

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

**CIV 2016-404-2915
[2018] NZHC 1172**

BETWEEN

COLIN GRAEME CRAIG
Plaintiff

AND

RACHEL MARGARET JOY
MACGREGOR
Defendant

Hearing: 20 April 2018

Appearances: Mr Craig in Person
H Wilson for Defendant

Judgment: 23 May 2018

JUDGMENT OF DUFFY J

This judgment was delivered by me on 23 May 2018 at 3.00 pm pursuant to
Rule 11.5 of the High Court Rules.

Registrar/ Deputy Registrar

Solicitors/Counsel:
Kensington Swan, Wellington

[1] The plaintiff, Colin Craig, brings three causes of action against the defendant, Rachel MacGregor, each of which alleges that comments she has made to others about Mr Craig were defamatory.

[2] The first cause of action relates to comments Ms MacGregor allegedly published to Jordan Williams, all of which either jointly or severally essentially suggest that Mr Craig had been sexually harassing Ms MacGregor by making unwelcome advances towards her and attempts at contacting her. Mr Craig pleads as matters of aggravation that insofar as Ms MacGregor published comments and copies of communications between her and Mr Craig to Mr Williams, she selected material that would support her claims of sexual harassment. Further, this selection distorted the true import of the communications she forwarded to Mr Williams. In addition, she held back from Mr Williams other material exchanged between her and Mr Craig that was either inconsistent with or undermined her claim of sexual harassment.

[3] The second cause of action in defamation relates to Ms MacGregor issuing a media release in response to a press conference held by Mr Craig and his wife in which he denied sexually harassing Ms MacGregor. The press conference and media release followed confidential settlements which Mr Craig reached with Ms MacGregor. Mr Craig alleges defamation by innuendo through Ms MacGregor saying on the media release that the agreement prevented her from correcting “factual inaccuracies” in his statements to the press conference.

[4] The third cause of action arises from Twitter statements Ms MacGregor made in which she said, “Colin Craig is trying to frame me as his mistress. There was never a sexual relationship, nor was there consent for his inappropriate actions.”

[5] By way of defence, Ms MacGregor admits she made the statements in respect of the first cause of action and alleges they are based on truth, honest opinion and qualified privilege. Regarding the second cause of action she admits she issued the media statement and its contents and alleges the words in that statement are based on truth, honest opinion and qualified privilege. She takes the same approach in relation to the third cause of action.

[6] There is also a counterclaim which Ms MacGregor brings against Mr Craig alleging that he defamed her by saying she had brought a false claim of sexual harassment against him and that she was a liar.

[7] Mr Craig and Ms MacGregor were involved in a political party known as the Conservative Party. Another person who was involved in this party is Stephen Taylor. Mr Taylor is also a professional counsellor. It seems that at the time Ms MacGregor believed she was being sexually harassed by Mr Craig she confided in Mr Taylor. Mr Craig now seeks non-party discovery in relation to all electronic and written communication between Ms MacGregor and Mr Taylor from the period of 1 April 2014 to 31 December 2015 that concerns Mr Craig, or that concerns his leadership of the Conservative Party.¹ Mr Craig also seeks notes, records or other written or electronic material of things said by Ms MacGregor again between 1 April 2014 and 31 December 2015 concerning Mr Craig or concerning his leadership of the Conservative Party.

[8] To date Ms MacGregor has discovered emails sent and received from what was formerly her work computer. These have included some emails she sent to and received from Mr Taylor. However, seemingly more communications from Ms MacGregor are held by Mr Taylor.

[9] Ms MacGregor opposes the application on two grounds. First, she contends the material sought by Mr Craig is not relevant to the proceedings, and secondly she maintains the communications are confidential communications that are protected from disclosure by s 69 of the Evidence Act 2006.

[10] Regarding relevance Ms MacGregor contends:

- (a) The alleged defamatory statements on which Mr Craig relies in his statement of claim were not made to or by Mr Taylor and do not involve Mr Taylor;

¹ Pursuant to r 8.21 of the High Court Rules.

- (b) The alleged defamatory statements Ms MacGregor has identified in her counterclaim were not made to or by Mr Taylor and do not involve Mr Taylor;
- (c) The events at the core of the pleadings do not involve Mr Taylor; and
- (d) Neither Mr Craig nor Ms MacGregor refers to Mr Taylor or any relationship or connection to Mr Taylor in their respective pleadings.

[11] At the hearing Mr Craig could not outline the content of the material for which he sought discovery. He seemingly has no idea what the subject material might contain. As regards its relevance to the proceedings all he could say was that Mr Taylor had read the pleadings and in Mr Taylor's opinion the material he held was relevant to the pleading.

[12] Further, Mr Craig believes the subject material will shed light on his relationship with Ms MacGregor. In this regard Mr Craig appears to believe that the subject material will include material that places their relationship in a good light, which will be relevant to proof of his claims in defamation against Ms MacGregor as well as enabling him to resist her counterclaim.

[13] There is no dispute Ms MacGregor made the allegedly defamatory statements and she admits their alleged natural meaning. She then pleads that those statements were: true, based on honest opinion and protected by qualified privilege.

[14] If the subject material revealed that Ms MacGregor had lied or exaggerated the claims of sexual harassment and her lack of interest in Mr Craig's advances, this would be relevant to undermining her defences. However, there is no suggestion the material has this effect.

[15] Mr Taylor has cooperated with Mr Craig insofar as Mr Taylor has read the pleadings, and has expressed an opinion on the relevance of the subject material in an affidavit filed in support of the application for non-party discovery. Although he is a counsellor he disputes the communications were exchanged in a counsellor-client

relationship. He does not consider himself to be under an obligation of confidentiality to Ms MacGregor.

[16] Given Mr Taylor's position, and in particular his rejection of any obligation of confidentiality owed to Ms MacGregor I cannot see why he has not outlined the subject material or in some other way described its content to Mr Craig. Indeed I cannot see why he has not simply permitted Mr Craig to review the subject material.

[17] In short, the Court is being asked to direct non-party discovery of material that is said to be relevant by a lay person, and with nothing else to give the Court any understanding of what the subject material may disclose. Such abstract requests for non-party discovery cannot satisfy the legal tests for orders for non-party discovery. Furthermore, there is a general acceptance some of the subject matter will not be relevant.

[18] I am satisfied that the application is no more than a fishing exercise, which cannot be permitted.²

[19] Regarding the second ground of opposition, it is difficult for me to assess whether the subject information is confidential or not given I have no idea about its content. Insofar as Mr Craig maintains the subject material says something about himself and his leadership of the Conservative Party that is not enough to enable me to assess if the second ground of opposition has been made out.

[20] Typically when the Court is asked to refuse discovery on the basis the disclosures sought are confidential the Court is faced with information that is relevant to the proceeding but alleged to be confidential. In such circumstances the Court must weigh the confidential nature of the information against its materiality to the matters in issue.³ Here I am not satisfied that the material sought is relevant to the issues the pleadings raise because I do now know what its content is. The description Mr Craig gives to the information is overly general and uninformative. I cannot determine the second ground of opposition because I do not have enough about the subject material

² See *Vector Gas Contracts Ltd v Contact Energy Ltd* [2014] NZHC 3171, [2015] 2 NZLR 670 at [29].

³ See *Vector Gas Contracts Ltd v Contact Energy Ltd* at [31].

to enable me to determine if it is confidential let alone whether in terms of s 69 of the Evidence Act 2006 it should be protected. For this reason alone I find the second ground of opposition is not established. This is not to say the subject material cannot support a claim based on s 69 of the Evidence Act. But until more is known about it any attempt at characterising the subject material as confidential and so protected from disclosure is premature.

Result

[21] The application for non-party discovery is dismissed.

[22] If the parties cannot agree costs leave is reserved to them to file memoranda on costs.