

IN THE SUPREME COURT OF NEW ZEALAND

SC 79/2014  
[2014] NZSC 136

BETWEEN KATHRYN FRANCES BOSWELL  
Applicant

AND OWEN ROSS MILLAR  
Respondent

Court: Elias CJ, William Young and Arnold JJ

Counsel: Applicant in person  
S J Chatwin for Respondent

Judgment: 7 October 2014

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**JUDGMENT OF THE COURT**

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- A The application for leave to appeal is dismissed.**
- B The applicant is to pay the respondent costs of \$2,500 and reasonable disbursements.**
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**REASONS**

[1] These proceedings arose out of the settlement of a dispute between the applicant and the late Mr Owen Millar about an option to purchase in favour of the applicant over part of a property owned by Mr Millar over which the applicant had a lease. Under the settlement agreement, the applicant was to purchase the land in dispute but this required the issue of a separate title which required either a resource consent for a subdivision or a boundary adjustment. The agreement provided for the parties to co-operate in applying for a subdivision consent but that if one could not be obtained, the transaction would proceed, at the applicant's option, as a boundary adjustment.

[2] Relevantly in issue in the High Court<sup>1</sup> and Court of Appeal<sup>2</sup> were claims by the applicant involving:

- (a) An alleged breach by Mr Millar of his duty to co-operate in relation to the subdivision consent application;
- (b) The applicant's contention that when Mr Millar entered the settlement agreement he knew that a subdivision consent would not be obtained;
- (c) Claims for damages to recover the applicant's costs in relation to the resolution of other disputes in respect of the settlement agreement which had been settled; and
- (d) A claim for a refund of rent paid of \$5,250.

A claim by Mr Millar for interest or rent on the purchase price was dismissed by the Judge in the High Court and was not the subject of an appeal to the Court of Appeal.

[3] On the four primary issues in the case, the applicant was unsuccessful in both the High Court and Court of Appeal. In relation to the first two, this was substantially on the facts.<sup>3</sup> In respect of the third, both Courts applied the well-established rule that in general legal costs incurred in relation to disputes are not able to be recovered as damages. The fourth claim required an interpretation of the lease and settlement agreement. Both Courts resolved that issue against the applicant.

[4] The case arises out of very particular contractual arrangements. There is no point of public or general commercial importance involved. As well, the applicant's arguments have received thorough consideration in both the High Court and Court of Appeal and there is no appearance of a miscarriage of justice.

Solicitors:  
Chatwin Legal Limited, Hamilton for Respondent

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<sup>1</sup> *Boswell v Millar* [2013] NZHC 703, [2014] 3 NZLR 332.

<sup>2</sup> *Boswell v Millar* [2014] NZCA 314, [2014] 3 NZLR 332.

<sup>3</sup> We accept that the factual issue in respect of the first issue fell to be determined in the context of an assessment of what was required under the co-operation agreement.