VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP1673/2016

CATCHWORDS

Costs: application for costs made by applicant at conclusion of hearing in a proceeding brought under Part IV of the *Property Law Act 1958*; determination made on basis of written submissions received from the parties; consideration of s 109 of the *Victorian Civil and Administrative Tribunal Act 1998.*

APPLICANT	Mr Colin Roderick Nicholson
RESPONDENT	Ms Julie Anne Nicholson
WHERE HELD	Melbourne
BEFORE	Member C Edquist
HEARING TYPE	Order in Chambers
DATE OF RECEIPT OF APPLICANT'S SUBMISSION	30 November 2018
DATE OF RECEIPT OF RESPONDENT'S SUBMISSIONS	14 December 2018
DATE OF ORDER	26 July 2019
CITATION	Nicholson v Nicholson (Building and Property) [2019] VCAT 1123

ORDERS

1 The respondent must pay to the applicant costs fixed in the sum of $12,000.

2 If proceeds of the sale of the Mount Waverley Property have not been completely dispersed, then that sum of $12,000 is to be deducted from the sum that would otherwise have been applied in favour of the respondent after all the other payments referred to in the orders made on 22 November 2018 have been effected.

MEMBER C. EDQUIST

REASONS

Introduction

1. The applicant Mr Colin Frederick Nicholson is the brother of the respondent Ms Julie Anne Nicholson. They inherited from their mother a number of properties including 276-278 Lawrence Avenue, Mount Waverley, Victoria ("**the Mount Waverley Property**"). Mr Nicholson initiated this proceeding on or about 16 December 2016 seeking orders for the sale and/or partition of some of the inherited properties including the Mount Waverley Property. The proceeding came on for final hearing on 22 November 2018. By that time the Mount Waverley Property was the only jointly owned property in respect of which orders were sought. Orders were made for the sale of the property. Mr Nicholson was given leave to apply for costs. Because the party was to deal with the usual cost by way of written submissions, Mr Nicholson was directed to file submissions by 30 November 2018, and Ms Nicholson was directed to file response submissions by 14 December 2018. I now set out my determination regarding Mr Nicholson's application for costs.

Background

2 In order to assess Mr Nicholson's contentions, it is necessary to have an understanding of the background of the matter. Much of the following information is drawn from an affidavit sworn by Mr Nicholson on 8 November 2018.

3 Colin Nicholson and Julie Nicholson are the children of the late Donald Roderick Nicholson and Enid Millicent Nicholson. Donald Nicholson died on 30 October 2010, and Enid Nicholson died on 21 July 2011.

4 Under Donald Nicholson's will, his wife Enid became his sole executor and owner of the whole of his real and personal property. Enid Nicholson appointed her two children as executors of her will. Probate of his mother's estate was granted to Colin Nicholson on 27 October 2014. Leave was reserved for Julie Nicholson to apply to become an executor, but she did not apply. Accordingly, Colin Nicholson remained the sole executor of their mother's estate.

5 In June 2016, Colin Nicholson instructed solicitors to make arrangements to sell the Mount Waverley Property. Mr Nicholson deposes at [14] of his affidavit, that at this time, his relationship with his sister had seriously deteriorated. Specifically, it was said that Julie Nicholson was insisting that she owned the Mount Waverley Property, and was continually disrupting its management and its sale. The relationship deteriorated to the point where Colin Nicholson and his wife Dawn took out a restraining order against Julie Nicholson in August 2016.

6 Arrangements were made for the sale of the Mount Waverley Property by auction, to take place on 10 September 2016. However, the auction did not

proceed because, on the day before the auction, Colin Nicholson and Julie Nicholson entered into a deed of settlement which covered many disputes between them. According to Mr Nicholson, at [20] of his affidavit, the objective of this deed, which he terms the "First Settlement Deed" was to "permit a separation of interests held by Julie and me in a fair and equitable manner having regard to Estate, superannuation, company and property matters dealt with by the deed."

7 Ultimately the First Settlement Deed was not complied with, and so, Mr Nicholson deposes at [26], he commenced this proceeding for the sale and/or partition of the properties which were the subject of the First Settlement Deed. Those properties included the Mount Waverley Property.

8 On 12 April 2017 a mediation was held in this proceeding. This did not result in a settlement of the dispute between the siblings.

9 At a Directions Hearing on 2 June 2017 the proceeding and any counterclaim were listed for hearing on 5 February 2018.

10 On 17 July 2017 Senior Member Lothian made orders in chambers listing the proceeding and any counterclaim for a compulsory conference. Of relevance to Mr Nicholson's costs application is the fact that the Senior Member remarked in her orders that two documents filed by Julie Nicholson, "The Bakery. A brief outline" dated 22 June 2017 and "the Rolls Royce of Nareeb" dated 7 July 2017, do not bear obvious direct relevance to the amended points of claim or the counterclaim.

11 At a Directions Hearing on 30 October 2017, the Tribunal (constituted by Senior Member Farrelly) noted that Ms Nicholson required either legal representation or the appointment of an administrator to her estate for the purpose of conducting the proceeding.

12 It appears from an order made in chambers on 16 November 2017 that there was to be a hearing on 11 December 2017 under the *Guardianship and Administration Act 1986* concerning Ms Nicholson. It appears from another order in chambers made in December 2017 that the application under the *Guardianship and Administration Act 1986* in respect of Ms Nicholson had been adjourned to enable a Public Advocate to complete an investigation and report to the Tribunal. It appears from orders made at a direction hearing on 2 February 2018 that Ms Nicholson had agreed to undergo an assessment of 13 February 2018 in connection with the Guardianship List proceeding G82157. There was a hearing in that proceeding on 7 March 2018. At a Directions Hearing in this proceeding on 28 March 2018 it was noted that Ms Debra Davis had been appointed as administrator of the estate of Ms Nicholson for the purpose of this proceeding. A mediation was directed to take place in April.

13 The proceeding had been listed for hearing on 30 May 2018. However, that hearing did not take place because on 23 April 2018, at the further mediation a settlement was achieved between Mr Nicholson and Ms

Nicholson. This was reflected in a signed deed ("the Second Settlement Deed"). This Deed made provision for the treatment of several properties, including the Mount Waverley Property which was to be sold by 24 September 2018.

14 The day after the mediation, the Tribunal vacated the hearing scheduled for 30 May 2018 and listed the proceeding for a Directions Hearing on 5 October 2018.

15 The Mount Waverley Property was not sold by 24 September 2018, and on 5 October 2018, the Tribunal set the proceeding down for a final hearing on 22 November. This application for costs arises, as noted, from an order made at the final hearing.

The Tribunal's power to award costs

16 The Tribunal's power to award costs is governed by s 109 of the *Victorian Civil and Administrative Tribunal Act 1998* ("**the VCAT Act**"). Because of its centrality to this decision, the relevant parts are now set out:

> (1) Subject to this Division, each party is to bear their own costs in the proceeding.
>
> (2) At any time, the Tribunal may order that a party pay all or a specified part of the costs of another party in a proceeding.
>
> (3) The Tribunal may make an order under subsection (2) only if satisfied that it is fair to do so, having regard to—
>
> (a) whether a party has conducted the proceeding in a way that unnecessarily disadvantaged another party to the proceeding by conduct such as—
>
> > (i) failing to comply with an order or direction of the Tribunal without reasonable excuse;
> >
> > (ii) failing to comply with this Act, the regulations, the rules or an enabling enactment;
> >
> > (iii) asking for an adjournment as a result of (i) or (ii);
> >
> > (iv) causing an adjournment;
> >
> > (v) attempting to deceive another party or the Tribunal;
> >
> > (vi) vexatiously conducting the proceeding;
>
> (b) whether a party has been responsible for prolonging unreasonably the time taken to complete the proceeding;
>
> (c) the relative strengths of the claims made by each of the parties, including whether a party has made a claim that has no tenable basis in fact or law;
>
> (d) the nature and complexity of the proceeding;
>
> (e) any other matter the Tribunal considers relevant.

17 Guidance as to how to approach s 109 was provided by Gillard J in *Vero Insurance Ltd v The Gombac Group Pty Ltd*[1], where his honour said:

> 18 It can be seen that the general rule to apply in all proceedings is that "each party is to bear their own costs in the proceeding." Despite the general rule, the Tribunal may at any time order a party to pay costs to another party. The general rule expressed in s.109(1) must yield to a finding by the Tribunal pursuant to s.109(3). However, the Tribunal may not make an order unless it is "satisfied that it is fair to do so", and in arriving at that decision the Tribunal is bound to have regard to a series of matters set out in s.109(3). Despite the fact that the various matters are listed, s.109(3)(e) operates to extend the relevant matters if the Tribunal considers that some other matter is relevant. That is, the listed matters are not exhaustive.
>
> 19 It follows that the general rule applies and the Tribunal may only make an order for costs if it is satisfied that it is fair to do so. That finding is an essential prerequisite to making an order for costs.
>
> 20 In approaching the question of any application for costs pursuant to s.109 in any proceeding in VCAT, the Tribunal should approach the question on a step by step basis, as follows –
>
> > (i) The prima facie rule is that each party should bear their own costs of the proceeding.
> >
> > (ii) The Tribunal may make an order awarding costs, being all or a specified part of costs, only if it is satisfied that it is fair to do so. That is a finding essential to making an order.
> >
> > (iii) In determining whether it is fair to do so, that is, to award costs, the Tribunal must have regard to the matters stated in s.109(3). The Tribunal must have regard to the specified matters in determining the question, and by reason of paragraph (e) the Tribunal may also take into account any other matter that it considers relevant to the question.

Grounds put forward by Mr Nicholson for an award of costs

18 Colin Nicholson contends that ss 109(3)(a) of the VCAT Act has been enlivened because Julie Nicholson has conducted the proceeding in a way which has unnecessarily disadvantaged him. She has done so by engaging in “unreasonable conduct”. In respect of this submission, he aptly relies on *Town Rise Apartments Pty Ltd v Manningham CC*[2]. The unreasonable conduct complained of was breaching the Second Settlement Deed by failing to place the Mount Waverley Property on the market for sale by 24 September 2018. Because of this, Mr Nicholson had to apply to the Tribunal for orders for sale.

19 In explanation of the breach of the Second Deed of Settlement, Ms Nicholson’s lawyers referred to the advice provided by the administrator, Mrs Davis, to the Tribunal on 5 October 2018. According to Ms

[1] [2007] VSC 117
[2] [2003] VCAT 1431 at [15]

Nicholson's written submissions dated 30 November 2018, at [8], the Tribunal was advised by Mrs Davis that:

> (a) Ms Nicholson is cognitively impaired, which resulted in the appointment of Mrs Davis as administrator as impairment affects Ms Nicholson's ability to make complex and difficult decisions;
>
> (b) Ms Nicholson, who is a 67, was finding it difficult to put her home on the market for sale. The home is old, on a large block of land, and full of furniture;
>
> (c) Mr Nicholson has chosen an agent to conduct the sale, but has not been able to put forward a date for the auction; and
>
> (d) Mrs Davis, as administrator, was reluctant to place the property on the market for sale with that agent in the absence of Ms Nicholson's cooperation and agreement. Nevertheless, Mrs Davis was attempting to work through this issue with Ms Nicholson, as a sale would be more effective for all parties if Ms Nicholson was invested in the process.

20 In my view, the acknowledgement by Mrs Davis that Julie Nicholson was not cooperating with the sale process is critical. Sub-section 109(3) authorises the Tribunal to make an order for costs if it is satisfied that it is fair to do so. Unnecessary costs to Mr Nicholson were clearly caused by Ms Nicholson's refusal to get the property on the market by the agreed date. I am not satisfied that that refusal was solely the result of her cognitive impairment. In this respect, I note that one of the arguments raised on Ms Nicholson's behalf in connection with the question of whether she had unreasonably prolonged the proceeding was that she had, by her administrator, entered into contracts of sale in respect of 4 other properties "in an expeditious but measured manner". It is reasonable to draw the inference that she had some control over the extent of the cooperation she gave in respect of the Mount Waverley Property.

21 The extent of the unnecessary costs incurred will be canvassed shortly. For present purposes, the key point to be made is that as between Colin Nicholson and Julie Nicholson, she was the party unreasonably responsible for the delay in the sale of the Mount Waverley Property. For this reason, I find that it is fair that an order for costs should be made against her.

22 This finding makes it makes it, strictly speaking, unnecessary to deal with Ms Nicholson's second argument, which is that the discretion of the Tribunal to award costs has also been enlivened under ss 109(3)(b) because Ms Nicholson has unreasonably prolonged the time taken to complete the proceeding. However, as Ms Nicholson will inevitably be disappointed by the finding just made, I will deal with the second argument.

23 The proposition put by Mr Nicholson is that, but for the breach of the Second Settlement Agreement, the proceeding would have been finalised in around late December 2018, rather than continuing until at least May 2018.

24 Ms Nicholson, in her written submissions, set out five responses. These are now addressed in turn. Firstly, as noted, Ms Nicholson through her administrator expeditiously sold four of the five properties she was required to sell under the Second Settlement Deed. I comment that although on the face of it, it appears commendable that Ms Nicholson through her administrator achieved so much, it is to be noted that this activity took place over a period of six months. Critically, it is not established that the reason why the Mount Waverley Property was not put on the market within time was the pressure of other activities required by the Second Settlement Deed. The submission made by Mrs Davis to the Tribunal at the Directions Hearing on 5 October 2018, referred to above, makes it clear that the issue was Ms Nicholson's failure to cooperate regarding the sale of the house in which she was living.

25 The next point made was that even if the Mount Waverley Property had been placed on the market for sale on 24 September 2018, it "was unlikely to have settled, assuming an auction in late October 2018, before Christmas, and would have more than likely have settled in early to mid-January 2019." I comment that I am not sure that this chronology is reasonable, because the Second Settlement Deed at [7] required the Mount Waverley Property to "be offered for sale not later than 24 September 2018". Even if the chronology is reasonable, it rather misses the point, which is that as a direct result of the breach of the Second Settlement Agreement, the sale of the property did not occur in September 2018 (or in Ms Nicholson's submission in October 2018), but in February 2019. The conclusion is inescapable, in my view, that the breach of the Second Settlement Agreement resulted in a delay in the conclusion of the proceeding of at least five (or four) months.

26 The third argument put is that the proceeds of the sale of the Mount Waverley Property were agreed to be entirely the property of Ms Nicholson. However, those proceeds were to be applied, at least in part, to the payment of Mr Nicholson's interest in two other properties, which had been fixed at $1,350,000. I do not understand the relevance of this argument, other than to underscore that by reason of the delay in the sale of the Mount Waverley Property, Mr Nicholson was kept out of money which is otherwise due to him.

27 The fourth point made was that as a result of the delay in placing the Mount Waverley Property on the market, Ms Nicholson consented to a particular order being made on 22 November 2018. This order related to Ms Nicholson's share of two properties in Inverloch, which she jointly held with Mr Nicholson, and which had been sold and were due to settle respectively on 18 December 2018 and 22 February 2019. The proceeds of the respective sales were to be paid to Mr Nicholson in partial settlement of the $1,350,000 owed to Mr Nicholson. (I found this submission hard to follow, as the order referred to in the submissions was order 10, whereas the relevant order appears to be order 11). As I understand the submission, it is

said that Ms Nicholson's consent to this order mitigated the effect of the delay caused to the sale of the Mount Waverley Property. I acknowledge the point, but note that this concession merely validates Mr Nicholson's complaint that he was being kept out of money to which he was entitled by the delay in the sale of the Mount Waverley Property.

28 The final point made is that Ms Nicholson, through the administrator, consented to the order for sale of the Mount Waverley Property on 22 November 2018 only after the Tribunal in the Guardianship List on 21 November 2018 had advised that the immediate sale of the property was not to be opposed. I comment that this merely highlights the fact that Ms Nicholson's opposition to the sale was the cause of the delay.

29 As a result of all these matters, Ms Nicholson argues that, in light of her conduct, it would not be fair for the Tribunal to order costs against her. I disagree. Although I acknowledge that Ms Nicholson is represented by an administrator because she is cognitively impaired, she could, through the administrator, have applied to the Tribunal for guidance regarding the sale of the Mount Waverley Property at a point before 21 November 2018. It is difficult to escape the conclusion that she applied to the Tribunal for the guidance only because of the scheduling of the final hearing in this proceeding on 22 November 2018. In these circumstances, I find that Ms Nicholson is to be held responsible for the delay in completing this proceeding.

What unnecessary disadvantage to Mr Nicholson arose as a result of Ms Nicholson's unreasonable conduct and delay?

Mr Nicholson's submissions

30 Colin Nicholson says that he has been unnecessarily disadvantaged in the following ways:

> (a) it was necessary to relist the proceeding for a Directions Hearing on 5 October 2018;
>
> (b) the preparation and filing of an affidavit sworn 3 October 2018 in support of the re-listing of the proceeding;
>
> (c) the hearing of the Directions Hearing on 5 October 2018, it being submitted that but for the need to relist the proceeding, the hearing on 5 October 2018 could have been administratively vacated; and
>
> (d) the preparation and filing of a further affidavit sworn by Mr Nicholson on 8 November 2018 in support of orders for the sale of the property.

31 Total costs are calculated in an annexure to the submissions of $20,313. In the written submissions, 60% of these costs are sought, rounded down to $12,000.

Ms Nicholson's submissions

32 Ms Nicholson, in her written submissions, contends that the costs sought by Mr Nicholson are excessive, and that the majority of the costs were unnecessarily incurred. A related submission is that Mr Nicholson claims 60% of possibly $14,000 cost for preparation and attending at the final hearing, which was of one hour duration only. It is contended that this is unreasonable. She also says that the affidavit sworn by Mr Nicholson in respect of the final hearing was "in most part, unnecessary, repetitious and not always relevant to the proceeding." It is also contended that Mr Nicholson could have been represented by his solicitor, and that it was not necessary to instruct Counsel for the hearing. Moreover, she says that if costs are be allowed, then only the reasonable costs of the final hearing should be allowed. Costs for the Directions Hearing on 5 October 2018 should be denied, as this had already been listed. Her penultimate point is that she acknowledges that the Tribunal has jurisdiction to fix the amount of costs itself under s 111 of the VCAT Act, but argues that costs should be assessed on the County Court Scale D. Her final point is that if costs are to be awarded, they should be limited to $1,360, comprising one third of the costs of preparation of Mr Nicholson's affidavit, put at $400, and attendance at the final hearing by Mr Nicholson's solicitor, assessed at $960.

The Directions Hearing on 5 October 2018

33 I deal first with the Directions Hearing on 5 October 2018. Ms Nicholson is correct in pointing out that this was not specifically listed because of her breach of the Second Deed of Settlement. However, it is to be noted that this Directions Hearing was listed on 24 April 2018 by an order made in chambers, the day after the Second Deed of Settlement had been signed. It was clearly the intention of the Tribunal to have a short Directions Hearing on a suitable date after the scheduled sale date of 24 September 2018 in order to finalise the matter. In this respect, it is noted that costs had been reserved at the Directions Hearing on 3 March 2017, 2 June 2017, 13 October 2017, 10 November 2017, 2 February 2018, 28 March 2018, and in chambers on 24 April 2018.

34 In the event, the parties have been prepared to deal with the issue of costs by way of written submissions. Accordingly, Mr Nicholson has substantiated his argument that but for the breach of the Second Deed of Settlement, the Directions Hearing would not have been necessary, and could have been vacated administratively. Because of the breach of the Second Settlement Deed, it was necessary to have a Directions Hearing in order to have the proceeding listed for a final hearing. This being the case, it was appropriate for an affidavit in support to have been sworn.

35 I am prepared to award Mr Nicholson, in principle, the costs of the preparation of the affidavit of Mr Isakow on 2 October 2018, preparation by Mr Isakow to appear at the Directions Hearing, and his appearance at the

Directions Hearing. I have reviewed the summary of costs appended as Appendix A to Mr Nicholson's submissions, and note that in respect of these items, costs of $1,500, $1,200 and $960 respectively are claimed. In the absence of details concerning the time involved, and information about the relevant hourly rate applied (where applicable) I am not in a position to assess those costs. However, as will become apparent below, it is not necessary that I do so precisely.

The final hearing

36 I turn now to the final hearing on 22 November 2018. It was only necessary to have a final hearing because of the breach of the Second Deed of Settlement. Mr Nicholson is to be allowed his reasonable costs of, and associated with the final hearing.

Appropriate scale to be applied

37 Ms Nicholson contends that the appropriate scale is the County Court Scale. I acknowledge that this is the default Scale of Costs nominated in Rule 1.07 of the *Victorian Civil and Administrative Tribunal Rules 2018.* However, having regard to the complexity of the proceeding, being a partition proceeding brought under Part IV of the *Property Act 1958*, and the value of the Mount Waverley Property, I find the appropriate scale cost applied is the Supreme Court Scale.

Representation by Counsel

38 Mr Nicholson was represented at the final hearing by Mr Farrands of Counsel. Having regard to the factors I took into account in finding that the Supreme Court Scale should be applied, this was not unreasonable. I have sighted a number of tax invoices from Mr Farrands's clerk, and note that his work involved a conference, the drafting of an affidavit, the preparation of submissions, the preparation of a memorandum of advice, and incidental attendances. Mr Farrands has charged for all attendances at the rate of $462 per hour inclusive of GST which implies a GST exclusive rate of $420 per hour. I accept this rate as it is well within the rate contemplated by the Supreme Court Scale.

39 The specific attendances by Mr Farrands are detailed in the invoices from his clerk, as follows:

- 18 October 2018 - Preparation for conference regarding VCAT matter, dispute as to terms of settlement, and related issues, advice in conference as to steps to address breach of terms of settlement, incidental attendances: $693 inclusive of GST;
- 1 November 2018 - Preparation of draft affidavit, preparation of draft submissions, incidental attendances: $1,386 inclusive of GST;
- 5 November 2018 - Further preparation of affidavit material, research regarding relevant *Property Law Act* provisions and

VCAT authorities, incidental attendances: $1,963.50 inclusive of GST;

- 6 November 2018 - Preparation of memorandum of advice regarding the proceeding in particular regarding relevant *Property Law Act* provisions and the jurisdiction of the court, incidental attendances: $1,617 inclusive of GST;
- 22 November 2018 - Preparation for hearing before VCAT for orders for the sale of a property in Mount Waverley and ancillary orders, conferring with instructing solicitors, reviewing case law, preparing proposed orders, conferring with Ms Davis, administrator, appearance before Tribunal, obtaining orders, memorandum of appearance, incidental attendances: $2,849 inclusive of GST; and
- 27 November 2018 - Preparation of submissions regarding costs associated with orders made on 22 November 2018, incidental attendances: $1,232 inclusive of GST.

40 I accept these attendances broadly, noting the complexity of the proceeding, and the fact that it could not have been clear to Mr Nicholson until at least the day before the hearing that the order for sale of the Mount Waverley Property would not be opposed. The total cost involved is $9,740.50, inclusive of GST. I note that there appears to be some repetition in terms of preparation of affidavit material. However, I do not think that the affidavit sworn by Mr Nicholson on 8 November 2018 was unduly long, repetitive or irrelevant, as contended by Ms Nicholson. On the contrary, it was of assistance to the Tribunal, including in connection with this costs application. It is possible that on close scrutiny, counsel's fees might be reduced to $9,000. However, as noted, in broad terms they are acceptable, and I find that $9,000 is a reasonable figure for counsel's fees.

41 The balance of the costs claimed relate to attendances by Mr Isakow in respect of:

- Preparing a brief to counsel;
- Conference with Counsel;
- Reviewing and amending affidavit of Colin Nicholson;
- Reading memorandum from counsel;
- Reviewing and amending affidavit of Colin Nicholson;
- Conference with Colin Nicholson;
- Conference with Counsel;
- Preparation of affidavit Colin Nicholson for filing and service;
- Attendance at VCAT to file Mr Nicholson's affidavit;
- Conference with Colin Nicholson;
- Attendance at hearing at instructing solicitor;
- Reading memorandum from counsel; and

- Reviewing and amending costs submissions.

42 As with the other attendances by Mr Isakow I am not in a position to make an assessment of the relevant costs, with one exception. The exception relates to the attendance at VCAT by Mr Isakow to file Mr Nicholson's affidavit, for which he charged $87.50. I do not regard this as reasonable. The affidavit could have been sent in by email, or by ordinary post, or a clerk could have attended to file it. I disallow this item. The other solicitor's items, broadly speaking, appear to be reasonable subject to the comment that there seems to be a degree of duplication with the work performed by counsel.

43 I have indicated that I regard counsel's fees of $9,000 is reasonable. In the context of a case as complex as this, an allowance of $3,000 for solicitor's fees is in my view reasonable, having regard to the work referred to by Mr Isakow in the Annexure to the submissions.

Summary

44 I find that Mr Nicholson is entitled to an award of $12,000 in respect of costs. I will make orders accordingly.

MEMBER C EDQUIST