IN THE DISTRICT COURT
AT AUCKLAND

CIV-2015-404-002882
[2017] NZDC 15914

BETWEEN	C G CRAIG Plaintiff/Respondent
AND	J STIEKEMA Defendant/Applicant

Hearing: 12 July 2017

Appearances: Mr A J Romanos for the Applicant
Mr J Marcetic for the Respondent

Judgment: 31 July 2017

DECISION OF JUDGE G M HARRISON

Background

[1] Mr Craig sues Ms Stiekema in defamation for damages totalling $240,000 plus costs. Both parties are now legally represented, this proceeding having commenced in the High Court while each was self-represented. The proceeding has been transferred to this Court by order of Associate Judge Bell on 29 March 2017, on Mr Craig's application, on the basis that the amount of damages claimed falls within the jurisdiction of this Court and that it would be inappropriate for the claim to be heard before a jury in the High Court. This Court does not hold jury trials in civil proceedings.

[2] Mr Craig, an accountant residing in Auckland, is a company director and was formerly the leader of the Conservative Party of New Zealand in the 2014 elections.

[3] One of Mr Craig's companies was Centurion Management Limited which employed Ms Stiekema, who also resides in Auckland, as a trust accounts manager.

[4] Ms Stiekema ceased her employment with Centurion in 2007 and filed a complaint against the company in the Employment Relations Authority. In a decision issued on 3 December 2007 the Authority awarded her $3,000 for unjustified disadvantage, and in a later decision of 13 March 2008 Ms Stiekema was awarded costs of $3,200.

[5] Mr Craig has been publicly involved in litigation, particularly involving defamation which have been widely reported throughout the news media in this country. I refer particularly to proceedings between Mr Craig and his former personal assistant, Ms Rachel MacGregor; a claim against him in defamation by Mr Jordan Williams in which a jury awarded the highest ever amount of damages in this country, although that award has been set aside and the decision is currently the subject of an appeal and cross-appeal; a claim in defamation by Mr Craig against Cameron Slater which was held over four weeks in May 2017 in the High Court before Toogood J on which the decision is presently reserved; and claims by Mr Craig against a Mr John Stringer, a former Conservative Party board member, for defamation which was settled although Mr Stringer has obtained leave to reopen the case; and a claim by Mr Stringer against Mr Craig for defamation, over publication of the same leaflet on which Mr Craig was sued by Messrs Williams and Slater. That is set down for a judicial settlement conference in the High Court in September of this year.

[6] In his amended statement of claim Mr Craig describes how he came under a public attack from the two bloggers, Messrs Stringer and Slater, and Mr Williams as a political activist. His counsel described the alleged defamatory statements in this proceeding as taking place following a multi-lateral attack on Mr Craig's reputation by the individuals I have referred to.

[7] The defamations alleged by Mr Craig in this proceeding all involved a communication by Ms Stiekema with Mr Stringer via "Facebook". These occurred in or about September 2015 and are pleaded in three separate causes of action.

The causes of action

[8] The first cause of action refers to the following which occurred on Facebook on 3 September 2015:

> **Jacky Stiekema** We support you John – you are one of the very few that stands up against him! Well done! I did it and it caused me lots of pain and I did not even manage to stop him with what he does!!!!!!
>
> 3 September at 18:48
>
> **John Stringer** Thank you Jacky, I really appreciate your email. What was your experience? (IM me privately if you prefer).
>
> 3 September at 18:53
>
> **John Stringer** I remember the Zacchaeus thing, and your suit. You were very brave.
>
> 3 September at 18:55
>
> **Jacky Stiekema** And I bet he never told you the full story?
>
> 3 September at 18:58
>
> **John Stringer** No, never did.
>
> 3 September at 19:02

[9] The second cause of action is based upon an email dated on or about 28 September 2015 allegedly transmitted by Ms Stiekema in the following terms:

> You are quite correct in your descriptions of Mr Craig's behaviour in dealing with people who oppose him in any way. His fraudulent activities chiefly rely on blackmail and other tactics are to discredit, isolate and threaten any opposition.

[10] The third cause of action refers to alleged publications to Mr Stringer before 18 September 2015 by Ms Stiekema as follows:

> (1) *The CP (Conservative Party) has been funded with stolen money, thousands and thousands every month.*
>
> (2) She was so badly bullied by Mr Craig "he bullied her to ill health".
>
> (3) She was so badly bullied by Mr Craig she "couldn't even drive past the castle for years".
>
> (4) The documents I have in my possession … evidence fraud … I consider this offending to be serious.

[11] In respect of the various alleged publications by Ms Stiekema Mr Craig claims that in their natural and ordinary meaning they defamed him as meaning that he was doing unethical or illegal things, that he had not been honest or told the truth, that he had committed fraud and blackmail, that he was corrupt, had stolen money, and was guilty of serious offending.

[12] Ms Stiekema has not yet filed a statement of defence, reserving her right to do so in which she indicates that she will raise various defences including the truth of the statements that she acknowledges making.

[13] Ms Stiekema has applied to strike out the claim in its entirety as an abuse of the process of the Court. The specific grounds of her application are that the statement of claim does not disclose a reasonable case of defamation, secondly that the allegations are frivolous and vexatious and thirdly that they are an abuse of the process of the Court. When legally represented an amended application was filed which essentially retained those grounds but added the possible application of the "Jameel principle", and seeks a further order striking out Mr Craig's pleaded meanings of his first cause of action.

The Jameel principle

[14] In *Jameel v Dow Jones and Co Inc* [2015] QB 946, the English Court of Appeal enunciated a new principle in relation to defamation proceedings to the effect that unless a plaintiff in a defamation suit could establish that there was a "real and substantial tort" the claim was at risk of being struck out as an abuse of process.

[15] The brief facts in that case were that the foreign claimant issued defamation proceedings in England against Dow Jones and Co Inc as the publisher of a US newspaper in respect of an article posted on an internet website in the USA which was available to subscribers in England. The claimant alleged that the article implied that he had been, or was suspected of having been, involved in funding Al Qaeda. The evidence was that only five subscribers had accessed the internet article and that consequently the claimant had in fact suffered no or minimal damage to his reputation.

[16] The Court struck out the claim as an abuse of process. It acknowledged the obligation of the Court in dealing with cases justly and keeping a proper balance between the right to freedom of expression and the protection of individual rights. The Court held that it was required to stop, as an abuse of process, defamation proceedings that were not serving the legitimate purpose of protecting the claimant's reputation which included compensating the claimant only if that reputation had been unlawfully damaged; the test was whether a "real and substantial tort" had been established. The Court held that the publication within the jurisdiction was minimal and did not amount to a real and substantial tort, that the damage to the claimant's reputation was insignificant and the facts did not justify the grant of an injunction prohibiting further publication. It concluded that it was disproportionate and an abuse of process for the claimant to proceed with his claim.

[17] In *Opai v Culpan* [2017] NZHC 1036, Katz J referred to the *Jameel* decision as follows:

> [16] The *Jameel* decision is widely recognised as one of the most important contemporary defamation decisions in the United Kingdom, and possibly the Commonwealth. … While there was a reasonable cause of action (because of the presumption of damage in defamation cases), the claim is nevertheless struck out as an abuse of process on the basis that the cost of the litigation would have been out of all proportion to whatever benefit or vindication might have been achieved.

[18] The Judge concluded that the *Jameel* principle applies in New Zealand. She said:

> [59] In my view Associate Judge Bell was correct to conclude that the *Jameel* principle applies in New Zealand. Permitting the Court to manage its own processes by reference to litigation proportionality, in rare and exceptional cases, is not an unjustifiable abrogation of a litigant's access to the Court. As in the United Kingdom, increased recognition of the importance of freedom of expression in recent years, combined with procedural reforms which have increasingly focused on concepts of litigation proportionality, weigh in favour of recognition of the *Jameel* principle in this jurisdiction.

And further:

> [62] Free speech concerns also underpin *Jameel*. Influenced by the enactment of the Human Rights Act 1998 (UK), the English Court of Appeal in *Jameel* recognised that allowing a trivial or pointless

defamation case to continue could constitute an impermissible interference with freedom of expression. Indeed, as the learned authors of *Gatley on Libel and Slander* observe:

> The question that lies at the heart of the *Jameel* jurisdiction is whether, if the Court were to allow the proceedings to continue, it would be sanctioning an interference with freedom of expression which was unnecessary for the protection of reputation, since it was plain that the claimant could not have suffered more than minimal damage to reputation ... On their face, such considerations are of course only relevant to defamation, but ... the *Jameel* principle has been considered in the context of other causes of action.

The same reasoning applies under NZBORA.

[19] This decision was followed shortly afterwards in *X v Attorney-General of New Zealand* [2017] NZHC 1136 where Simon France J said:

> [18] On an application for review of the Associate Judge's decision, Katz J addressed arguments focused on the different procedural rules applicable in New Zealand, and what was said to be a different human rights framework in New Zealand from that applying in the United Kingdom. Neither proposition persuaded Katz J that *Jameel* should not be applied here and I respectfully adopt her reasons. More generally I agree with the analysis that the doctrine is consistent with the way the rules of procedure have evolved in New Zealand. In particular, r 15.1(1)(d) of the High Court Rules 2016 expressly provides for the interlocutory stay or strike out of proceedings on abuse of process grounds.

The strike out application

[20] Leaving aside for the moment the *Jameel* principle which applies where a cause of action exists, generally speaking, an application to strike out is usually based on the pleadings alone and the assumption that the plaintiff can make out all of the factual allegations pleaded. It is inappropriate to strike out a claim summarily unless the Court can be certain that it cannot succeed. The case must be "so clearly or certainly bad" that it should be precluded from going forward: *Couch v Attorney-General* [2008] 3 NZLR 725.

[21] Despite the fact that the general approach is to consider the pleadings only on a strike out application, affidavit evidence will be admitted to show that an essential factual allegation is plainly wrong. In *Attorney-General v McVeagh* [1995] 1 NZLR 558, the Court of Appeal said at p 566:

> The Court is entitled to receive affidavit evidence on a striking-out application, and will do so in a proper case. It will not attempt to resolve genuinely disputed issues of fact and therefore will generally limit evidence to that which is undisputed. Normally it will not consider evidence inconsistent with the pleading, for a striking-out application is dealt with on the footing that the pleaded facts can be provided (authorities stated). But there may be a case where an essential factual allegation is so demonstrably contrary to indisputable fact that the matter ought not to be allowed to proceed further.

[22] That approach is appropriate to the second and third causes of action. To succeed on those Mr Craig must prove that Ms Stiekema was the maker or publisher of the alleged defamatory statements. If she did not make them then those claims must fail.

[23] Ms Stiekema has filed four affidavits in respect of the strike-out application. She has admitted making the statements set out in paragraph 22 of the amended statement of claim which support the first cause of action. She has steadfastly denied through all four affidavits that she has made any of the statements on which the second and third causes of action are based.

[24] Mr John Stringer has sworn two affidavits in support of the application. In his affidavit of 22 March 2017 he refers to the statements on which the second and third causes of action are based and in paragraph 5 of his affidavit he says:

> On request, I have checked through my electronic and physical records: emails, social media postings, letters and text messages. I confirm I do not have any record of the defendant making these statements to me.

[25] In his affidavit of 26 June 2017 Mr Craig refers to circumstantial evidence in an endeavour to support an inference of publication by Ms Stiekema although none of the instances he refers to establish that she made the statements upon which the second and third causes of action are based. One instance relied upon by Mr Craig was an email from Mr Stringer to members of the Conservative Party on 18 September 2015 in which he wrote:

> And as one of his staff said to me, "The CP was funded with stolen money, thousands and thousands every month".

[26] At paragraph 18 he said:

> I have checked with current and former members of my staff. The only staff member who claimed or admitted to have been communicating with Mr Stringer is Mrs Stiekema. On that basis, I believe that she made the statements pleaded in the second and third causes of action to Mr Stringer.

[27] In his affidavit of 10 July 2017 at paragraph 18B, Mr Stringer responds to this statement by Mr Craig as follows:

> In paragraph 18 Mr Craig claims to have checked with his current and former members of Centurion staff, and none of them purported to have spoken to me. This is not true as several have spoken directly to me about his conduct.

[28] Earlier, at paragraph 15, Mr Stringer again confirms that Mrs Stiekema did not make the statements in question about fraud.

[29] At paragraph 16 he said:

> I still have a record of correspondence from the source who *did* make the claims to me regarding fraud at Centurion. However this is a person with whom I am still corresponding in my ongoing proceedings against Mr Craig (HC Christchurch, CIV-2015-409-0575 and HC Auckland, CIV-2015-404-2524). I have correspondence with this person as late as 22 June 2017.

[30] He went on to explain how he wishes to keep the identity of this person confidential but agreed to make unredacted copies of the written material he had received from this person available to counsel and the Court on strict conditions. That opportunity was not taken up.

[31] Mr Craig's response, through counsel in submission, was that the allegedly conflicting evidence between Mr Craig and Ms Stiekema must be tested at trial for the issue to be resolved. I can see little point in him doing so. While admitting the statements on which the first cause of action is based were made by her, Ms Stiekema has steadfastly denied making the statements on which the second and third causes of action are based. She is supported in that by Mr Stringer who has produced compelling evidence that another person altogether is the author of those statements. I regard it as highly unlikely that any different conclusion would be reached at trial. I have serious misgivings that it would be appropriate to keep these proceedings alive, merely to provide an opportunity to test this evidence by cross-examination.

[32] I do not reach any final conclusion on this issue, however, and now turn to assess the applicability of the *Jameel* principle.

Does the application of *Jameel* warrant strike-out?

[33] The statements on which the first cause of action is based were made only to Mr Stringer. One other person responded to the Facebook page supporting the comment. Mr Stringer said that he had 200 friends but there were no other responses and indeed no evidence that any other of the friends had actually accessed the Facebook page. In these circumstances dissemination has been extremely limited and within the scope of dissemination in the *Jameel* case.

[34] In terms of effect upon his reputation, despite submissions from Mr Romanos that the words complained of were not defamatory, I accept for the purposes of this application that they could be, but I regard the effect they would have on Mr Craig's reputation as minimal. Ms Stiekema filed an affidavit producing approximately 600 press and other media reports relating to Mr Craig at the time the statements in question were made. I have already detailed the other litigation in which Mr Craig is involved and which has attracted significant media coverage. Mr Romanos described the effect of Ms Stiekema's statements as no more than "a drop in the ocean" which I accept as a fair description.

[35] Taking all of these matters into account and further the unlikelihood of Mr Craig establishing that Ms Stiekema made the statements upon which the second and third causes of action are based, in my view no serious tort has been established that would justify the claim proceeding to trial. The costs associated with a trial that would occupy of the order of five days, perhaps more, are simply not justified.

[36] The entire claim is therefore struck out pursuant to District Court Rule 15.1 pursuant to the *Jameel* principle, and particularly because of the extremely limited dissemination of the admitted statements and the unlikelihood that they would have any effect whatsoever on Mr Craig's reputation.

[37] Costs should follow the event. Any application in that regard from Ms Stiekema is to be filed within 10 days of receipt of this decision, with any response on behalf of Mr Craig within a further 10 days.

G M Harrison
District Court Judge