

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

CIV-2007-404-6421

IN THE MATTER OF the Defamation Act 1992

BETWEEN MOHAMMAD SADIQ
 Plaintiff

AND BAYCORP (NZ) LIMITED
 First Defendant

AND JOHN EWART HARRIS
 Second Defendant

Hearing: 7 August 2009

Appearances: No appearance for Plaintiff
 Ms Langston for First Defendant
 Mr Kohler for Second Defendant

Judgment: 7 August 2009

ORAL JUDGMENT OF ASSOCIATE JUDGE DOOGUE

Solicitors/Counsel:

Murdoch Price, P O Box 23-620, Hunters Corner, Auckland (K Ming)

Wilson Harle, P O Box 4539, Shortland Street, Auckland

Mr G Kohler, P O Box 4338, Auckland

[1] On 5 November 2008 I made orders for security for costs in this proceeding. On the application of the first defendant I directed that the first tranche was to be paid 30 November 2008. Since that time there have been several further conferences in the proceeding. At some of those Mr Sadiq was represented. On the last occasion when counsel appeared for Mr Sadiq it was Mr Judd who sought leave to withdraw which was granted. It has not been contested for Mr Sadiq that none of the tranches under the security for costs order have been paid and nor has it been contended that any other steps have been taken to bring proceedings to a resolution by trial.

[2] In my view the time has come for the proceedings to be brought to an end. In the last minute that I issued in this matter, 1 July 2009, I expressly warned that I was contemplating taking that step. These proceedings were started in 2007 and there are real difficulties with them. There is no end in sight and I am convinced that the defendants should not be further troubled with them. I make an order dismissing the proceedings under Rule 15.2. The plaintiff is to pay the defendants' costs. In both cases the defendants, through their respective counsel, Ms Langston and Mr Kohler, accept that 2B costs and disbursements are appropriate and I so order.

[3] The only matter that needs to be additionally considered is the first defendant's application for costs on the defendant's summary judgment application which I heard in February 2008 and dismissed. The costs on that application have yet to be disposed of. While the first defendant was unsuccessful in its application the application fulfilled the vital need to clarify and crystallise the issues in the proceeding particularly in the difficult area of whether the first defendant had relevantly published the alleged defamatory comments. While the first defendant was unsuccessful on the summary judgment application I considered the last factor that I have just mentioned justifies an award of costs in the first defendant's favour.

[4] The first and second defendants are also to be entitled for the costs of the various conferences including today's conference.

[5] Both the first and second defendants are entitled to disbursements as fixed by the Registrar.

J.P. Doogue
Associate Judge