

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

**CIV-2013-404-005218
[2014] NZHC 3272**

BETWEEN

CAMERON JOHN SLATER
Appellant

AND

MATTHEW JOHN BLOMFIELD
Defendant

Hearing: On the papers

Judgment: 19 December 2014

JUDGMENT OF ASHER J

*This judgment was delivered by me on Friday, 19 December 2014 at 4.30pm pursuant to r 11.5 of
the High Court Rules.*

Registrar/Deputy Registrar

Solicitors/Counsel: J Miles QC, Auckland.

Copy to:
Appellant and Respondent.

[1] I refer to my minute of 5 November 2014. It is necessary to determine two issues:

- (a) Whether this proceeding should be transferred to this Court; and
- (b) The appropriate costs order on a hearing under s 68 of the Evidence Act 2006.

The transfer of proceedings

[2] Mr Blomfield issued these proceedings in the District Court. He asserts that at the time he filed the original statement of claim he did not realise what impact the allegedly defamatory stories would have on his life. He now says that the damages award that he will seek could well exceed \$200,000. He cites other Court decisions in support of this.¹

[3] He also asserts that the matters to be raised at trial involve novel and complicated questions which are more suited to the High Court. He points out that there has already been a hearing in the High Court not only in relation to an appeal against an interlocutory order, but in relation to s 68(2) of the Evidence Act application. The matter was of sufficient complexity for amicus curiae to be appointed. In oral submissions Mr Blomfield also raised in abstract the possibility that he might seek a jury trial.

[4] Mr Slater opposes the transfer. He argues that there is no special factor about the case warranting transfer. He points out that Mr Blomfield has chosen a particular jurisdiction and should stick to it. He is concerned about further costs.

[5] Under s 43(6) of the District Courts Act 1947 the High Court may transfer to that Court from the District Court "... if the High Court or Judge thereof thinks it desirable that the proceeding should be heard and determined in the High Court." It has been observed of the discretion in *Fuehrer v Thompson* that it is for the applicant to establish the desirability of the transfer:

Cushing v Peters HC Wellington CP257/93, 8 September 1993.
Fuehrer v Thompson [1981] 1 NZLR 699 at 701.

It involves a consideration of such matters as the amount of the claim, its nature and complexity, the type of issue raised by the pleadings, its public or other importance and such other considerations as relate to the proceedings and render it desirable that they be so heard. Once the Court is satisfied of the desirability of removal, the discretion becomes exercisable. Under that head other issues may arise relating more directly to the justice of the case in the particular circumstances. Factors such as delay in making the application, the stage the proceedings have reached, the prejudice, if any, occasioned to the party opposing the application and such other considerations as bear on the justice of the case are material to be considered. It is a matter of balancing such factors against the established desirability that the action be heard in the High Court and in that balance the power in s 43(6) to direct removal on terms is to be borne in mind. The imposition of terms and directions as to costs may in the particular case achieve justice.

[6] The applicant Mr Blomfield must therefore establish that the transfer is desirable. The advantages and disadvantages of a transfer will be weighed with reference to the nature of the case and the issues raised by the pleadings, and its public or other importance. If it is not desirable that there be a transfer, then that is an end to the matter. If it is desirable that there be a transfer, the Court should then weigh any factors relating to the particular procedural circumstances of the case and personal circumstances of the parties in particular the party opposing, in determining whether to allow the application. If an order is made, conditions can be imposed if the interests of justice require.

[7] A number of factors indicate that removal into the High Court is desirable:

(a) First, the proceeding has some complexity. The defences of honest opinion and truth are to be raised. It would seem it will involve the unravelling of some complicated commercial dealings between Mr Blomfield and the Hells Pizza chain. One of the defamatory meanings pleaded was that Mr Blomfield had been involved in a criminal conspiracy, and there were references to misuse of funds in a charity. A case of that complexity may be better suited to the High Court.

(b) Second, the procedural history of this case to date has been complex. Both parties have shown a propensity to take every available interlocutory point. There is no reason to believe that this pattern is likely to cease. At the hearing on 5 November 2014 there were four interlocutory issues that

had to be determined. There is an appeal pending. This is a factor which makes it more desirable for the case to be heard in the High Court.

- (c) Third, Mr Blomfield undoubtedly believes that the damage that he has suffered is considerable. It is not possible to evaluate that at this point. However, Mr Blomfield's self-assessment of considerable damages, and the serious nature of the alleged defamatory statements, indicates that a hearing in the High Court with its unlimited monetary jurisdiction may be more appropriate. I hasten to add, however, that this is not to be treated as any indication that Mr Blomfield would succeed in any significant claim for damages.
- (d) Fourth, in the High Court in a civil proceeding a plaintiff has the option of a jury trial. Under s 19A of the Judicature Act 1908 there is no such right in the District Court.
- (e) The case is of no singular public importance. The events in question were not public events and in relation to Mr Blomfield, the subject of the statements, do not relate to a public figure. However, the serious nature of the alleged defamatory statements show it for that reason to have some public significance and interest.

[8] A combination of these factors satisfies me that it is desirable to move this case to the High Court. The question then is whether there are any particular issues relating to the justice of the case that would make an order transferring the proceedings unfair.

[9] The proceeding at the moment is in a state of hiatus. Mr Blomfield has agreed to a stay, pending an appeal of the decision under s 68(2) of the Evidence Act 2006 by Mr Slater. In those circumstances, no delay to any party is caused by a transfer. There will be ample time to effect the transfer before the appeal is determined. Moreover, the application is by Mr Blomfield, the party that by definition as plaintiff usually has most to gain by proceeding quickly. Save for costs which I will deal with next, there is no disadvantage to Mr Slater in the transfer.

[10] Mr Slater should not be in any way disadvantaged by the making of such an order. As he points out, Mr Blomfield had the option of filing proceedings in the High Court at the outset and chose not to do so. The fiscal responsibility for this move must rest on him. Therefore it is a condition of the transfer that any reasonable disbursements that must be paid by Mr Slater in relation to the transfer must be reimbursed by Mr Blomfield. Should he fail to reimburse Mr Slater for any of those reasonable disbursements, then I would entertain an application for a stay or review of the transfer order.

Costs on the judgment of 4 September 2014

[11] On 4 September 2014 following a defended hearing of one day I allowed in part Mr Slater's appeal against the decision of the District Court that he was not a journalist. I held that he was prima facie entitled to invoke s 68(1) of the Evidence Act 2006 in relation to his sources other than those of a particular person, Mr Spring.

[12] Another aspect of the appeal was dismissed. However, Mr Blomfield succeeded in the other part of the hearing. He had applied under s 68(2) that s 68(1) should not apply to the particular disclosures he sought of Mr Slater's sources. I granted that application.

[13] Thus, both parties had a measure of success and failure. It could be said that the net outcome was in favour of Mr Blomfield, and that he was able to get access to the sources that he was seeking. However, the finding in favour of Mr Slater that he was a journalist was undoubtedly of importance to him, and probably took up more of the time at the hearing than the s 68(2) issue. Moreover, Mr Slater agreed to the s 68(1) application being heard in conjunction with the appeal. If he had not so agreed, there may have been two separate hearings, with him succeeding on the first and failing on the second with costs going each way.

[14] Mr Blomfield sought an uplift in costs for certain extra steps that had to be taken. He claimed there was significant additional preparation over what would normally be involved on an appeal for an interlocutory decision, including additional procedural steps and the provision of extensive additional evidence. I do not regard those features as out of the ordinary. I do, however, accept that there was delay by Mr

Slater in correctly filing the original appeal to this Court, and additional costs as a consequence.

[15] I do note that Mr Slater has not incurred legal expenses, being self-represented, while Mr Blomfield has.

[16] Given that each party was successful on a key issue, and that Mr Slater's conduct saved two separate hearings, but that he did cause delay by procedural errors, my conclusion is that a modest award of one-third of costs calculated on a 2B basis is the appropriate award of costs in Mr Blomfield's favour, together with disbursements as set out in his submission of \$325.

[17] In relation to costs on this hearing, Mr Blomfield succeeded on the application to transfer, but he chose to file in the District Court and should not get costs. In relation to the costs dispute, both sides had a measure of success. There will be no order of costs on the two applications determined by this decision.

Result

[18] The proceeding is transferred to the High Court. Mr Blomfield is to meet any reasonable costs or disbursements incurred by Mr Slater as a consequence of the transfer (not including extra costs arising from any High Court costs orders relating to any actual trial or preparation for that trial).

[19] Mr Slater is to pay to Mr Blomfield one-third of his costs on the s 68 proceedings calculated on a 2B basis, together with disbursements of \$325.

Asher J