IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2010-404-7064

	BETWEEN	JOSEPH GREGORY HALLETT Appellant
	AND	PETER ALDERIDGE WILLIAMS QC Respondent

Hearing: 20 July 2011

Appearances: Appellant in person
Respondent in person, together with H Phillips

Judgment: 26 July 2011

JUDGMENT OF BREWER J

This judgment was delivered by me on 26 July 2011 at 3:00 pm pursuant to Rule 11.5 High Court Rules.

Registrar/Deputy Registrar

COPIES TO:
JG Hallett and PA Williams QC

Introduction

[1] On 18 October 2010, following a hearing on 23 June 2010, District Court Judge LI Hinton gave judgment against the appellant, Mr Hallett, in a defamation action brought against the appellant by Mr Williams. Judge Hinton awarded Mr Williams $125,000 compensatory damages and $15,000 punitive damages. The District Court Judge also issued various injunctions designed to limit the damage done to Mr Williams and to prevent further publication of the defamatory material.

[2] Mr Hallett now appeals against the judgment. His main ground of appeal is that Judge Hinton should have granted an adjournment of the hearing on 23 June 2010 due to Mr Hallett's absence overseas. The result was that Judge Hinton heard evidence only from and on behalf of Mr Williams as plaintiff and no case was put forward by or on behalf of Mr Hallett.

[3] Mr Hallett has also filed separate proceedings for orders under the Protected Disclosures Act 2000. His case is that the material found by Judge Hinton to be defamatory constitutes protected disclosures under that Act and that accordingly he, Mr Hallett, is entitled to immunity from suit in respect of them.

Background

[4] Mr Hallett is the author of a book entitled "New Zealand – A Blackmailer's Guide". In it he publishes various attacks on Mr Williams including that Mr Williams had criminal complicity with the Mr Asia drugs syndicate and with the Black Power gang. Without a doubt, the contents of the book are grossly defamatory of Mr Williams.

[5] Mr Williams commenced defamation proceedings against Mr Hallett in the District Court. Mr Hallett's response is summarised by Judge Hinton as follows:[1]

> [8] Mr Hallett admits in his amended statement of defence that he is the author of the book. He denies that the particular extracts concerning Mr Williams and referred to above are false or malicious. He denies that the

[1] *Williams v Hallett* DC Auckland CIV-2008-004-2897, 18 October 2010.

> words in their natural and ordinary meaning meant, and were understood to mean, the defamatory meaning complained of by the plaintiff.

[6] Overall, Mr Hallett's defence was (and still is) that the statements in the book are true.

[7] Eventually, the case was given a firm fixture date of 3 May 2010. The notification from the Court of this fixture date was sent out on or about 23 December 2009. Mr Hallett acknowledges that he received it.[2]

[8] However, on 22 March 2010 Mr Hallett left the country. His itinerary called for him to return on 18 September 2010.[3] The tickets were purchased with Fly Buy points and could only be altered at considerable expense.[4]

[9] Once in Europe, Mr Hallett acquired congenial employment in Portugal. He decided he would not return for the 3 May 2010 fixture. Instead, he instructed Mr Meyrick to appear on that day and seek an adjournment. He took no steps to be ready for trial in the event of the adjournment not being granted. In particular, no briefs of evidence had been filed in the Court or served on Mr Williams.

[10] Judge Hinton granted the adjournment. He did so reluctantly and the following paragraphs from his decision are relevant:[5]

> [16] This application for an adjournment has been made far too late and the proceedings concern serious issues. I have considerable sympathy for Mr Williams' position. Reluctantly however, I think I have no option but to accede to the request for an adjournment. I do so reluctantly.
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> [17] It will be on the basis that Mr Hallett's travel arrangements will be advised to the Court in terms of Judge Sinclair's minute of 26 April 2010. It will be on the basis that the registrar will allocate a fixture date for the hearing of this matter, at the earliest opportunity. The enquiries I have just made, as I began dictating this decision, are that a date in early August will be available. I will see the registrar personally when I leave this Court, in a moment, to see if an earlier date is possible.

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2 Transcript of hearing before the Hon Justice Brewer, at p 67.

3 An Appeal of the "Reserved Judgment of Judge L I Hinton" in the Auckland District Court heard on 23 June 2010 with decision dated 18 October 2010, filed by Mr Hallett on 18 February 2011, at p 5.

4 Transcript of hearing before the Hon Justice Brewer, at p 24.

5 *Williams v Hallett* DC Auckland CIV-2008-004-2897, 3 May 2010.

[11] Mr Meyrick apparently communicated to Mr Hallett as follows:[6]

> I appeared in Court in the defamation case yesterday [3 May]. In accordance with your instructions I applied for an adjournment. This was opposed with some vigour by Peter Williams who prepared and submitted a substantial document. He wanted the application for adjournment rejected and the hearing to proceed. I argued that – effectively – he was asking for the statement of defence to be struck out as he would be denying you the opportunity to present a defence. He put some pressure on the court. The Judge granted your application for an adjournment. He said it would be as short an adjournment as possible. Mr Williams wanted a date in May. It seems that is not possible and the earliest date we will be able to get will be in August. No date is set at this stage. If some other case falls over in the meantime this case might be put in its place. Mr Williams is not happy about everything concerned with this case and he has complained to the court that you continue to defame him. You may not get a Christmas card from him this year. I will let you know as soon as I get a new date for the defamation hearing. At this stage I am not recorded as counsel in the summary judgment matter [unpaid Architecture fee].

[12] Mr Hallett responded on the same day:[7]

> Brilliant be in touch soon with good news. Well done, I expect I owe you.

[13] The District Court then set about arranging a further fixture. On 10 May 2010 Ms Khoo, the Team Leader (Civil) at the Auckland District Court, sent Mr Williams and Mr Meyrick an email as follows:[8]

> This matter needs to be set down again for 1 day Fixture.
>
> I would appreciate your advice as to your availability for the months of June, July and August by no later than 4 pm, Friday 14 May 2010. After which, I will need to refer your dates to the Judicial Resource Manager for her to work on freeing up Judge Hinton to sit this Fixture in Auckland District Court.

[14] By notice dated 27 May 2010 the Court advised Mr Hallett at his address for service and Mr Meyrick by email of a firm fixture for 23 June 2010.

[15] Mr Hallett says that he was not made aware of this date until 18 June 2010 when he received the following email from Mr Meyrick:[9]

> Where are you. Defamation case back in court on 23.6.10 – what do I do???

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6 Affidavit of Michael Brian Meyrick dated 18 July 2011, email dated 4 May 2010.
7 Ibid.
8 Respondent's submissions opposing appeal dated 25 March 2011, annexure 5.
9 Affidavit of Michael Brian Meyrick dated 18 July 2011.

[16] Mr Hallett's response to Mr Meyrick dated 18 June 2010 was:

> I'm still in Portugal. I won't be finished in time to return to New Zealand in 4 days time. The courts requested that I "give notice 7 days before I return" and neither have happened yet. I'm still working day in day out with a British Royal doing a family biography. You might want to remind that Court that ...

The email goes on to repeat and embellish some of the defamatory material the subject of Mr Williams's action. It finishes:

> Other than that, I haven't even had a holiday yet.

[17] On 20 June 2010 Mr Meyrick sent an email to Mr Hallett as follows:

> Thanks for reply – will file memorandum in court – why am I not in Portugal? Good question actually.

[18] On 21 June 2010 Mr Hallett sent an email to Mr Meyrick saying:

> I'm currently working as the Lord Chamberlain to the Brit.Monik, so it's busy busy busy.

The rest of the email does not bear repeating, but amounted to complaints about Mr Williams proceeding with the defamation case.

[19] On 23 June 2010 Mr Meyrick appeared for Mr Hallett. The record of that appearance is as follows:[10]

> THE COURT:
> Where's Mr Hallett?
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> MR MEYRICK:
> Well that's a very good question sir. I have been endeavouring to get instructions from him by email. He's not answering his telephone but he does respond to his emails and he assures me that he's still in Portugal and hasn't yet made it back to New Zealand. Now, this was the situation when this matter was last called a month or so ago. So my position is that I'm fairly much hamstrung really. I'm instructed to seek a further adjournment; Mr Hallett assures me he is returning to New Zealand but the project on which he is working on, which he went to Portugal to do, is still partly completed but not yet completed. He has not given me a date when he will be back in New Zealand.

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[10] *Williams v Hallett* DC Auckland CIV-2008-004-2897, 23 June 2010, In-Chambers discussion before Judge LI Hinton.

> In support – well I can't say much more except that I will say this, obviously the feedback I've had from Mr Williams, that he obviously has very strong feelings about this, and that's understandable. But the case having come this far I think needs to be heard, and how the Court can hear it, I'm not too sure it can hear it in Mr Hallett's absence.

[20] Following further submissions from Mr Meyrick and Mr Williams, the Judge refused to adjourn the trial. The relevant paragraphs of his ruling are:[11]

> [6] The application for an adjournment is a remarkable one in the circumstances. It is a threadbare application, which is advanced without any conventional written application, affidavit or other documents in support of it. It is advanced on the basis that apparently without Mr Hallett's presence today this matter cannot be heard. As I understand it, Mr Meyrick proposes that this matter, having come this far, needs Mr Hallett to be here for it to be advanced any further.
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> [7] More specifically, the proposition is that Mr Hallett is unable to defend himself, apparently, if he is not here. Of course, if this matter were to proceed today Mr Meyrick can (although he has just advanced in reply submissions to Mr Williams that perhaps he may not be able to) defend the matter on behalf of Mr Hallett because, of course, Mr Meyrick can remain and would be able to conduct a cross-examination of witnesses should this proceed.

[21] Mr Meyrick then sought, and obtained, leave to withdraw. In an email dated 28 June 2010 he reported to Mr Hallett as follows:[12]

> The defamation matter was called again on 23.6.10. I appeared and asked for another adjournment. Peter Williams opposed. This time I was not successful. The judge ruled that the trial go ahead. After he made that ruling I decided I would not be part of it. There is no point in having a hearing against you when you are denied the opportunity to defend it. If any decision went against you and you wanted to appeal I did not want to give any credibility to the process by remaining in court and cross examining etc. It would allow the court to say later that you were represented. So I asked for leave to withdraw from the trial. This was granted. The judge had no choice. As far as I know Peter Williams called his evidence which included a recording of a radio transcript given by you. As of this morning there is no decision. Reserved decision. Don't know when it will be released. Will let you know when I hear.

[22] I observe that Mr Hallett states that Mr Meyrick was not representing him at either the appearance on 3 May 2010 nor the appearance on 23 June 2010.

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[11] *Williams v Hallett* DC Auckland CIV-2008-004-2897, 23 June 2010, Ruling of Judge LI Hinton.

[12] Affidavit of Michael Brian Meyrick dated 18 July 2011.

Mr Meyrick in his affidavit deposes that after assisting Mr Hallett to write a statement of defence he did not act for him.[13]

[23] Mr Meyrick might not have had formal instructions from Mr Hallett on a fee-paying basis but it is clear to me from the email correspondence and from the records of Mr Meyrick's appearances that he was certainly representing Mr Hallett as a lawyer and with Mr Hallett's approval. Nothing turns on this point.

[24] Mr Hallett eventually returned to New Zealand on his original air travel tickets, although he says he did make efforts to return earlier but was unable to do so because of money troubles and flying restrictions due to the Icelandic volcano.

[25] Mr Hallett maintains that his allegations against Mr Williams are true, avers that he can prove their truth and that he should be given the opportunity to do so. He submits that Judge Hinton should have granted the adjournment because the Judge knew that he was overseas and that proceeding without him present under that circumstance was a breach of natural justice and due process.

The granting of adjournments

[26] This is an appeal against the exercise of a discretion.[14] The criteria for a successful appeal are: (1) error of law or principle; (2) taking account of irrelevant considerations; (3) failing to take account of a relevant consideration; or (4) the decision is plainly wrong.[15]

[27] The court may adjourn an application on any terms that it thinks just.[16] The Court has a wide discretion in relation to the adjournment of a trial, and the paramount consideration is the need to do justice to the parties. As Tipping J expressed in *O'Malley v Southern Lakes Helicopters Ltd*:[17]

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13 Ibid, para [4].
14 *Feasey v Dominion Leasing Corp Ltd* [1974] 1 NZLR 593 (SC) at 598.
15 *Kacem v Bashir* [2011] 2 NZLR 1 (SC).
16 District Courts Rules 2009, r 12.7; see also High Court Rules, r 10.2.
17 *O'Malley v Southern Lakes Helicopters Ltd* HC Christchurch CP513/89, 4 December 1990; see also *Barge v Freeport Developments Ltd* (2004) 17 PRNZ 394 (HC).

> However the essential question which the Court always has to consider when asked for an adjournment is whether or not that is necessary in order to do justice between the parties. One must not overlook that not only is it necessary to do justice to the party who is seeking the adjournment but also justice to the party who wishes to retain the benefit of the fixture. It is essentially a balancing exercise.

[28] Relevant to the assessment is whether the parties have acted responsibly and done everything practicable to avoid adjournment. Genuine and unavoidable travel mishaps to the parties is a good ground for adjournment; poor planning is not.

[29] As Mr Hallett did not appear and was not represented at the hearing before Judge Hinton, it is necessary to have regard to the principles that guide the Court's unrestricted discretion to set aside a judgment that has been obtained by default. The test against which an application should be considered is whether it is just in all the circumstances to set aside the judgment. Considerations such as whether the defendant's failure to appear was excusable, whether the defendant had a substantial ground of defence, and whether the plaintiff would suffer irreparable injury if the judgment was set aside, should be treated as tests by which the justice of the case is to be measured.[18]

[30] I have no doubt that Judge Hinton exercised his discretion correctly when continuing the trial in the absence of Mr Hallett. That is because:

(a) Mr Hallett's failure to appear at the hearing was inexcusable, given that:

(i) He knew that the case was set to be heard on 3 May 2010;

(ii) He left the country on 22 March 2010, not intending to return until 18 September 2010;

(iii) He took the risk that an adjournment might not be granted on 3 May 2010;

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[18] *Russell v Cox* [1983] NZLR 654 (CA).

(iv) When the adjournment was granted, he knew that a fixture would be set down within a matter of months, but he still had no intention of returning to New Zealand until September;

(v) He had been in contact with his lawyer on these matters;

(b) Prior to both the May and June hearings he made no attempt to inform the Court of any legitimate reason why a further adjournment would be required. No written applications or affidavits were provided;

(c) He had taken no steps prior to the May or the June hearings to be ready for trial. No briefs of evidence had been filed or served;

(d) It would have been unfair to Mr Williams, who conversely has complied with court procedure, to delay the proceeding further;

(e) The evidence of defamation was overwhelming and nothing has been put forward by the appellant that would properly found an argument of truth.

[31] For these reasons I conclude that Judge Hinton was entitled to proceed with the hearing.

Protected disclosure

[32] Mr Hallett also claims that the defamatory material constitutes protected disclosures and he is entitled to immunity under s 18 of the Protected Disclosures Act 2000. He is mistaken.

[33] The Protected Disclosures Act is a regime designed to protect whistleblowers in organisations. Its purpose is to promote the public interest:[19]

(a) by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation; and

[19] Protected Disclosures Act 2000, s 5.

> (b) by protecting employees who, in accordance with this Act, make disclosures of information about serious wrongdoing in or by an organisation.

[34] Mr Hallett has never been an employee of Mr Williams (he was briefly retained as a contractor in around 2003). Mr Williams is not an organisation under s 3. In any event, Mr Hallett did not attempt to follow any of the procedures under ss 7–10 of the Act. The Act clearly does not apply to him.

Conclusion

[35] For the reasons given, the appeal is dismissed. Costs are awarded to Mr Williams on a 2B basis.

Bankruptcy proceedings

[36] By proceedings initiated by Mr Williams on 15 December 2010, he seeks an order adjudicating Mr Hallett bankrupt for failing or refusing to pay the sums ordered by Judge Hinton in the defamation case.

[37] Mr Hallett sought a stay of that proceeding pending the determination of this appeal. A stay was granted by Asher J on 14 February 2011.

[38] Upon my determination of the appeal Asher J's order for stay lapses. I direct the registry to enter Mr Williams's action in the bankruptcy list on the earliest available date.

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Brewer J