IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2015-485-729
[2017] NZHC 897

UNDER	the Defamation Act 1992
BETWEEN	SIR EDWARD TAIHĀKUREI DURIE First Plaintiff
	DONNA MARIE TAI KOKERAU HALL Second Plaintiff
AND	HETA GARDINER First Defendant
	THE MĀORI TELEVISION SERVICE Second Defendant

On the papers

Judgment: 5 May 2017

JUDGMENT OF MALLON J
(COSTS)

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[1] I refer to paragraph [147] of my judgment delivered on 8 March 2017.[1] I have since received memoranda on the issue of costs. Having considered the memoranda I accept the defendant's submissions that costs should be ordered in their favour for the reasons on which they rely.

[2] In particular the starting position is that costs must be fixed when an interlocutory application is determined unless there are special reasons to the contrary.[2] The novelty of the legal point on which the strike out application was

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1 *Durie v Gardiner* [2017] NZHC 377.
2 High Court Rules 2016, r 14.8(1).

based is not in itself a special reason not to fix costs.[3] The fact that the defence will be tested at trial is accounted for in the rules.[4]

[3] The general principle is that the party who fails with respect to an interlocutory application should pay costs to the party who succeeded.[5] The defendants were the successful party. Neither defence, the subject of the application, was struck out. The defendants were required to re-plead the defence, but the plaintiffs failed on the more fundamental issues of whether the defamatory meanings were capable of being understood as expressions of opinion and whether there was any prospect of the defendants establishing reasonable grounds for believing the opinions were genuine. Therefore, although the plaintiffs had a measure of success in that the defendants were required to re-plead this defence, I am not satisfied that the pleading problems significantly increased the costs of the plaintiffs.[6]

[4] The defendants seek costs on a 2B basis and disbursements as calculated in their schedule (total $20,381.54). The plaintiffs have not challenged the items claimed or their calculation if costs are to be ordered. I make an order for the costs and disbursements as claimed.

Mallon J

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3 *Couch v Attorney-General* [2010] NZSC 27, [2010] 3 NZLR 149 at [180] and *Shell Todd Oil Services Ltd v Nazzer* HC New Plymouth CIV-2005-443-268, 31 October 2005 at [17].
4 High Court Rules 2016, r 14.8(2).
5 Rule 14.2.
6 Rule 14.7(d).