

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

**CIV-2013-404-004550
[2014] NZHC 1353**

BETWEEN LLEWELLYN WILLIAM BURCHELL
and JOAN ROSLYN BURCHELL
Plaintiffs

AND SUKHMINDER SINGH
Defendant

Hearing: 30 April 2014

Appearances: L W Burchell (Self-represented, in Person)
for the Plaintiffs
J A McBride (together with S Singh, in Person)
for the Defendant
K Laurenson and C Scott for the New Zealand Police

Judgment: 17 June 2014

**JUDGMENT OF DUFFY J
[re Strike-out Application]**

This judgment was delivered by Justice Duffy
on 17 June 2014 at 3.30 pm, pursuant to
r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Counsel: J A McBride, Auckland

Solicitors: Blank Singh and Associates, Auckland
Crown Law, Wellington

Copies To: L W Burchell, Auckland
New Zealand Police, North Shore, Auckland

[1] The defendant, Sukhminder Singh, applies to this Court to strike out the amended statement of claim of the plaintiffs, Llewellyn Burchell and his wife, Joan Burchell (“the Burchells”). The application is opposed.

[2] In the amended statement of claim, the Burchells allege that Mr Singh has defamed them and committed the tort of conspiracy against them.

[3] The genesis of this proceeding lies in a tenancy dispute that developed between Mr Singh and the Burchells. Mr Singh is one of the owners of a residential property at 2 Weldene Avenue, Glenfield. The property was let to the Burchells.

[4] Later, Mr Singh took steps to end the tenancy. Those steps included taking a proceeding before the Tenancy Tribunal. The Burchells opposed this proceeding. There was a hearing before the Tenancy Tribunal on 11 June 2013. In the course of that hearing, there was evidence that showed that on or about 28 April 2013, Mr Singh had made a statement to the New Zealand Police (“the police”) about either Mr Burchell or both him and his wife.

[5] The Burchells took exception to what was said in the statement made to the police. In their original statement of claim they alleged that the statement as read out to the Tenancy Tribunal was defamatory. Later they recognised that statements that were made before the Tenancy Tribunal are protected by absolute privilege as proceedings before that Tribunal are covered by s 14 of the Defamation Act 1992. They have amended their claim to place the focus of their complaint on the 28 April 2013 statement made to the police. Statements made to the police may be protected by qualified privilege but that is as far as the law of privilege will go to protect statements of that kind.

[6] Rule 15.1(1) of the High Court Rules empowers the Court to strike out all, or part of a pleading if it: (a) discloses no reasonably arguable cause of action; (b) is likely to cause prejudice or delay; (c) is frivolous or vexatious; or (d) is otherwise an abuse of the process of the Court.

[7] The principles for the exercise of the power under r 15.1(1)(a) are well settled: see *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33]; *Attorney-General v Prince* [1998] 1 NZLR 262 (CA). The approach relevant to this proceeding is as follows:

- (a) Pleadings, whether or not admitted, are assumed to be true, though this does not extend to pleaded allegations which are entirely speculative and without foundation;
- (b) The cause of action must be clearly untenable. The Court must be certain that it cannot succeed;
- (c) The jurisdiction is to be exercised sparingly and only in clear cases;
- (d) The strike-out threshold is deliberately set high.

[8] To exercise the power of strike out under r 15.1(1)(b), there must be an element of impropriety and abuse of the Court's processes: see *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89]. An unnecessarily prolix pleading will qualify. A scandalous and irrelevant proceeding will also qualify: see *Van der Kaap v Attorney-General* (1996) 10 PRNZ 162 (HC).

[9] *Chesterfields Preschools Ltd* at [90]-[95] makes it clear that the pleading of purely evidentiary material, particularly where it is excessively detailed, will qualify for striking out under r 15.1(1)(b). So too will unintelligible pleadings and the pleading of irrelevant material. Under r 15.1(1)(c), *Chesterfields Preschools Ltd* identifies a frivolous proceeding as one that trifles with the Court's processes, whereas a vexatious proceeding is one which involves an element of impropriety: [89].

[10] I am satisfied that the amended statement of claim qualifies for striking out under rr 15.1(1)(a), 15.1(1)(b) and 15.1(1)(c).

[11] First, under r 15.1(1)(a), it is difficult to make sense of the causes of action as pleaded. Paragraph 3 of the amended statement of claim alleges that on 28 April 2013, Mr Singh made a false and defamatory statement to the police about the Burchells. Paragraph 4 pleads that evidence of this statement can be found on page 62 of the transcript of the Tenancy Tribunal hearing TTT275-13-TA that took place on 11 June 2013. So it is the statement that Mr Singh made to the police on 28 April 2013 that is alleged to be defamatory. This much is clear. But then nothing else is said about this statement. The content of the allegedly defamatory statement is not expressly stated anywhere in the amended statement of claim. Anyone wanting to know the statement's content has to look at page 62 of the transcript from the Tenancy Tribunal hearing.

[12] Section 37 of the Defamation Act requires a plaintiff to give particulars of the defamatory meaning. Without knowing the particulars of the defamatory statement, it is impossible for this Court to determine if the pleading discloses a reasonable cause of action.

[13] Paragraphs 5 to 35 of the amended statement of claim plead allegations that are unconnected to the alleged statement to the police on 28 April 2013. These allegations at times make scandalous references to the conduct of the adjudicator of the Tenancy Tribunal; they refer to other alleged defamatory statements which were said in evidence to the Tenancy Tribunal (citations of this material from the transcript are expressly pleaded); and they forecast the future conduct of Mr Singh if he is not held to account for his defamatory conduct. The allegations are at times: scandalous and irrelevant; unintelligible; unnecessarily prolix; and largely comprise of evidential material. As such, they offend against rr 15(1)(b) and (c). Such allegations are the antithesis of what is required of a statement of claim: see *Hopper Group Ltd v Parker* (1987) 1 PRNZ 363 (CA) at 366, which is affirmed in *Chesterfields Preschools Ltd* at [85]:

One essential part of pleadings is to state precisely the basic facts on which the plaintiff relies so as to clearly define the issues which the defendant has to meet. If that is not done, it is difficult for a defendant to prepare for trial and questions such as payment into Court or offers of settlement can hardly be considered. Furthermore, if the case goes to trial without precise pleadings, much time can be wasted and a defendant might be taken by surprise when the real issue not previously stated clearly suddenly emerges.

[14] Paragraphs 36 to 38 of the amended statement of claim set out the allegations for the tort of conspiracy. They set out the legal elements of this tort, as well as evidential matters that at times bear little if any relation to this tort. It is impossible to fit the allegations into a framework for the tort of conspiracy; so, in this regard, the pleading is unintelligible.

[15] The core complaint for the conspiracy claim appears to be that Mr Singh and his property manager, Russell Nordstrand, have made false statements to the Tenancy Tribunal and to the police in order to have the Burchells evicted from the tenancy. However, the amended statement of claim does not comply with r 5.17 (distinct matter to be stated separately), nor does it comply with r 5.26 (statement of claim to show nature of claim). Consequently, it is impossible to know if the allegations relate to a conspiracy based on lawful conduct that has been carried out by Mr Singh and Mr Nordstrand with the sole or predominant purpose of injuring the Burchells, or a conspiracy by unlawful means. I consider that rr 5.17 and 5.26 require each type of conspiracy to be separately pleaded. Further, the content of the allegations is irrelevant, unintelligible and contains evidential material. There is nothing that I can see that would mesh with the elements of either forms of conspiracy.

[16] At the hearing, only Mr Burchell appeared. He informed the Court that Mrs Burchell was unwell. The Burchells are lay litigants. Thus, they cannot be expected to present the Court with a top-flight statement of claim. Nonetheless, they should ensure that their statement of claim basically conforms with what the law of pleadings and the High Court Rules require. To allow them to do less than that would be unjust to Mr Singh. He is entitled to be informed of the case against him in a way that conforms with legal requirements.

[17] However hopeless a pleading may appear, this Court will not usually strike it out if it is capable of being rectified to conform with legal requirements: see *Van der Kaap v Attorney-General* at 165. On the other hand, as was recognised in *Deliu v Hong* [2013] NZHC 735, the striking out of a proceeding does not create a res judicata or an issue estoppel. Thus striking out the amended statement of claim will not be fatal to the Burchells' ability to make a proper claim against Mr Singh, should such be possible.

[18] The pleading presently under consideration has already been amended once. It remains a mess. The general state of the pleadings and other interlocutory applications on the Court file for this proceeding do not suggest to me that the Burchells are likely to be able to improve upon the current amended statement of claim, should they be given the chance to file a new version. Further, the more time that the Burchells are given to improve their ill-pleaded proceeding, the greater the costs and other inconvenience for Mr Singh. He is entitled to some relief from the barrage of scandalous accusations and unintelligible claims that he has endured to date from these proceedings, which can only have impacted detrimentally on his legal costs.

[19] The general impression that I have gained from reading the amended statement of claim and from hearing Mr Burchell's submissions is that the Burchells are unhappy with the action that Mr Singh took against them before the Tenancy Tribunal. They seek to use the present proceedings to gain some form of redress against Mr Singh for taking them to the Tenancy Tribunal. Whilst they are entitled to apply available legal remedies to cure any harm that Mr Singh may have caused to them, their present attempt through these proceedings fails in so many ways to meet this Court's requirements that the only appropriate response is to strike them out.

Result

[20] The amended statement of claim is struck out.

[21] In accordance with the general rule, costs should follow the event. I would award costs at category 2B. If Mr Singh seeks an increase over scale costs, he will need to file memorandum setting out the basis for a higher award of costs. He should do so within 15 days of delivery of this judgment. If he does not, costs will be set at category 2B.

Duffy J