

UNDER THE DEFAMATION ACT 1992

**IN THE DISTRICT COURT
AT MANUKAU**

CIV-2012-092-001969

BETWEEN

MATTHEW BLOMFIELD
Plaintiff

AND

CAMERON JOHN SLATER
Defendant

Appearances: Plaintiff in person
N Pender for Defendant

Judgment: 16 May 2013

DECISION OF JUDGE NICOLA MATHERS

[1] Mr Blomfield is the plaintiff suing Mr Slater in defamation. Mr Slater has made an application for security for costs.

[2] It appears that there is some considerable baggage between the plaintiff and the defendant. The defendant, it is said, has made various publications on a website called Whale Oil. The statements or opinions expressed on Whale Oil are serious. The defendant alleges the plaintiff is a thief and who has dishonestly orchestrated a series of events in order to steal charitable funds. In addition he alleges a scam whereby the plaintiff was involved in a premeditated and deliberate plan to defraud a children's charity. A conspiracy is also alleged. It is then said that the plaintiff caused a third party to fraudulently change the amount pledged. It is further said the plaintiff was dishonest and abusive. Also it is said that the plaintiff is a psychopath and that he loves extortion. Then it is said that he is a pathological liar. A further allegation relates to laundering money. Then it is said by the defendant "Drugs, fraud, extortion, bullying, corruption, collusion, conspiracies, perjury, deception, hydraulicing – it's all there." There are other statements or opinions which I have not listed.

[3] The defendant's synopsis of submissions in support of an application for security for costs is simple. While setting out the usual tests to support such an application, it is submitted by the defendant that he has strong defences to the plaintiff's claim. He summarises that "for him to succeed with the honest opinion defence alone, Mr Slater, the defendant, need only show that his opinion was genuinely held. His opinion does not have to be sound or nor even one shared by reasonable people. The defence is not defeated by malice."

[4] The plaintiff opposes honest opinion as a defence and rejects that the statements and/or opinions are honestly held, and of course they must be opinions. Also the more extravagant the opinions the more likely they will be scrutinised as to being honestly held.

[5] In addition the defendant pleads truth, which is of course, a complete defence but is not always the easiest to run.

[6] I note also, before embarking on the required analysis, that the defendant acknowledges, through his counsel, that some of the allegations that I have set out above are capable of a defamatory meaning.

[7] For the purposes of considering this present application I have been helped by a recent High Court decision of Kos J in *Highgate on Broadway Limited v Arthur Devine* [2012] NZ8C 2288. This decision helpfully sets out in a concise form the well known steps to be taken into account when balancing the different interests in an application such as this.

[8] Three issues need to be considered:

- (a) The first is whether there is reason to believe the plaintiff will be unable to meet an award of costs against him;
- (b) The second is whether it is appropriate for an order for security for costs to be made;
- (c) The third is how much security is appropriate.

[9] The first issue is fairly easy to resolve because it seems that both the plaintiff and the defendant accept that due to the plaintiff's bankruptcy he "will be unable" to meet an award of costs. I am therefore satisfied that there is credible evidence from which it may reasonably be inferred that the plaintiff would be unable to pay a costs award.

[10] I am therefore satisfied the defendant has met the threshold required for an order. As Kos J says, impecuniosity makes an order for security more likely but it has never been the case that impecuniosity per se requires the making of an order.

[11] There are a number of considerations. The plaintiff is not a nominal one. There is no evidence of the plaintiff disposing of assets to avoid meeting a costs order. There is no evidence that the plaintiff has access to third party funding. The most important consideration, however in this case, is whether the plaintiff's substantive claim is prima facie unmeritorious. I have already touched on this as to the defendant's submissions as to honest opinion and that malice does not destroy honest opinion as a defence. However I refer to Professor Burrows' text "Media Law in New Zealand at page 189 where he concludes:

Therefore the Act has probably not relaxed the previous requirements a great deal, if at all, although the burden of proof has changed. Under the old law the plaintiff had to prove malice, but under the new law the defendant must prove the opinion was genuine.

[12] Bearing in mind the concession that some of the defendant's statements or opinions are capable of a defamatory meaning and bearing in mind what I have said about the defence of honest opinion and indeed truth and taking the statement of claim on face value, it is very hard, particularly in the context of a defamation case, for me at this stage to say the plaintiff's substantive claim is prima facie unmeritorious, or that the defendant has a complete defence, and I do not so hold.

[13] In any event would the denial of security in the circumstances of this litigation be oppressive to the reasonable interests of the defendant? While the impecuniosity of the plaintiff was not caused by the defendant, I acknowledge that an impecunious plaintiff holds in effect a strong club in one hand due to the prospect

of a defendant perhaps successfully defending the claim but incurring substantial legal costs.

[14] I am satisfied that an order for security would deprive the plaintiff of his ability to advance a prima facie meritorious claim. There has been no evidence of delay in making this application. I have already said that both parties seemed to be carrying baggage against each other but I do not consider that the conduct of either party should disqualify either of them in consideration of a just result.

[15] Standing back and considering all relevant considerations, I am of the view that the defendant has not made out a sufficient case for an order for security for costs and the application is therefore declined. As the plaintiff is a litigant in person I make no order for costs other than any actual disbursements which have been incurred and are approved by the Registrar.

A handwritten signature in black ink, appearing to read 'Nicola Mathers', with a long horizontal flourish extending to the right.

Nicola Mathers
District Court Judge