

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

**CIV-2013-404-2890  
[2013] NZHC 2753**

BETWEEN GRACE HADEN  
Appellant

AND NEIL EDWARD WELLS  
First Respondent

WINIFRED NORIEN HOADLEY  
Second Respondent

GRAEME JOHN COUTTS  
Third Respondent

Hearing: 4 September 2013

Appearances: Appellant, Ms Haden, in person  
DJ Neutze and B Atkins for Respondents

Judgment: 22 October 2013

---

**JUDGMENT OF BREWER J**

---

*This judgment was delivered by me on 22 October 2013 at 12 noon  
pursuant to Rule 11.5 High Court Rules.*

*Registrar/Deputy Registrar*

Solicitors: Appellant in person  
Brookfields (Auckland) for Respondents

## Introduction

[1] Ms Haden appeals the decision of Judge BA Gibson in the District Court at Auckland delivered on 10 May 2013.<sup>1</sup> This is the latest decision in a long-running battle between Ms Haden and the respondents, but particularly Mr Wells.

[2] The trouble between Ms Haden and Mr Wells began when the two fell out over their involvement in a community organisation. This led Ms Haden to investigate Mr Wells's role in a trust called Animal Welfare Institute of New Zealand (AWINZ). Ms Haden formed strong views on the propriety of Mr Wells's role and launched a sustained attack against him.

[3] Mr Wells and AWINZ sued Ms Haden in the District Court in 2006, alleging breach of the Fair Trading Act, passing off and defamation.

[4] On 19 July 2007, Judge M-E Sharp in the District Court at Auckland struck out Ms Haden's defence for failure to comply with an *unless* order. That order related to the payment of costs on a failed counterclaim brought by Ms Haden. Thereafter, Judge Joyce QC heard formal proof on the claims against Ms Haden. By that time, all claims other than the claim by Mr Wells that he had been defamed had been withdrawn. Formal proof was partly effected by Mr Wells verifying the statement of claim on oath. He also filed an affidavit and was cross-examined. Judge Joyce gave Ms Haden more latitude than would normally be given in a formal proof situation. Effectively, she was able to present her defence. In a reserved judgment, Judge Joyce found the allegation of defamation proved and awarded damages.<sup>2</sup>

[5] Since then the following Court action has occurred:

- (a) On 26 August 2008, Ms Haden filed a notice of appeal from Judge Joyce's judgment and sought leave to appeal out of time the *unless* order, which had struck out her statement of defence. On 4 December

---

<sup>1</sup> *Haden v Wells* DC Auckland CIV-2012-004-696, 10 May 2013.

<sup>2</sup> *Wells & Ors v Haden & Ors* DC Auckland CIV-2006-004-1784, 30 July 2008.

2008, John Hansen J declined leave to appeal.<sup>3</sup> The substantive appeal was dismissed by Rodney Hansen J on 20 November 2009.<sup>4</sup>

- (b) Ms Haden then sought leave to appeal to the Court of Appeal. The application was declined by Rodney Hansen J on 23 June 2010.<sup>5</sup>
- (c) Ms Haden then applied for special leave to appeal to the Court of Appeal. The application was declined on 6 December 2010.<sup>6</sup>
- (d) Prior to the release of the Court of Appeal's judgment, Ms Haden applied for judicial review of the *unless* order and Judge Joyce QC's judgment. Allan J struck out the entirety of the review application on 25 November 2010.<sup>7</sup>
- (e) Ms Haden then attempted to file a further "review pursuant to section 4 Judicature Amendment Act 1972" and sought a "stay of enforcement due to new evidence" in the High Court at Auckland. The Registrar refused to accept the documents for filing. On 1 February 2012, Rodney Hansen J dismissed an application to review the Registrar's decision.<sup>8</sup>
- (f) On 4 April 2012, Ms Haden filed fresh proceedings in the District Court, which included an application to stay and/or suspend Judge Joyce QC's judgment. On 24 April 2012, Judge FWM McElrea dismissed the application to stay and/or suspend the judgment.<sup>9</sup>

[6] This brings me to the present proceeding. On 4 April 2012, Ms Haden also filed a notice of claim in the District Court alleging:

[The respondents] misled the court in their claims and withheld vital evidence. The statement of claim had been filed without supporting

---

<sup>3</sup> *Haden v Wells* HC Auckland CIV-2008-404-5500, 4 December 2008.

<sup>4</sup> *Haden v Wells* HC Auckland CIV-2008-404-5500, 20 November 2009.

<sup>5</sup> *Haden v Wells* HC Auckland CIV-2008-404-5500, 23 June 2010.

<sup>6</sup> *Haden v Wells* [2010] NZCA 591.

<sup>7</sup> *Haden v Wells* HC Auckland CIV-2010-404-2050, 25 November 2010.

<sup>8</sup> *Haden v Wells* [2012] NZHC 31.

<sup>9</sup> *Wells v Haden* DC Auckland CIV-2006-004-1784, 24 April 2012.

affidavits and the court was misled as to discovery. Evidence produced by the defendants in 2011 proved that they had no standing and that their claim was meritless. The interlocutory hearings that resulted from the false claim struck out the plaintiff's defence of truth and honest opinion on a defamation matter. The first defendant swore the statement of claim as being true and committed perjury.

[7] Ms Haden sought:

I want the defendant to withdraw all liquidation and bankruptcy proceedings forthwith to pay compensation for my actual losses and pay damages. I am asking for the following amount of money from the defendant: \$200,000.

[8] The respondents applied to strike out the claim. Judge Gibson did so. My task is to decide Ms Haden's appeal of that decision.

### **The District Court decision**

[9] Ms Haden has found documents which she submits establish at least a prima facie case for perjury and deceit. Her submission is that where perjury or fraud are present and were operative in a party obtaining judgment in their favour, the judgment will be set aside by the Court in which it was obtained. This is necessary to preserve the integrity of the Court against an abuse of its process.

[10] Judge Gibson agreed that, although a creature of statute, the District Court has the power to vitiate a decision of one of its Judges if that decision was procured by fraud. It is a matter of the exercise of inherent power to uphold the integrity of its Court system.

[11] However, the District Court Judge found that in order to avoid strike out, Ms Haden had to show at least a prima facie case that operative fraud existed. This is a higher onus than applies normally in strike out actions, but fraud is a subset that requires greater assurance that the processes of the Court will not be used vexatiously.

[12] The principal evidence before the District Court Judge to support Ms Haden's case were her affidavits of 4 April 2012 and 23 August 2012. In them, Ms Haden repeated the allegations she made throughout the earlier proceedings to which I have referred. Essentially, they are that Mr Wells falsely and corruptly represented to the

Minister of Agriculture that there was in existence a Trust called the Animal Welfare Institute of New Zealand. In 1999 he applied for this non-existent body to become an approved organisation under the Animal Welfare Act 1999. The application was approved in December 2000. Thereafter, Mr Wells used the status of this non-existent organisation for his private and corrupt ends.

[13] Ms Haden's argument was that the documents she now has give such cogency to her allegations that she should be permitted to proceed with her case.

[14] Judge Gibson held that Ms Haden's evidence did not go to the required extent. He determined that nothing in the new documents could assist Ms Haden. The causes of action which might have been relevant, namely breach of the Fair Trading Act and passing off, had been removed from the statement of claim before Judge Joyce's decision. What was left was Mr Wells's claim of defamation. The Trust was not a party to that claim. Further, Judge Joyce was aware of the issue about the date of formation of AWINZ as a Trust and did not consider it relevant. Judge Joyce was of the view that even if Ms Haden's statement of defence had not been struck out, her defences of truth and honest opinion could not have assisted her in light of the remarks which she had made. In any event, Judge Gibson pointed out, Judge Joyce was concerned with formal proof and quantum even though he allowed Ms Haden to present her case.

[15] The District Court Judge did not accept that the new documents could give foundation to Ms Haden's submissions. In the District Court Judge's view, the proceeding brought by Ms Haden was nothing more than a collateral and vexatious attack on Judge Joyce's decision.

### **Ms Haden's submissions on appeal**

[16] Ms Haden's overarching submission is that the District Court Judge got everything wrong. He was wrong in his appraisal of the new evidence. He was wrong to say that Ms Haden might with diligence have found her most significant new document (an audit report) through the discovery process. He was wrong to hold that even if the allegation of fraud could be established, it would have had no effect on outcome.

[17] Ms Haden's submission is that her statement of defence in the Joyce case was struck out only because the Trust was suing her. Her defence of the Trust's claims led her into a defaulting position on orders of the Court. If the Trust did not have standing then those collateral and costly arguments would not have been made. As a result, her statement of defence would have stood and the case would have been argued on its merits.

[18] Ms Haden submits that Mr Wells simply used legal tactics to force her out of the case. With her defences gone, she could not put before Judge Joyce the information needed to back up her defences of truth and honest opinion. Judge Joyce allowed the veracity of the statement of claim to be established by Mr Wells simply swearing that it was true. Thereafter, the Judge uncritically accepted it as being true. Ms Haden's submission is that if Judge Joyce had been aware of the pattern of behaviour of Mr Wells in the years preceding the Court case then Judge Joyce would have refused to enter formal proof and would have required the contested case to proceed.

[19] Ms Haden's case is that Mr Wells was able to succeed only by fraud. He deliberately deceived the District Court and thereby procured judgment against her.

[20] Judge Gibson was wrong to take the case as decided by Judge Joyce at face value. He should have looked further back in time to the actions of the respondents which, in Ms Haden's submission, caused her defence to be struck out in the first place.

### **The respondents' submissions**

[21] The respondents submit that none of Ms Haden's submissions can stand analysis. They say that even if all of Ms Haden's submissions were taken as being correct, it would not assist her. That is because the standing of the Trust was relevant only to the causes of action which were withdrawn before Judge Joyce gave his decision. What Judge Joyce had was a number of highly defamatory statements made by Ms Haden against Mr Wells. Whether or not Mr Wells was honest in his assertions as to the formation and operation of the Trust is irrelevant to the defamation issue.

[22] However, of course, the respondents submit that neither Judge Joyce nor Judge Gibson erred. Judge Joyce gave the appellant, Ms Haden, every opportunity to put her case. He rejected her allegations.

[23] Judge Gibson, in order to decide the strike out application, had to look at Judge Joyce's decision and compare it to the new evidence to find if the latter might have been able to influence the former. It is true that Judge Gibson might have misunderstood when the audit report became available, but that is of no moment given the issues.

### **Discussion**

[24] An appeal from the civil jurisdiction of the District Court proceeds by way of rehearing. However, a strike out is the exercise of a discretion. Accordingly, while I must consider the issues myself, I will not interfere with the decision of the District Court Judge unless I find that he has fallen into material error.

[25] I agree with Judge Gibson that a judgment obtained by fraud in the District Court can be vitiated by that Court. The District Court has an inherent power to prevent its process from being abused. If a judgment is obtained by fraud then that is an abuse of process. If operative fraud is proven then a judgment obtained thereby should be set aside as a nullity.

[26] I agree with Judge Gibson also that where such fraud is alleged, a strike out application is not evaluated in the usual way. It does not proceed on the assumption that the facts pleaded by the plaintiff are true:<sup>10</sup>

[32] The rationale for allowing a fraud exception to finality is that it is right that a party who can show that his or her ability to mount an effective case was compromised by the fraudulent conduct of the other party, should not be bound by a judgment which was thereby obtained.

[33] While this rationale exceptionally warrants permitting an unsuccessful litigant to bring a proceeding seeking to reopen a judgment in concluded litigation on the ground it was procured by fraud, it also provides for pre-trial scrutiny of such claims to protect against abuse of that process. So where a defendant in a proceeding involving the fraud exception applies

---

<sup>10</sup> *Commissioner of Inland Revenue v Redcliffe Forestry Venture Ltd et al* [2012] NZSC 94, [2013] 1 NZLR 804 per McGrath J.

to strike it out, the plaintiff is required to discharge the onus of showing it has a case with an evidential foundation amounting to a prima facie case of fraud. The plaintiff's claim of fraud must be one that is fully and precisely pleaded and particularised and of sufficient apparent cogency that it should go to trial.

[27] Ms Haden's pleading was that the fraud or deceit lay in Mr Wells swearing on oath before Judge Joyce that the matters pleaded in the statement of claim were true, when he knew that matters relating to the formation and existence of AWINZ were not true.

[28] The new evidence that Ms Haden relies on to show she "has a case with an evidential foundation amounting to a prima facie case" is described in her affidavit of 4 April 2012 as annexures F, H, I, J, K and L4.<sup>11</sup>

[29] These exhibits are:

- (a) F: A number of documents apparently produced by Mr Wells following a complaint by Ms Haden to the Law Society.
- (b) H: Audit of the Animal Welfare Institute of New Zealand dated 20 July 2009 by the Ministry of Agriculture and Forestry (MAF) Assurance and Risk Strategy & Performance Group.
- (c) I: Letter by AWINZ to the Minister of Agriculture dated 7 October 2009.
- (d) J: Bankruptcy proceeding brought by Mr Wells against Ms Haden.
- (e) K: Liquidation proceedings brought by Mr Wells against Ms Haden's company, VeriSure Investigations Ltd.

---

<sup>11</sup> Affidavit of Grace Haden with regards to new evidence to support application s 289 rescinding order for fraud, District Courts Rules 1992 & 17.2.2 & 17.2.3 District Courts Rules 2009, obtaining a decision by fraud and deceit, miscarriage of justice, dated 4 April 2012, as stated in para 37 thereof.



(f) L4: Charities website filing by Mr Wells on 20 December 2011.<sup>12</sup>

[30] In her submissions to me, Ms Haden characterises the audit report (annexure H) as “the one document which unlocks and unravels the fraud/deceit”.<sup>13</sup> For her claim to succeed, this would have to be so. The other documents do not point to fraud.

[31] The audit report was produced by the Assurance and Risk Strategy & Performance Group of MAF. The impetus for the audit came from complaints by Ms Haden to the Minister of Agriculture.

[32] I have regard to the audit report not because it is admissible as evidence in its own right (it is not) but because in the context of a strike out application it is reasonable to consider its contents to see whether, if they could be proved, they would bear the weight for which Ms Haden contends.

[33] The audit report is not complimentary of AWINZ. The Executive Summary commences:<sup>14</sup>

MAF has undertaken regular audits of AWINZ since it became an approved organisation in 2000. These audits have focused on the performance and technical standards for inspectors and auxiliary officers and the delivery of animal welfare enforcement services by AWINZ’s linked organisation, AWW. The governance arrangements, management, and financial arrangements of AWINZ have not previously been included within the scope of any MAF audit.

...

The conclusion of our audit is that we found insufficient evidence to be able to give assurance that AWINZ is meeting the conditions of approval specified in s122 of the Act and the MAF document ‘Criteria for considering applications to be an approved organisation’ (“the MAF Criteria”).

A particular test of the appropriateness of accountability arrangements, financial arrangements and management is whether these arrangements are sufficient to be confident that any fraudulent activities, were they to occur, would be identified in a timely manner. Both internal and independent external scrutiny play a role in this. The current level of external scrutiny over the accountability arrangements, financial arrangements and

---

<sup>12</sup> I have not seen this exhibit which is described by Ms Haden at para 35 of her affidavit of 4 April 2012. It is not mentioned in her submissions to me dated 14 August 2013.

<sup>13</sup> Submissions for plaintiffs dated 14 August 2013, at para 39.

<sup>14</sup> Audit report, at page 8.

management of AWINZ is very limited and is not, in our opinion, sufficient to be able to give assurance that fraudulent activities, were they to occur, would be identified in a timely manner.

It was not the purpose of this audit to investigate whether fraudulent activities had occurred within AWINZ. However we note that from the information and records of AWINZ that we were able to review, we did not find evidence of any fraudulent activities.

[34] The body of the report bears out the passages quoted above. It paints a picture of well-meaning trustees carrying out functions without exercising proper governance and without having regard to their duties under the Trust Deed to do so. If the audit report is accurate, the conclusion that if fraud were to occur it would not be identified in a timely manner is a reasonable one. An example to illustrate, and exemplify, the audit's findings is as follows:<sup>15</sup>

We found that despite being set up in 2000, AWINZ did not hold any Trust Board meetings until June 2004. Since its inception (and at the time of the audit), AWINZ has held 4 Trust Board meetings. The Deed of Trust and Revocation required 24 meetings between the financial years of 2001/02 – 2007/08. There were no meetings for three of the 7 financial years of operation. We found that of the four Trust Board meetings held since 2000, three of the meeting minutes were not signed by the Chair and the one minute that was signed was for a meeting that did not have a quorum of Trustees.

[35] The report is also critical of Mr Wells for conflicts of interest:<sup>16</sup>

There is a conflict between Neil Wells' (sic) various roles in AWINZ:

- between his role as Trustee (supervisor) and Chief Executive Officer (manager)
- between his role in monitoring the performance of AWINZ's linked organisation (AWW), and his separate management responsibilities as an employee and Animal Welfare Manager in AWW
- between his AWINZ CEO role entering into contracts with, and directing the work of, contracted film monitors when those film monitors are also AWW employees and under his direct control as the Animal Welfare Manager at AWW

[36] Judge Gibson had to consider whether the audit report, when taken with the other matters raised by Ms Haden, provided an evidential foundation amounting to a

---

<sup>15</sup> Ibid, para 4.1.2 at page 14.

<sup>16</sup> Ibid, at page 20.

prima facie case of fraud.<sup>17</sup> I accept at the outset that the Judge was in error in saying that Ms Haden might have been able to obtain it by way of a non-party discovery order had she, in the proceeding determined by Judge Joyce, not failed to comply with the unless order. Self-evidently, the audit report was not prepared until the year after Judge Joyce delivered his decision.

[37] The audit report is crucial to Ms Haden's case because her allegations about the formation of AWINZ and the injustice resulting from her defence being struck out for failure to comply with the unless order had been made before and rejected. The leading (and authoritative) example is the decision of the Court of Appeal on Ms Haden's attempt in 2010 to gain leave to bring a second appeal.<sup>18</sup>

[38] Judge Gibson did not address directly the contents of the audit report. Instead, he upheld (as he was bound to do) the processes by which the case came originally to Judge Joyce and the process adopted by Judge Joyce:

[29] The allegations of fraud in the notice of claim are not particularised in the way required by the authorities already mentioned. It seems to me there is no prospect of the plaintiffs' claim succeeding. The fact that there may have been a difference of opinion as to who instigated the integration of dog and stock control services or that there may have been an inaccuracy in the date the trust was established does not lead to a conclusion that there was an attempt on the part of Mr Wells to either deliberately fabricate evidence or give false evidence to mislead the Court. In any event issues in relation to the actual date of incorporation were considered by Judge Joyce QC as, at para [242] of the judgment given on 30 July, 2008 he summarised the point by saying:

As regards an accurate identification of how far matters were along the requisite road for the establishment of a formally established and documented trust, his communications were distinctly presumptive.

[30] Even putting aside the issue of compliance with the 'unless' order and the debarring of the defendants, as they then were, from defending the claim the additional material would not have saved the plaintiff, Mrs Haden, in the defamation proceedings as is illustrated by the following extract from Judge Joyce QC's judgment:

[334] Had her defence pleading survived, not even 'honest opinion' could, on her case, have ever saved her. Necessarily putting aside matters of malice, and (as such) her repeated assertions of corruption, she had shown by her conduct and evidence that,

---

<sup>17</sup> *Haden v Wells*, above n 1, at [21].

<sup>18</sup> *Haden v Wells*, above n 6.

reckless of the consequences and ignoring the true facts, she has persistently published but counterfeit opinions dressed up in fashion designed to seek their acceptance as fact.

[39] It would have been helpful if Judge Gibson had addressed the “additional material”, and in particular the audit report, directly. It is, after all, the reason why Ms Haden was able to bring the proceeding which the Judge was being asked to strike out.

[40] Nevertheless, I do not find that Judge Gibson erred in his conclusion. If Ms Haden were able to prove the contents of the audit report they would not, even when considered with the submissions she had made previously, establish the foundation for a prima facie case of fraud. The audit report, as is apparent from the extracts I have quoted above, is critical of the governance of AWINZ, but that is a far cry from raising fraud. There is no finding, for example, that AWINZ was a sham in the sense that it was not doing the animal welfare work it was contracted to do. Indeed, as the first paragraph quoted at [33] makes explicit, MAF had regularly audited AWINZ’s performance, technical standards and delivery of services since it became an approved organisation in 2000. The auditors were not looking for fraud but noted that they found no evidence of it.

[41] That being so, the respondents’ application for strike out had to succeed. Ms Haden could not impeach the judgment of Judge Joyce by repeating or elaborating on her previous arguments. Those arguments had been decided against her conclusively in previous cases. Her new documents had to show fraud. In my view, Judge Gibson was right to conclude that they did not.

[42] For completeness, I agree with Judge Gibson that even if the new documents had been before Judge Joyce, and Ms Haden’s defence had not been struck out, the outcome would not have changed. The defamation action against Ms Haden did not turn on allegations that AWINZ was not in existence when Mr Wells said it was, or that the governance of AWINZ was muddled or incompetent. The following passage of Judge Joyce’s judgment encapsulates what was actually at issue:<sup>19</sup>

---

<sup>19</sup> *Wells & Ors v Haden & Ors*, above n 2, at [290].

The statement of claim, and in particular reference to what Mrs Haden had published in respect of Mr Wells and AWINZ, accurately asserted that such publications meant or were meant to imply that Mr Wells:

- Had created an illegitimate “sham trust”;
- Was not properly accounting for monies received by AWINZ or not using such monies for the charitable purposes of AWINZ;
- Was dishonest and had taken money intended for charitable purposes for himself;
- Had acted fraudulently and/or illegitimately and/or was involved in a “cover up”.

[43] Nothing in the new documents could have assisted Ms Haden with justifying her making these assertions.

### **Decision**

[44] The appeal is dismissed.

[45] The respondents are entitled to costs. They are to file and serve their memorandum as to costs by 15 November 2013. Ms Haden must file and serve her memorandum in reply by 29 November 2013.

---

Brewer J