IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY

CIV-2016-442-000039
[2016] NZHC 2156

IN THE MATTER	of an application for an order pursuant to section 181 of the Personal Property Securities Act 1999
BETWEEN	PATRICK DEAN NORRIS Applicant
AND	BOWATER FINANCE LIMITED Respondent

Hearing: 8 September 2016

Appearances: Mr Norris, Applicant, in person
M J Logan for Respondent

Judgment: 13 September 2016

COSTS JUDGMENT OF ASSOCIATE JUDGE MATTHEWS

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[1] In this originating application Mr Patrick Norris (Mr Norris) applies for orders under the Personal Property Securities Act 1999 (PPSA) directing Bowater Finance Limited (Bowater) to provide him with certain documents held by Bowater in relation to a company called Tree Children Limited. Bowater has a security over the property of Tree Children Limited registered on the personal property securities register.

[2] In relation to his dealings with Bowater, including bringing this proceeding, Mr Norris maintains that he represents Mr Roger Blakiston. Mr Blakiston has registered a financing statement stating that he has security over stated personal property owned by Tree Children Limited.

[3] After some negotiation the issues arising on this application have been resolved, apart from the question of costs. Mr Norris claims to be entitled to an

award of "costs by way of damages" as he describes it, under s 176 of the PPSA. He claims his own fees on behalf of Mr Blakiston for 52.5 hours at $140 per hour, a total of $7,350 plus GST, making a total of $8,452.50. He claims as a disbursement a bill he has received from a firm called Norling Law, solicitors from Auckland, of $2,070, the filing fee on this application of $540, the cost of obtaining photographs of stock on the premises of Tree Children Limited of $103.50, and a service fee for this application on Bowater in a total of $92.

[4] Section 177(1) of the PPSA provides:

> **177 Secured party to provide certain information relating to security interest**
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> (1) The debtor, a judgment creditor, a person with a security interest in personal property of the debtor, or an authorised representative of any of them, may request the secured party to send or make available to any specified person, at an address specified by the person making the request, any of the following:
>
> (a) a copy of a security agreement that creates or provides for a security interest held by the secured party in the personal property of the debtor:
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> (b) a statement in writing of the amount of the indebtedness and of the terms of payment of the indebtedness:
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> (c) a written approval or correction of an itemised list of personal property indicating which items are collateral, unless the security interest is over all of the personal property of the debtor:
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> (d) a written approval or correction of the amount of indebtedness and of the terms of payment of the indebtedness.

[5] Section 178 provides that a secured party who is required to comply with a request under s 177(1) must do so within 10 working days of receipt of the request, unless exempted under s 179.

[6] Section 179 provides on application of a secured party, the Court may make an order exempting that party from complying with a request under s 177 in whole or in part, or extending the time for compliance, if satisfied that in the circumstances it would be unreasonable for the secured party to comply with the request.

[7] Mr Norris contacted Mr Verhagen, the chief financial officer of Bowater, on or about 1 June asking, orally, for Bowater's security documents. Bowater did not

provide these documents at once, so on 6 June Mr Norris emailed Mr Verhagen asking again for the security documents. Mr Verhagen had a real concern about responding to the request, which is best expressed in his own words from his affidavit:

> 4. BFL is confident that it has first priority over the assets of Tree Children Limited (TCL). It has no wish to be obstructive in this matter, but holds concerns regarding Mr Blakiston's claim (made by the applicant on his behalf) that he holds a security over TCL assets. In these circumstances we consider it is not unreasonable to require Mr Blakiston to establish that he in fact does have security over TCL's assets before disclosing information to him.
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> 5. The main reason for our concern is the failure, or refusal, by the applicant to provide us with a copy of the security documentation which he claims gives Mr Blakiston a security interest pursuant to s17 of the Personal Property Security [sic] Act 1999. This was initially promised to us in the applicant's email of 6 June 2016 (**PDN 1, exhibit D**). But ultimately has never been provided.
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> 6. We do not see that BFL should have to simply accept the statement by the applicant that Mr Blakiston has a security interest. I understand that the applicant has a recent conviction for theft by a person in a special relationship under s220 of the Crimes Act, and that the theft occurred in his capacity as a liquidator of a company. I also understand from a search of the Companies Office records that the applicant is a disqualified director and has been prohibited from managing a company until October 2017. A copy of the Companies Office record is **annexed** hereto and marked **A**. Given that the applicant is now apparently trying to take possession of the assets of another company in financial difficulties the applicant must accept that his actions will be closely scrutinised and that he will be required to provide appropriate proof at each step.

[8] In light of this Mr Verhagen contacted Mr Blakiston direct. He followed up a conversation with a Mr Blakiston with an email. This was sent at 7.43 pm on 7 June in the following terms:

> Hi Rodger
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> I contacted Pat [Norris] as I had originally arranged to meet with him tomorrow morning to discuss the debt position, collection options and security priority. However I received conflicting information about whether Pat was acting on your behalf. So I contacted you directly seeking confirmation. You were quite clear that you had not employed Pat. Had only ask [sic] him for some advice and if you were to employ him you would make sure you did so in writing, which you had not done. Obviously this threw me a bit and has made me have to back pedal on the original offer to meet.

> This may have not been your intention, but I thought it better to postpone than to make a mistaken assumption.
>
> ...
>
> I see no problem in working with you and Pat if he is your appointed representative.

[9] Prior to sending this email Mr Verhagen had emailed Mr Norris telling him of his earlier conversation with Mr Blakiston:

> I talked to Rodger Blackiston [sic] this afternoon and he informed me that you are not currently his agent in this matter. He said that he may employ you at some future stage, particularly if his demand for payment is not meet [sic] by midday tomorrow. Based upon this I think it may be premature for us to meet in the morning.

[10] Mr Blakiston emailed Mr Norris and Mr Verhagen the same evening at 6:05, though the email was sent to a misspelt email address for Mr Verhagen and was not delivered to him. It did, however, go to Mr Norris. Mr Blakiston said:

> Pat and David,
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> There seems to be enormous distrust between all parties. This matter is not going to be resolved if confidences are broken. I do not have enough experience in matters such as these to make confident decisions. Pat and I do not have a written contract, all our transactions to date have been verbal. David, our telephone conversation was confidential which you agreed to, I did not even have chance to notify Pat of the call and I receive these mails [sic]. This whole affair is painful enough for me without becoming embroiled in, I said, you said, correspondence. If our so-called "investor" has not made good by 12:00hrs tomorrow 08.06.16, further action needs to be taken.

[11] The following morning Mr Norris emailed Mr Verhagen, with a copy to Mr Blakiston. He said that all his clients are required to complete terms of appointment/engagement before he will take instructions and act on their behalf. He said Mr Blakiston had overlooked this formal appointment and he confirmed that his appointment is valid and has not been revoked or modified by Mr Blakiston. He therefore claimed to act as an authorised representative for Mr Blakiston. Once more, he asked for a copy of the security agreement in favour of Bowater, and made reference to s 177. He did not attach the appointment document he referred to.

[12] Five days later, on Monday 13 June, Mr Blakiston told Mr Verhagen that he confirmed the appointment of Mr Norris "in the recuperation of stock etc in regards to 'Tree Children' ...".

[13] On 13 June Mr Norris reiterated his request by email and he did so again on 14 June. By this point he was seeking a significant number of additional documents beyond the security which Bowater held over the assets of Tree Children Limited.

[14] I am satisfied from the above communications and the evidence that:

(a) When the initial request was made on 1 June, Mr Norris did not present to Bowater any information to support his claim that he was an authorised representative of Mr Blakiston, or any information, beyond the financing statement, to support Mr Norris's claim that Mr Blakiston had a security interest in personal property of Tree Children Limited.

(b) Bowater was guarded in its response to the initial request given the deficiencies in the request made by Mr Norris.

(c) It contacted Mr Blakiston and he informed Bowater that Mr Norris did not have his authority.

(d) Advice of Mr Norris later receiving authority only arrived on 13 June from Mr Blakiston.

(e) Even at that point, the security document which Mr Norris claimed Mr Blakiston had over the assets of Tree Children Limited had not been produced, despite requests.

(f) During that period Bowater also had concerns about the nature of the interest which Mr Norris was claiming that Mr Blakiston had.

[15] Section 177 provides that a secured party must make certain documents available upon requests from a range of persons, one of whom is "an authorised representative of" any of the others, who include a person with a security interest in personal property. In the scheme of the PPSA, I am satisfied that this is intended to

be a straightforward mechanical exercise. It must be carried out within a limited time, and can be enforced by order of the Court.[1]

[16] This does not mean, however, that the holder of a security interest must respond to any request by any person. When a request is made by a person who has not, himself, registered a financial statement which can be exercised by the holder of the security to which it refers, that person will have the appearance of being a stranger. The Act is not to be interpreted or applied in such a way that a security holder must divulge the information listed in s 177 unless the credentials of the person asking for that information are reasonably made out. In the case of a person whose name does not appear on the financial statement, but who claims to be an authorised representative of a person with a security interest, a request has not been made under s 177 until such time as the person making the request provides authentication of his claim to be authorised, and shows that the person he represents holds a security interest in personal property of the debtor. These are the fundamental criteria required by s 177(1) which trigger the obligation in s 178. Were the Act to be interpreted otherwise, the confidential information of a security holder to whom such a request is made would be severely compromised.

[17] It follows that the appropriate course for Mr Norris to have followed when he first approached Bowater was to produce authority from Mr Blakiston which he claimed to have and whom he said he represented, and to produce a copy of Mr Blakiston's security interest to demonstrate to Bowater that he was a person entitled to make a request under s 177(1). If that information had been provided, the time limit for compliance in s 178 would have been triggered. However, that did not occur.

[18] Mr Norris's argument is that Bowater did not ask him to substantiate his authority. That misses the point. It was for him to demonstrate to Bowater that he was making a valid request under s 177(1). He did not. Bowater, for reasons I find to be reasonable and prudent, checked direct with Mr Blakiston. His advice bore out the very reason it was appropriate to make the enquiry in the absence of Mr Norris producing some authority. The facts of this case demonstrate with clarity why a

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1 Personal Property Securities Act 1999, ss 178 and 179.

request under s 177(1) is not made until a representative demonstrates, rather than asserts, his authority to make the request.

[19] The first day on which it was made clear to Bowater that Mr Norris was authorised to act in this matter on his behalf was 13 June. Prior to that no authority had been presented other than unsubstantiated assertions by Mr Norris, which when checked direct with Mr Blakiston turned out to be wrong.

[20] It follows that if a copy of Mr Blakiston's security had also been made available to Bowater on that day, Mr Norris would at that point have been in a position of making a valid request under s 177(1) and the time set by s 178 would have run from then. However, Mr Norris did not make a copy of Mr Blakiston's security available at that time. Bowater had a copy of a financial statement relating to it. It might be arguable that this was sufficient validation of Mr Norris's claim that Mr Blakiston had a security interest, so for present purposes, without deciding the point, I will consider the present application for costs on the basis of the starting date for compliance with the request being 13 June.

[21] That being the position, the last date for compliance with the request by Bowater was 27 June. This proceeding was issued on 17 June. At that point Bowater had not failed to comply with the request, as compliance was not required until some 10 days later. This application was therefore filed without a statutory basis.

[22] It follows from this that Mr Norris is not entitled to an award of costs. There was no cross application for costs by Bowater.

[23] It is not therefore necessary to consider whether an award of costs can be made to an applicant under s 176, as a form of damages. The general rule is that costs will not be awarded in this Court to a successful litigant in person, though disbursements may be awarded.[2] Application of this rule would mean that in the absence of any extraordinary circumstance no award of costs would be made in

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[2] *Re Collier (A Bankrupt)* [1996] 2 NZLR 438 (CA) at 440; *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2010] NZCA 400, (2010) 24 NZTC 24,500 at [162].

favour of Mr Norris in any event. Mr Norris did not present any reasoned argument for his proposition that he should receive an award of damages representing the costs Mr Blakiston had inccurred with him. Mr Logan, who had looked into the point, told me he had been unable to find any authority supporting this proposition or otherwise. For these reasons, and because it is not necessary to decide this point given the earlier finding I have made, I confine my discussion of it to just one observation. Section 177 provides that a range of persons may seek information from a secured party, and s 178 provides that the secured party must comply within a brief period of just 10 days. It may be arguable that it is reasonably foreseeable that the applicant would incur cost in taking enforcement steps as a result of the failure to comply. Beyond that, I leave the issue for determination when it arises.

[24] Finally, even if the conclusion I have reached is wrong, I would not have awarded costs as sought. Mr Norris's role is, at best, vague. He does not give his occupation in any of the documents he has filed. It is not on the letterhead he uses. There is no evidence before the Court of any basis on which there could be an award of damages, or costs, to Mr Norris. His involvement in the affairs of Mr Blakiston is obscure, and the charges he has evidently made to Mr Blakiston are not substantiated beyond merely being stated.

Outcome

[25] The application for costs is dismissed.

[26] Mr Logan did not seek costs on this application. His position is that costs should lie where they fall, and I agree.

J G Matthews
Associate Judge

Solicitors:
Applicant, self-represented
Pitt & Moore, Nelson