

Civil Procedure

District Courts and Tribunals

13/4/15 Update Summary

COMMENTARY

Commentary has been added on the following recent cases:

DISTRICT COURTS RULES 2014

The following recent cases are cited in this update:

Tankersley v Meroiti [2014] NZHC 1874 – Rules of general application – Time – Extending and shortening time – Scope of rule – Consequence of a breach of an unless order: [DCR1.23.03].

Stylo Medical Service Ltd v Hum Hospitality Ltd [2014] NZHC 2723 – Rules of general application – Time – Extending and shortening time – Scope of rule – High Court has inherent jurisdiction to extend time: [DCR1.23.03].

Nawisielski v Nawisielski [2014] NZHC 2039, [2014] NZFLR 973 – Trustees, executors, and administrators – Derivative proceeding distinguished – Cases under r 4.23(3) are distinguishable from derivative proceedings – Costs: [DCR4.23.01], [DCR15.20.01].

Credit Suisse Private Equity LLC v Houghton [2014] NZSC 37; [2014] 1 NZLR 541 – Persons having same interest – Liberal approach to representative procedure – Relevant date for ascertaining whether a defendant would be denied an otherwise

available limitation defence is the date of the representation order: [DCR4.24.02], [DCR4.24.03].

Capital And Merchant Finance Ltd (in rec and in liq) v Perpetual Trust Ltd [2014] NZHC 3205 – Striking out and adding parties – Adding an intervener or interested party – Court refused to confer interested party status on a barrister whose actions in the course of settlement negotiations were in issue in the proceeding: [DCR4.56.08A].

Sisson v IAG New Zealand Ltd [2014] NZHC 616 – Representative capacity of party – Proceedings against executors and trustees of estates – Intitulement must properly describe the representative capacity: [DCR5.33.01].

Internet Traders Ltd v Williams [2014] NZHC 3407 – Application for injunction – Principles for granting interim injunctions – Serious question to be tried – Test requires consideration of the best case that could be put forward by the plaintiff on the evidence adduced: [DCR7.45.02(1)].

Vector Gas Contracts Ltd v Contact Energy Ltd [2014] NZHC 3171 – Order for particular discovery against non-party after proceeding commenced – Relevance – Necessity remains, by implication, a relevant consideration: [DCR8.21.06].

Pearce v Tower Insurance [2014] NZHC 2849 – “Recusal” of Judge – Application should normally be supported by affidavit evidence: [DCRPt10.01].

Y v Foulkes [2014] NZCA 396, [2014] NZAR 982 – Recalling judgment – Overlooking a matter that required a decision is a reason for recalling a judgment: [DCR11.9.01], [DCR11.9.01A].

Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue [2014] NZCA 350, (2014) 26 NZTC 21-086 – Recalling judgment – Effect of appealing: [DCR11.9.04A].

Powell v Hally Labels Ltd [2014] NZCA 572 – Costs – Prima facie position and the exceptions – Whether plaintiff and defendant acted reasonably – Assessments of the merits of the case: [DCR15.20.01].

Commentary in this chapter has been updated at the following locations:

Rule 5.63 yields to statutory set off: [DCR5.63.05]

“Control”: [DCR8.7.01]

DISPUTE RESOLUTION/ADJUDICATION TRIBUNALS

The Motor Vehicle Disputes Tribunal – A Guide to Practice and Procedure chapter has been updated at the following locations:

MV2.01 Types of claims that may be heard

MV6.08 Hearing the evidence

MV8.02 Appeal

The Motor Vehicles Sales Act 2003 chapter has been updated at the following locations:

MVASch1.16.05 Judicial review

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