

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

**CIV-2009-485-002638
[2012] NZHC 1685**

UNDER the Defamation Act 1992, s 3(2) of the
Crown Proceedings Act 1950 and s 16 of
the Judicature Act 1908

BETWEEN LYSETTE LILLIAN DU CLAIRE
Plaintiff

AND MATTHEW SIMON RUSSELL PALMER
First Defendant

AND CROWN LAW OFFICE
Second Defendant

Hearing: 20-23 February 2012

Counsel: Plaintiff in person
M McClelland and U Jagose for Defendants

Judgment: 13 July 2012

**JUDGMENT OF ASHER J
(Costs)**

*This judgment was delivered by me on Friday, 13 July 2012 at 1pm
pursuant to r 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

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[1] I issued a substantive judgment in this matter on 7 May 2012. The plaintiff failed in her claims and judgment was entered for the defendants on all causes of action.

[2] The defendants now seek costs at scale on a 2B basis. Miss du Claire opposes the making of such an order.

[3] The Crown filed a submission in support of its application for costs on 21 May 2012 in accordance with the timetable. Miss du Claire, who informs the Court that she has suffered ill-health, has not filed any written submission. However, in a telephone conference of 10 July 2012 arranged by the Wellington registry, Miss du Claire orally set out her opposition.

[4] The costs are at the discretion of the Court.¹ In the principles set out in r 14.2 of the High Court Rules, it is stated² that the party who fails with respect to a proceeding should pay costs to the party who succeeds. The determination of costs should be predictable and expeditious.³ Appropriate daily recovery categories and categories for the determination of reasonable time are set out.⁴

[5] Mr McClelland in his submission on behalf of the defendants states that there are no special circumstances warranting a departure from the usual principle that the successful party should obtain costs. He also refers to further particular factors supportive of an award of costs in that:

- (a) The defendants carried a greater burden in preparation for trial.
- (b) Miss du Claire repeatedly failed to provide adequate particulars despite orders that she should do so.
- (c) Miss du Claire pursued claims and arguments that lacked merit.
- (d) Miss du Claire unreasonably refused settlement offers.

¹ High Court Rules, r 14.1.

² Rule 14.2(a).

³ Rule 14.2(g).

⁴ Rules 14.4 and 14.5.

[6] Miss du Claire in response repeated some of her original arguments on the merits, including a reiteration of her view that Dr Palmer was wrong in his views on the “secrecy” of the documents. She also submitted that there were a number of novel issues that arose in some of the rulings and in the judgment itself which were points of public importance. She submitted that the proceedings raised significant questions as to Crown Law’s role in dealing with government departments and that the judgment had clarified the law in certain areas (while she also made it clear that she strongly disagreed with aspects of the judgment and that an appeal has been lodged).

Decision

[7] The defendants succeeded and the plaintiff failed. Further, it is my view, reflected in the judgment,⁵ that the plaintiff failed by a considerable margin and was unable to support serious allegations of ill-will and malice.

[8] The fact that issues of public importance arose in the course of rulings and the determination of the various causes of action can be relevant. Under r 14.7(e), if a proceeding concerns a matter of public interest and the party opposing costs acted reasonably in the conduct of the proceeding, costs may be refused or reduced.

[9] While there were issues of public interest that arose insofar as the role of Crown Law and the inter-relationship between Crown Law and government departments, those issues were of a background nature. They arose in the context of the qualified privilege defence. That was a strong defence, and on the facts there was in my view little realistic prospect of Miss du Claire overcoming it. She persisted nevertheless, asserting ill-will or improper advantage on the part of Dr Palmer.

[10] I do not consider Miss du Claire acted reasonably in the conduct of the proceeding. There was a failure on her part to particularise the particulars of defamatory meaning adequately, despite directions that she should do so.⁶ She also

⁵ *Du Claire v Palmer* [2012] NZHC 934 at [123]–[124] and [182]–[191].

⁶ At [43].

refused to back down on arguments when they were clearly untenable. One such example was her argument that in addition to it being erroneous, there was something sinister and unprofessional in the defendants' opinion that the Jersey documents were privileged.

[11] Miss du Claire received settlement offers proposing a payment of cash which she declined to accept. The offers were, given my decision, generous, but in the circumstances their modest nature limits the weight that can be legitimately placed upon them in determining costs.

[12] I also only place limited weight on the factor that the defendants prepared the bundle of documents given their access to resources when compared to those of Miss du Claire who was self-represented.

[13] It has to be reiterated finally that the rulings and legal issues that were decided all arose in the context of a claim that in my view, could not succeed, and failed. There was no core issue of public interest which could have been legitimately raised and on which the case turned.

Conclusion

[14] When I balance these factors I can see no reason not to follow the usual course and order costs in favour of the successful party. Costs should follow the event. This case involved some complexity and I certify for a second counsel for the two days sought.

Result

[15] The plaintiff is ordered to pay costs to the defendants on a 2B basis.

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Asher J