IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA60/2023
[2023] NZCA 380

BETWEEN	ROY WILLIAM BASSETT-BURR Appellant
AND	QUENTIN STOBART HAINES First Respondent
AND	BPE TRUSTEES (No 1) LIMITED Second Respondent
AND	QUENTIN HAINES PROPERTIES LIMITED Third Respondent

Hearing:	24 July 2023
Court:	Miller, Moore and Palmer JJ
Counsel:	DGO Livingston for Appellant J D Dallas for First Respondent D K Evans and L C McIvor for Second and Third Respondents
Judgment:	21 August 2023 at 3.00 pm

JUDGMENT OF THE COURT

A The appeal is allowed. The order for costs made in [2022] NZHC 2966 is set aside.

B The High Court must revisit, in light of this judgment, the costs award made in [2022] NZHC 3402.

C The three respondents must pay the appellant one set of costs for a standard appeal on a band A basis, with disbursements as fixed by the Registrar.

REASONS OF THE COURT

(Given by Miller J)

[1] This is an appeal from a High Court decision awarding costs against the appellant as a non-party to a proceeding in which statutory demands issued under s 289 of the Companies Act 1993 were set aside.[1]

Background

[2] The statutory demands were served on 20 May 2019.[2] They were issued by the trustees of the Link No 1 Trust. One of the trustees was Harry Memelink, whose family trust it was. The other was Lynx Trustees Ltd, a company owned and directed by the appellant, Roy Bassett-Burr. He signed all the demands, and immediately after service he emailed a number of parties, including the debtors.

[3] The debtors named in the statutory demands were Quentin Haines, formerly Mr Memelink's solicitor but no longer practising,[3] the QSH family trust, and the second and third respondents, both of which are companies associated with Mr Haines. The sums claimed in the demands were sums payable under loan obligations assumed by the Haines interests to financiers which had assigned their interests to the Link No 1 Trust. The loans were secured by a mortgage over a lifestyle property at Manakau, Levin. It appears that Mr Memelink and the Link No 1 Trust had guaranteed the loans and took the assignment after Mr Haines defaulted.

[4] A statutory demand under s 289 of the Companies Act may only be issued against a company in respect of a debt that is due. It requires the company to pay within 15 working days,[4] failing which the company is presumed unable to pay its debts and may be wound up.[5] Under s 290 the High Court may set aside a statutory

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1 *Haines v Memelink* [2022] NZHC 2966 [Judgment under appeal]; and *Haines v Memelink* [2019] NZHC 2169 [Statutory demands decision].

2 Statutory demands decision, above n 1, at [3].

3 Mr Haines has deposed that he surrendered his practising certificate on 23 August 2018, for unrelated reasons.

4 Companies Act 1993, s 289(2)(d).

5 Sections 241(4)(a) and 287(a).

demand if satisfied that there is a substantial dispute as to whether the debt is owing or due, or the company appears to have a set-off or cross-claim against the creditor.[6]

[5] The demands appeared on their face to have been prepared by a solicitor who acted for the Memelink interests, but in fact the solicitor had not been involved in their preparation.[7] It appears that Mr Memelink and Mr Bassett-Burr intended to brief the solicitor on the latter's return from leave.

[6] On 24 May 2019 Mr Haines demanded by email to Mr Bassett-Burr that the demands be withdrawn by 27 May. He warned that the entities served intended to move to set the demands aside and would seek an uplift on costs for abuse of the statutory demand process. Mr Bassett-Burr asked what was wrong with the demands. Mr Haines responded (we now know, incorrectly) that the assignment of the mortgage was not done correctly and a discharge of mortgage had occurred. Mr Bassett-Burr replied on 27 May that he would take legal advice urgently but could not hold the lawyer to a deadline. He asked that Mr Haines defer action until the lawyer had responded.

[7] On 31 May the three respondents to this appeal applied to set the statutory demands aside on a number of grounds: relevantly, Mr Haines and the QSH family trust were not companies, the debts were disputed, and the assignments were unlawful or had the effect of discharging the mortgages. Mr Haines swore an affidavit deposing to cross-claims which included a very large sum of more than $1 million for legal fees incurred while he had been acting for Mr Memelink. He maintained that as he had not heard further from Mr Bassett-Burr he had been forced to file the application.

[8] Mr Memelink advised Mr Haines by email of 17 June that the demands were withdrawn. He reserved the right to produce the email and seek costs, should Mr Haines move to set the demands aside. The email was copied to Mr Bassett-Burr.

[9] Mr Haines offered on 18 June to withdraw his application if costs of $5,000 were paid by 20 June. There was no response. On 21 June he confirmed that he would

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6 Section 290(4)(a)–(b).
7 Statutory demands decision, above n 1, at [5].

seek costs with an uplift. On 23 June Mr Memelink replied, copied to Mr Bassett-Burr, stating that the demands had never been properly served and no action had been taken on them. It had not been necessary for Mr Haines to incur costs. He rehearsed a number of complaints against Mr Haines and warned that he would seek costs should Mr Haines persist. He made similar allegations in another email on 24 June.

[10] Mr Haines evidently refused to deal with Mr Memelink. Instead of responding to Mr Memelink's emails, he forwarded the email of 24 June to Mr Bassett-Burr on 25 June. He told Mr Bassett-Burr that the application was to be called in the High Court on 1 July.

[11] Mr Memelink emailed Mr Haines on 25 June demanding that the application be withdrawn because, among other reasons, the demands had not been served properly and had been withdrawn. He advised that costs would be sought if Mr Haines persisted.

[12] Mr Dallas appeared for the applicants on 1 July to advise the Court that the notices had been withdrawn and to seek costs with an uplift of 50 per cent. He advised Cull J that the applicants also sought costs against Mr Bassett-Burr personally on the ground that he had taken an active part in causing wasted costs for the applicants by pursuing meritless and disputed demands. Mr Memelink appeared and advised Cull J that the application was opposed.[8] She directed that a notice of opposition be filed.[9]

[13] The application was set down for 30 August 2019. On August 28 Mr Smith, counsel for the Memelink interests, sought an adjournment on grounds of his unavailability that day and Mr Memelink's need for legal advice. The adjournment application was declined the next day.[10] That evening, Mr Memelink sought to file documents in apparent opposition. It appears his stance was that the demands had never been served and there had been no loss to anyone.

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8 *Haines v Memelink* HC Wellington CIV-2019-485-315, 2 July 2019 (Minute of Cull J) at [2].

9 At [4].

10 *Haines v Memelink* HC Wellington CIV-2019-485-315, 29 August 2019 (Minute of Churchman J) at [21].

[14] The 30 August hearing was held before Churchman J. No documents had been filed in opposition, with the Judge declining to admit the documents filed by Mr Memelink the evening prior. Mr Memelink appeared. He confirmed that the application was not opposed but sought to draw the Judge's attention to complaints against Mr Haines relating, among other things, to the latter's claim for fees. The Judge declined to hear from him on these matters. Mr Dallas argued that the case was a textbook example of a meritless demand which warranted uplifted costs and costs against Mr Bassett-Burr, who was said to have "a direct financial interest in the outcome of this litigation" and to be using Lynx Trustees "as a ruse to avoid personal liability".

[15] It was common ground before us that that Mr Bassett-Burr had no involvement in the proceeding after 25 June. (In fact, it appears from the record before us that he was copied into emails between Mr Memelink and their solicitor about the request to adjourn and emails between Mr Memelink and the Registrar of the High Court about the fixture, but Mr Dallas did not seek to make anything of this.)

[16] Churchman J set the demands aside, noting that the first two had not been issued against a company as required by s 289 of the Companies Act and that the purported debts on which they all were based were clearly disputed.[11] The Judge also rejected as untenable Mr Memelink's claim that the application had never been opposed.[12] He awarded costs against Mr Bassett-Burr personally, finding that he had improperly issued the demands and had failed to respond to the invitation to withdraw.[13] He noted that Mr Bassett-Burr is the brother-in-law of Mr Memelink and found that the two had acted in concert in a vendetta against Mr Haines.[14]

[17] The award of costs was set aside on appeal on procedural grounds, this Court finding that there had been no formal application for non-party costs and Mr Bassett-Burr had not been put on notice.[15] An application was then made for costs

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11 Statutory demands decision, above n 1, at [6]–[7] and [33].
12 At [27]–[33].
13 At [47]–[48], citing *ETB Realty Ltd v Eastlight Asset Trading No 3 Ltd* [2016] NZHC 609.
14 At [49].
15 *Bassett-Burr v BPE Trustees (No 1) Ltd* [2020] NZCA 457, (2020) 25 PRNZ 509 at [14] and [21]. Leave to appeal this Court's decision to the Supreme Court was declined: *BPE Trustees (No 1) Ltd v Bassett-Burr* [2021] NZSC 14 at [14].

against Lynx Trustees and Mr Memelink. On 13 May 2021 Churchman J fixed the costs at $21,689.25 and disbursements at $1,230.[16]

[18] The costs have not been paid. Mr Memelink was bankrupted on 28 August 2018 and Lynx Trustees was placed in liquidation on 10 September 2019. The Link No 1 Trust went into receivership on 31 May 2022. We were told that its receivers are seeking to recover the debt which Mr Haines was found liable to pay the Trust.

[19] On 3 August 2021 Grice J delivered a judgment on an application for summary judgment between Mr Memelink as trustee of the Link No 1 Trust, and the Haines interests.[17] The Judge found Mr Haines liable on the assigned debts, rejecting as untenable his claims that the debts had not been assigned but rather had been discharged.[18] It was not in dispute that the loans to the finance companies were in default. There is a cross-claim which could not be struck out on summary judgment and needs to be repleaded.[19] The exact amount owing to the Memelink interests is uncertain. Quantum is to be decided after a hearing in 2025.

[20] On 24 August 2022 the Haines interests moved for an order that Mr Bassett-Burr pay non-party costs, following the successful appeal of the original non-party costs award.[20] A hearing was held before Churchman J on 10 November 2022.[21] Mr Bassett-Burr was represented by Mr Livingston. In the judgment under appeal, which was delivered on 11 November 2022, the Judge ordered that Mr Bassett-Burr pay the costs that had been fixed on 13 May 2021.[22]

[21] The Judge directed that the parties seek agreement on costs of the costs hearing.[23] If they could not agree memoranda were to be filed and he would make a decision on the papers. Memoranda were duly filed. On 14 December 2022 the Judge ordered that Mr Bassett-Burr pay a further $18,075 with disbursements of $890 for the

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16 *Haines v Memelink* [2021] NZHC 1063 [Costs decision of May 2021] at [31].
17 *Memelink v Haines* [2021] NZHC 1992 [Judgment of Grice J].
18 At [112], [119] and [185].
19 At [171]–[172].
20 *Bassett-Burr v BPE Trustees (No 1) Ltd,* above n 15.
21 Judgment under appeal, above n 1.
22 At [30] and [32]; and Costs decision of May 2021, above n 16, at [31].
23 Judgment under appeal, above n 1, at [34].

non-party costs hearing.[24] That sum included an uplift of 25 per cent on scale costs.[25] The Judge accepted Mr Dallas's argument that Mr Livingston had made meritless arguments and put incorrect information before the Court.[26] The meritless arguments appear to have related to the parties' indebtedness to one another, which the Judge found irrelevant, and the incorrect information appears to have concerned Lynx Trustees' insolvency.

[22] There was some confusion surrounding whether leave was required to bring the judgment under appeal to this Court. The December 2022 decision dealt with an application by Mr Bassett-Burr for leave to appeal the November 2022 non-party costs award, with the parties believing at the time that the decision was interlocutory and thus leave was required under s 56(3) of the Senior Courts Act 2016.[27] We note that this Court has stated that where costs are sought from a non-party, this is in substance a separate claim brought against the non-party, and is therefore an originating application even if made in the form of an interlocutory application in the substantive proceedings.[28] Leave of the High Court is therefore not required to appeal to this Court and this appeal was brought as of right.[29]

The judgment under appeal

[23] Churchman J recounted the background,[30] noting that the application for non-party costs had followed the Supreme Court's indication that such an application offered Mr Haines an alternative avenue of redress.[31] He rejected as untenable the arguments that Mr Bassett-Burr had no substantive involvement in the issue of the demands and found that the costs could have been avoided had Mr Bassett-Burr acted responsibly.[32] The Judge emphasised that as a trustee and a director of Lynx Trustees, Mr Bassett-Burr had obligations to act prudently and in accordance with the law, and

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24 *Haines v Memelink* [2022] NZHC 3402 [Costs decision of December 2022] at [44].
25 At [42].
26 At [41].
27 At [16].
28 *Rerekura v Prison Director, Auckland South Corrections Facility (SERCO)* [2022] NZCA 232 at [18]–[19].
29 At [20].
30 Judgment under appeal, above n 1, at [2]–[11].
31 At [10]–[11].
32 At [16] and [21].

could not hide behind Mr Memelink.[33] He declined to entertain a set-off against Mr Haines's alleged liabilities in other proceedings.[34] He found that neither Lynx Trustees nor the Trust had any prospect of meeting an award of costs.[35] A 50 per cent uplift was justified and Mr Bassett-Burr had been notice from the outset that it would be sought.[36]

The appeal

[24] The question is whether it was right to order Mr Bassett-Burr, as a non-party, to pay costs. He contends that:

(a) he was not the real party, standing to benefit from the proceeding;

(b) there was no sufficient causal link between him and the proceeding;

(c) the circumstances did not warrant looking behind the limited liability of Lynx Trustees; and

(d) this is not one of those exceptional cases in which non-party costs are justified.

[25] Mr Haines contends that the issues are:

(a) whether there is a sufficient nexus between Mr Bassett-Burr's actions and the costs incurred;

(b) whether his actions were those of a prudent director or trustee;

(c) whether Lynx Trustees and the Link No 1 Trust are insolvent; and

(d) whether Mr Bassett-Burr believed he could benefit financially from the issue of the statutory demands.

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33 At [29].
34 At [24]–[26].
35 At [28].
36 At [30]–[31].

Non-party costs

[26] The principles are relevantly settled. Costs are discretionary but must be fixed on a principled and reasonable basis.[37] The jurisdiction extends to costs against a non-party.[38] Such awards are exceptional, but that means only that they require something outside the ordinary run of cases.[39] The ultimate question is whether it is just to order that the non-party pay them, and because a number of considerations may be in play the court's enquiry is to some extent fact-specific.[40] It is not sufficient that the non-party, Mr Bassett-Burr, shared responsibility for the inept litigation strategy that the trustees of the Link No 1 Trust pursued. It is necessary, in the circumstances of this case, to consider whether he committed any relevant impropriety or was relevantly acting not in the interests of the Trust but in his own interest, such that he was the real party.[41]

No relevant impropriety

[27] The costs award against Lynx Trustees and Mr Memelink is not under appeal. It cannot be doubted that the High Court might properly award costs in circumstances where no notice of opposition was filed and the Court was faced with an unchallenged claim that the debt was disputed. It is unsurprising that the Court treated the demands as an abuse of process. Lynx Trustees and Mr Memelink did not comply with directions to file papers in opposition. They did not offer any coherent explanation which might excuse them from liability for costs.

[28] However, we must be prepared to consider the substantive merits when assessing Mr Bassett-Burr's costs liability, and in particular his liability for an uplift on costs. Mr Livingston argued that Mr Memelink's email of 17 June 2019 was an effective withdrawal, contending that it is arguable whether there were grounds to set

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37 *Shirley v Wairarapa District Health Board* [2006] NZSC 63, [2006] 3 NZLR 523 at [16], citing *Sharp v Wakefield* [1891] AC 173 (HL) at 179 per Lord Halsbury LC.

38 *Concrete Structures (NZ) Ltd v Smith* [2019] NZHC 2572, (2019) 25 PRNZ 74 at [14].

39 At [15], citing *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2)* [2004] UKPC 39, [2005] 1 NZLR 145 at [25] and [29].

40 *Dymocks Franchise Systems (NSW) Pty Ltd*, above n 39, at [25].

41 *Kidd v Equity Realty (1995) Ltd* [2010] NZCA 452 at [16], citing *Goodwood Recoveries Ltd v Breen* [2005] EWCA Civ 414, [2006] 1 WLR 2723, *Metalloy Supplies Ltd v MA (UK) Ltd* [1997] 1 WLR 1613 (CA) at 1620 per Millett LJ and *Secretary of State for Trade and Industry v Backhouse* [2001] EWCA Civ 67.

the demands aside and claiming that it is obvious that the quantum of the loans owed by Mr Haines far exceeds any cross-claim.

[29] We are persuaded that this is not a case in which the issue of the demands can be regarded as an abuse of the statutory demand process. It was never appropriate to issue demands against debtors which are not companies, but for those debtors the demands were ineffective; there was never any question of a statutory presumption of inability to pay debts and a resulting winding-up order.[42] It is because a demand places a debtor company in an invidious position that there is ample High Court precedent for an uplift on scale costs.[43] Nor were the demands inaccurate; the Haines interests were and are indebted to the Link No 1 Trust under the assigned loan documents. Mr Haines's claim that the loans had never been assigned has been rejected.[44]

[30] Mr Haines has advanced a cross-claim, including a claim for costs said to be payable to him as the former solicitor for the Memelink interests, which could not be resolved on summary judgment.[45] Churchman J pointed to the judgment of Grice J as evidence that the amount payable is presently unliquidated.[46] But it does not follow that it was an abuse of the statutory demand process to claim amounts due in debt in May 2019. Rather, the demands were prima facie justified, though susceptible to being set aside if the Haines interests could persuade the Court that there was a counterclaim, set-off or cross-demand that ought to be brought into account. The costs that Mr Haines claims from Mr Memelink appear to comprise a substantial part of the cross-claim. We observe that in related disciplinary proceedings the Law Practitioners Disciplinary Tribunal found on 8 April 2022 that Mr Haines had overcharged Mr Memelink and was guilty of disgraceful and dishonourable conduct.[47]

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42 *Summer Construction Ltd v Bakker* HC Wellington CIV-2006-485-1499, 10 November 2006 at [31].

43 At [31] and [38]; *ETB Realty Ltd,* above n 13, at [17]–[18]; and *Four Avenues Property Group Ltd v Higgs Construction Ltd* [2016] NZHC 1202 at [13].

44 Judgment of Grice J, above n 17, at [112].

45 At [187].

46 Judgment under appeal, above n 1, at [22], citing Judgment of Grice J, above n 17, at [161].

47 *National Standards Committee (No 1) v Haines* [2022] NZLCDT 10 at [82]–[90] and [102]–[104]. The Tribunal did not attempt to quantify the overcharging but found that the amount claimed was far more than could be considered fair and reasonable.

[31] This is not a case in which it can yet be said that the Memelink interests should have known there was a genuine cross-claim. Grice J found that, as pleaded, two of the three causes of action in the cross-claim could not succeed and the allegations (of an alleged agreement or fiduciary relationship) were imprecise.[48] In the meantime, it is at least premature to describe the statutory demands as an abuse on the ground that the sum payable was unliquidated. The outcome may yet be that any set-off or cross-claim advanced by the Haines interests fails or is not sufficiently connected to the debt to establish a legal or equitable set-off.

[32] For these reasons, we think there was a basis for the statutory demands to be issued. It cannot be said, in light of Grice J's judgment, that an application to set the demands aside must succeed; it would depend on the Haines interests persuading the Court that there is a cross-claim which ought to be taken into account. That issue was never decided because the Memelink interests withdrew the demands. It is because no opposition was filed that the application to set the demands aside was granted.[49]

[33] Churchman J accepted that it was necessary to move to set the notices aside because nothing further was heard from Mr Bassett-Burr after he had told Mr Haines on 27 May 2019 that he would take legal advice urgently and requested that Mr Haines hold off in the meantime.[50]

[34] We are not persuaded that it was necessary to move as abruptly as Mr Haines did. There was no reason to doubt Mr Bassett-Burr's assurance that he would get legal advice urgently. Advice was taken. The Memelink interests appear to have been advised that the demands were bad because they could not be issued against Mr Haines and the Trust, and the demands were abandoned by email of 17 June. It is difficult to escape the inference that thereafter it was all about costs, which the Haines interests pursued very aggressively.

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48 Judgment of Grice J, above n 17, at [184], [165] and [169].
49 Statutory demands decision, above n 1, at [31]–[32].
50 At [13]; and Judgment under appeal, above n 1, at [5].

[35] For these reasons we do not accept Mr Bassett-Burr was guilty of any impropriety in issuing the demands or in failing to move more quickly to have them withdrawn.

Mr Bassett-Burr's control of and interest in the litigation

[36] As Churchman J found, Mr Bassett-Burr signed all the notices and took an active part in the dealings with Mr Haines over them.[51] Mr Memelink has claimed that he was the decisionmaker, that Mr Bassett-Burr acquiesced on the ground that Mr Haines owed the Link No 1 Trust money, and that the "technical errors" were Mr Memelink's responsibility. Mr Bassett-Burr's affidavit is to the same effect. We are not persuaded that Churchman J was wrong to reject Mr Bassett-Burr's evidence that he was merely a reader-writer for Mr Memelink (who suffers from dyslexia and poor eyesight).[52] We also agree with the Judge that Mr Bassett-Burr could not defer to Mr Memelink but was obliged to exercise his own judgement as a director/trustee.[53] We accept that he shares responsibility for the issue of the statutory demands.[54]

[37] However, Mr Bassett-Burr did respond to Mr Haines's claim that the demands should not have been issued, and they were withdrawn after legal advice was taken. Further, we have noted that Mr Dallas accepted before us that Mr Bassett-Burr had no involvement after 25 June. So far as he was concerned, the only matter remaining was the Haines claim for costs.

[38] It appears Mr Bassett-Burr has an interest in the litigation between the Haines and Memelink interests. He is a substantial lender to the Trust via what he describes as his company, and so is his late mother's estate. Churchman J did not appear to attach significance to this. Nor do we. It is not possible on the material before us to know just how direct is Mr Bassett-Burr's interest. He claims that the family lending to the Trust is secured against Trust properties and serviced by rental income. It cannot be said, on the information before us, that he was acting in his own interest and not

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51 Judgment under appeal, above n 1, at [3]–[5].
52 At [17].
53 At [16].
54 *Dymocks Franchise Systems (NSW) Pty Ltd*, above n 39, at [25].

that of the Trust. We record that before us Mr Dallas withdrew a claim that Mr Bassett-Burr's wife and child are also beneficiaries of the Trust.

Was the order just?

[39] This is the ultimate issue. We agree with Churchman J that it appears a wider vendetta is being pursued,[55] but we do not know the rights and wrongs of it. No doubt that will become apparent when the High Court quantifies the liability of the Haines interests. In the meantime we cannot blame the Memelink interests alone for the waste of court time and parties' money that this litigation represents. We must focus on the statutory demands and the application to set them aside.

[40] We have accepted that the High Court was entitled to award costs as against Lynx Trustees and Mr Memelink, but the decision was justified for what are essentially process reasons; they did not take steps in opposition and in the absence of any coherent explanation the High Court cannot be faulted for finding the demands to be a misuse of the statutory process.

[41] We have also accepted that the merits are relevant to non-party liability for costs. By the time the non-party costs application was heard the judgment of Grice J and the decision of the Disciplinary Tribunal had been delivered. It is now clear that the Haines interests are indeed liable on the assigned debts, and there is a question mark, at least, over the alleged cross-claim. Differing from Churchman J, we are not persuaded that the demands were in fact an abuse of process. Nor are we persuaded that it was necessary to move so quickly to set the demands aside. Mr Bassett-Burr committed no impropriety, nor was he acting in his own interests rather than those of the Link No 1 Trust.

Disposition

[42] We do not agree that this is a case in which Mr Bassett-Burr should have been held liable to pay costs as a non-party, still less an uplift on costs.

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[55] Statutory demands decision, above n 1, at [49].

[43] The appeal is allowed. We set aside the order that Mr Bassett-Burr pay the costs which were fixed in the judgment of 11 November 2022.

[44] No appeal was filed against the judgment of 14 December 2022, but the substantive basis for the High Court decision has been overturned and costs in the High Court should be considered afresh.[56] The appropriate course is to direct that the High Court revisit costs, fixing them on the basis that the application for non-party costs has failed. We make a direction accordingly. No purpose would be served by requiring the appellant to move for a recall or seek leave to bring an appeal out of time.

[45] We turn to costs in this Court. Mr Dallas sought to begin the hearing by laying the groundwork for increased costs here. We observe that costs were also sought by Ms Evans, appearing for the second and third respondents. Her argument was more measured than that of Mr Dallas but it added nothing of substance. When we asked why it was necessary for the Haines parties to be separately represented we were told that it was in case there might be a conflict of interest. None is apparent, so far as this litigation is concerned.

[46] We accept Mr Dallas's complaints about the case on appeal to some extent; it was badly put together and badly indexed, making it very difficult to use. But there is no reason why that should much affect costs incurred by the Haines interests. We see no reason to depart from the usual practice in this Court: costs follow the result. The three respondents are jointly liable to pay the appellant one set of costs for a standard appeal on a band A basis, with disbursements as fixed by the Registrar.

Solicitors:
Livingston & Livingston, Wellington for Appellant
jd Dallas, Wellington for First Respondent
Aspire Legal, Wellington for Second and Third Respondents

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[56] Jurisdiction to make such an order is found in r 48 of the Court of Appeal (Civil) Rules 2005.