IN THE HIGH COURT OF NEW ZEALAND
NAPIER REGISTRY

CIV-2012-441-406
[2013] NZHC 600

UNDER	the Arbitration Act 1996
IN THE MATTER OF	an appeal under clause 5(1)(c) of the Second Schedule of the Act
BETWEEN	NAPIER CITY COUNCIL Plaintiff
AND	CITYSCAPE NEW ZEALAND LIMITED Defendant

Hearing: 13 March 2013
(Heard at Wellington)

Counsel: J O Upton QC for plaintiff
E J Horner for defendant

Judgment: 26 March 2013

RESERVED JUDGMENT OF DOBSON J

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[1] This proceeding constitutes an appeal on questions of law from an interim arbitral award of J L Marshall QC[1] who was appointed by the parties to determine issues in relation to the liability of the plaintiff (NCC) as an outgoing tenant on termination of a lease with the defendant (Cityscape) in respect of the second floor of a commercial building in Dickens Street, Napier (the premises).

[2] By the end of 2004, the NCC had been the tenant of part of the second floor of the premises for some time. Cityscape purchased the building in September 2004.

[1] *Cityscape New Zealand Ltd v Napier City Council* Interim Award on Liability, 5 April 2012 (the interim award).

Discussions between the parties led to the conclusion of a Heads of Agreement to Lease (HoA) dated 2 December 2004 in respect of the NCC's commitment to lease the whole of the floor. The HoA provided that the parties would complete a lease in the Auckland District Law Society (ADLS) standard form, and that the leasing relationship between them would operate in the meantime as if such a lease had been completed. The HoA provided for the lease to commence on 1 February 2005, or earlier "subject to Fit out completion". In the event, there were significant delays in physical works, which had not started on 1 April 2005.

[3] During February or March 2005, Cityscape initiated the process of having the formal lease completed by submitting a draft of the standard ADLS form to solicitors for NCC . Details particular to the lease of the extent of the premises, term, rights of renewal and rental were endorsed in handwriting, and other changes to the standard form were also marked up in handwriting.

[4] Solicitors for NCC subsequently engrossed the lease in partly typed, but predominantly printed, terms using the standard ADLS form. The lease was duly executed by the parties providing for a commencement date of 1 April 2005 for an initial first three year term, with two three year rights of renewal.

[5] One right of renewal was exercised and NCC vacated at the end of the second three year term on 31 March 2011.

[6] The present dispute arose when Cityscape claimed that NCC was obliged to pay for the costs of reinstating the premises into its pre-lease condition, and NCC denied liability for that cost. The parties agreed to arbitrate the dispute, dealing first with the issue of liability and then, if necessary, dealing with the quantum of NCC's liability. The parties agreed that the arbitrator could deal with the matter on written submissions and he produced the interim award dated 5 April 2012.

[7] The arbitrator's determination was that NCC was liable for the costs of reinstating the premises. NCC wishes to challenge that determination.

[8] Procedurally, the appeal was somewhat complicated by the view initially taken on behalf of NCC that it required leave to appeal.[2] Once proceedings were commenced on that basis, Cityscape opposed the application as advanced. By the time that preliminary issue came to be argued before Collins J, it was apparent that the Court's leave was not required. Instead, Collins J's judgment of 16 November 2012 was confined to the scope of questions that could properly be pursued as ones of law, arising out of the interim award.[3] That judgment rejected a purported question of law on the existence of an estoppel.

[9] Accordingly, the questions of law on which the appeal was argued are as follows:

(a) whether the arbitrator misconstrued cl 20.1 of the lease as requiring reinstatement of the premises at the end of the term to their condition as they were prior to the fit-out being completed;

(b) whether the arbitrator misconstrued cl 20.1 of the lease by holding that [Cityscape] had *incurred costs* in reinstating the premises within six months of the end of the term of the lease by entering into a reinstatement contract on 28 September 2011 for the work to be done, even although the reinstatement work was not carried out within that six month period.

First question: interpretation of clause 20.1 of the lease

[10] The relevant ADLS provision is in the following terms:

> **Additions and Alterations**
>
> 20.1 **THE** Tenant shall neither make nor allow to be made any alterations or additions to any part of the premises or alter the external appearance of the building without first producing to the Landlord on every occasion plans and specifications and obtaining the written consent of the Landlord (not to be unreasonably or arbitrarily withheld) for that purpose. If the Landlord shall authorise any

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2 The parties' agreement to refer the dispute to arbitration included recognition of the right of a party to appeal on questions of law at cl 4.

3 *Napier City Council v Cityscape New Zealand Ltd* [2012] NZHC 3061.

> alterations or additions the Tenant will at the Tenant's own expense if required by the Landlord at the end or earlier termination of the term reinstate the premises. If the Tenant fails to reinstate then any costs incurred by the Landlord in reinstating the premises whether in whole or in part, within 6 months of the end or earlier termination of the term shall be recoverable from the Tenant.

[11] The arbitrator applied this clause on its terms. He found that at the commencement of the lease period, 1 April 2005, the floor of the building that was the subject of the lease had partitions consistent with its use in three tenancies, and that after the commencement of the lease, alterations were effected that rendered it suitable for the NCC's use as a single tenancy. At the end of the period of occupancy, Cityscape sought reimbursement for the costs it would incur to reinstate partitions for three tenancies.

[12] The arbitrator rejected arguments on behalf of NCC[4] that the reinstatement obligation should not be determined on the physical state of the premises at the commencement date of the lease, but rather having regard to the agreement between the parties that there would be an alteration to its physical state. This argument had depended on a provision in the HoA, which suggested that the commencement date of the lease was subject to completion of the fit-out. However, the arbitrator's reasoning did not permit the interpretation of cl 20.1 of the lease to be altered or otherwise influenced by this (or any other) provision in the HoA.

[13] In arguing the appeal that cl 20.1 had been interpreted wrongly, Mr Upton QC argued that the HoA and the lease had to be read together and that there was an inconsistency between them in respect of the reinstatement obligation. He submitted that, by reference to surrounding circumstances, the preferable interpretation of cl 20.1 was to recognise the state of the premises for the purposes of assessing any reinstatement obligation on NCC, as they appeared after completion of the fit-out works. He argued that NCC's commitment to the lease of the premises was subject to those works being completed.

[14] The reference in the HoA to the lease was in the following terms:

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4 Mr Upton was not counsel for NCC when its case was before the arbitrator.

> 13. **THE LEASE** shall be in the form of the Auckland District Law Society lease, latest edition, to be prepared by the lessor's solicitor at the lessee's cost. Until the Auckland District Law Society Lease has been executed the Lessee and the Lessor shall be bound by the terms contained in this agreement and in the formal A.D.L.S. lease as if the same had been completed and executed in accordance with this Heads of Lease Agreement.

[15] That provision in the HoA was followed by two provisions that specified as follows:

> 14. **THE LESSEE** is not permitted to make any alterations or additions to the premises without having first obtained the approval of the lessor, such approval not to be unreasonably withheld.
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> 15. **THE LESSEE** agrees that upon vacating, the premises will be left clean and tidy and in good repair and condition. The lessee may remove its fixtures and fittings and shall repair any damage caused by such removal.

Clause 15 of the HoA had the following words added at the end of it in handwriting:

> Subject to "Fitout". Conditions to be agreed.

[16] In addressing the factual context in which a need allegedly arose to reconcile inconsistencies between the HoA and the lease, Mr Upton insisted that NCC had only started paying rent from 1 April 2005 as a gesture of goodwill, and that the nature of the bargain could easily have been varied so that the rental commitment only commenced after the fit-out was completed.

[17] However, there is no scope for pursuit of such an argument on an appeal on questions of law. The reality is that the contractual relationship was governed by the lease, the lease commenced from 1 April 2005 and there was no provision for deferring the commencement of the tenant's obligation to pay rent. The contractual commitment was honoured and rent paid from 1 April 2005.

[18] On its ordinary meaning, cl 13 of the HoA committed the parties to completing a formal lease in the ADLS form, and in the meantime treated the nature of the rights and obligations being assumed as those stipulated in the HoA, sitting alongside the ADLS terms as if the lease had been completed. That sequence

demonstrates that once the ADLS lease was completed, it became the source of rights and obligations regulating the lease contract.

[19] I am satisfied that there was no error of law by the arbitrator in interpreting the provisions of the lease on its own terms, and treating the HoA as "superseded by the lease".[5] Mr Upton did not cite any authority for the proposition that the two documents had to be read together, and rather argued that the terms of the documents in the factual context in which they were prepared required that approach.

[20] It is therefore unnecessary to determine Mr Upton's arguments as to how the terms of cls 14 and 15 of the HoA were said to have influenced the nature of a reinstatement obligation as claimed by NCC. The short point was that cl 14 was to be treated as permitting alterations if the landlord gave approval for them, without a corresponding obligation to effect reinstatement at the end of the term or pay the landlord to do so. Further, that cl 15 of the HoA represented the tenant's only obligation on termination, ie that the premises be left in a clean and tidy condition, in good repair, and with any damage caused by the removal of the tenant's fixtures and fittings also being repaired.

[21] I would not have been persuaded that these provisions created inconsistent obligations in any event. Given that they followed immediately after the commitment to the ADLS terms of formal lease, it is hardly tenable to suggest that the HoA, on its own, relieved the tenant from the obligation to reinstate any alterations or additions to the premises that were undertaken for the tenant's purposes, as agreed on behalf of the landlord.

[22] The specific obligation in cl 15 as to the manner in which any fixtures and fittings added by the tenant were to be removed could hardly be treated as defining the limit of the tenant's obligations in relation to alterations and additions to the premises, which are of a fundamentally different character. Those provisions were contemplated as being superseded by the provisions of a formal ADLS lease, which stated the tenant's obligations specifically for the reinstatement of alterations and additions.

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5 Interim award at [25].

[23] In urging reflection on the factual context in which the lease operated, Mr Upton also submitted that the outcome contended for on behalf of the landlord provides a "windfall bonus" to it. This was said to arise because it was common ground that, if the alterations had been completed prior to the commencement of the lease term, then NCC would have taken the premises over in that state, and not incurred any reinstatement obligation. The arbitrator had recognised that that would be the different contractual position, if the facts were different in that material respect.

[24] However, there is no justification for criticising the outcome as creating a windfall in these circumstances. The bargain as reflected in the lease was that the alterations to suit NCC's purposes would be undertaken after the lease term commenced, so that the status of the premises for the purposes of the reinstatement obligation would be as they were prior to those alterations. The landlord entered into the bargain on the basis that it would have the option to require reinstatement into three tenancies, and at the end of the occupancy by NCC, it elected to pursue that option. Reinstatement costs will be incurred in transforming the premises back into a state suitable for three separate tenants and, if quantum is assessed accurately, there will be no "windfall" but only reimbursement for the cost of that work.

Alternative argument on the first question

[25] Mr Upton sought to argue that the renewal of the lease for a second term constituted a new lease, so the tenant's obligation was only to reinstate the premises to the condition they were in at the commencement of that second term. There were no material alterations within that time frame, and accordingly, on that argument, there would be no material cost recoverable by Cityscape from NCC.

[26] This argument was not raised before the arbitrator. It was an argument that had occurred to Mr Upton on reviewing the file, when he was instructed after the interim award had been delivered.

[27] The prospect of such an argument was foreshadowed in the documents filed before Collins J in what had started as an application for leave to appeal. In

submissions filed in support of the application,[6] Mr Upton disavowed reliance on it. Notwithstanding that, and the difficulties in contending that it raises a question of law that should be treated as "arising out of" the interim award, Mr Upton urged that the Court hear and determine the argument. He submitted that if, as a matter of law, his analysis was correct, then a miscarriage of justice would occur if the appeal was determined in ignorance of this argument where (if he were correct) recognition of the argument would alter the outcome.

[28] For Cityscape, Ms Horner opposed the argument being included within the questions of law. She argued that Cityscape had relied on the acknowledgement given by Mr Upton in his 5 October 2012 submissions that the argument would not be pursued. She disputed that it could validly be before the Court as it was not a question that arose out of the interim award because it had not been raised at all in that award. Further, she argued that it could not be argued adequately without additional evidence on points that were not traversed before the arbitrator.

[29] On this last concern, as the hearing before me developed, it became apparent that counsel had differing assumptions as to the terms and circumstances in which the renewal had been completed. I asked Mr Upton to take instructions after the hearing as to whether a deed of renewal (assuming that the renewal had been completed in that way) was before the arbitrator. I subsequently received a memorandum advising that no deed of renewal was signed, but that the matter was handled by way of an exchange of emails. No such emails were attached to the affidavits that were filed in the arbitration (and which were provided to me at the hearing) and I infer that they were not before the arbitrator.

[30] The scope of issues that might be argued on questions of law from an arbitrator arguably requires a more restricted approach than, for example, on appeal from an inferior court. Certainly since the Arbitration Act 1996, the courts respect the contractual freedom for parties to commit to dispute resolution in an alternative forum. One feature of arrangements for arbitration of disputes is often the priority attributed to achieving timely finality of the dispute in the forum of the parties'

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6 Submissions on behalf of NCC, 5 October 2012 at [15].

choice.[7] A narrow approach to the scope of questions of law that might be re-argued on appeal is appropriate where the contractual arrangements confine the rights of appeal to "… any question of law arising out of the award".[8]

[31] In the present context, I can see no justification for suggesting that this alternative question, which was not before the arbitrator in any form at all, can realistically be characterised as a question that "arises out of the award". It would have represented a discrete argument in support of the tenant's denial of any liability to reinstate the premises, and no component of it was put to the arbitrator. None of the arbitrator's reasoning deals with the point at all. In those circumstances, it would be a forced and unnatural interpretation of "arising out of" to extend that concept to an argument that could have been raised but was not.

[32] The essence of Mr Upton's alternative argument was that the legal effect of the renewal that occurred was to bring an end to obligations assumed under the first lease, and create a new set of obligations for the second period of three years. Conceptually, no doubt renewal arrangements on particular terms could have that effect.

[33] However, as Ms Horner demonstrated in argument, it is entirely speculative to assume that the dealings between the parties, and the terms in which they committed to a renewal for a further three years, necessarily had that legal effect. She protested to the alternative argument being considered by the Court when the outcome could be affected by evidence which was not called because this issue was not before the arbitrator.

[34] In the circumstances of this appeal, that objection is persuasive. There would be an unfairness to Cityscape if it did not have to meet this argument before the arbitrator, and was then prejudiced in opposing the argument on appeal when there may have been evidence that would raise doubts about, or even eliminate, the merits of the argument sought to be run on behalf of NCC.

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7 See, for example, *Downer Construction (New Zealand) Ltd v Silverfield Developments Ltd* HC Auckland CIV-2005-404-6800, 11 July 2006 at [27]; *Gold and Resource Developments (NZ) Ltd v Doug Hood Ltd* [2000] 3 NZLR 318 at [54](7).

8 Arbitration agreement, 17 June 2011 at cl 4.

[35] Accordingly, I find that the Court does not have jurisdiction to entertain the alternative argument Mr Upton pursued on the scope of the obligation in cl 20.1 of the lease.

[36] Mr Upton also argued, if this new argument was not properly before the Court in the present appeal, that he could reserve his position to argue it "on another day". Ms Horner did not accept that a subsequent opportunity would arise and I agree with her. Certainly, the arbitrator's determination was described as an interim award, but that was because issues of quantum were reserved for later argument. The existence of any liability to pay, which is the point of Mr Upton's alternative argument on the interpretation of cl 20.1, could not be properly included within an argument as to what the quantification of such liability was.

[37] Against the contingency that I am wrong in declining jurisdiction to hear the alternative argument, it is appropriate to briefly review the argument, and the response to it.

[38] Clause 34.1 of the ADLS terms provides for the tenant's right to renew and specifies that "… the landlord will grant a new lease for a further term …". Any such new lease is specified by cl 34.1(b) to be on and subject to the covenants and agreements in the original lease. Consistently with that structure, the interpretation provision in cl 46.1 of the lease defines "renewal" as meaning the granting of a new lease.

[39] Mr Upton's argument was that the reinstatement obligation assumed under the original lease came to an end when the parties committed themselves to the new lease on renewal, so that the reinstatement obligation under the new lease could only relate to physical works carried out at the premises after the commencement of the second term.

[40] Mr Upton relied on the Court of Appeal decision in *Sina Holdings Ltd v Westpac Banking Corporation* for the proposition that contractual rights and obligations as between landlord and tenant do not continue from one lease term to

the next, where the mechanism used for renewal is the creation of a new lease.[9] In that case, the issue was the liability of a tenant that had assigned its interest for defaults that had occurred after it had assigned its interest to an assignee/new tenant, and where the renewal had been agreed between the landlord and the new tenant.

[41] The Court of Appeal confirmed that the assignor's liabilities terminated at the end of the term during which it assigned its interest, where the renewal was structured as a new lease. By analogy, Mr Upton argued that the obligations of the same tenant, post-renewal, would be confined to the obligations arising under the new lease.

[42] Mr Upton cited a commentary about the ADLS lease terms from a New Zealand Law Society seminar paper on commercial leases. That included the following:[10]

> A landlord and its tenant sometimes enter into a fresh lease before or after the expiry date of their original lease. In that situation, additions or alterations made by the tenant during the original lease will lose their status as additions or alterations for the purposes of the fresh lease. This means that the tenant will escape liability for reinstatement at the end of the fresh lease (in relation to the work carried out during the term of the original lease).

[43] The effect of that commentary is a warning to conveyancers acting for landlords who wish to extend a tenant's obligation to reinstate so that it would apply during the renewed term in the same way as in the original term, to ensure that the renewal of that commitment is expressly confirmed.

[44] Counsel suggested that there was no New Zealand authority dealing directly with this point. Mr Upton's proposition might appear counter-intuitive to landlords and tenants who treat a renewal of lease as a continuation of their previous bargain, subject to rent reviews. However, Mr Upton's point depends on a legal distinction being drawn between the nature of an agreement to take a further term constituting just an extension of term (in which case the effect of covenants in the original lease would endure through the renewed term), and an agreement to "renew" by means of

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9 *Sina Holdings Ltd v Westpac Banking Corporation* [1996] 1 NZLR 1 (CA).

10 Ish Fraser and others, "Commercial Leases" (paper presented to New Zealand Law Society Seminar, April-May 2008) at 59.

the grant of a new lease (in which case a separate set of rights and obligations arises, having the same scope but relating discretely to the subsequent period provided for).[11]

[45] As the Court of Appeal recognised in *Sina*, the extent of rights and obligations of the parties will depend on the true construction of the commitments as expressed in the relevant documentation.[12] This is certainly not the context in which to make any general pronouncement on the point. Certainly, the context that Ms Horner sketched provides some basis for suggesting that the terms and circumstances of exchanges between NCC and Cityscape when dealing with the renewal after the first three year term could either expressly or implicitly have recognised that the same rights and obligations between them would run on for another three years.

[46] If there had been a formal deed of renewal completed strictly in accordance with the renewal provision in the original ADLS lease, then it seems likely that there would have been a tenable basis for Mr Upton's alternative argument temporally constraining the scope of the reinstatement obligation under cl 20.1 of its terms. However, that is not the evidence in the present appeal. If the Court had jurisdiction, I would nonetheless not be prepared to determine, as a question of law on the state of facts as known, that the landlord's entitlement to require reinstatement of the work done after commencement of the original term was lost at the end of the first term.

Second question: "Costs incurred … within six months …"

[47] Just before the expiry of the six month period after the end of the second lease term, Cityscape entered into a contract with a Napier building firm to reinstate the premises into the configuration that had applied before transformation into a single tenancy for NCC. None of the work was done within that six month period, and I was told at the hearing that it has still not been undertaken.

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11 *Sina Holdings Ltd v Westpac Banking Corporation* at 4.
12 At 5.

[48] It was argued for NCC that it could not be liable for any part of the contractual commitment Cityscape had entered into, because the costs were not incurred within the six month period specified in cl 20.1 of the lease.

[49] The arbitrator rejected that argument, finding that by entering into the contract with the builder, Cityscape had become "responsible or liable" to make the payments and that, in terms of the lease, those costs were accordingly incurred. The arbitrator cited dictionary definitions of the word "incur" as meaning:

- "… to render oneself liable to (damage) … to become through one's own action liable or subject to …";[13]

- "become liable or subject to; bring upon oneself".[14]

[50] The arbitrator also relied on cases involving disputes in respect of costs in legal proceedings. From *R v Miller*, he cited Lloyd J to the effect that costs are incurred by a party if he is responsible or liable for those costs, even although they are in fact paid by a third party.[15] In the cases cited, work in respect of which awards of costs were made had been completed, but that difference was not treated as determinative. Having entered into the contract with the builder, the arbitrator reasoned that Cityscape had become liable to make payments when the work was done.

[51] The arbitrator considered a constraint requiring the work to have been done within the six month period would be commercially unreasonable. That was particularly the case where a landlord has to arrange reinstatement work because of the default of a tenant, and where the tenant might deliberately or otherwise frustrate the application of the provision by delaying matters so that it becomes impossible to effect the reinstatement work within six months of the end of the lease.

[52] Mr Upton argued that NCC could not have any liability until the costs were actually incurred. He invoked the proposition "*no work, no pay*". NCC is concerned

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13 *Oxford English Dictionary* (online ed, Oxford University Press, 2013).
14 *Webster's Third International Dictionary* (G & C Merriam Co, Springfield (Mass), 1961).
15 *R v Miller* [1983] 1 WLR 1056 at 1061.

that if the work is not done, then there is no way to determine Cityscape's liability to pay.

[53] Ms Horner readily accepted that if the work is not done, then the quantum of NCC's liability would be limited to the damages that Cityscape becomes liable to pay, for breach of the contract it has with the builder.

[54] On the other hand, if work now proceeds and the builder establishes that the actual costs incurred are higher than the sums stipulated in the signed contract, Ms Horner argued that Cityscape would be entitled to indemnity by NCC for the actual costs incurred. This last proposition was subject to an acknowledgement that Cityscape would have to establish it had complied with its obligation to mitigate the extent of liability, in circumstances in which increased costs became payable under the contract.

[55] As Mr Upton submitted, the purpose of the six month time limit is to provide for finality in the quantification of liabilities for a tenant on termination of the lease. Finality is optimally achieved when the work has been done, so that its status as reinstatement to the previous form of the premises, and costs for doing so, can be ascertained with certainty. Once the impracticality or unfairness of requiring the physical works to be completed within six months is taken into account, the concept of costs incurred applies more broadly to costs in respect of which a contractual commitment exists within the relevant timeframe. That lessens the ability for finality to be achieved, because the contractual commitment might vary as the work is carried out. However, it achieves a reasonable balance between putting the tenant on notice as to its liability triggered by termination, and final quantification of that liability.

[56] The prospects of subsequent variations to the quantum of the contractual liability assumed was not before the arbitrator. The liability incurred is determined by the contract as entered into within the six months following termination. If, after that commitment was made, the landlord and the builder agree to vary that contract, then quantification of the tenant's liability will be limited to the reinstatement cost that the landlord committed to within the six month period.

[57] Accordingly, on both questions of law I find that the arbitrator was correct and the appeal is therefore dismissed.

Costs

[58] Both parties sought costs in the event that they prevailed on the appeal. For NCC, Mr Upton argued that it should, in any event, have costs on the application for leave to appeal, because the opposition was misconceived.[16] For Cityscape, Ms Horner argued that it should be awarded costs on the preliminary argument because it was required as a result of a mistake on the part of NCC as to the nature of its entitlements arising out of the arbitration agreement, and because the opposition was in any event in part successful (leave had been sought on a claim in estoppel, which Collins J rejected as not constituting a question of law). Ms Horner also argued that, in the course of exchanges of submissions, NCC had resiled from the indicated intention to run the alternative argument on the first question of law, a concession which Cityscape has subsequently relied on.

[59] As to costs on the substantive appeal, Ms Horner seeks costs on a solicitor and client basis because of a contractual provision that obliged the tenant to pay the landlord's legal costs of and incidental to the enforcement of the landlord's rights, remedies and powers under the lease.[17]

[60] Although Cityscape's response to the misconceived application for leave to appeal may have been overly robust, there is merit in Ms Horner's point that the application was over-reaching in including a proposed question for appeal that was rejected as not constituting a question of law. I also accept that it created uncertainty by raising a new issue on appeal which justified opposition.

[61] As to the substantive argument, NCC has not made any material in-road into the correctness of the legal analysis undertaken by the arbitrator, and Cityscape's opposition to all its arguments was vindicated.

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16 The judgment of Collins J, above n 3, reserved costs, pending the outcome of the substantive appeal.

17 Clause 6.1 of the ADLS lease.

[62] In these circumstances, I award costs in favour of Cityscape on a 2B basis for all stages in the appeal. I am not prepared to order costs on a solicitor and client basis as that would involve anticipating a further claim that might be made under the terms of the lease by the landlord, when the present claim has not been formulated or argued as such. Awarding costs on a conventional party and party basis does not estop the landlord from claiming recovery for the balance of the costs incurred, if it considers it has a claim for doing so in terms of the contractual provision.

Dobson J

Solicitors:
Lawson Robinson, Napier for plaintiff
Morrison Kent, Wellington for defendant