IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE

CIV-2015-409-000575
[2017] NZHC 3221

UNDER	the Defamation Act 1992
BETWEEN	COLIN GRAEME CRAIG Plaintiff
AND	JOHN CHARLES STRINGER Defendant

Hearing: 16 October 2017

Appearances: C G Craig (Plaintiff/Respondent) in person
J C Stringer (Defendant/Applicant) in person

Judgment: 19 December 2017

JUDGMENT OF ASSOCIATE JUDGE OSBORNE
[as to application for recall]

Introduction

[1] The plaintiff, Colin Craig, sued the defendant, John Stringer, in defamation. The claim was settled by the parties on 31 January 2017 with the Court giving judgment by consent.[1] In addition to recording orders made by consent, the Court recorded at the request of the parties three matters contained in their settlement agreement, including that Mr Stringer had "settled the litigation by payment of a confidential sum". The orders contained in the judgment were sealed on 3 February 2017.

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1 *Craig v Stringer* [2017] NZHC 50.

This application

[2] Mr Stringer applies for an order that "the judgment be recalled, set aside on the basis of fraud and that the proceeding be struck out". Alternatively, he seeks an order that the judgment be recalled and reworded.

[3] Mr Craig opposes both aspects of the application.

[4] In support of his application, Mr Stringer had asserted that confidential aspects of the parties' settlement had been breached by Mr Craig. In an amended application, Mr Stringer asserted, as an additional ground of application, that Mr Craig had deliberately falsified a document discovered in this proceeding.

[5] The parties filed affidavit evidence. Mr Craig denied a breach of confidentiality and the allegation of falsifying a document.

The consent judgment and the parties's settlement agreement

[6] The operative terms of the consent judgment were:[2]

> [2] I order by consent:
>
> (a) There is judgment for the plaintiff against the defendant in relation to the following publications alleging:
>
> (i) that the plaintiff sexually harassed Rachel MacGregor;
>
> (ii) that the plaintiff sexually harassed another woman or other women;
>
> (iii) that the plaintiff has been fraudulent in his business dealings; and
>
> (iv) that the plaintiff committed electoral fraud.
>
> (b) The plaintiff's claims are otherwise dismissed.
>
> …
>
> [4] There is no order as to costs and directions as to costs or disbursements previously made or reserved are rescinded.

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[2] *Craig v Stringer*, above n 1, at [2]–[4].

[7] The judgment also recorded some matters of agreement between the parties (albeit not as orders of the Court):

> [3] By their agreement the parties recorded that:
>
> (a) The defendant retracts in full his statements as to the matters set out at paragraph [2](a) above;
>
> (b) The defendant has apologised to the plaintiff; and
>
> (c) The defendant has settled the litigation by payment of a confidential sum.

[8] As the judgment indicated, the parties had recorded a settlement agreement. Save for the recording of three matters in the consent judgment, they did not file in the Court a copy of their agreement to make it part of the Court record. Nonetheless, it became necessary for them for the purposes of the present application to produce the settlement agreement in evidence. Both parties accepted that it needed thereby to become an open document.

[9] The parties' settlement agreement recorded:

> Colin & John agree that by consent there will be orders that Mr Stringer defamed Mr Craig in various publications by alleging:
>
> a Mr Craig sexually harassed Rachel MacGregor;
>
> b Mr Craig sexually harassed another or other women;
>
> c Mr Craig has been fraudulent in his business dealings;
>
> d Mr Craig committed electoral fraud.
>
> Mr Stringer retracts in full his statement about these matters, has apologised to Mr Craig and settled the matter by payment of a confidential sum.
>
> Colin & John also agree (financial agreement):
>
> (1) that Mr Stringer agrees subject to the following causes to pay as settlement for defamation the amount of $100,000 (One hundred thousand dollars).
>
> (2) It is agreed that Mr Stringer's net worth will be independently verified (Mr Craig to nominate and pay an independent Christchurch accountant to calculate this value).
>
> (3) Mr Craig agrees to write off any balance of the amount owed that exceeds Mr Stringer's net worth.

> (4) The amounts and all financial details are strictly confidential and if confidentiality is breached by Mr Stringer, then Mr Craig may restart his claim. If confidentiality is breached by Mr Craig, Mr Stringer is entitled to full repayment of any settlement made.
>
> Signed : Colin Craig, 30 January 2017
>
> Signed: John Stringer, 30 January 2017

Financial verification process

[10] Clause 2 of the settlement agreement provided a mechanism by which Mr Stringer's net worth was to be independently verified. Mr Stringer (under clause 1) was to pay $100,000 in settlement of the defamation claim but, for his part, Mr Craig by clause 3 agreed to write off any balance of that amount which exceeded Mr Stringer's net worth.

[11] It is common ground that the verification process established Mr Stringer's net worth as $nil with the consequence that Mr Craig's write-off agreement was activated. Thus, although Mr Stringer's agreement had been to pay $100,000, Mr Craig wrote off that amount by reason of clause 3 of the settlement agreement.

Issue 1: inaccuracy of judgment

Relief sought by Mr Stringer

[12] Mr Stringer asks the Court to recall the consent judgment of 31 January 2017 in order to re-word paragraph [3](c) of the judgment (as set out at [6] above). In particular, Mr Stringer asks that the words:

> The defendant has settled the litigation by payment of a confidential sum

be replaced by the words:

> The parties have concluded the terms of their settlement by mutual consent and no consideration has passed or will pass in consequence of the terms of the agreement.

[13] Mr Stringer described the verification process as having "superseded" the original wording of clause [3](c) of the judgment. He submits that clause [3](c) of the judgment is now a "misnomer" and wrong in fact.

Mr Craig's position

[14] Mr Craig, responsibly, did not submit that paragraph [3](c) of the judgment now accurately reflects the position between the parties (leaving to one side whether it ever did).

Discussion

[15] The record of agreement which the parties asked the Court to include in the terms of the consent judgment is, by its nature, informative rather than operative. It happens that the parties (and therefore the Court) did not accurately capture the detail of the arrangements by which Mr Stringer agreed to pay a sum of money and Mr Craig agreed to a write-off of part or all of that sum in a certain event.

[16] The subsequent verification process makes it appropriate that there now be a clarification through this judgment of both the detail of the parties' agreement and the outcome.

[17] The agreement between the parties was and remains as recorded at [9] above. The outcome was, as recorded at [11] above, that Mr Craig wrote off the entire sum of $100,000 which Mr Stringer had agreed to pay.

[18] A decision to recall a judgment involves the exercise of a discretion. Given that the consent judgment adopted the parties' incorrect description of the financial aspect of their settlement agreement, it is appropriate through recall of the judgment to correctly state the position.

[19] The Court's order below will correct the mis-statement in paragraph [3](c) of the consent judgment.

Issue 2: non-disclosure of a letter

The issue

[20] The consent judgment came about as a result of the parties' concluding a settlement agreement at a judicial settlement conference convened in this proceeding.

[21] The parties had been required to make discovery of relevant documents. It is common ground that correspondence between Mr Craig and Rachel MacGregor concerning any matters of relationship between them was relevant.

[22] In a verified list of documents dated 14 January 2017, Mr Craig discovered an item which was stated to be of "21/11/2011" and which was recorded to have been put by Mr Craig on a file. By implication, the file was Ms MacGregor's personal (employment) file. I will refer to it as "the file note".

[23] Mr Stringer received a copy of the file note by way of inspection. It is a 14-line, typed note. Under a heading "Things I am Doing", Mr Craig introduces six brief points with the following paragraph:

> Following on from the above here are the things that I am doing to ensure our relationship is constructive and appropriate. My own little action plan if you like (pretty much all as already discussed with you).

[24] The six points that followed were:

> 1. Texting only for work.
>
> 2. Limitation of time when we are alone i.e. not nights or weekends.
>
> 3. When I think of you I pray for you.
>
> 4. Giving you a massage/hug when you want one. In your words it's "comforting".
>
> 5. Encouraging you to seek God and be close to him. Making our relationship focus on good and holy things. Praying together.
>
> 6. Encouraging you to be a support and helper of my wife Helen. This is actually a lot to ask – I realize that. But again love is not self-seeking and if you help strengthen and build my marriage then you are doing good not evil. If/when you are married and if things don't

> change (i.e. you haven't moved away) I would likewise be a supporter and encourager of your marriage.

[25] This was the only form of that communication available to Mr Stringer when he took part (on 30 January 2017) in the settlement conference a little over two weeks after receipt of Mr Craig's discovered documents.

[26] Following the settlement conference, Mr Stringer became aware of a letter disclosed by Ms MacGregor in proceedings issued by Jordan Williams against Mr Craig.

[27] The letter is 12 pages long. It is headed "ABSOLUTELY PRIVATE AND CONFIDENTIAL" and dated on its first page, 7 February 2012. The letter begins with a greeting:

> Dear Rachel (LOL that sounds formal) Hi Rach

[28] It is, on any view of it, a most unusual document to have been written by an employer to his employee. It contains a number of headings to its subject-matter:

> What this letter will be
>
> Can I Just Say
>
> What I think for 2012
>
> Thoughts on being noble
>
> Thoughts on faith (ie really trust in God) – Rach and a husband
>
> A Heart to Worship
>
> Insider's Guide to the Good Man Part 1
>
> Break Time
>
> About the Job
>
> You and Me
>
> Things I am Doing
>
> The end

[29] The letter is generally typed in black. On the second page, Mr Craig explains that he has decided he will include some questions for Ms MacGregor in the letter ("voluntary of course") and for ease of reading he will put them in blue. Thereafter a number of questions appear in blue.

[30] On the 11th page of the letter, there is set out under the heading "Things I am Doing", a passage from which the file note discovered in this proceeding (set out at [23] – [24] above) was clearly drawn.

[31] The full text of this section, as it appears towards the end of the 12-page letter, is:

> Following on from the above here are the things that I am doing to ensure our relationship is constructive and appropriate. My own little action plan if you like (pretty much all as already discussed with you).
>
> 1. Texting only for work. Ouch this hurts – I like texting you. OK question – is it exciting to get texts from me or is it just blah? Why do I find texts from you exciting?
>
> 2. Limitation of time when we are alone i.e. not nights or weekends.
>
> 3. When I think of you (which is more often than I have admitted too! (sic)) I pray for you. If I love you, then I want the best for you, the best for you is God's plan.
>
> 4. Giving you a massage/hug when you want one (most work days LOL). My theory here is that it's better than going cold turkey with no Rach contact at all (Perish the thought ☹). In your words it's "comforting".
>
> 5. Encouraging you to seek God and be close to him. Making our relationship focus on good and holy things. Praying together.
>
> 6. Encouraging you to be a support and helper of my wife Helen. This is actually a lot to ask – I realize that. But again love is not self-seeking and if you help strengthen and build my marriage then you are doing good not evil. If/when you are married and if things don't change (i.e. you haven't moved away) I would likewise be a supporter and encourager of your marriage.

[32] Mr Stringer viewed the half-page file note (discovered in this proceeding) as a fabricated or falsified version of the 12-page letter (not so discovered). The vast majority of what Mr Craig had written to Ms MacGregor (comprising the earlier 10 pages and the last page) was not included in the file-note. Secondly, lines within the

file note portion were also excluded. Excluded portions indicate the prior existence of a degree of relationship, intimacy and physical contact which Mr Craig considers to be exciting and would like in some way to continue in a mutually "comforting" way.

The context of this litigation

[33] Mr Craig's defamation claims were based on statements made by Mr Stringer on a number of topics including allegations that:

- Mr Craig had sexually harassed Ms MacGregor and/or engaged in "abhorrent behaviour";
- Mr Craig had sexually harassed another woman or other women;
- Mr Craig had been fraudulent in his business dealings; and
- Mr Craig had committed electoral fraud.

(There were other statements in relation to which Mr Craig also sued Mr Stringer but Mr Craig, in the context of settlement, was prepared not to pursue those).

[34] Mr Stringer has represented himself in this proceeding. Mr Craig, after an initial period in which he was represented by counsel, has also represented himself. At the time of the judicial settlement conference, Mr Craig's (second amended) statement of claim stood at 384 paragraphs (95 pages). Mr Stringer had filed a fully particularised defence asserting truth and raising a number of affirmative defences including honest opinion. He pleaded truth to the statements both as to abhorrent behaviour and as to sexual harassment.

Relevance of the full 12-page letter

[35] At the settlement conference, Mr Stringer was constrained to evaluate the prospects of his establishing truth as a defence. He did not purport to have direct knowledge of most of the facts which lay behind his statements as to Mr Craig's

behaviour. At any trial, he would need to rely on, in addition to the evidence of others, documentary records including correspondence between relevant persons. For the purposes of cross-examination, documents reflecting the emotions of Mr Craig and Ms MacGregor and their behaviour to one another would clearly be relevant.

[36] The 12-page letter is one such document. The differences between the 12-page letter, the full version on the final page and the abbreviated file note which Mr Craig placed on Ms MacGregor's personal file were of themselves also capable of constituting valuable material for cross-examination.

[37] The parties, at a time when Mr Craig was represented by counsel, agreed that standard discovery was appropriate in this proceeding. It was ordered. Accordingly, under r 8.7 High Court Rules, Mr Craig was required to list (among other items) all documents which adversely affected his case or supported Mr Stringer's case.

[38] Mr Craig, in his affidavit in opposition, implicitly and appropriately recognised that the 12-page letter would have been discoverable had he retained possession of it. He explained that he had obtained, after the judicial settlement conference, a copy of the 12-page letter through a non-party discovery order made against Ms MacGregor in other proceedings. A non-party discovery order was also made against Ms MacGregor in this proceeding in relation to a number of categories of document but the documents discovered by Ms MacGregor in this proceeding did not include the 12-page letter. That may have been upon the basis it was not a document falling within the directed categories. Mr Craig deposes:

> If Ms MacGregor had discovered the letter to me before this case was ended, then I would have discovered it to Mr Stringer. However I did not have it at the time.

[39] Rule 8.16(1) High Court Rules requires a party to list not only the ordered classes of documents which remained in his possession but also those which formerly, but no longer, were in his possession. The original of the letter sent by the party to another person is therefore a document which is required to be listed (albeit under the category of documents no longer possessed). But it was not listed. The non-discovery of the document meant that Mr Stringer was deprived of the

opportunity to himself pursue (if necessary through his own non-party discovery application) production of the letter for the structuring of his defence and/or consideration in the context of the pending settlement conference.

The principles as to recall or setting aside of judgment

[40] The consent judgment was drawn up and sealed. It was accordingly not amenable to the recall jurisdiction under r 11.9 High Court Rules, as that provision provides:

> **11.9 Recalling judgment**
>
> A Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.

[41] The issues raised by Mr Stringer are also not amenable to the slip rule which permits the correction of a judgment which contains a clerical mistake or an error arising from an accidental slip or omission.[3] Rule 11.10 High Court Rules clearly has no application in this case – the orders and the matters expressed in particular in relation to Mr Stringer's allegations of sexual relationships were recorded precisely in the terms sought by the parties and reflected accurately the Court's intention in making the orders.

[42] Once the Registrar seals the formal record of a judgment which accurately reflects the Court's intention in giving judgment, there operates the principle of finality articulated by Wild CJ in *Horowhenua County v Nash (No 2)* when His Honour observed:[4]

> Generally speaking, a judgment once delivered must stand for better or worse subject, of course, to appeal. Were it otherwise there would be great inconvenience and uncertainty. There are, I think, three categories of cases in which a judgment not perfected may be recalled - first, where since the hearing there has been an amendment to a relevant statute or regulation or a new judicial decision of relevance and high authority; secondly, where counsel have failed to direct the Court's attention to a legislative provision or authoritative decision of plain relevance; and thirdly, where for some other very special reason justice requires that the judgment be recalled.

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3 Rule 11.10 High Court Rules.

4 *Horowhenua County v Nash (No 2)* [1968] NZLR 632 at [633] (decided, pursuant to the Court's inherent jurisdiction, before any rule existed to deal with recall).

The commentaries in both *McGechan on Procedure*[5] and *Sim's Court Practice*[6] capture the importance attached to the finality of a sealed (or "perfected") judgment.

[43] The Court of Appeal dealt with the subject in *Farquhar v Property Restoration Ltd*.[7] The Court recognised that the principle of finality was subject to exceptions. Hardie Boys J, delivering the judgment of the Court, stated:[8]

> It is clearly settled law that once a judgment is sealed it must stand, for better or worse, subject of course to any further rights of appeal. There are certain recognised exceptions: for example an accidental slip or omission may be rectified; a judgment may be set aside, usually by separate action, where it was obtained by fraud; a case may sometimes be reopened where fresh evidence not previously available has come to light; in some cases a judgment obtained by consent may be reopened; and in some circumstances a supplementary judgment may be given to cover a matter not previously dealt with.

[44] The brief discussion of the Court of Appeal in *Farquhar v Property Restoration Ltd* was part of a broader review of authority by Faire J in *Herron v Wallace*.[9] There, under a heading "Does the Court have jurisdiction to recall or rescind a perfected judgment?", his Honour extensively reviewed both case law and commentary in relation to the Court's inherent jurisdiction. His Honour then concluded:

> [33] From these cases, in my view, the principles may be extracted in the following way:
>
> (a) The starting point must be the finality of litigation which reflects the public interest in there being an end to litigation, and the private interests of the parties in not being subject to vexatious litigation; however
>
> (b) absolute finality of litigation is unsafe There are circumstances in which the Court may invoke its inherent jurisdiction. There are some established categories of exception to the finality of litigation:
>
> (i) a slip or omission may be rectified;
>
> (ii) a judgment may be set aside, usually by separate action, where it was obtained by fraud;

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5 A C Beck and others *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [HR11.9.01(7)].

6 Sophie Young (ed) *Sim's Court Practice* (online looseleaf ed, LexisNexis) at [HCR11.9.5].

7 *Farquhar v Property Restoration Ltd* CA 186/89, 27 May 1991.

8 At 5.

9 *Herron v Wallace* [2016] NZHC 2426 at [16] – [34].

(iii) a case may be reopened where fresh evidence not previously available has come to light which is material to the outcome of the case;

(iv) a judgment obtained by consent may be reopened; and

(v) a supplementary judgment may be given to cover a matter not previously dealt with.

Application of the principles

[45] The defining circumstance of this case is that the 12-page letter was not produced through discovery before the parties attended the judicial settlement conference and reached the terms of agreement to which effect was given through the consent judgment. While Mr Craig can be taken to have known at the time of the settlement conference what he had stated to Ms MacGregor through his 12-page letter, none of that information was available to Mr Stringer when the settlement conference took place.

[46] It is recognised that, in the majority of cases in the High Court, what the parties will require in a settlement conference is assistance in evaluating the merits of the dispute.[10] An intended purpose of settlement conferences is to enable the parties to identify the strength and weakness of their position on important issues. Their evaluation can then lead them to what is an appropriate conclusion to the dispute.

[47] The 12-page letter had particular relevance in that it contained material from which conclusions could be drawn as to the nature of the relationship between Mr Craig and Ms MacGregor. It contained material on which Mr Craig might be cross-examined at trial.

[48] This case falls within two of the categories recognised by Faire J at [33](b)(iii) – (iv) of the judgment in *Herron v Wallace,*[11] in that the judgment was obtained by consent and fresh evidence has become available to Mr Stringer which is material to the outcome of the case but was previously unknown to him.

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10 Practice Note 40 *High Court Guidelines on Judicial Settlement Conferences*, at 2.2.

11 *Heron v Wallace*, above 9, as set out at [44].

[49] I am satisfied that this is a case in which it would be inappropriate to apply the principle of finality of litigation. The parties had engaged in good faith through the settlement conference process to endeavour to settle the issues between them without resort to trial. Mr Stringer ought not to be held to account through the consent judgment to the extent that the consent judgment contains concessions on the part of Mr Stringer on matters of which he was not fully informed by reason of a failure of discovery.

[50] As the judgment will no longer contain judgment in relation to the publication alleging that Mr Craig sexually harassed Ms MacGregor, the terms of the judgment as to the dismissal of the plaintiff's claims (para [2](b) of the consent judgment) also require alteration to recognise that there is now no longer a conclusion in relation to that particular allegation. The order made below will reflect a saving in that regard. It will be for Mr Craig to decide whether to discontinue that single, remaining aspect of his claims so that this proceeding can be finally resolved as the parties intended. The Court will make case management directions in that regard in a separate Minute.

[51] This conclusion affects only the first aspect of the consent judgment at [2](a)(i), set out above at [6], whereby judgment was entered for Mr Craig in relation to the allegation that the plaintiff had sexually harassed Ms MacGregor. The information unavailable to Mr Stringer through the non-discovery of the 12-page letter would not have affected the evaluation made by the parties in relation to the other allegations which were the subject matter of the judgment. It would be inappropriate to rescind any aspect of the judgment other than that relating to the first-mentioned allegation.

Issue 3: evidence of sexual harassment of other women

The issue

[52] Mr Stringer had made publications alleging that Mr Craig had sexually harassed another woman or women (other than Ms MacGregor).

[53] As Mr Stringer has explained it in his evidence and submissions, the source of his allegations lay in a series of phone calls made in June 2016 by a solicitor to Cameron Slater. Mr Stringer's evidence is that Mr Slater drew an inference from the calls that there existed a "second woman" affected by conduct in the nature of sexual harassment on the part of Mr Craig. That remained Mr Stringer's understanding at the time of the settlement conference convened in this proceeding.

[54] Mr Stringer has subsequently learned that the solicitor in question had been instructed in the matter on which she telephoned Mr Slater by Mr Craig or possibly Mr and Mrs Craig.

[55] Mr Stringer appears to now accept that there was no "other woman" involved. As he put it in his written submissions:

> Mr Craig entered into the [Christchurch] settlement negotiations in January 2017 knowing there was no "second woman" as early as June 2016.

Discussion

[56] The issues which the parties were endeavouring to resolve at the settlement conference all flowed from whether Mr Stringer had defamed Mr Craig when making his various statements, including that Mr Craig had sexually harassed another woman or other women.

[57] Mr Stringer did not take issue with the fact he had made the statements. His evidence indicates that he now accepts that the statements flowed from an (incorrect) inference drawn by Mr Slater, on which he (Mr Stringer) relied.

[58] Mr Stringer's subsequent learning of more details of the correct background which lay behind the solicitor's telephone discussions with Mr Slater could never have cut across the determination of whether the (incorrect) allegations made by Mr Stringer at the time were defamatory.

[59] There is no basis upon which the Court could recall the judgment based on the further information Mr Stringer now has.

Costs

[60] Costs and disbursements would normally follow the event in favour of Mr Stringer. However, as he was self-represented, the only order will be as to his reasonable disbursements.

[61] The consent judgment will be recalled in order to delete from the scope of the judgment the publication at [2](a)(i) which refers to the alleged sexual harassment of Ms MacGregor.

Other issues

[62] The parties referred to a number of other matters in the course of their evidence and submissions.

[63] In support of his application for recall of the consent judgment, Mr Stringer made allegations of falsification of documents by Mr Craig, which were disputed by Mr Craig. As the Court is recalling the consent judgment on other grounds it is unnecessary that I explore the further ground. I do not do so.

[64] For the purposes of the application, the parties provided competing evidence suggesting that one or other had breached terms of confidentiality applying between the parties. On this application, the Court's concern is with the correctness of its judgment. The Court is not required to determine whether either party has breached any agreement as to confidentiality.

[65] Neither Mr Craig nor Mr Stringer has pursued relief in relation to the contract by which they agreed on settlement terms. Through their not having brought matters of relief in relation to the contract to the Court, nothing in this judgment affects the subsistence of that agreement. This judgment appropriately addresses only the misdescription of the financial arrangements agreed upon by the parties and the extent to which the consent judgment was rendered inappropriate by the circumstances of non-discovery of the 12-page letter. There will be relief to that extent only.

Orders

[66] I order:

[1] The judgment of this Court in this proceeding dated 31 January 2017 is recalled;

[2] The wording of the judgment is amended to now read:

I order:

(a) There is judgment for the plaintiff against the defendant in relation to the following publications alleging:

(i) The plaintiff sexually harassed one or more women other than Rachel MacGregor;

(ii) that the plaintiff has been fraudulent in his business dealings; and

(iii) that the plaintiff committed electoral fraud.

(b) The plaintiff's claims, save his claims in relation to publications alleging that the plaintiff sexually harassed Rachel MacGregor, are otherwise dismissed.

(c) By their agreement the parties recorded that:

(i) The defendant retracts in full his statements as to the matters set out at para [2](a) above;

(ii) The defendant has apologised to the plaintiffs; and

(iii) The parties' agreement to settle the litigation involved agreement by the defendant to pay an agreed sum which sum was subsequently written off by the

plaintiff upon an agreed financial audit of the defendant's financial position.

[3] The plaintiff is to pay to the defendant his reasonable disbursements incurred in the filing of his application for recall.

Associate Judge Osborne

Copy to:
C G Craig, Auckland
J C Stringer, Christchurch