

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

CIV 2008-485-2614

BETWEEN BRADY ERROL CHADWICK
 Plaintiff

AND DOMINION POST/FAIRFAX MEDIA
 Defendant

Hearing: 8 May 2009

Counsel: No Appearance for Plaintiff
 R K P Stewart for Defendant

Judgment: 8 May 2009

ORAL JUDGMENT OF RONALD YOUNG J

Introduction

[1] In these civil proceedings, which appear to allege defamation and conspiring to commit an unidentified crime, the defendant seeks an order for security for costs and, if successful, an order staying these proceedings until the security for costs is paid or appropriately secured. There has been no appearance by the plaintiff nor any response documents filed, although the application, supporting affidavits and notice of today's hearing date have all been sent to the plaintiff's address for service.

[2] On 23 November 2007 the Dominion Post newspaper published the following paragraph in its "Capital Beat" column:

WANTED

Brady Errol Chadwick, 33, on charges of common assault, speaking threateningly, receiving stolen property, wilful trespass and six charges of failing to answer bail.

[3] Just over twelve months later the plaintiff issued these proceedings in the High Court alleging the publication was defamatory. While the pleadings do not identify what words were defamatory nor how they were defamatory it seems the plaintiff relies upon the claim that the charges he faced were subsequently withdrawn by the Police to support his proposition.

[4] Mr Chadwick seeks damages being, as he has pleaded, “collateral/commodities to the value of three billion New Zealand dollars payable as uranium for use in Atomic Power Stations” as well as a printed correction.

[5] In response the defendant in its statement defence says:

- a) the statement of claim is defective in a number of ways;
- b) they admit they publish the Dominion newspaper and that they published the column concerning the plaintiff;
- c) they say that the words and photograph published were on an occasion of qualified privilege; and
- d) they deny all other allegations.

[6] Rule 5.45 of the High Court Rules empowers a Court to order security for costs where there is reason to believe the plaintiff will be unable to pay costs and an order may be made if the Court considers it is just in all circumstances.

[7] As a first step, therefore, I must be satisfied there is reason to believe that Mr Chadwick will be unable to pay the defendants costs if Mr Chadwick is unsuccessful.

[8] I am satisfied that there is reason to believe that Mr Chadwick will be unable to pay any costs order against him. As the defendant’s researches establish there is no record that the plaintiff owns any assets. He is not recorded as owning any land, or having any interest in any property by virtue of the Personal Property Securities Register or as a shareholder in any company.

[9] The plaintiff himself self describes as unemployed and of no fixed abode. His address for service is care of the Downtown Ministry.

[10] In addition the defendants received no response to a letter sent to the plaintiff on 6 December 2008 inviting him to provide information as to how he could pay any costs award against him.

[11] Three other factors point strongly towards granting security in this case:

- a) Firstly, the merits of the plaintiffs' claim seem modest indeed. In similar factual circumstances in *Ferrymead Tavern v Christchurch Press Company Limited* (1999) NZAR 529 this Court found for the defendants in a summary judgment application in that they had made out a defence of qualified privilege. Currently it seems probable that such a defence would be available to the defendants should this matter come to trial.
- b) The plaintiffs current pleading is wholly inadequate and may not reveal any cause of action. The claim for damages seems hugely inflated and, as to the claim for damages to be payable in Uranium this is, as I have previously pointed out to Mr Chadwick in other litigation, simply beyond this Court's power.
- c) Thirdly, the plaintiff has recently filed ill considered and speculative civil cases in the High Court at Wellington. See *Brady Errol Chadwick v The Attorney-General of New Zealand* (CIV 2008-485-2701, CIV 2008-485-2702, CIV 2008-485-2705, CIV 2008-485-2706, CIV 2008-485-2616) and *Brady Errol Chadwick v The Superintendent of Rimutaka Prison* (CIV 2008-485-762). These have either been dismissed on the merits or struck out before trial. In December 2008 Wild J directed that the Registrar of this Court not accept further new proceedings from Mr Chadwick for filing without authorisation from a High Court Judge.

[12] As against these failures is the prospect, if an order for security for costs is made, that this might effectively prevent Mr Chadwick from continuing this litigation. In this case I accept that it is probable that it will do so unless Mr Chadwick has access to unidentified funds.

[13] However, here, given the plaintiff's case is currently ill formed, the merits seem to clearly favour the defendant and the plaintiff apparently has neither assets nor income beyond a state benefit, justice requires that an order be made.

[14] As to quantum, the defendants estimate a five-day trial. Given the narrow compass of the facts one would hope that might not be required. However, I do accept that given the complexity of pleading and litigating defamation especially where, as here, the plaintiff has no legal assistance it is reasonable to expect significant interlocutory hearings.

[15] The proper course I think is now a staged order for security for costs. The current order I make reflects all interlocutory matters to trial. If Mr Chadwick was in a position to pay security or have a security provided to the satisfaction of the Registrar of the High Court, then further application could be made and considered relating to the trial itself.

[16] I, therefore, make an order for security for costs in the sum of \$10,000, as I have said, to be either paid by Mr Chadwick or appropriately secured to the satisfaction of the Registrar of the High Court. I make an order that unless and until payment or security is provided these proceedings be stayed.

Ronald Young J

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