IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2015-404-2524
[2018] NZHC 3076

BETWEEN	JOHN CHARLES STRINGER Plaintiff
AND	COLIN GRAEME CRAIG First Defendant
	HELEN RUTH CRAIG Second Defendant
	ANGELA MARIA STORR Third Defendant
	KEVIN ERIC STITT Fifth Defendant
	STEPHEN DYLAN TAYLOR Sixth Defendant

Hearing:	22 August 2018
Appearances:	J C Stringer in person C G Craig, H R Craig, A M Storr, K E Stitt, S D Taylor in person
Judgment:	26 November 2018

JUDGMENT OF PALMER J

This judgment was delivered by me on 26 November 2018 at 2:15 p.m.
pursuant to r 11.5 of the High Court Rules 2016.

Registrar/Deputy Registrar

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Parties:
The Plaintiff
The Defendants

Summary

[1] Mr John Stringer is suing Mr Colin Craig, Mrs Helen Craig, Mrs Angela Storr, Mr Kevin Stitt and Mr Steve Taylor for defamation related to events in the Conservative Party in 2015. I determine various interlocutory applications as follows:

(a) Mr Stringer has given notice for Mr Craig to produce two cell-phones and forensic extraction reports. That must be done at the time to be ordered for discovery. In the meantime, Mr Craig must preserve whatever he has of the phones for that purpose.

(b) Mr Stringer applies for further interrogatories to be answered by Mrs Craig, Mrs Storr and Mr Stitt. I decline some of these as irrelevant or because the defendants have already answered them sufficiently. But Mrs Craig and Mrs Storr do need to answer interrogatories concerning their knowledge of Mr Craig's relationship with Ms MacGregor. That is because they are defending themselves on the basis the allegedly defamatory statements, that Mr Stringer's statements about the relationship were false, were their honest opinion.

(c) Mr Stringer's application to strike out Mrs Craig's, Mrs Storr's and Mr Stitt's statements of defence, and Mrs Storr's and Mr Stitt's applications to strike out the claims against them, are declined because they have not demonstrated the defences and claims are not tenable. But Mr Stringer will need to file a further amended statement of claim and the defendants will need to respond to that.

(d) Mr Stringer's application to strike out Mr Taylor's statement of defence is declined. The reason Mr Taylor has not yet filed a full statement of defence until now is because the Court directed he was not obliged to do so. By a fine margin, I also decline to strike out Mr Stringer's claim against Mr Taylor. Mr Stringer's purpose in pressuring Mr Taylor consistently centred on vindicating his reputation and so is not, quite, a collateral purpose. A line call should be decided in favour of preserving freedom of access to the courts.

The context of this proceeding

This proceeding

[2] Mr Colin Craig was leader of the Conservative Party during the 2014 election campaign. Mr John Stringer was a Board member of the Party. Ms Rachel MacGregor Mr Craig's former press secretary, resigned two days before the election. Afterwards, Ms MacGregor and Mr Craig settled a claim with the Human Rights Review Tribunal of sexual harassment.[1]

[3] In June 2015, Mr Stringer began making public statements including alleging Mr Craig had sexually harassed Ms MacGregor. Mr Craig denied these allegations. On 29 July 2015, Mr Craig and his wife Mrs Helen Craig held a press conference announcing a defamation suit against Mr Stringer. They also launched a booklet, titled "Dirty Politics 2015", claiming Mr Stringer had engaged in a campaign of dirty politics. The booklet is said to have been delivered to most homes in New Zealand.

[4] In September 2015, Mr Craig filed a defamation proceeding against Mr Stringer in the Christchurch High Court (the Craig proceeding). That proceeding was initially settled by consent in January 2017 but judgment was recalled in December 2017 in respect of a claim by Mr Craig that Mr Stringer had defamed him by alleging Mr Craig had sexually harassed Ms MacGregor.[2] On 31 August 2018, Associate Judge Osborne ordered the Craig proceeding be heard concurrently with this proceeding.[3]

[5] This proceeding was filed in October 2015 by Mr Stringer against Mr Craig and five other defendants involved in the Conservative Party. Mr Stringer alleges he was defamed by statements:

(a) by Mr and Mrs Craig in the booklet and at the 29 July 2015 press conference;

(b) by Mr Craig in ancillary media and subsequent blogs and emails;

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1 *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [12].
2 *Craig v Stringer* [2017] NZHC 3221
3 *Craig v Stringer* [2018] NZHC 2281.

(c) by statements by Mrs Storr and Mr Stitt; and

(d) by Mr Taylor as anonymous "moderator" of, and contributor to, the booklet.

[6] Mr Stringer seeks:

(a) declarations Mr Craig is liable in defamation;

(b) just over $1 million in general and aggravated damages from Mr and Mrs Craig;

(c) another $200,000 in general damages from Mr Craig;

(d) $35,000 in damages from Mrs Storr and $25,000 from Mr Stitt; and

(e) $400,000 in general damages, and $287,761 in aggravated damages, from Mr Taylor.

[7] In general, the defendants offer defences that the allegedly defamatory statements were the subject of qualified privilege, were true or not materially different from the truth and were an expression of their honest opinion.

[8] This proceeding and the Craig proceeding are set down for trial together over four weeks in the Auckland High Court commencing 19 August 2019. These are separate from the various other sets of defamation proceedings involving Mr Craig and others which concern these events. [4]

Interlocutory applications

[9] All parties have made interlocutory applications which I treat in three groups:

(a) an application by Mr Stringer for a production order;

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4 *Williams v Craig* [2017] NZHC 724, [2017] 3 NZLR 215; *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1; *Craig v Williams* [2018] NZSC 61; *Craig v Slater* [2018] NZHC 2712; *Craig v MacGregor* HC Auckland CIV-2016-404-2915 (judgment pending).

(b) an application by Mr Stringer for interrogatories; and

(c) applications by Mr Stringer, Mrs Storr, Mr Stitt and Mr Taylor to strike out aspects of statements of claim or defence.

[10] I also make timetabling orders.

1 Production order

Relevant law of production orders

[11] Rule 8.32 of the Rules is:

> **8.32 Notice to produce documents or things**
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> (1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before a Judge, an officer, an examiner, or other person who has authority to take evidence in the proceeding.
>
> (2) If the document or thing is in the control of the party who is served with the notice, the party must, unless a Judge otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.
>
> (3) The notice must be treated as an order of the court to produce the document or thing specified in the notice.

Application and submissions

[12] On 10 May 2017, Mr Stringer gave notice to Mr and Mrs Craig to produce one or more cell-phones and corresponding forensic extraction reports and requested they be preserved as a matter of urgency. In his Minute No 2 of 14 June 2017, Heath J recorded his understanding that Associate Judge Osborne was seized of an application on the same issue in the Craig proceeding and he was not prepared to make orders that could potentially be inconsistent with those.[5] Heath J reserved leave for Mr Stringer to ask the Court to rule on his application, with both sides having the opportunity to file supporting affidavits setting out the evidence on which they rely. [6]

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5 Minute No 2 of Heath J of 14 June 2017 at [13].

6 At [15].

[13] Mr Stringer submits Mr Craig has used material on the cell-phones as evidence in other proceedings and had them forensically examined, there is no reason why they cannot be provided and failing to do so will prejudice the case. He submits there are texts on the phones that were selectively missing or not discovered in other proceedings and an independent company should examine the phones.[7]

[14] Mr Craig submits there is no dispute that correspondence, including texts and letters between him and Ms MacGregor, will be relevant to the proceeding. He says he has the parts of one of the cell-phones in his possession, has taken reasonable steps to preserve them and has had independent experts extract the messaging records. He submits it would be proper for those documents to be discovered when discovery orders are made but they have not been made yet.

Should Mr Craig produce the cell-phones and reports and when?

[15] Rule 8.32 provides a notice for production be "for the purpose of evidence at the hearing of the proceeding or before a Judge … who has authority to take evidence in the proceeding". Mr Craig has undertaken to preserve what remains of the phones and there is evidence he has done so.[8] The question is when the cell-phones and their relevant contents must be provided to Mr Stringer and the other parties. I agree that should be when discovery is ordered. Mr Stringer can get an independent company to examine them at that point. That will be according to a timetable I set down at the s 35 conference I order below.

2 Interrogatories

Law of interrogatories

[16] Under r 8.34 a party may file a serve a notice requiring another party to answer specified interrogatories relating to any matter in question in the proceeding. Under r 8.39, a statement in answer to interrogatories must set out the interrogatories and the answers and:

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7 *Craig v Stringer* [2017] NZHC 3221.

8 Affidavit of Colin Craig Related to Interlocutory Matters to be Heard 22 August 2018, 1 June 2018 at [29]–[31].

(2) … must deal with each interrogatory specifically, either—

(a) by answering the substance of the interrogatory without evasion; or

(b) by objecting to answer the interrogatory on 1 or more of the grounds mentioned in rule 8.40(1) and briefly stating the facts on which the objection is based.

[17] Under r 8.40 a party may object to answering an interrogatory on the grounds only that it does not relate to a matter in question, is vexatious or oppressive, the information sought is privileged or the sole object is to ascertain the names of witnesses. Under r 8.42, if a party "fails to answer an interrogatory sufficiently", a judge may order the party to make a further answer.

Applications and submissions

[18] On 31 October 2016, Mr Stringer asked Mrs Craig, Mrs Storr and Mr Stitt to answer interrogatories. They each provided answers on 8 November 2016. Mr Stringer complains the answers are insufficient and evasive and seeks further answers. He points to specific examples of what he submits are inadequacies in answers to his questions. Mr Stringer also seeks answers by Mr Taylor to his notice of interrogatories of 8 May 2017, to which Mr Taylor did not reply.

[19] Mrs Craig submits many of Mr Stringer's questions are highly personal and irrelevant to her defences of truth and honest opinion and she has answered them honestly and to the best of her ability. Mrs Storr's and Mr Stitt's submissions are to similar effect. Mr Taylor submits he has not been obligated to answer interrogatories.

Should the defendants provide further answers to interrogatories?

[20] Interrogatories are not a substitute for cross-examination of witnesses at trial. I consider the defendants have answered most of the interrogatories sufficiently, where they are relevant to the issues in the proceeding. Some others appear designed to elicit the names of witnesses, which is a ground for not answering. Where Mr Stringer disagrees with an answer he can pursue that at trial, where relevant, rather than through further interrogatories. More particularly, in relation to examples raised by Mr Stringer:

(a) Mr Stringer asked Mrs Craig to identify the "number of contributors" to the booklet she mentions in the booklet.[9] She identified four people.[10] Mr Stringer submits this answer is insufficient because it fails to identify Mr Lusk.[11] Mrs Craig submits her answer is correct and stands by it. Further testing of that is a matter for trial.

(b) Mr Stringer asked why Mrs Craig did not inform Mr Stringer of her intention to sue him beforehand, to which she responded "I am not suing Mr Stringer; he is suing me".[12] Mrs Craig's response does not really answer the question about her intention, but I cannot see how the answer to that is relevant to the issues at trial. If the context of the trial suggests it is relevant, it can be explored then.

(c) Mr Stringer asked Mrs Storr whether she agreed with a statement, allegedly by Mr Craig as "Mr X" in the booklet, that party members are "mostly a bunch of bigots", to which Mrs Storr replied she did not know who said the comment but would not agree with it.[13] Mr Stringer submits that is relevant to her reports to members of the party that Mr Stringer's statements were false. Mrs Storr submits she answered the question. She did, in the negative. The issue can be pursued at trial if relevant.

(d) Mr Stringer asked Mr Stitt why he promoted the booklet denigrating a party and board member, to which Mr Stitt replied Mr Stringer was no longer a board member at the time.[14] That can be pursued at trial if relevant.

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9 Notice to Answer Interrogatories to Helen Craig, 31 October 2016 at Interrogatory 4.
10 Affidavit of Helen Craig in response to Mr Stringer's notice of interrogatories, 8 November 2016 at [4].
11 Affidavit of John Stringer supporting his notice to Mrs Craig to answer interrogatories, 17 November (Stringer to Craig) at [8].
12 Notice to Answer Interrogatories to Helen Craig at Interrogatory 16; Stringer to Craig at [9].
13 Affadavit of Angela Storr, 8 November 2016 at [5]; Affidavit of John Stringer supporting his notice to Mrs Storr to answer interrogatories, 17 November 2016 (Stringer to Storr) at [5].
14 Affidavit of Kevin Stitt, 8 November 2016 at [6]. Affidavit of John Stringer supporting his notice to Mr Stitt to answer interrogatories, 17 November 2016 (Stringer to Stitt) at [6].

[21] But there is one set of interrogatories which Mrs Craig and Mrs Storr have refused to answer, on the basis they are irrelevant to the proceeding, that they do need to answer. Mr Stringer asked them a number of questions about their knowledge of Mr Craig's relationship with Ms McGregor. Mr Stringer says the defendants defamed him by, among other things, calling him a liar and saying he deliberately orchestrated lies about Mr Craig including that he had sexually harassed Ms MacGregor. Questions about what these defendants knew about that are not relevant to their defences of qualified privilege or the truth of their statements that Mr Stringer's statements were false. But they are relevant to their defences that it was their honest opinion that Mr Stringer's statements were false. Accordingly, if they continue to maintain their defence of honest opinion, within 15 working days of this judgment:

(a) Mrs Craig will need to answer interrogatories 11, 12, 13, 15 and 18; and

(b) Mrs Storr will need to answer interrogatories 7, 8 and 9.

3 Strike-out

Law of strike-out

[22] The law governing the striking out of proceedings is well established. Rule 15.1 of the High Court Rules provides, relevantly:

> **15.1 Dismissing or staying all or part of proceeding**
>
> (1) The court may strike out all or part of a pleading if it—
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> (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
>
> (b) is likely to cause prejudice or delay; or
>
> (c) is frivolous or vexatious; or
>
> (d) is otherwise an abuse of the process of the court.

[23] As summarised by the Court of Appeal in *Attorney-General v Prince* and a minority of the Supreme Court in *Couch v Attorney-General*:[15]

(a) the facts pleaded are assumed to be true;

(b) the causes of action must be so untenable the court is certain they cannot possibly succeed;

(c) the jurisdiction is to be exercised sparingly and only in a clear case;

(d) the jurisdiction is not excluded by the need to decide difficult questions of law; and

(e) particular care is required in areas where the law is confused or developing.

[24] In *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* the Court of Appeal also stated:[16]

> The grounds of strike out listed in r 15.1(1)(b)-(d) concern the misuse of the court's processes. Rule 15.1(1)(b), which deals with pleadings that are likely to cause prejudice or delay, requires an element of impropriety and abuse of the court's processes. Pleadings which can cause delay include those that are prolix; are scandalous and irrelevant; plead purely evidential matters; or are unintelligible. In regards to r 15.1(1)(c), a "frivolous" pleading is one which trifles with the court's processes, while a vexatious one contains an element of impropriety. Rule 15.1(1)(d) – "otherwise an abuse of process of the court" – extends beyond the other grounds and captures all other instances of misuse of the court's processes, such as a proceeding that has been brought with an improper motive or are an attempt to obtain a collateral benefit. An important qualification to the grounds of strike out listed in r 15.1(1) is that the jurisdiction to dismiss the proceeding is only used sparingly. The powers of the court must be used properly and for bona fide purposes. If the defect in the pleadings can be cured, then the court would normally order an amendment of the statement of claim.

[25] In *Goldsmith v Sperrings Ltd*, in a defamation context, Bridge LJ in the Court of England and Wales stated:[17]

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15 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) at 267 (cited approvingly by Elias CJ and Anderson J in *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33]).

16 *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89] (citations omitted).

17 *Goldsmith v Sperrings* [1977] 2 All ER 566 (EWCA) at 582.

> In my judgment, one can certainly go so far as to say that when a litigant sues to redress a grievance no object which he may seek to obtain can be condemned as a collateral advantage if it is reasonably related to the provision of some form of redress for that grievance. On the other hand, if it can be shown that a litigant is pursuing an ulterior purpose unrelated to the subject-matter of the litigation and that, but for his ulterior purpose, he would not have commenced proceedings at all, that is an abuse of process. These two cases are plain, but there is, I think, a difficult area in between. What if a litigant with a genuine cause of action, which he would wish to pursue in any event, can be shown also to have an ulterior purpose in view as a desired by-product of the litigation. Can he on that ground be debarred from proceeding? I very much doubt it.

[26] In *Williams v Spautz*, a litigant threatened and commenced defamation proceedings against his employer in an attempt to get his job back.[18] The High Court of Australia held a court would have the power to strike out on grounds of abuse of process if the process resulted in oppression even if a litigant had a prima facie case, giving the example of where a party could establish a prima facie case but "has no intention of prosecuting the proceedings to a conclusion because he or she wishes to use them only as a means of extorting a pecuniary benefit from the defendant".[19] But it emphasised there was a heavy burden on the party alleging abuse of process, and the power was to be exercised "only in the most exceptional circumstances".[20] It endorsed Bridge LJ's doubts that a litigant with a genuine cause of action but also an ulterior purpose could be debarred, but stressed this was only so if the litigant was pursuing a cause of action "which he would wish to pursue in any event".[21]

[27] In New Zealand, relying on these authorities, Gendall J has recently stated the relevant policy considerations as:[22]

> (a) Generally, courts are required to exercise their jurisdiction on matters properly brought before them.
>
> (b) It is important to preserve freedom of access to the courts.
>
> (c) The courts need to be vigilant that abuse of process claims are not advanced other than in clear and appropriate cases and are not brought for tactical reasons; and

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18 *Williams v Spautz* [1992] HCA 34, (1992) 174 CLR 509 at 522.
19 At 522.
20 At 529.
21 At 522.
22 *Tomanovich Holdings Ltd v Gibbston Community Water Company 2014 Ltd* [2018] NZHC 990 at [42], adopting those set out in *Williams v Spautz* [1992] HCA 32, (1992) 174 CLR 509 at 519; see also Associate Judge Abbot's similar summary in *Air National Corporate Ltd v Aiveo Holdings Ltd* [2012] NZHC 602 at [31].

(d) Equally, the courts fundamentally should be alert to misuse of their processes and be prepared to exercise their power to stay when the interests of justice demand it.

[28] He stated:[23]

> The improper purpose need not be the sole purpose, as long as it is the predominant purpose. The onus is on the party alleging abuse of process to show that the proceeding was brought for an improper purpose. It is "a heavy onus" and one to be exercised only in exceptional circumstances. It is unnecessary to prove commission of an improper act to justify exercise of the power to stay. However, save in the clearest of cases, it will be necessary to point to some separate manifestation of the defendant's intent in the form of an overt act such as a demand which identifies the true collateral purpose.

Mr Stringer's application to strike out Mrs Craig's, Mrs Storr's and Mr Stitt's defences

[29] On 1 June 2017, reiterated on 10 August 2017 and 14 December 2017, Mr Stringer applied to strike out the statements of defence of Mrs Craig, Mrs Storr and Mr Stitt. The thrust of Mr Stringer's submissions is that their statements of defence were filed late, are templates of Mr Craig's statement of defence, do not have consecutively numbered paragraphs, do not admit or deny each distinct allegation and are signed using scanned signatures not original signatures. He also submits the statements do not focus on the particulars of his claim, overuse the phrase "in the alternative" and have no distinct grounds of defence. The defendants submit they coordinated with each other but the final document filed by each of them is their defence, which they have signed off.

[30] The grounds Mr Stringer gives for striking out these statements of defence are not proper grounds for strike out. If a defect in a pleading can be cured, the court will ordinarily direct an amended pleading to be filed. But the technical nature of the defects of which Mr Stringer complains do not tempt me to do even that, given that all parties to this proceeding lack legal representation. Given that, below, I direct Mr Stringer to file a further amended statement of claim, the defendants will need to file amended statements of defence in response. They can tidy up any technical defects, and use original signatures, at that point. I decline Mr Stringer's application.

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23 At [36] (footnotes omitted).

Mrs Storr's and Mr Stitt's application to strike out Mr Stringer's claim

[31] By application dated 7 February 2017, reiterated on 18 June 2018, Mrs Storr and Mr Stitt seek to strike out Mr Stringer's claim against them. At the hearing, the application was refined to focus on two paragraphs of Mr Stringer's statement of claim, which allege they repeated and endorsed allegations in the booklet.[24] Mrs Storr and Mr Stitt claim the two paragraphs should be struck out for lacking sufficient detail of dates, words used or their meaning. They submit Mr Stringer is required to separate publications into separate causes of action. Mr Stringer submits sufficient particulars are set out in other paragraphs.[25]

[32] Mr Stringer is correct the paragraphs to which he points provide the particulars of his claim. I decline this strike out application too. However, Mrs Storr and Mr Stitt are correct that the allegedly defamatory statements, who is said to have made them and what their natural and ordinary meanings are pleaded to be, need to be better identified. That is required by ss 7 and 37 of the Defamation Act 1992 and by case law. Muir J pointed that out in a Minute dated 19 August 2016. There is a need for pragmatism in pleading defamation causes of action, particularly when self-represented litigants are involved.[26] But repleading will assist the conduct of the proceeding. In the orders below, I direct Mr Stringer to file a further amended statement of claim containing a schedule which lists each allegedly defamatory statement, who made it and the natural and ordinary meaning he pleads it has.[27] I direct the defendants to respond.

Mr Stringer's application to strike out Mr Taylor's defence and for interrogatories

[33] Mr Stringer did not initially sue Mr Taylor when he initiated this proceeding on October 2015, but sought to join him later. In a minute of 25 November 2016, Heath J directed a formal application under r 4.56 of the Rules be filed. Mr Stringer filed a third amended statement of claim dated 20 March 2017 that included Mr Taylor.

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[24] Fourth Amended Statement of Claim at [122] and [128].

[25] At [121] referring to [82]–[83] and [127] referring to [84]–[90].

[26] *Wishart v Murray* [2015] NZHC 3363, [2016] 2 NZLR 565 at [17]–[21]; *Low Volume Vehicle Technical Association v Brett* [2017] NZHC 2846, [2018] 2 NZLR 587 at [30]; *Low Volume Vehicle Technical Association v Brett No 2* [2017] NZHC 3281 at [49]–[50].

[27] Oral Minute of Muir J of 19 August 2016 at [10]–[11] and [16]–[17].

On 26 April 2017, Mr Taylor filed and served an affidavit in response along with a purported "notice of defence" relying on the contents of the affidavit. On 27 April 2017, Mr Stringer wrote a letter to Mr Taylor objecting the document did not comply with the High Court Rules.

[34] On 1 June 2017, Mr Stringer applied for "unless" orders or that Mr Taylor's response be struck-out and judgment entered against him. On 14 June 2017, Heath J stated in Minute No 2:[28]

> So far as Mr Taylor is concerned, there is no obligation for him to take any further steps in this proceeding at this stage. His rights, and those of Mr Stringer, are expressly preserved at this stage. The need for Mr Taylor to take further steps will be reconsidered if settlement were not reached.

[35] Mr Stringer reiterated his 1 June 2017 application with amendments on 10 August 2017 and 14 December 2017. Mr Stringer submits he has had no response to his concerns, the statements in the document are evasive and extraneous and contained insufficient particulars. Mr Stringer also applies for Mr Taylor to answer interrogatories Mr Stringer sent him on 8 May 2017. Mr Taylor submits he has taken no further steps in respect of a notice of defence or interrogatories because, in accordance with Heath J's minute which he "took as gospel", he was not obligated to do so. If his own strike-out application fails, he presumes he will need to take further steps and says he will do so.

[36] Mr Taylor is correct that, because of Heath J's minute, he has not been obligated to take further steps in the proceeding. Mr Stringer's application to strike out his defence must fail because the defects in Mr Taylor's document can be cured by him filing a statement of defence according to the requirements of r 5.48 of the High Court Rules 2016 (the Rules). I decline Mr Stringer's application to strike out Mr Taylor's defence.

Mr Taylor's application to strike out Mr Stringer's claim

[37] Mr Taylor also applies to strike out the claim against him. He submits he was joined to the proceedings because he did not give in to threats by Mr Stringer to sue

[28] Minute No 2 of Heath J of 14 June 2017 at [17].

him unless he "falsely" supported Mr Stringer. He provided evidence of receiving three emails:

(a) In an email of 20 November 2016, Mr Stringer gives Mr Taylor "24 hours to decide which side you want to be on", saying "unless you help me get to the bottom of things I have no choice but to include you as a hostile participant party".[29] Mr Stringer states he has "no interest in coming after you personally" but "it will only be natural for me to present the jury with your background and activities as part of the proceedings".

(b) In a later email of 20 November 2016, Mr Stringer states Mr Craig has revealed Mr Taylor as Mr X which implicates Mr Taylor in the booklet, that the Craigs are "condemned and will be financially ruined by the publication" but "you don't need to be too but the Craig's (sic) force my hand implicating you in court documents as a full partner alongside them" and asks "[c]an you and I work to avoid that?".[30]

(c) In an email of 7 August 2017, Mr Stringer tells Mr Taylor "… in exchange for turning Queens' [sic] witness things could change for you for the better and you could be free of all this: everything is negotiable and there is a willingness amongst parties on this side to talk to you" and "we all just want to get to the truth and you can help elucidate some of that in exchange for agreements over matters concerning you".[31]

[38] Mr Taylor accepts he was the anonymous moderator of the validity of the information in the booklet but says he was not aware, until the morning of the hearing, that Mr Stringer alleges he was the Mr X who is quoted in the booklet, which he denies. Mr Taylor says he did not want to get involved in the litigation or make a statement against Mr Craig, which would go against his conscience, and he refused to be bullied

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29 Email of 20 November 2016 at 4.55 pm from Mr Stringer to Mr Taylor attached to Affidavit of Stephen Taylor, 22 August 2018 (Taylor affidavit).

30 Email of 20 November 2016 at 6.05 pm from Mr Stringer to Mr Taylor attached to Taylor Affidavit.

31 Email of 20 November 2016 at 6.05 pm from Mr Stringer to Mr Taylor attached to Taylor Affidavit.

or intimidated. He points out others involved in the production of the booklet are not defendants. He submits Mr Stringer's proceeding against him should be struck out as an abuse of process because it was filed for an improper purpose – a mere tool to get Mr Taylor to support Mr Stringer's cause against Mr Craig. He submits "it can't be right that legal proceedings are used as a weapon to solicit testimony".[32]

[39] Mr Stringer submits various attempts were made to settle with Mr Taylor but there was no coercion as he was free to choose to settle or not. He says he was only seeking to establish the extent of Mr Taylor's involvement with the publications but once he discovered Mr Taylor was a participant he was obviously going to join him to the proceeding. Mr Stringer also submits Mr Taylor's liability is based on his statements in the booklet, not publishing the booklet and there is no basis to strike out the proceeding.

[40] Mr Taylor's submission that it cannot be right for legal proceedings to be used as a weapon to solicit testimony has real force. The three emails, which were not contested by Mr Stringer, demonstrate Mr Stringer was threatening to involve Mr Taylor in the legal proceeding in order to obtain his cooperation with his side of the case. Mr Stringer's suggestion that, otherwise, he had no interest in coming after Mr Taylor personally, points directly to that, as do the content of the other emails.

[41] Mr Stringer says he would have brought proceedings against Mr Taylor regardless once he found out he was involved in the booklet. But his emails are not consistent with that. In his second email of 20 November 2016, Mr Stringer told Mr Taylor he did not need to face condemnation and financial ruin while making it clear he already believed Mr Taylor had been "revealed" as Mr X and the moderator. And his email of 7 August, saying "everything is negotiable", came well after he had joined Mr Taylor to the proceeding.

[42] I have no doubt Mr Stringer is genuine in initiating his legal proceeding against Mr Craig and the other defendants, in response to Mr Craig's own proceeding. But I am disturbed that he used the threat of joinder as a means of pressuring Mr Taylor to give evidence for him. I consider his conduct has come close to constituting abuse of

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32 Defendants' submissions of 18 June 2018 at [19].

process. But, by a fine margin, I have decided not to strike out the proceeding. That is because I consider it is clear that Mr Stringer's purpose consistently centred on vindicating his reputation. It was "reasonably related to the provision of some form of redress" for his grievance, in the words of Bridge LJ in *Goldsmith v Sperrings Ltd.*[33] It is not, quite, a collateral purpose. As the authorities cited above emphasise, the power to strike out a proceeding for abuse of process must be exercised only in the most exceptional circumstances. A line call should be decided in favour of preserving freedom of access to the courts. Accordingly, I decline to strike out Mr Stringer's claim against Mr Taylor.

Mrs Storr's, Mr Stitt's and Mr Taylor's application for separate questions

[43] Before the hearing, Mrs Storr, Mr Stitt and Mr Taylor purported to file an amended application for strike out that included, among other things, an application that certain questions be determined as a separate question from the trial. This was not a strike-out application which had been set down for hearing. I observed, in Minute No 2 of 11 June 2018, that questions of disputed fact are usually best determined at trial in the context of the all the evidence, but allowed them to file a new application and submissions on that issue if they wished.

[44] On 18 June 2018, Mrs Storr, Mr Stitt and Mr Taylor filed a further application that a question, of whether Mr Taylor published the booklet as claimed by Mr Stringer, be determined separately prior to trial. They submit it is a discrete question that would be efficiently determined before trial. Mr Stringer submits it should not. Mr Stringer submits Mr Taylor's claims he did not help author or publish the booklet are contradicted by other statements by Mr Taylor and others.

[45] A defendant is liable for defamation if a defamatory statement is published to a person other than the plaintiff. Here, if Mr Taylor made defamatory statements in the booklet, they appear to have been at least published to the others involved in the production of the booklet. He admits to being the moderator or reviewer of the booklet. And the booklet was published widely. The extent of Mr Taylor's involvement in the publication processes does not therefore appear to affect his

[33] *Goldsmith v Sperrings,* above n 17.

liability. Even if it did, it would be a disputed fact that would best be resolved at the trial of the rest of the proceeding, to mitigate the risk of inconsistent decisions. I decline Mr Taylor's application for determination of a separate question.

Result and next steps

[46] I order:

(a) Mr Craig must produce all remaining parts of the two cell-phones and the two forensic extraction reports at the time to be ordered for discovery and will preserve what he has of the phones in the meantime, for that purpose.

(b) If they continue to maintain their defence of honest opinion within 15 working days:

(i) Mrs Craig must answer interrogatories 11, 12, 13, 15 and 18; and

(ii) Mrs Storr must answer interrogatories 7, 8 and 9.

(c) Mr Stringer's application to strike out the statements of defence of Mrs Craig, Mrs Storr, Mr Stitt and Mr Taylor, and Mrs Storr's, Mr Stitt's and Mr Taylor's applications to strike out the claims against them, and Mr Taylor's application to have a question determined separately, are declined.

(d) Mr Stringer to file, **by 31 January 2019,** a further amended statement of claim containing a schedule which lists each allegedly defamatory statement, who made it and its natural and ordinary meaning.

(e) The defendants to file amended statements of defence in response, **within 15 working days** of the amended statement of claim being filed.

(f) The Registry to schedule a one-day conference under s 35 of the Defamation Act 1992, as soon as practicable **after 21 February 2019,** regarding this proceeding and the Craig proceeding.

(g) The parties each to file memoranda **three days before** the s 35 conference including, for each proceeding: the list of witnesses they propose to call; their estimates of the hearing time required; what admissions of fact other parties should make; which issues they consider may be resolved without trial (including by correction under ss 26, 27 or voluntary apology); any further interlocutory issues; and any other issues relevant to trial.

[47] None of the parties are legally represented so are not entitled to costs. Mr Stringer has been partially successful in two applications but failed in four and has to replead. None of the defendants' applications succeeded. I do not consider any of the parties have succeeded to the extent that I should award them payment of disbursements by other parties.

Palmer J