IN THE DISTRICT COURT
AT NORTH SHORE

I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA

CIV-2024-044-000035
[2025] NZDC 2543

BETWEEN	TAURANGA CITY COUNCIL Plaintiff
AND	BGT DEVELOPMENTS LIMITED Defendant

Hearing:	22 January 2025
Appearances:	S Farnell and S Waalkens for the Plaintiff D Fraundorfer and H J O Lewis for the Defendant
Judgment:	13 February 2025

DECISION OF JUDGE K G DAVENPORT KC

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[1] The Tauranga City Council seeks summary judgment for the sum of $15,387.45 which it says that the defendant owes it for unpaid fees for the grant of a resource consent to the defendant.

[2] The defendant counterclaims and seeks a set off. It seeks damages under three causes of action – contract, legitimate expectation, and negligence. It submits that *"this is a case about the Council going outside and well beyond its functions as the administrator of resource consent charges"*. Unsurprisingly, the plaintiff does not agree and says it is seeking judgment for a simple debt and that there is no legal basis for the defendant's counterclaims. The plaintiff comes to Court today seeking summary judgment and to strike out the counterclaim.

[3] First, I have to determine whether or not the summary judgment brought by the plaintiff should be permitted. The plaintiff was outside the time permitted by R 12.4(2) of the District Court Rules 2014 to lodge an application unless I otherwise order. Rule 12.4(2) requires that a summary judgment application must be filed 10 working days after the filing of the statement of defence. That date was 18 March 2024. The application was filed in August 2024. The plaintiff says, in explanation, that there was a change of counsel and the notice of change of solicitor was filed in Court on 26 April 2024. In a memo dated 17 May 2024 new counsel raised the possibility of strike out to the counterclaim. In the plaintiff's case management conference memorandum of 6 June 2024 the delay in filing the strikeout was addressed. The plaintiff said it required the defendant to provide further and better particulars of the counterclaim before it could consider what applications it needed to file. The plaintiff sought orders that any applications be filed by 5 August 2024. The application for strikeout and summary judgment and an affidavit in support was filed on 5 August. In November 2024 the defendant filed an amended statement of defence which included a new cause of action in negligence.

[4] The amended application for leave to file the application for summary judgment out of time does not provide the grounds set out above[1] but the issue remains the same for the Court – what is the prejudice in allowing a Summary Judgment claim to be made some 5 months after the date provided in the Rules? The defendant does not identify any specific prejudice but submits:

(1) That the delay has not been satisfactorily explained. The defendant submits that there is "simply no excuse for the delay and makes a mockery of the safeguards built into the summary judgment process".

(2) The merits of the application are not strong enough to justify leave being granted to file the application out of time.

(3) There is a risk of miscarriage of justice if the summary judgment is heard. The defendant submits that the interests of justice and policy require that the application be dismissed based on the way that the

[1] Counsel provided this information at the hearing.

publicly funded counsel has conducted this litigation. They submit that if counsel are allowed to file interlocutory matters out of time, thus increasing costs, that will be an abuse of the Court's processes.

[5] I agree that the delay was not satisfactorily explained in the amended application for leave to file the summary judgment. Further, a delay such as this delay is not one that the Court should take lightly. The Rules exist not as a guide but as a Code. Nonetheless, in submissions counsel developed the outline of the facts which I have set out above. I can accept that new counsel indicated at the first opportunity (May) before the Court that there might be an application to strike out-but not summary judgement. In its notice of opposition the defendant does raise the issue that the delay has not been explained but not the point that the strikeout was signalled but not the summary judgment.

[6] In June the application had yet not been filed but the plaintiff submitted at the case management conference that it required further and better particulars of the counterclaim. However the last timetable orders made by the Court were that any interloctutory applications were to be made by 5 August – rather than just any strikeout application. The plaintiff complied with this order but it may be that the summary judgment possibility was not raised until the application for summary judgment was filed. I consider this application therefore was not flagged by the plaintiff clearly in its memoranda to the Court. Should this prevent my granting leave? I have decided that costs will remedy the potential prejudice and the delay. The Court should hesitate to deny leave where the application may resolve the issues before the Court.

[7] I conclude therefore that leave will be granted as:

(a) The merits of the application are strong enough.

(b) There is no prejudice to the defendant other than that inherent in any delay.

(c) There is no rule that a publicly funded organisation should be held to a different standard than any party.

(d) Costs will be an adequate remedy for the delay.

[8] I award the defendant $2000 in costs for the delay. I have formed the view that the plaintiff could have filed this application earlier with reasonable diligence and thus costs are appropriate.

The Applications

[9] The Council seeks summary judgment for $14,877.45 being the fees on an application for a resource consent for a subdivision being undertaken by the defendant. The defendant in turn has counterclaimed for losses said to have been suffered by it as a result of the Council's failure in the resource consent process. The Council seek to strike out the counterclaim. There are three causes of action:

(a) contract;

(b) breach of legitimate expectation;

(c) negligence.

[10] The dispute revolves around a resource consent application for the development of 46 houses in Bethlehem. In May 2021 the application for resource consent for stage 1 of the development was lodged with the plaintiff. The defendant says that the application was assigned to a junior planner who made a request to the defendant under s 92 of the Resource Management Act. This section provides that a consent authority may request the applicant to provide further information in relation to the application or commission any person to prepare a report. The applicant can refuse to provide the information sought or the report requested but few do.

[11] The planner requested evidence of an iwi or hapu consultation based on the Council's existing policy for consultation. The defendant asserts that this consultation was unnecessary and there was no legal requirement for any applicant to consult with the tangata whenua but was only a matter of good practice.[2] The defendant says it

[2] www.tauaranga.govt.nz/council/policies.

engaged with the Council over this request. In July 2021 geotechnical concerns were raised and the Council and BGT consulted together. A revised resource application was lodged in August 2021. The defendant submits that planning consent should have been issued shortly after this date. Instead they submit that the junior planner made a request for further consultation letters from two hapus: Ngati Kahu and Ngāti Hangarua. In October 2021 the planner issued a further s 92 request for information that both hapu provide a cultural impact assessment (CIA). There were then lengthy discussions with both hapu. Ngati Hangarua provided their cultural impact assessment on 2 November but Ngati Kahu took longer, and disputed whether they were the ones who had mana whenua. There was a dispute over payment of legal fees. It took until April 2022 for Ngati Kahu to provide a CIA. At that time a more senior planner became involved in the matter as the junior planner went on holiday. Despite assertions by Ngāti Kahu that their CIA should not be relied upon until all issues were resolved, the senior planner issued the consent to the defendant on 9 June 2022. The defendant's position is that this unnecessary delay caused significant costs.

[12] Thus the initial application was lodged in May 2021; the amended application lodged in August 2021 and consent granted on 8 April 2022. The defendant submits that:

(a) The Council appeared to be leveraging future payments of legal work and fees by BGT when the lawyer for Ngati Kahu was acting for her hapu (and was also engaged on matters for the Council).

(b) BGT was seeking to engage in genuine consultation with the hapu but consultation is not a legal fee capturing process.

(c) BGT was seeking to undertake genuine engagement, and the argument over legal fees had no relevance to the resource consent application.

(d) There is no legal obligation for the applicant to consult with the tangata whenua.

(e) The development is on land zoned residential for many years and the development proposed was in accordance with the latest RMA National Policy Statement on Urban Development and Council and Bay of Plenty Regional Council policies and plans. These plans had already had extensive hapu and iwi engagement.

(f) The site was not identified as a cultural site.

(g) There were no effects not already considered; and

(h) The Council should not have maintained that CIAs were necessary.

[13] It is on this factual basis that the defendant has brought the counterclaim.

The Law

[14] A summary judgment may be granted where the defendant has no defence to the claim and has the onus of proving that there is no defence. These principles are well-settled and have been set out for some time. The leading case is *Krukziener v Hanover Finance Ltd.*[3]

[15] Council has filed an affidavit in support of its application by a Stacy Hikari. The factual basis for the summary judgment claim is that Council issued an invoice in accordance with its usual schedule of fees and charges and these fees were not objected to by the defendant. The plaintiff submits that there is a clear statutory framework in the Resource Management Act to object to Council's fees in processing the resource consent and this was not followed by the defendant.[4] Thus, the plaintiff submits that the fees are due.

[16] The defendant submits that in writing a letter objecting to the fees charged it has objected to the fees but this was not sent until three months after the invoice was

[3] *Krukxziener v Hanover Finance Ltd* [2008] NZCA 187.
[4] See ss 357A, 357B and 357C Resource Management Act.

sent. The letter was not in compliance with the Resource Management Act and its provisions for objecting to fees.

[17] Further, the plaintiff submits Council did consider the fees which it was charging and because of delays in the statutory time limits made a deduction of $2000.

[18] The real issue is not (in my opinion) whether the defendant must pay the charges but whether or not the defendant does have a counterclaim or setoff for the losses that they say that they have suffered. The Council submit that none of the claims brought in the statement of defence and counterclaim are legally sustainable and are not capable of amendment.

[19] A Court must look at a strike out application and determine whether or not the claim disclosed is not reasonably arguable, or is frivolous or vexatious and is otherwise an abuse of process.

[20] The leading case is a Court of Appeal decision in *Attorney-General v Prince.*[5] The Court said that in considering an application to strike out the pleaded facts are assumed to be true. The Court will need to find that any cause of action must be clearly untenable to strike it out. The jurisdiction is exercised sparingly but is not excluded only because there are difficult questions of law requiring extensive argument. However the Court should be slow to strike out a claim in any developing areas of the law.

The Pleadings impugned

[21] The claim by the defendant that it should not have been required to carry out a cultural impact assessment gives rise to the statement of defence and counterclaim. The defence pleads first, there was a contract between the parties which required the plaintiff to provide professional and local government services to achieve resource consent. The terms of the contract were that the plaintiff would comply with its obligations in a way that was fit for purpose, without delay and according to the timeframes and costs of processing a resource consent application, the costs would be

[5] *Attorney-General v Prince* [1998] 1 NZLR 262 at 267.

reasonable and the Council would comply with their statutory duties. The Defendant then pleads that the Council breached these terms:

> 14. The plaintiff breached the contract by:
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> (a) Failing to process the resource consent within a timely manner;
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> (b) Using junior or underqualified staff to perform services in such a manner that caused unreasonable costs and/or delays;
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> (c) Advising the defendant that Iwi and associated consultation was necessary to achieve the resource consent, when that was not required;
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> (d) Delaying performance of the contract, by taking from August 2021 when the resource consent was lodged until June 2022 for it to be released; and/or
>
> (e) Carrying out the contract in a manner that has seen unreasonable charges, services that were not fit for purposes and in a manner that has taken unnecessary time.

[22] The second cause of action is that the defendant engaged with the plaintiff to achieve resource consent and had a legitimate expectation that the plaintiff would carry out its statutory role in a way that was compliant with its statutory duties and obligations, the services were fit for purpose and carried out without delay, and the charges sought would be reasonable. The alleged breach is set out in paragraph 19:

> 19. The plaintiff breached the legitimate expectations placed upon it by:
>
> (a) Using junior or underqualified staff to perform services in such a manner that caused unreasonable costs and/or delays;
>
> (b) Advising the defendant that Iwi and associated consultation was necessary to achieve the resource consent , when that was not required;
>
> (c) Delaying performance of consent related services, by taking from August 2021 when the resource consent was lodged until June 2022 for it to be released; and/or
>
> (d) Carrying out its functions in a manner that has seen unreasonable charges, services that were not fit for purposes and in a manner that has taken unnecessary time.

[23] The third cause of action is negligence. The defendant pleads that:

> 21. The plaintiff owed a common law duty of care to the defendant (Duty).

Particulars of Duty

(a) Prior to issuing any requests under section 92 of the Resource Management Act 1991 (RMA), to inspect its own records, particularly those relating to mana whenua, and to examine and reconcile whether the requested information was required in accordance with the RMA.

(b) To exercise reasonable care and skill in the provision of directions to the defendant in respect of the progression of the defendant's resource consent application.

(c) To provide accurate information to the defendant regarding consultation requirements and the legal status of existing iwi/hapu agreements when mana whenua was in issue.

[24] The defendant seeks damages for these breaches:

(a) Additional compliance cost of $10,023.98 plus GST having to carry out their work during the winter because of the breach.

(b) $252,132 plus GST for delay (only sought for the first two causes of action).

(c) $23,451 for unneeded consultancy and related costs (and this is all that is sought for the negligence claim).

(d) Unexpected lending and interest costs for the delay.

Analysis of the Defence and counterclaim

[25] The Council submit that all claims should be struck out-

(1) In contract as there is no contract between the parties.

(2) In legitimate expectation as there is no legal principle which permits a claim for legitimate expectation outside of a judicial review claim.

(3) In negligence as a Council cannot be sued in negligence when carrying out its quasi-judicial function to issue/consider resource consent.

A - Negligence

[26] The Council rely on the decision of *Bella Vista v Western Bay of Plenty District Council*, where the Court of Appeal upheld the strike out of a claim based on an allegation that the Council owed a duty of care to the applicant when processing a resource consent application.[6] The Court of Appeal held that no duty of care was owed for a quasi-judicial function. The Council also rely on *Morrison v Upper Hutt City Council* where the Court of Appeal held that additional costs to the applicant due to delay, were not claimable against the Council and no duty of care was owed. The Court commented this was because the local authority had granted permission to the applicant.[7]

[27] BGT submit that because the pleaded duty involves administrative actions, not quasi-judicial functions, the same legal hurdles do not exist. BGT concede that a duty of care is not maintainable when granting resource consent as the Council is performing a quasi-judicial function.[8] Therefore, BGT's argument relies on a request for information under s 92 being an administrative action. They say that detailed expert evidence is required to determine whether s 92 is a quasi-judicial function or administrative action.

[28] BGT seeks to distinguish the current case from *Bella Vista*, submitting that BGT is not taking issue with the issuance of the consent itself but rather the 'detour' the Council required it to take before granting the consent. Additionally, BGT refers to a number of cases where District Councils have been found to owe a duty of care in particular circumstances.

[29] In order to have a successful claim in negligence BGT must first show that the Council owed a duty of care. Whether it is fair, just and reasonable for a duty of care to be recognised involves a two-stage inquiry:[9]

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[6] *Bella Vista Resort Ltd v Western Bay of Plenty District Council* [2007] NZCA 33.
[7] *Morrison v Upper Hutt City Council* [1998] 2 NZLR 331 (CA).
[8] Synopsis of Submissions of Defendant in Opposition to Plaintiff's Application for Summary Judgment and Strike Out of Defendant's Counterclaim at [33].
[9] *Monticello Holdings v Selwyn District Council* [2015] NZHC 1674 at [38].

(a) first, an internal inquiry is undertaken. This focuses on the relationship and proximity between the parties themselves; and

(b) second, an external inquiry is undertaken. This requires an examination of the overarching policy considerations, as to whether a duty of care is appropriate.

[30] The Court of Appeal in *Bella Vista* decided that the decision to grant a resource consent is a quasi-judicial function which is not susceptible to the finding of a duty of care saying: [10]

> "Mr Crombie further contended that the decisions of consent authorities under the RMA were policy decisions involving interpretations of information submitted by applicants. **The decision of whether to grant resource consent is a quasi-judicial decision (as opposed to an operational function) that is not susceptible to the finding of a duty of care.** …
>
> As Mr Crombie asserted, there is a public interest in regulatory bodies being free to perform their roles when making quasi-judicial decisions. The duty, even as now circumscribed, would open Councils to a constant challenge in this regulatory area."
>
> [Emphasis added]

[31] Against that, the Court of Appeal decision in *Craig v East Coast Bays City Council* is authority for the proposition that a council owes a duty of care in respect of operational decisions and administrative acts under town planning legislation.[11]

[32] BGT's claim therefore relies on a distinction between the Council acting in an operational capacity, and its quasi-judicial decision-making functions. BGT claims that s 92 falls within the former and therefore a duty of care arises in negligence.

[33] The purpose of the RMA is to promote the sustainable management of natural and physical resources.[12] In assessing sustainable management, a consent authority is directed to consider the need of communities to provide for their social, economic, and cultural wellbeing as well as environmental protection.[13] In achieving the purpose of

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[10] *Bella Vista*, above n 6, at [54] – [55] per Robertson J.
[11] *Craig v East Coast Bays City Council* [1986] 1 NZLR 99 (CA).
[12] Resource Management Act 1991, s 5(1).
[13] Section 5(2).

the RMA, all persons exercising functions and powers under it shall recognise and provide for the matters of national importance in s 6, shall have particular regard for the other matters in s 7, and shall take into account the principles of Te Tiriti o Waitangi.[14]

[34] Section 92 falls within Part 6 of the RMA, which explicitly deals with resource consents. The provision provides that the consent authority may request the applicant to provide further information or to agree to the commissioning of a report on any matter relating to the application. An applicant may either agree to, or refuse, a request under s 92.

[35] If the applicant agrees to the request, then the time for processing the consent may be extended until the information or report is provided.

[36] If the applicant does not agree then the consent authority must proceed with the application and consider it. This can result in the consent being declined under s 104(6) and (7). If a request is made and refused, there is subsequently a greater chance of the consent being declined.

[37] In *Bella Vista* William Young P (dissenting) observed:[15]

> Obviously the more closely the pleading focuses on the precise statutory functions of the Council as a consent authority, the more it engages policy considerations which point away from the imposition of a duty…

[38] The High Court in *Wakatu Inc v Tasman District Council* discussed the distinction between a quasi-judicial decision maker and an administrative decision maker in the context of bias.[16]

> The former distinction between administrative functions and judicial functions has for many years been blurred, as the Court of Appeal noted in *Lower Hutt City Council v Bank* [1974] 1 NZLR 545 at 548:
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> > "Furthermore, we believe that the clear-cut distinction, once favoured by the Courts, between administrative functions, on the one hand, and judicial functions, on the other, as a result of which it was proper to require the

[14] Sections 6, 7 and 8.
[15] *Bella Vista*, above n 6, at [72].
[16] *Wakatu Inc v Tasman District Council* [2008] NZRMA 187 (HC) at [23]; citing *Lower Hutt City Council v Bank* [1974] 1 NZLR 545 (CA) at 548.

> observance of the rules of natural justice in the latter but not in the former, is not in these days to be accepted as supplying the answer in a case such as we have before us. Former clear-cut distinctions have been blurred of recent years by directions from highest authority to apply the requirement of fairness in administrative actions as well, if the interests of justice make it apparent that the quality of fairness is required in those actions."
>
> The tendency that the Court of Appeal there noted has continued since then. Nevertheless, there remains a distinction between a judicial or quasi judicial decision maker, where the strict rules as to disqualification for bias apply, and an administrative decision maker, where an ability to make a decision in which the decision maker may have an interest will more readily be inferred.

[39] Justice Cull held that deciding whether to accept an application for resource consent as complete was within the administrative decision-making capacity of the Council.[17]

[40] In *Athendale Property Ltd v Western Bay of Plenty District Council*, Associate Judge Doogue made the following observations:[18]

> …First, the claim as presently argued by the plaintiff does not give due recognition to the distinction between the functions of the Council in its administrative role when managing its responsibilities under the RMA and in relation to the district plan, on the one hand, and the quasi judicial function that the Council performs when deciding whether or not to permit amendments to be made to the district plan. This latter function, as Mr Crombie pointed out, is one that involves consideration of policy matters and generally the public interest. It is not an area where the Court is likely to readily acknowledge the existence of a duty of care owed to a party in the position of the plaintiff. Mr Crombie referred me to the discussion of the matter in the Court of Appeal judgment in *Bella Vista Resort Ltd v Western Bay of Plenty District Council*.

[41] By way of comparison, *Craig* involved the negligent failure of a City Council to identify and notify a neighbour in relation to a consent application which affected them.[19] The Court drew a distinction between operational decisions (e.g. failure to identify a neighbour), for which there is a duty of care, and quasi-judicial decisions (e.g. granting of consent), in respect of which the council would not normally owe a duty of care.

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[17] *Wakatu*, above n 11, at [24].
[18] *Athendale Property Ltd v Western Bay of Plenty District Council* [2013] NZHC 965 at [21].
[19] *Craig* above n 6.

[42] Section 92 falls under Part 6 of the RMA and applies exclusively to resource consents. The provision for further information is an essential function of the local authority's power to assess resource consent applications. This ensures that the authority can effectively weigh up information and make appropriate decisions as to resource consents in accordance with the purpose of promoting the sustainable management of natural and physical resources. This is clearly a step within the decision whether or not to grant consent. Additionally, ss 6, 7 and 8 of the RMA, as well as public interest and policy considerations, favour encouraging consultation with tangata whenua. To import a duty to inspect, examine and reconcile records prior to making a request may dissuade the authority from promoting consultation and distract from their duties.

[43] Therefore, in my view, when the Council made a request for further information under s 92 it was acting in its quasi-judicial capacity.

[44] BGT has failed to provide any compelling reasons as to why the request under s 92 should be regarded as operational. I reject BGT's submission that determining whether such a function is quasi-judicial "will require detailed and expert evidence". The nature of the function can be properly determined with reference to the legislation and authorities, and the facts before the Court.

[45] I therefore find inarguable the suggestion that the Council owed BGT a duty of care in its exercise of the powers afforded by s 92. Accordingly BGT's counterclaim in negligence should be struck out.

B - Legitimate Expectation

[46] BGT has also pleaded legitimate expectation as a cause of action. It argues that based upon the Council's statutory role under the Local Government Act 2002 and the manner the Council held itself out to process resource consents, BGT had a legitimate expectation that the Council would carry out its role in a manner pleaded in clause 19 of the amended defence and counterclaim.

[47] BGT submits the Council breached the legitimate expectation, and as a result of the breach(es) it has suffered detriment, including financial loss. BGT seeks

damages in the amount of $285,606 plus GST, further damages for interest and bank costs, interest, and costs.

[48] The Council argues that legitimate expectation is a public law principle and a matter for judicial review. The Council also argues it is not a basis for seeking damages or compensation. Accordingly, the Council submits this cause of action has no prospect of success and should be struck out.

[49] BGT refers to the case of *Te Ara Rangatū O Te Iwi O Ngāti Te Ata Waiohua Inc v Attorney-General* as an example where legitimate expectation was advanced as a cause of action rather than being limited purely to an application for judicial review.[20] That case was a claim of a breach of legitimate expectation in relation to the parties' Treaty settlement negotiations. However, the plaintiffs in that case were advancing their claim of legitimate expectation as an "administrative law cause of action".[21] It therefore appears that the cited case does not support BGT's argument that legitimate expectation can be a cause of action outside of judicial review.

[50] BGT has also submitted that the doctrine of legitimate expectation has now developed to effectively be "estoppel" when dealing with a public entity, such as the Council.[22] The learned authors of *Joseph on Constitutional and Administrative Law* note that:[23]

> Substantive legitimate expectation overlaps the private law concept of promissory estoppel. Estoppel and legitimate expectation are kindred concepts, founded on the principle of fairness: it would be unconscionable for a person to resile from a promise or representation relied upon to another's detriment. **But there the comparison ends.** The courts have refused to countenance a doctrine of public law estoppel. Estoppel has its roots in private law and is unsuited to the public law arena. …
>
> [emphasis added]

[51] I agree that this passage states the current position in New Zealand law. There is no authority supporting BGT's assertion that legitimate expectation is not limited

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[20] *Te Ara Rangatū O Te Iwi O Ngāti Te Ata Waiohua Inc v Attorney-General* [2020] NZHC 1882.
[21] Above n 15, at [679].
[22] Updated synopsis of Submissions of Defendant in Opposition to Plaintiff's Application for Summary Judgment and Strike Out of Defendant's Counterclaim at [33].
[23] *Joseph on Constitutional and Administrative Law* at [25.6.8(3)].

purely to an application for judicial review. The claim is therefore legally untenable and I strike out this claim.

C - Contract

[52] This is a problematic cause of action for the defendant. The engagement by the defendant with the plaintiff was as the territorial authority who BGT was required to engage with in order to secure consent for it to proceed with the development at Bethlehem. The defendant pleads that a contract arose between the parties where the counsel gave advice on 7 July prior to the revised application being filed. The defendant says it was intended by the parties that a contract would form once BGT accepted the Council's offered pathways because Council was stepping outside of informal dialogue and into an advisory role which created implied obligations that when it was providing advisory services to BGT it was required to carry out that role:

(a) in a way that would comply with its statutory obligations;

(b) that the amounts charged under the contract would be reasonable;

(c) that the services would be fit for purpose and/or the services would be performed without delay.

The defendant pleads the plaintiff allegedly breached these terms.

[53] This argument is completely untenable legally. There is no contractual relationship between the plaintiff and the defendant. Even if the Council was offering advisory services this was still within its statutory obligations under the Resource Management Act (RMA). It is entitled to have informal discussions with the parties and to issue requests under s 92 of the Resource Management Act and this does not create a contractual relationship. The parties dealings were always in relation to the Resource Management application and statutory obligations that Act imposes on the Council. The Council provided no contractual services in this application for resource consent and the claim must fail and I strike it out.

[54] On the basis of this analysis none of the defendant's causes of action in the counterclaim can succeed. Repleading would not cure these defects as they are all legally untenable. I therefore strike out the defendant's defence and counterclaim.

Summary judgment

[55] There is no arguable defence to the plaintiff's claim for summary judgment. The RMA has a specific procedure for challenging costs and this was not followed. The letter sent three months after fees were charged (20 September) raised the issue of reduction. The email exchange between the Council and BGT was not in accordance with the RMA but does discuss a fee reduction and it was considered by the Council. They engaged with BGT on this issue but ultimately decided the fee reduction already offered was fair. The defendant cannot argue that they have a defence to this claim where the statutory provision has not been adhered to[24] and there is no possible argument of estoppel[25] from the Council's conduct.. I have disregarded any legal implications from the alleged part payments as the defendant says they were attributed to this invoice in error.

[56] I therefore find that the defendant has shown no arguable defence to the claim. I enter judgment for the plaintiff for $15,387.45. The statement of claim does not seek interest.

[57] I order the defendant to pay costs on a 2B basis less the $2000 costs ordered.

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Judge KG Davenport KC
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 13/02/2025

[24] Noting that the procedure for objection has a 15 working day timelimit from the date of the decision s 357C RMA.
[25] I find on the facts that there was no representation or statement from the Council that they would entertain an application for reduction of fees out of time.