

IN THE SUPREME COURT OF NEW ZEALAND

SC 117/2013  
[2013] NZSC 155

BETWEEN                      FRANCIS THOMAS DOOLEY  
   Applicant  
  
AND                              RAYMOND BRUCE SMITH  
   First Respondent  
  
   MOHAMMED SHAHADAT  
   Second Respondent

Court:                      McGrath, William Young and Glazebrook JJ  
  
Counsel:                      J G Miles QC and R K P Stewart for the Applicant  
   P A McKnight and A J Romanos for the First Respondent  
  
Judgment:                      20 December 2013

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**JUDGMENT OF THE COURT**

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- A    The application for leave to appeal is dismissed.**
- B    Costs of \$2,500 plus usual disbursements (to be set by the Registrar if necessary) are awarded to the first respondent.**
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**REASONS**

**Introduction**

[1]    This application concerns comments made about Mr Dooley by Mr Smith to a reporter at the Greymouth Star. The comments were published in an article in the Greymouth Star. That article was later replicated in the Westport News.

[2] In the High Court, Lang J held that the statements were defamatory.<sup>1</sup> The Court of Appeal allowed Mr Smith's appeal.<sup>2</sup> It held that none of the words in question carried a defamatory meaning.<sup>3</sup> It also held that the defence of truth would have been available, had the words been defamatory.<sup>4</sup> Further, any available defence of qualified privilege would not have been rebutted by s 19 of the Act.<sup>5</sup> The Court also held that Lang J erred in considering that a declaration under s 24 of the Act followed a finding of defamation as a matter of course. The Court said that the Judge should have declined relief considering the length of time that had elapsed.<sup>6</sup>

### **Grounds**

[3] Mr Dooley seeks leave to appeal against the decision of the Court of Appeal. Among other things, he submits that the Court of Appeal was wrong to find that the statements made by Mr Smith did not bear the meanings pleaded. Mr Dooley further submits that the Court of Appeal was wrong to find that the defence of truth was available to Mr Smith, that it should have held the defence of qualified privilege was not available and that it was wrong on the question of relief and costs.

### **Discussion**

[4] The differences between the decision of the High Court and the Court of Appeal essentially relate to matters of fact. To the extent that there are legal issues raised by the applicant, these are very much related to, and dependent on, the particular circumstances of this case. As such, the proposed appeal raises no issue of general or public importance. Nor is there any appearance of a substantial miscarriage of justice.

[5] The application for leave to appeal is dismissed with costs.

Solicitors:  
Izard Weston Lawyers for applicant  
Langford Law for first respondent

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<sup>1</sup> *Dooley v Smith* [2012] NZHC 529.

<sup>2</sup> *Smith v Dooley* [2013] NZCA 428. The circumstances leading to Mr Smith's comments being made are set out in the Court of Appeal judgment from [9]–[35].

<sup>3</sup> At [38]–[55].

<sup>4</sup> At [61]–[68].

<sup>5</sup> At [78]–[82].

<sup>6</sup> At [104].