

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

**CIV-2013-404-004475
[2013] NZHC 2731**

UNDER the Defamation Act 1992

IN THE MATTER of an application for review of the registrar's decision

BETWEEN RAZDAN RAFIQ
Intending Plaintiff

AND THE CHIEF EXECUTIVE OF THE
MINISTRY OF BUSINESS,
INNOVATION AND EMPLOYMENT-
IMMIGRATION NZ & DEPARTMENT
OF LABOUR
Intending Defendant

Hearing: (On the papers)

Judgment: 18 October 2013

JUDGMENT OF VENNING J

This judgment was delivered by me on 18 October 2013 at 5.00 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Copy to: The Plaintiff
The Ministry of Business, Innovation & Employment, Auckland

[1] The Registrar has referred this application for review of the Registrar's decision to me as List Judge.

[2] Mr Rafiq purported to file a statement of claim dated 16 September 2013 alleging defamation against the Chief Executive of the Ministry of Business, Innovation and Employment (the proposed proceedings).

[3] In the proposed proceedings Mr Rafiq seeks a declaration and damages in the sum of \$3 million. He also intends to file an accompanying application for summary judgment of his claim.

[4] Given there are existing proceedings before the Court in which Mr Rafiq sues the Chief Executive of the Ministry of Business Innovation and Employment in defamation the Registrar was not prepared to accept the proposed proceedings without referring them to a Judge.

[5] I have reviewed the proposed proceedings and also the existing proceedings before this Court CIV-2013-404-000002 (the existing proceedings).

[6] On 17 May 2013 Priestley J made an order in the existing proceedings granting leave to Mr Rafiq to bring his substantive claim out of time but also directing him to pay \$6,368 to the Registrar of this Court within 20 working days (by 17 June) as security for the defendant's costs.

[7] Mr Rafiq failed to pay security. On 12 August 2013 I directed that the existing proceedings be stayed pending payment of the security ordered by Priestley J. In addition I directed the Registrar was not to accept any more documents from the plaintiff on the file until security was paid. Leave was also reserved to the defendant to file an application to have the plaintiff's proceedings dismissed for failure to pay security.

[8] In the meantime Mr Rafiq had filed an appeal with the Court of Appeal from Priestley J's decision. He applied for fee waiver. That was declined by the Registrar of that Court. In a judgment delivered on 20 June 2013 Stevens J of the Court of

Appeal confirmed the Registrar's decision to decline to waive the payment of the filing fee.

[9] The position at present therefore is that the existing order of Priestley J requiring security in the defamation proceedings and the order of this Court staying Mr Rafiq's defamation proceedings remain in full force and effect.

[10] I have reviewed the allegations in the proposed proceedings and compared them with the allegations in the existing proceedings. While the allegations refer to different examples of alleged defamatory statements by the defendant they are based on Mr Rafiq's review of his file with the intended defendant, and arise out of his dealing with the defendant, just as the allegations in the existing proceedings do. To the extent there is any merit in the allegations in the proposed proceeding they could and should have been raised in the existing proceedings.

[11] If two actions are commenced with the second asking for relief which could have been obtained in the first, the second is prima facie vexatious and an abuse of process. It will be stayed or struck out.¹ The proper action where the first set of proceedings are stayed, particularly for the reasons given in this case, is to apply to have the stay lifted. In this case the stay could be lifted by payment of the security. Mr Rafiq could then file an amended statement of claim in the existing proceedings to include the further allegations. It is apparent that Mr Rafiq proposes to pursue the proposed proceedings to avoid and overcome the previous order of this Court staying the existing proceedings until he pays security for costs. To allow that would be to allow an abuse of process.

[12] For those reasons I confirm the Registrar's decision not to accept these proceedings for filing. They are to be returned to Mr Rafiq.

Venning J

¹ *Otis Elevator Co Ltd v Linnel Builders Ltd* (1991) 5 PRNZ 72 (HC); *Earl Poulett v Viscount Hill* [1893] 1 Ch 277; *Williams v Hunt* [1905] 1 KB 512; and *Buckland v Palmer* [1984] 3 All ER 554.