

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

CIV 2009-485-1233

IN THE MATTER OF the Defamation Act 1992

BETWEEN V C KERR
 Plaintiff

AND THE DOMINION POST
 Defendant

Hearing: 2 September (On Papers)

Counsel: V C Kerr In Person
 R Stewart for Defendant

Ruling: 3 September 2009

**RULING OF SIMON FRANCE J
(Scope of hearing of 19 November 2009)**

[1] These matters have been referred to me in Dobson J's absence.

[2] On 10 August 2009 Gendall A J ordered that:

the defendant's application for strike-out and security for costs and the plaintiff's summary judgment application on this proceeding are both set down for hearing before a High Court Judge at 10.00 a.m., Thursday 19 November 2009.

[3] The proceeding is an action in defamation. Mr Kerr has filed an application for summary judgment, and applications to strike out all the defendant's defences. The defendant has filed applications for strike out, and security for costs. Each side opposes the other's applications.

[4] The defendant applies to the trial Judge for a variation on the Associate Judge's scheduling. It requests that its strike out application be heard first. This was a live issue at the time Gendall AJ set the schedule.

[5] Mr Kerr has twice previously brought proceedings concerning the subject matter of the publication. The defendant says this proceeding is an abuse and it should not incur costs preparing to defend the summary judgment application until its strike-out application is heard.

[6] Mr Kerr says the Associate Judge's order is fair and should stand. The defendant has republished the information so he is able to bring the proceedings again. The defendant's application is a gross injustice because it has no defences.

Decision

[7] The matter has a history.

[8] In 2000 Mr Kerr sued the defendant over an article. In that proceeding Mr Kerr was ordered to pay security for costs. To the defendant's knowledge that was not done and it believes those proceedings to have been struck-out for that reason.

[9] In 2007 Mr Kerr sued the defendant over two different articles published in its newspaper. In those proceedings security for costs was ordered. They have not been paid. The proceedings were stayed pending payment in full. There has been nothing done, so they remain stayed. It is to be noted that those proceedings included by an application by Mr Kerr for summary judgment.

[10] At the time of the publication that was the subject of the stayed 2007 proceedings, the owners of the Dominion, Fairfax Limited, also posted the same allegedly defamatory articles on its website, "Stuff". These present proceedings concern that internet publication. The article was posted unamended from how it had appeared in the Dominion Post. The present pleadings are also largely the same as in the stayed 2007 proceeding.

[11] In these circumstances the present application by the defendant is, with respect, plainly right. It should not have to take further steps on the summary judgment application or on the proceeding at all, other than to do what is necessary for the hearing of its applications for strike-out and security for costs. If it succeeds on either, that will either end matters or place them on the same footing as the 2007 proceedings. If the defendant is unsuccessful, Mr Kerr is prejudiced only by a period of delay before his interlocutory applications can still be heard.

[12] Accordingly, standing in the shoes of the trial Judge, I amend the decision of Gendall A J of 10 August 2009. The hearing of 19 November 2009 is limited to the defendant's application for strike-out and security for costs.

Simon France J

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