed an application on 9 July 2015 seeking orders that this proceeding be transferred to Cairns, where he resides, and that the whole of this proceeding be adjourned pending the outcome of what I understand to be criminal proceedings against him.

[4] The latter application, for an adjournment, is said, in Mr Bhela's affidavit of 9 July 2015 to be made on the basis that Mr Bhela's criminal matter relates to allegations of payments from third parties which the plaintiff has relied upon in calculating his income tax for these proceedings. As Mr Bhela denies the alleged payments and is vigorously defending his criminal matter, he submits that finalising these proceedings will result in the plaintiff tendering evidence that will prejudice his criminal matter. He has also filed an affidavit by a Mr Mirotsos, who identifies himself as the solicitor acting for the defendant in the criminal proceedings, in support of that argument.

[5] Having regard to the nature of the plaintiff's claim and the legislative context in which the claim is brought, including the conclusive evidence provisions, this argument regarding the criminal proceedings provides no basis for adjourning this proceeding. Because of those provisions, the only means of challenging an assessment is by way of an objection or a subsequent appeal.

[6] It is well established that the policy of the tax legislation is to require a taxpayer to "pay now and argue later", adopting the words of Justice Nathan in *Deputy Commissioner of Taxation v Akers* (1989) 89 ATC 4725 at 4727. There is no evidence before me of whether an objection or objections have been made, but in any event I note that by force of section 14ZZM and 14ZZR of the *Taxation Administration Act 1953*, that would not interfere with these recovery proceedings. I refer in this regard, also, to the *Deputy Commissioner of Taxation v Broadbeach Property Pty Ltd* (2008) 237 CLR 437 at paragraph 44.

[7] Likewise, the submission by the defendant made at the hearing today, that he does not have available to him all the documentation that he would wish to refer to does not provide a basis to delay hearing the summary judgment application.

[8] The bases of the defendant's defence to the plaintiff's claim are set out in his defence filed on 6 January 2015. In short, those bases are: firstly, that he did not receive the notices of amended assessment; secondly, that the notices of amended assessment are incorrect and contain inaccuracies; thirdly, that in respect of the director's penalties, that the obligation on the defendant as a director was complied with because the company was wound up on 8 March 2013; and fourthly, that the notices of assessment of the administrative penalties were not served and, relatedly, are incorrect because of the argument regarding the inaccuracies in the notices of amended assessment. Each of those points can fairly be addressed on this application without further delay and without any further time being given.

[9] In terms of the relevant principles on this application, they are well established. Rule 292 confers a discretion on the Court to give judgment for all or part of the plaintiff's claim against the defendant if the Court is satisfied the defendant has no real prospect of successfully defending all or part of the plaintiff's claim, and there is no need for a trial of the claim or part of the claim. I refer, in terms of the principles, to the statement of her Honour, Justice White, in *Coldham-Fussell v The Commissioner of Taxation* (2011) 82 ACSR 439 at paragraph 98, among other things, the reference there to the passage from a judgment of Lord Woolf to the effect that:

> "The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or … they direct the Court to the need to see whether there is a 'realistic' as opposed to 'fanciful' prospect of success."

[10] I note also that rule 292 is to be applied, keeping in mind the purpose of the *Uniform Civil Procedure Rules*, articulated in rule 5, to facilitate the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense. Noting, of course, that that does not detract from the need to exercise powers to summarily terminate proceedings with caution.

[11] For the reasons which I am going to set out now, I have come to the view that in respect of all but one part of the plaintiff's claim, the defendant does not have any real prospect of successfully defending the claim, and there is no need for a trial, such that the discretion under rule 292(2) is enlivened. I am satisfied it is appropriate to exercise my discretion to give judgment for the plaintiff against the defendant in respect of all but one part. The one part is the amended assessment in respect of the 2007 financial year, and then the consequence of that in relation to the administrative penalty. I will explain my reasons for that in a moment.

[12] The first category of the plaintiff's claim relates to income tax. Section 161 of the *Income Tax Assessment Act 1936* imposes the requirement to lodge a return for each year of income, and it is on the basis of those returns and any other information that the Commissioner has that, under section 166, the Commissioner must make an assessment of the taxable income and tax payable of that person.

[13] There is evidence before me that the defendant reported his income for the financial years ending June 2007, 2008, 2009 and 2010, consistently with section 161. That is in the affidavit of Mr Foster, filed 15 May 2015, at paragraph 20. In these reasons, I am going to refer to that affidavit by reference to the word "Foster". The Commissioner made assessments under section 166 for each of those years, which is referred to in Foster at [21] and exhibit JF1 to Foster at pages 21 to 27.

[14] Section 170 enables the Commissioner to amend an assessment, and the Commissioner did that in this case. Copies of the amended assessments appear also in exhibit JF1 to Foster, starting at page 28. Section 170(1) of the *Income Tax Assessment Act 1936* sets out the time within which the Commissioner may amend an assessment. The relevant item under that section is item 4, which provides that:

> "The Commissioner may amend an assessment within 4 years after the day on which he or she gives notice of the assessment to the taxpayer."

[15] In respect of the year ending June 2007, the original notice of assessment was issued on 6 November 2008 and the notice of amended assessment was not issued until 8 March 2013, which is some four months outside that four year period. In respect of the others, the amendment is made within the four years.

[16] The Commissioner does, of course, have power to amend an assessment at any time if he or she is of the opinion there has been fraud or evasion. But before me there is no evidence of either of those being in play, or the Commissioner having been of that opinion, and so I cannot proceed on the basis that that is the case. So it seems to me, then, in respect of that 2007 year, there has been a transgression or a non-compliance with that time limit that is imposed on the Commissioner.

[17] When I raised this with counsel for the Commissioner this morning, my attention was drawn to section 175 of the *Income Tax Assessment Act 1936*, which provides that:

> "The validity of any assessment shall not be affected by reason that any of the provisions of this Act have not been complied with."

[18] And also the conclusive evidence provision in section 177 of the Act and, as I understand is now applicable, section 350-10(1) of the *Taxation Administration Act 1953*. What the latter provides is that the production of a document under the hand of a Deputy Commissioner purporting to be a copy of the document issued by the Commissioner is conclusive evidence that the document was so issued, and further that production of a notice of assessment is conclusive evidence that the assessment was properly made or the notice was properly given.

[19] What I am concerned about is how that sits with a clear provision in section 170(1), item (4), that the Commissioner may only amend the assessment within a specific period of time. I was not referred to any authority in support of the proposition that sections 175 and 177, or alternatively 350-10 of the *Taxation Administration Act 1953*, expressly apply and overcome a non-compliance with the time provision. In those circumstances, on a summary judgment application, I am not prepared to give final relief in respect of that part of the claim. That does not, however, affect the other parts of the claim.

[20] The issue raised by the defendant in respect of the claim for recovery of income tax is, he asserts in his defence and in his submissions before me, that he did not receive

the notices of amended assessment. Now, in that regard, section 174 of the 1936 Act requires the Commissioner to serve notice of an assessment, which includes an amended assessment, in writing, on the person as soon as conveniently may be after making the assessment.

[21] As I have said, the copies of the amended assessments appear in JF1 to Foster, starting at page 28. At paragraph 22 of Foster it is said that, in accordance with section 174 and regulation 40 of the *Income Tax Regulations 1936*, the plaintiff served on the defendant notices of amended assessment stating the amount of tax payable etcetera and referring to exhibit JF1.

[22] Regulation 40 of the *Income Tax Regulations* provides that the Commissioner may serve a document on a person for the purposes of the Act and these regulations by, under subsection (b), if the person has given a preferred address for service that is a postal address, posting a copy of the document to that address. There is evidence in Foster at [23] that the records of the Commissioner show that at the time of service of the notices of amended assessment the defendant's address for service was PO Box 170, Innisfail Qld 4860, which is the address on those notices.

[23] Relevantly, it is not for the plaintiff to prove receipt of the notices, but rather to prove service of the notices. I refer in that regard to the High Court's decision in *Fancourt v Mercantile Credits Ltd* (1983) 154 CLR 87 at 96, where that distinction is drawn. One of the points made there is that provisions in legislation dealing with service by post contemplate the possibility of something less than actual receipt by the person to be served, and note that it involves a balance of the overall public convenience with the possibility for inconvenience in some cases.

[24] But in any event, what I need to be concerned about is whether there is before me evidence to prove that the notices of amended assessment were served. In addition to that statement in Foster at [22], that the notices were served, there are a number of provisions which support the plaintiff's contention that that statement in paragraph 22, taken with the production of the copies of the notices of assessment, is sufficient to prove service.

[25] Firstly, there is, as I have said, the evidence of service in accordance with regulation 40, which I have referred to. Secondly, the evidence that the address on the notices is the preferred address. Thirdly, although it would be open to the Commissioner to have tendered a certificate under section 255-45(2)(c) of the *Taxation Administration Act 1953*, which he did not do in this case, it seems to me that sections 163 and 160 of the *Evidence Act 1995* (Cth) deal with this issue. I refer in this regard to the decision of his Honour Judge Dorney QC in *Deputy Commissioner of Taxation v Scott*, which is reported in [2015] QDC 99.

[26] Section 163 of the *Evidence Act* provides that, in subsection (1), a letter from a Commonwealth agency addressed to a person at a specified address is presumed, unless evidence sufficient to raise doubt about the presumption is adduced, to have been sent by prepaid post to that address on the fifth business day after the date that, because of its placement on the letter, purports to be the date on which the letter was prepared. Relevantly, "letter" is defined in subsection (2) to mean any form of written communication that is directed to a particular person. "Commonwealth agency" is defined more broadly in the dictionary of that Act to mean an agency within the *Public Service Act 1999* and a person or body holding office or exercising power

under or because of the constitution or a law of the Commonwealth, as well as a body or organisation, whether incorporated or unincorporated, established for a public purpose by or under a law of the Commonwealth. It seems clear to me that the Commissioner is a Commonwealth agency and that the notices of assessment fall within that provision. That enables me to be satisfied that, on the basis of the presumption, the notices were sent by prepaid post to the address on the notices on the fifth business day after the date that appears on them. This can then be read with section 160, which deals with the presumption in relation to when a postal article sent by prepaid post is deemed to be received, which is on the fourth working day after it was posted.

[27] The last provision I refer to is section 350-10(1) of the *Taxation Administration Act*, which is the conclusive evidence provision which refers to production of a document under the hand of the Deputy Commissioner and purporting to be a copy of a document being conclusive evidence that it was so issued, and further, in respect of a notice of assessment, conclusive evidence that the notice was properly given.

[28] I am not going to express a final view on whether "properly given" extends to service, given that there is a power or an ability for the Commissioner to tender a certificate in that regard, but in any event I am satisfied section 163 addresses that issue to the extent that it is necessary, in addition to Mr Foster's paragraph 22.

[29] The presumption is in no respect rebutted by any evidence from the defendant, and his mere assertion of non-receipt is not sufficient in that regard. It follows that for the purposes of this application I am satisfied that the notices of amended assessment were served.

[30] What remains then is, as I have already made reference to, that production of the copies of the amended notices of assessment are, under the legislation, that is section 177, or now section 350-10, conclusive evidence that the assessment was made and as to the amounts and particulars of the assessment.

[31] An additional point in that regard that I had raised in the course of the hearing dealing with the copies of the notices of assessment that are provided to me is that, I note that section 45(2) of the *Taxation Administration Regulation 1976* provides that, relevantly, a notice bearing the written, printed or stamped name of a person who is or was at any time the Deputy Commissioner in the place of the person's signature is taken to have been duly signed by the person, unless it is proved that the document was issued without authority. Again, that not being proved here, I can proceed on the basis of those documents.

[32] The two bases of the defence that have been articulated, that is, non-service or non-receipt of the notices and, secondly, the inaccuracy of the amounts, do not provide any basis for me to conclude that there is a reasonable prospect of the defendant successfully defending the plaintiff's claim. And there is no need, in my view, for there to be a trial in that regard. In particular, regarding the inaccuracy of the amounts, section 177 and now section 350-10 put it beyond question that in this proceeding, which is to be distinguished from a review or appeal relating to the assessment, the production of those notices of assessment is conclusive evidence of the amounts and particulars of the assessment. So that finding applies to all but the amended assessment for the 2007 financial year.

[33] Turning then to the director penalties. The company is Bhela Investments Pty Ltd, which was registered on 21 November 2006. It appears from a company extract which is JF2 to Foster that Mr Bhela, the defendant, is or was the sole director of the company since its registration in November 2006. The company has now been wound up, post March 2013. The amounts for director penalties are dealt with in two blocks because of an amendment to the legislation that took place in 2010.

[34] In respect of the pre-2010 period, there is evidence before me that the company notified the Commissioner through the lodgement of business activity statements under division 12 of the *Taxation Administration Act 1953* of PAYG amounts withheld. And I refer here to Foster at [31] and JF3. The company was liable to pay those amounts under section 16-70 of that Act to the Commissioner by the due date, which is worked out under section 16-75. The due dates are identified in the evidence in Foster at [31].

[35] Section 222AOB of the *Income Tax Assessment Act 1936* requires a director of the company to cause the company to do one or all of the following things before that due date: (1) comply with its obligation to pay the money; (2) make an agreement with the Commissioner under section 222ALA in relation to the company's liability; (3) appoint an administrator of the company; or (4) cause the company to begin to be wound up within the meaning of the *Corporations Act*.

[36] Under section 222AOC, if that provision, that is 222AOB, is not complied with on or before the due date the director is liable to the Commissioner by way of penalty in an amount equal to the unpaid amount of the company's liability.

[37] The relevant due dates, as I have said, are set out in paragraph 31 of Foster. The pleaded defence in respect of this part of the plaintiff's claim is that the company received a court order for winding up on 8 March 2013 and that a liquidator was appointed on that day. It is apparent that that is well outside the due dates for the company to comply with its obligation to pay those withholding amounts to the Commissioner. Accordingly, this does not afford the defendant a defence to the claims. This is also reflected in the evidence in Foster, at paragraphs 32, 36 and 42.

[38] There is a requirement under the legislation for a director's penalty notice to be given, under section 269-25 of the *Taxation Administration Act 1953*. In respect of this period, notice was given, by notice dated 8 November 2010, and I refer in this regard to the affidavit of Ms Hamerton filed on 15 May 2015, exhibit VH2, and also as to the address on that notice, which is based on the address recorded for the defendant at the relevant time in the records of the ASIC, which is appropriate, having regard to section 269-50. Ms Hamerton's affidavit also deals with the posting and service of that notice.

[39] What has been produced in addition is the running balance account for the company which was to be exhibit JF4 to Foster, but as is apparent from Mr Foster's later affidavit filed on 10 July 2015 there was a page missing from that exhibit, and it is exhibited afresh as JF1 to that later affidavit. Production of that statement is, by virtue of section 8AAZI of the *Taxation Administration Act 1953*, prima facie evidence of what is set out in it and that material is not rebutted by any evidence filed by the defendant.

[40] The only basis for defence articulated, that is, the winding up of the company in March 2013, does not provide a defence to the plaintiff's claim, as I have already said.

[41] In respect of the post-2010 period, once again, Foster, at [44] and [45], refers to amounts withheld for PAYG by the company and, relevantly, exhibit JF5.

[42] In respect of this period, which commences in mid-2010, the relevant provision is section 269-15, which sets out a director's obligations. The director comes under an obligation to cause the company to pay the money's withheld to the Commissioner, and continues to be under that obligation until the company complies, or an administrator is appointed, or the company begins to be wound up. A liability to a penalty arises if at the end of the due day for payment by the company the director is still under that obligation. That is under section 269-20.

[43] Once again, the evidence is to the effect that none of those three things identified in section 269-15 were done by the due dates. The relevant due dates are set out in Foster at [45]. As I have already noted, the defence articulated is that the company was wound up in March 2013, which is well outside these periods. And, once again, I refer to Foster at [51] and the replacement JF4, the running balance account, which is put in evidence.

[44] In respect of these post-2010 periods, there are two director's penalty notices that were issued. The first notice was dated 13 February 2012 regarding amounts withheld from September 2010 to October 2011, and I refer to exhibit BH2 to the affidavit of Mr Herreros filed on 15 of May 2015 and paragraph 9 of that affidavit. The address to which that notice was directed and posted is dealt with in Mr Herreros' affidavit, as is service.

[45] There was a further director's penalty notice dated 4 September 2012 also issued, which is referred to by Mr Herreros at paragraphs 17 and 18 and exhibit BH4, and there is evidence of it being posted to the relevant address in the ASIC records at the time. I refer there to exhibit BH6.

[46] In respect of both blocks of director's penalties, on the basis of the articulated defence, there is not a reasonable prospect of defending the plaintiff's claim, and there is no need for a trial.

[47] The last part of the plaintiff's claim is the administrative penalties in respect of the shortfall of tax. This is consequent upon the shortfall identified following the amended assessments for the 2007 and 2008, 2009 and 2010 financial years. Relevantly section 284-75(1)(c) of the *Taxation Administration Act 1953*, prior to Act number 56 of 2010, exposed a taxpayer to an administrative penalty if a person makes a statement to the Commissioner which is false or misleading, and results in a shortfall amount. Section 298-30 requires the Commissioner to make an assessment of the amount of the administrative penalty under division 284 and section 298-30(3) provides that production of a notice of assessment or copy of it certified by or on behalf of the Commissioner is conclusive evidence of the making of the assessment and the particulars in it.

The notices of assessment are set out in JF6 to Foster, and the comments that I have previously made about the notices of assessment, including the reference to section 45(2) of the *Taxation Administration Regulations 1976*, apply there also, save that it

follows from what I have said about the amended assessment for the year ending 30 June 2007 that I do not propose to include that part of the claim in my judgment today. It is otherwise apparent that there is no basis for a defence on the part of the defendant and, in determining that, no need for a trial.

Further reasons for making the order on 17 August 2015

[48] On 16 July 2015, after giving my *ex tempore* reasons as above, I requested that the plaintiff's solicitor provide a draft order, reflecting my reasons (there being a need to remove the amounts for the 2007 financial year, and adjust interest calculations), and further requested that be accompanied by an explanation for how the total figure was calculated, by reference to the evidence, for the assistance of both the Court and the defendant.

[49] In partial compliance with my direction, on 29 July 2015 the plaintiff provided a further affidavit of James Foster, sworn 27 July 2015 (filed 29 July 2015). I say partial compliance because that affidavit did not, as requested, identify the source of the composite amounts in the evidence.

[50] There were some discrepancies in the figures set out in paragraph 5 of Mr Foster's 27 July affidavit. These were identified by me, in correspondence I directed my Associate to send to the plaintiff and the defendant, on 30 July 2015. That correspondence has been marked exhibit 2. By that correspondence, I indicated to the parties that I was not prepared to make the order before hearing further from them in court.

[51] Relevantly (and apart from what appears to be a minor typographical error), the discrepancies were:

1. The absence of reference to a credit amount of $10,440.35, in the defendant's favour, in respect of the tax shortfall penalty amount for the 2009 year; and

2. The total amount of the director's penalties being misstated in Mr Foster's 27 July affidavit as $62,837 (which is in fact the amount for the pre-2010 period only), when the total figure in the running balance account was $118,690. The difference between these two figures is $55,853 which is the amount referred to in the evidence for the post-2010 period.

[52] The matter was listed this morning, 17 August 2015, for the purpose of resolving those issues and making the correct order. The plaintiff relied upon further material, comprising an affidavit of Kenneth Bell sworn 11 August 2015 (addressing the discrepancies); an affidavit of Prateek Das affirmed 11 August 2015 (setting out calculations of the defendant's various liabilities for the 2008, 2009 and 2010 years, and interest calculations) and also a schedule, provided by email today, setting out each of the liabilities, and interest calculations, with references to the evidence (this was marked exhibit 1).

[53] In so far as the first discrepancy referred to above is concerned, Mr Bell explains that in his affidavit, and the amount has now been brought into account, in the defendant's favour. In so far as the second discrepancy is concerned, that too is explained by Mr Bell, as simply an error in Mr Foster's affidavit.

[54] The defendant also sought to rely on a further affidavit of himself today (affidavit of Sona Bhela sworn 4 August 2015). However, that affidavit sought to raise the same issue that was raised at the hearing on 16 July 2015 (that is, to seek to have these proceedings adjourned pending resolution of criminal proceedings against the defendant) and as I explained at the hearing today, having already given my reasons for granting the application for summary judgment, I would not engage further with those issues. The purpose of the further hearing today was solely to finalise the order to be made, giving effect to the reasons given on 16 July 2015.

[55] Unfortunately, the plaintiff's material again contained an error (in Mr Das' affidavit, mis-stating the total amount of the director's penalties by an amount of $1,800 - a product it seems of incorrectly transcribing the figure for the total amount of the director's penalties as $116,890, when the correct figure is $118,690). Although all of the component figures in the schedule which is exhibit 1 appear to me to be correct, in terms of the evidence before the court, the total ($440,813.38) is incorrect, but reflects this error. The correct total seems to me to be $442,613.38.

[56] I repeat what I said in court to the plaintiff's representative this morning, that the lack of attention to detail demonstrated by the plaintiff's material since I gave my reasons on 16 July 2015 is completely unsatisfactory to say the least, not only having regard to the position and role of the plaintiff, but also in this case in particular the lack of representation on the part of the defendant.

[57] Nevertheless, subject to the correction of the error just referred to, I am satisfied that, consistent with my reasons given on 16 July 2015, it is appropriate that judgment be entered for the plaintiff against the defendant for the sum of $442,613.38.

[58] The plaintiff also sought its costs, fixed in the sum of $4,300.00. That was the amount of costs sought at the hearing on 16 July 2015 (affidavit of Mr Cuskelly filed 10 June 2015). It is appropriate that the defendant pay the plaintiff's costs of the application for summary judgment, and the amount sought is modest and reasonable. No further amount for costs has been sought (that is, post 16 July 2015), which is appropriate as the further time spent in dealing with this matter and finalising this order has been caused by the plaintiff's errors.

[59] The orders of the court therefore are:

1. Pursuant to rule 292 of the *Uniform Civil Procedure Rules 1999* judgment be entered in favour of the plaintiff in the amount of $442,613.38, inclusive of further interest.

2. That the defendant pay the plaintiff's costs on the standard basis fixed in the sum of $4,300.00.