

IN THE SUPREME COURT OF NEW ZEALAND

**SC 96/2006
[2008] NZSC 28**

BETWEEN SOUTHBOURNE INVESTMENTS
 LIMITED
 Applicant

AND GREENMOUNT MANUFACTURING
 LIMITED
 Respondent

Court: Blanchard, Tipping, McGrath and Anderson JJ

Counsel: J G Miles QC and S A Grant for Appellant
 T Herbert for Respondent

Judgment: 17 April 2008

JUDGMENT OF THE COURT

The costs award made on the summary judgment application in the High Court in favour of the applicant is set aside and it is ordered that all costs pertaining to the High Court hearing of the summary judgment application be reserved pending the outcome of the litigation and then determined by the High Court.

REASONS

[1] When this Court gave judgment on 2 August 2007¹ it noted at para [27] of its decision that Greenmount had not had its appeal against the costs awarded by the Associate Judge in favour of Southbourne determined. The Court gave leave for memoranda to be filed in relation to that question. This has now been done.

[2] In circumstances in which the Associate Judge refused Greenmount's application for summary judgment on grounds differing from the ground on which

¹ *Southbourne Investments Ltd v Greenmount Manufacturing Ltd* [2008] 1 NZLR 30.

that decision was ultimately sustained in this Court, we consider that it is not appropriate that the costs award made by the Associate Judge should stand.

[3] The question of costs on the summary judgment application should be revisited by the High Court after the outcome of the proceeding has been determined at trial.

Solicitors:
Foley & Hughes, Auckland for Appellant
LeeSalmonLong, Auckland for Respondent