IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2013-404-000002
CIV-2013-404-001717
[2013] NZHC 1134

UNDER	The Defamation Act 1992
BETWEEN	RAZDAN RAFIQ Plaintiff
AND	THE CHIEF EXECUTIVE OF THE MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT (FORMERLY THE CHIEF EXECUTIVE OF THE DEPARTMENT OF LABOUR) Defendant

Hearing: 13 May 2013

Appearances: Plaintiff in person
W N Fotherby for the Defendant

Judgment:

RESERVED JUDGMENT OF PRIESTLEY J

This judgment was delivered by me on Friday 17 May 2013 at 12.00 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date:……..

Counsel:
W N Fotherby, Crown Solicitor, Auckland Email: William.fotherby@meredithconnell.co.nz

Copy to:
The Plaintiff

[1] Two interlocutory matters are before me. The first is an application by the plaintiff for leave to bring defamation proceedings out of time. The second is an application by the defendant seeking security for costs.

[2] For some inexplicable reason the Registry opened a separate file for the plaintiff's leave application. An order is made to consolidate both files. The sole CIV number for this proceeding will be CIV-2013-404-000002.

[3] The essence of the plaintiff's claim, gleaned from his statement of claim, is that the defendant Ministry (which includes New Zealand Immigration Service) holds false and defamatory information about him on its relevant computer file in the Ministry's Application Management System (AMS). The statement of claim details the statements and information to which the plaintiff objects.

[4] Very similar, if not identical concerns have been raised by the plaintiff with the Privacy Commissioner and the Human Rights Review Tribunal. In a decision the Tribunal released on 8 April 2013[1] its Chair, a distinguished New Zealand jurist, R P G Haines QC, described the plaintiff's allegations and documents in that forum trenchantly. "Largely incoherent", "unparticularlised", "abusive", "offensive", "generalised and sweeping", "rambling", "disjointed", "jumbled", "unfocused", "disorganised", "barely coherent", were some of the adjectives deployed.

[5] A perusal of the plaintiff's documents filed in this proceeding reveals, in some areas, similar traits. However, access to justice and natural justice considerations require this Court to adjudicate this proceeding between the parties on its merits.[2]

[6] Mr Fotherby's submission is that, in terms of s 4(6A) of the Limitation Act 1950 (the relevant operative statute), well over two years have expired from the date of the accrual of the plaintiff's alleged cause of action. In terms of s 4(6B) leave should not be granted for a number of reasons. These include the "terrible behaviour" of the plaintiff in conducting closely related litigation; the generally

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1 *Rafiq v Chief Executive, Ministry of Business Innovation and Employment* [2013] NZHRRT 9.

2 There is no suggestion the Human Rights Review Tribunal did otherwise.

vexatious nature of the proceeding; the extreme and extravagant language which the plaintiff has on occasions deployed; and the fact that there is no cogent evidence suggesting that the defendant has ever published the alleged defamatory statements.[3]

[7] Mr Fotherby submits that if leave is granted, a condition should be attached under s 4(6B) requiring the plaintiff to pay security of costs. In its alternative application the defendant seeks payment of $15,000 as security for costs. The plaintiff has not applied for legal aid and apparently has no intention of doing so. Thus, argues Mr Fotherby, the defendant should not be exposed to an empty costs award in respect of a proceeding which is essentially hopeless.

[8] The plaintiff's submission is that he has been defamed and he is entitled to redress. The statement of claim seeks what he terms a "punitive award".

[9] A minute issued by Associate Judge Christiansen on 9 April 2013 in this proceeding refers, at [12], to a "discussion" between the plaintiff and the Bench in which the plaintiff indicates that he "might" seek the services of a lawyer and apply for legal aid. The plaintiff indicated to me, however, he would not be doing this.

[10] The plaintiff submitted trenchantly that, were I to refuse him leave, and indeed were some subsequent court to deny him what he sees as his clear entitlement to damages, he would appeal to the Court of Appeal, and if he were to fail in that forum, would seek leave to appeal to the Supreme Court. The plaintiff exhibits a fixed view that he is totally correct, that he is entitled to the legal redress he seeks, and that he will not tolerate any judicial officers standing in his way.

[11] I have a clear view about the two applications before me. This view is based partly on principle and partly on pragmatism.

[12] As to the plaintiff's application for leave to bring his proceeding out of time, I intend to grant leave. I do so for two reasons. First, the precise date on which the plaintiff had personal knowledge or awareness of the alleged defamatory statement has relevance. The defendant has filed evidence in that regard. The plaintiff, as yet,

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[3] Counsel advanced a number of additional cogent arguments which I do not itemise because they are more relevant to a strike out application.

has filed none. When I asked him when he first became aware of the defamatory statements he said March 2012. But when referred to documents which suggested an earlier date, he equivocated. The plaintiff should be given the opportunity of addressing the date and limitation issues on oath if he so chooses. The date is clearly contestable.

[13] My second reason is that the frequently vexed question of granting the indulgence of leave to bring a proceeding out of time is best examined in tandem with a hearing of the substantive claim and an assessment of its merits.

[14] As to the defendant's application for security of costs, my view is the $15,000 sum sought is excessive, having regard to what is known of the plaintiff's financial situation. It is important to ensure that courts do not fix a security figure which (as Mr Fotherby candidly admitted) might have the effect of staying the substantive proceeding forever.

[15] Rather than having this proceeding bouncing around the judicial hierarchy on appeals from interlocutory judgments, the best way of dealing with the merits of the plaintiff's claim is to ascertain whether it would survive a strike out application. Mr Fotherby submitted this would be the next step.

[16] It is, however, appropriate for this Court to order security from the plaintiff sufficient to meet an award of costs in the defendant's favour should it succeed on a future strike out application. The sum I intend to award, calculated on the basis of a half day strike out hearing on the 2B scale, is $6,368.[4]

[17] There is no prejudice to the defendant in this approach. The interests of justice are better served by closer judicial scrutiny of whether the plaintiff's claim has any prospect of success rather than sustained warfare over threshold interlocutory matters which leave the merits or hopelessness of the plaintiff's claim unaddressed.

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[4] This sum is calculated in terms of a litigant's entitlement on the 2B scale to unsuccessful opposition to a strike out application. 3.2 days at $1,990 per day is the costs entitlement.

[18] Limitation issues can be re-canvassed in the context of a strike out application. The order I have made in respect of security for costs is without prejudice to the defendant's right to seek further security should a strike out application fail.

Result

[19] The plaintiff is given leave, pursuant to s 4(6A) of the Limitation Act 1950, to bring his substantive claim out of time.

[20] The plaintiff is ordered to pay the sum of $6,368 to the Registrar of this Court within 20 working days as security for the defendant's costs.

Additional comment

[21] The plaintiff has filed a number of documents (and has entered into correspondence with the Registrar) which are insulting and certainly in contempt.

[22] He claims he does not want a "European" Judge determining his claim because such Judges are racist. He also sent an email to the case officer on 1 May 2013 with the subject "Your dismissal from the case", telling the case officer that "Europeans like you are not permitted in my case" and purporting to dismiss him. A memorandum was attached. The case officer in question is a Filipino.

[23] It will be a matter for other Judges, and dependent, of course, on the plaintiff's behaviour, but repetition of scurrilous allegations against judicial officers and attacks on the integrity of this Court will not be tolerated. The plaintiff needs to exercise care and restraint in this area. He has been warned.

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Priestley J