

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CP 48-sd00

BETWEEN

PETER CLEM COLLECUTT

Plaintiff

A N D

TELEVISION NEW ZEALAND LIMITED

Defendant

135

Hearing: 26 February 2001

Counsel: GP Denholm for the plaintiff/respondent
JWS Baigent for the defendant/applicant

Judgment: 26 February 2001

(ORAL) JUDGMENT OF MASTER KENNEDY-GRANT

Solicitors for the plaintiff

Foy & Halse
PO Box 26-218
Auckland

Solicitors for the defendant

Simpson Grierson
Private Bag 92518
Auckland

[1] This is an application by the defendant for an order for security for costs in respect of the defamation proceeding brought against it by the plaintiff.

[2] On the evidence before the Court I have no hesitation in holding that there is reason to believe that the plaintiff will be unable to meet any order for costs that might be made against him in this proceeding after trial if he were unsuccessful.

[3] I am also satisfied on the evidence before me that there is no reason why, in the exercise of the Court's discretion, the Court should not make an order for the provision of security for costs. There is no evidence before the Court which supports the argument advanced by Mr Denholm that the plaintiff's inability to meet any order for costs that might be made is probably due to the actions of the defendant of which he complains.

[4] Clearly it is necessary, and this is a matter which I will consider in the next section of this judgment, to ensure that the quantum of the order for security for costs which I make is one which is fair having regard to the interests of both parties, including the interest of the plaintiff in not being disabled from bringing this proceeding if he wishes to continue to do so.

[5] I turn therefore to consider the question of quantum.

[6] Ms Baigent, for the defendant, has provided the Court with a schedule of costs in this proceeding on a 2B basis, providing for all steps taken by the defendant from the preparation, filing and service of the statement of defence to the conclusion of trial. On the basis of this schedule she seeks, on behalf of the defendant, security for costs in the sum of \$45,000. This is \$110 short of the amount shown in the schedule. This amount is calculated on the basis of allowing seven days for the trial of this matter.

[7] Mr Denholm, for the plaintiff, has submitted, on the contrary, that the trial is unlikely to take more than four days and that it is unnecessary to allow two weeks or,

indeed, eight days (being twice the assessed length of trial) for preparation. He suggests a figure of five days for preparation.

[8] It is my view that the appropriate order is an order for the provision of security for costs in the sum of \$30,000, in two tranches, each of \$15,000, the first to be provided at this stage, with a stay of the proceeding until it is, and the second, once the first has been provided, to be provided 28 days before the date of call over.

[9] I have arrived at the figure of \$30,000 after making a number of calculations, each of which provides an alternative way, in my view, of arriving at an appropriate figure. The approaches I have adopted are as follows:

[a] Making adjustments to the schedule provided by Ms Baignet The figure of \$45,110 contained in this schedule is calculated, as I said earlier, on the basis of providing for all the steps taken or to be taken by the defendant in this matter from the commencement of the defence and allowing 7 days for trial and 14 days for preparation. All interlocutory steps, except for the present application, had been taken by the defendant before the present application was filed. The amount provided, in accordance with the schedule, for those steps is \$11,280. If I deduct that sum from the figure of \$45,110 I arrive at a figure of \$32,830. I then make one further deduction, namely in respect of the costs of this application, including the sealing and service of the order. The costs allowed for the steps relating to this application in the schedule tendered by Ms Baigent total \$1,690. If I deduct that further amount from the reduced figure of \$32,830, which I had previously arrived at, I arrive at a figure of \$31,140.

[b] Adopting Mr Denholm's assessment of the length of trial and the time required for preparation. As noted above Mr Denholm suggested that the trial would only take 4 days and that only 5 days' preparation would be required. If I allow a figure of \$2,500 per day for trial and for preparation, that results in a figure of \$22,500. If I allow a higher rate of \$3,000 per day, that results in a figure of \$27,000, which is

\$3,000 below the figure of \$30,000 which I have indicated I have decided is the appropriate figure. I have to say that I think that Mr Denholm's assessment of the length of time is light.

[c] Assessment of likely solicitor and client costs for trial and preparation and allowance of two-thirds of that amount. If I accept for this purpose, the suggested length of trial of 7 days and length of preparation of 14 days, and apply rates of \$2,500 and \$3,000 per day to each of these, I arrive at a total of \$52,500 at the lower rate of \$2,500 per day and \$63,000 at the higher figure of \$3,000 a day. If I take two-thirds of the lower of these two figures, I arrive at a figure of \$35,000. If I take two-thirds of the higher of these two figures, I arrive at a figure of \$42,000.

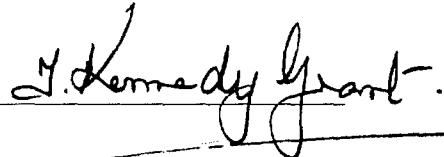
[10] I consider that having regard to the results of the three calculations the figure of \$30,000 which I have indicated I consider to be the appropriate figure is, indeed, an appropriate figure.

[11] I therefore make the following orders:

- [a] There will be an order that the plaintiff provide security for the defendant's costs of this proceeding from this point on in the sum of \$30,000;
- [b] This sum be provided in two tranches, \$15,000 at this stage and the second, also of \$15,000, 28 days before the date of call over;
- [c] That until such time as the first of these tranches is provided and in the event of the second tranche not being provided on the due date, then until such time as it is provided, the plaintiff's proceeding against the defendant will be stayed;
- [d] The security for costs may be provided either by payment into Court of the sum required at each stage (to be invested in an interest bearing

account) or by the provision to the Registrar of a bond by a trading bank or registered financial institution in a form acceptable to the Registrar;

- [e] The plaintiff is ordered to pay the defendant's costs of and in connection with this interlocutory application, including the cost of sealing and serving the order, in the sum of \$1,690 (that sum is inclusive of any disbursements);
- [f] The Registrar is to schedule a further conference before me within 21 days of the provision of the first tranche of security (the purpose of this further conference will be to set the matter down for trial and to make appropriate pre-trial and mode of trial orders).

A handwritten signature in black ink, reading "T. Kennedy Grant", written over a horizontal line.

~~MASTER T KENNEDY-GRANT~~