

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

CIV 2009-404-5571

BETWEEN	ESE SIO AND LEE PALUPE Plaintiffs
AND	SAMOA MULTIMEDIA GROUP LIMITED First Defendant
AND	RULLA SU'A VAAI Second Defendant

Hearing: 16 September 2009

Counsel: E St John for Plaintiffs
No Appearance for First Defendant
No Appearance for Second Defendant

Judgment: 16 September 2009

ORAL JUDGMENT OF RONALD YOUNG J

[1] This is an application for leave to commence a defamation action made in reliance on s 55 of the Defamation Act 1992 and s 4 of the Limitation Act 1950. Such an application is necessary because two years have passed since the publication of the alleged defamatory comments.

[2] There was no appearance by either the first or second defendants.

[3] This application was made some one month after the expiry of the two years. The plaintiffs, it seem, mistakenly thought the article had been published on 4 September 2007 when in fact the date of publication was 6 August 2007.

[4] This application, filed on 31 August 2009, is therefore some twenty-five days out of date. I accept that this was a simple mistake of fact and given the delay is less than one month and no obvious prejudice arises to the defendants beyond the twenty-five day delay I am satisfied the application should be granted.

[5] I therefore give the plaintiffs leave to commence these defamation proceedings.

[6] For the sake of completeness I add that I asked counsel about the service of these proceedings on the second defendant given his residence in Samoa, out of New Zealand. I am satisfied that the service of the proceedings on Mr Vaai comply with High Court Rule 6.27(c)

[7] Leave having been given the plaintiffs therefore should expeditiously file their statement of claim and notice of proceedings. I note a draft copy of the statement of claim was annexed to the affidavit filed in support of the application.

[8] I reserve the question of costs.

Ronald Young J

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