

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

**CIV 2007-485-2212
[2014] NZHC 1090**

BETWEEN ROBERT ALEXANDER MOODIE
 Plaintiff

AND ELIZABETH GRACE STRACHAN
 Defendant

Hearing: 19 May 2014

Counsel: R A Moodie appearing in person
 J Upton QC for the Defendant

Judgment: 21 May 2014

JUDGMENT OF MALLON J

[1] This proceeding is a defamation claim arising out of an article written by Ms Black and published in the *New Zealand Listener* (the *Listener*) on 17 March 2007. It has had a lengthy interlocutory phase. For that reason it is subject to case management by Collins J. It is important that the proceeding continues to be case managed in light of the delays resulting from the continued interlocutory applications.

[2] The matter before me is the plaintiff's application for an order striking out the defendant's defence and for judgment to be entered in his favour. The basis of that application is the failure to file particulars of the defences of honest opinion and truth despite orders made by me and then Dobson J in 2010. I am satisfied that the application cannot be granted on that basis. Those orders were overtaken by events. Specifically:

- (a) Those orders were informally stayed when the defendant applied for a stay and the parties agreed to that stay pending an appeal by the

defendant from a judgment of mine.¹ That appeal was deemed abandoned on 14 May 2014.

- (b) In the meantime one of the causes of action against the defendant (in respect of the defendant's responsibility for the statements in the *Listener*) was struck out because of a settlement reached with the defendant's joint tortfeasors.² That judgment was appealed by the plaintiff. That appeal was deemed abandoned on 5 September 2011 although the defendant was not informed of that by the Court of Appeal until around the middle of 2012.
- (c) On 12 June 2013 the Court refused an application by the plaintiff to add new causes of action and refused the defendant's strike out application in respect of the remaining cause of action against the defendant (for alleged defamatory statements made by the defendant to Ms Black).³ This judgment was appealed by the defendant. That appeal is to be heard on 28 July 2014.
- (d) On 29 July 2013 the plaintiff filed a sixth amended statement of claim. The defendant applied to strike out that claim. In a judgment given on 8 November 2013 the Judge struck out some paragraphs but not others.⁴
- (e) The seventh amended statement of claim was filed on 12 November 2013. On 30 January 2014 the plaintiff applied for judgment to be entered in his favour. On 20 February 2014 the defendant applied to strike out the seventh amended statement of claim.

[3] Although I am satisfied that the defendant has not defied the orders made in 2010 it is of concern that the plaintiff still does not have a particularised statement of defence to a claim that was first made against the defendant in 2007 (albeit that the

¹ *Moodie v Strachan* HC Wellington CIV-2007-485-2212, 21 May 2010.

² *Moodie v Strachan* HC Wellington CIV-2007-485-2212, 26 August 2010.

³ *Moodie v Strachan* [2013] NZHC 1394.

⁴ *Moodie v Strachan* [2013] NZHC 2951.

details of the claim have been amended over the ensuing years). The defendant says that she cannot file the particulars because the claim is defective even though it is onto its seventh iteration.

[4] For present purposes the relevant parts of the seventh amended statement of claim are as follows:

- (a) Paragraph 4: Mr Ellis made statements to Ms Black which were defamatory (a number of statements are particularised which are generally to the effect that the plaintiff is dishonest and takes advantage of people).
- (b) Paragraph 5: Those statements meant and were intended to mean various pleaded things (essentially that the plaintiff is dishonest, exploitative and fraudulent).⁵
- (c) Paragraph 10: In the context of responding to Ms Black's prior interview with Mr Ellis, the defendant made defamatory statements to Ms Black about the plaintiff (a number of statements are particularised).
- (d) Paragraph 11: "In addition to their natural and ordinary meaning the underlined words in paragraph 10 published to Ms Black bear the following special meaning because of the false and defamatory statements the defendant knew Mr Ellis had previously published to Ms Black which are contained in paragraph 4 above and which the defendant was intending to, and did, add her voice to, endorse, and republish to Ms Black" (a number of defamatory meanings are pleaded with reference to each of the statements particularised in paragraph 10).

⁵ Paragraphs 6 to 9 concern background matters.

- (e) Paragraph 12: By reason of the publication by the defendant to Ms Black of the words in paragraph 10, the plaintiff's reputation has been severely and gravely damaged.
- (f) Para 13: At the time the defendant published the alleged defamatory words to Ms Black the defendant knew that Ms Black was a reporter for the *Listener*, that she would be publishing an article based on what Mr Ellis and the defendant had told her, and knew that as a journalist and features editor of a national publication "Ms Black's opinion and perception of the plaintiff was important."

[5] The plaintiff accepts that paragraph 5 should not be in the seventh amended statement of claim. He says that it was included in error and he intends to file an eighth amended statement of claim which removes this paragraph. He considers that his pleading is otherwise proper.

[6] The purpose of pleadings is to define the issues in advance of the case so that the parties are fairly informed of the case they have to meet and can take steps to deal with it.⁶ In my view the above pleading fairly informs the defendant of the case she is to meet.

[7] The defendant's objections to the pleading are that:

- (a) Paragraphs 4 and 5 are not in accordance with the directions of Kós J made in the judgment referred to at [2](d) above.
- (b) In so far as paragraphs 11(a),(f) and (g) are purportedly natural and ordinary meanings, the words are not capable of bearing the alleged meanings.

⁶ *McGechan on Procedure* (looseleaf ed, Thomson Brookers) at [HR5.26]; *Farrell v Secretary of State* [1980] 1 All ER 166 (HL); *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53 at [84]. See also *BNZ Investments Ltd v CIR* (2008) 23 NZTC 21,821 (HC) at [45] where Miller J noted that "[t]he temptation to insist upon excessively refined pleadings is to be resisted as unnecessary and wasteful of costs and Court time."

- (c) In so far as paragraphs 11(a), (f) and (g) are innuendo meanings the plaintiff gives no particulars in respect of the intrinsic facts Ms Black knew at the time of publication in order to interpret the words complained of in the way the plaintiff suggests.
- (d) Paragraph 13 is “scandalous and/or vexatious and/or frivolous and/or irrelevant and/or is likely to cause prejudice or delay and/or is an abuse of process and/or will otherwise hinder the just, expeditious and economical disposal of the proceeding” because they have no bearing on the claim and they serve only to attack the defendant’s motivations on speculative grounds.

[8] I do not agree that paragraph 4 is not in accordance with the directions of Kós J. At that time the pleading was that the defendant had republished Mr Ellis’ statements to Ms Black by saying to Ms Black “I understand Tony Ellis’ comment.” His Honour said that this could not refer to all of the then 28 statements of what Mr Ellis had said to Ms Black. He said it must involve a much narrower compass. In response to that direction the plaintiff has referred to nine particular statements made by Mr Ellis to Ms Black which are all statements about the plaintiff’s alleged dishonesty and exploitative conduct. As the plaintiff explains, he is pleading that in saying “I understand [Mr Ellis’] comment” the defendant has endorsed all of these nine statements. The defendant can respond to that pleading on that basis.

[9] As presently pleaded all of the particularised meanings in paragraph 11 are the alleged special meanings. That follows from “In addition to their natural and ordinary meaning the underlined words in paragraph 10 bear the following special meaning ...”. If the defendant considers any of the pleaded meanings are not capable of having those meanings she should so plead in her statement of defence. I consider that the alleged sting of the pleaded statements is sufficiently clear from the pleaded meanings to enable the defendant to respond to them.

[10] The defendant is correct that paragraph 11 does not plead what Ms Black knew when the defendant made her statements. However the intention of the pleading at this point is to say that the defendant knew what Mr Ellis said when she

made her statements and she intended by her words to endorse them. In so far as Ms Black's knowledge is concerned, it is apparent from the pleading at paragraph 4 that what Ms Black is alleged to have known are the comments Mr Ellis had made to her.

[11] The defendant is correct that the damages claim against the defendant must relate only to the plaintiff's reputation as a result of the statements made to Ms Black. The republication in the *Listener* is now irrelevant. (Comments have already been made by the Court in a separate proceeding involving the parties about the prospects of an award of the amount that is claimed for that limited publication.) To the extent that the defendant considers that the sub-paragraphs in 13 are irrelevant the defendant is able to say so in her pleading. I note that none of those matters are likely to be controversial or difficult to plead to even if they are irrelevant.

[12] In summary the defendant's objections to the pleading do not make it especially difficult for the defendant to plead to the claim. The essence of the claim is clear. When the defendant spoke to Ms Black she was endorsing what Mr Ellis said (the statements pleaded at paragraph 4) and adding her own comments (the statements at paragraph 10). The plaintiff relies on the natural and ordinary meaning (not particularised) of the words said by the defendant and the alleged special meanings as pleaded in paragraph 11. The defendant is fairly informed of what is alleged against her. Further refinement of the pleading may certainly be possible but it has long since reached the stage where further applications to strike out should be entertained.

[13] A defence must be filed within 25 working days of the date of this judgment. The defendant is not to plead to paragraph 5 which has been included in error and is struck out. If the defences of truth and honest opinion are pleaded in that defence, particulars of those defences must be given. A telephone conference is to be convened before Collins J, on a date approximately two weeks after the 25 working days has expired or at a time when Collins J directs, so that further timetable directions can be made.

[14] I consider that the plaintiff should have costs on a 2B basis. Although he has not succeeded in having the defence struck out, it has been necessary for him to bring the application in order to obtain a particularised statement of defence.

Mallon J