

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**2013-404-000403
[2013] NZHC 623**

UNDER Defamation Act 1992

BETWEEN DENNIS PAUL IRELAND
Plaintiff

AND GRAEME CROSBY
Defendant

Counsel: L A Andersen for the Plaintiff
G P Blanchard for the Defendant

Judgment: 26 March 2013

**JUDGMENT AS TO COSTS OF
ASSOCIATE JUDGE CHRISTIANSEN**

*This judgment was delivered by me on
26.03.13 at 4:30pm, pursuant to
Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar
Date.....*

Solicitors/Counsel:
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G Blanchard, Barrister, Auckland – greg@gregblanchard.co.nz

[1] The plaintiff filed a proceeding alleging he was defamed by the defendant because of what the defendant allegedly said to another person about the circumstances in which the plaintiff's house was burnt down.

[2] The plaintiff only sought to recover his legal costs by way of penalty.

[3] The plaintiff also filed a summary judgment application claiming the defendant had no defence to his claim.

[4] In his affidavit in opposition to the summary judgment claim the defendant denies having stated to anyone that the plaintiff had burnt his house down. In that outcome the plaintiff filed a memorandum of discontinuance of his summary judgment application.

[5] The defendant has applied for costs. When inviting counsel to submit memoranda in relation to the question of costs I noted:

Usually a Court will not fix costs when, as here, the substantive proceeding is to continue.

[6] In submissions opposing any award of costs counsel urges these be reserved until the main proceeding has been resolved. The summary judgment application was withdrawn because evidence will be required to determine whether the defendant said what a third party claims he did say.

[7] In response Mr Blanchard for the defendant notes that the summary judgment application was filed without any reference at all to the defendant and that had such a basic step been taken then it would have been discovered that the defendant categorically denied making the alleged defamatory statement.

[8] Mr Andersen's reply noted that there is no obligation of consultation required in the circumstances.

[9] An application for summary judgment in a case involving a single claim of defamation, is indeed unusual. In this case the plaintiff's case relies entirely upon

what was reportedly said to a third party. In themselves those circumstances should have provided caution when proceeding with the summary judgment claim.

[10] A costs award is appropriate and I order they be paid by the plaintiff in the sum of **\$1,302.80** inclusive of disbursements.

Associate Judge Christiansen