

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

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

**CIV-2017-404-003091
[2019] NZHC 1574**

BETWEEN

KRISTIN PIA CATO
Plaintiff

AND

MANAIA MEDIA LIMITED
First Defendant

ROWAN DIXON
Second Defendant

JANE THOMPSON
Third Defendant

On the papers

Judgment: 8 July 2019

**JUDGMENT OF HINTON J
[Re Costs]**

*This judgment was delivered by me on 8 July 2019 at 10.30 am
pursuant to Rule 11.5 of the High Court Rules*

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Registrar/Deputy Registrar

Counsel/Solicitors:
Stephen Mills QC, Auckland
Lee Salmon Long, Auckland

Parties:
Rowan Dixon
Jane Thompson

[1] Ms Cato is suing the defendants in defamation. She claims the defendants, who are all involved with the *Horse & Pony* magazine, defamed her in that publication by impugning her professionalism and ethics as a barrister. Ms Cato sought a determination that the pleaded portions of the article were capable of bearing the pleaded defamatory meanings.

[2] On 13 March 2019 I delivered a judgment on that application.¹ Ms Cato now seeks costs. The defendants say costs should lie where they fall.

Background

[3] The alleged defamatory material was published in an article about complaints made to the judicial committee of Equestrian Sports New Zealand (ESNZ) concerning the conduct of certain individuals in the New Zealand show jumping team during their tour to Australia in 2017. The complaints were resolved through a private mediated settlement. The article was primarily about the way the complaints were dealt with by ESNZ, and the author was critical of the process adopted. Many paragraphs are devoted to a settlement statement issued by Ms Cato, who represented the complainants in the mediation.

[4] Ms Cato pleaded that the article defamed her in the following ways:

In its natural and ordinary meaning the Article as a whole, and including the passages highlighted in Schedule 1, meant, and was understood to mean:

- (a) The plaintiff had acted unethically in acting as counsel for the complainants in the dispute that is the subject of the Article by:
 - (i) Being responsible for releasing a statement that is damaging to the reputations of Mr McVean and Ms Laurie;
 - (ii) Misusing her position as a lawyer for the complainants to benefit her family by releasing the statement to iSpyHorses, a media outlet controlled by her mother, when the statement would have received wider and more effective publicity for the vindication of her clients if it had been released by Horse & Pony;
 - (iii) Hiding that misuse of position by not identifying herself in the statement or disclosing her relationship with the founder and director of iSpyHorses.

¹ *Cato v Manaia Media Ltd* [2019] NZHC 440.

(b) The plaintiff had acted unprofessionally or otherwise improperly in her capacity as a lawyer for the reasons set out in (a)(i)-(iii) above.

(c) There are grounds to suspect that the plaintiff has acted unethically in her capacity as a lawyer for the reasons set out in (a)(i)-(iii) above.

(d) There are grounds to suspect that the plaintiff has acted unprofessionally or otherwise improperly in her capacity as lawyer for the reasons set out in (a)(i)-(iii) above.

(e) There are grounds to suspect that the plaintiff has acted unethically in her capacity as a lawyer by breaching confidentiality provisions in a mediation or settlement agreement by releasing the statement without the consent of her clients and/or other parties to the dispute.

(f) There are grounds to suspect that the plaintiff has acted unprofessionally or otherwise improperly in her capacity as a lawyer by breaching confidentiality provisions in a mediation or settlement agreement by releasing the statement without the consent of her clients and/or other parties to the dispute.”

[5] To summarise my judgment, I concluded:

(a) the meaning pleaded at (a)(ii) and (a)(iii) is not available.

(b) the meaning pleaded at (e) and (f) is not available insofar as it refers to release without the consent of the plaintiff's clients.

(c) To the extent (b), (c) and (d) rely on the above pleadings, they are not available.

(d) The article is otherwise capable of bearing the defamatory meanings pleaded.

[6] To put my conclusion another way, I found the article could not be defamatory in the sense of suggesting Ms Cato acted unethically or improperly by releasing the statement to iSpyHorses, and not to Horse & Pony. I also found the article did not suggest Ms Cato released the statement without the consent of her clients.

[7] But I did find it was arguable that the article as a whole would leave a reader with the impression Ms Cato may have acted unethically or improperly by releasing

the statement in breach of a confidentiality provision, without the consent of the other parties to the mediation.

Law

[8] Costs are at the discretion of the Court.² The principles relevant to costs awards are set out in r 14.2, and include:

- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds;
- (b) an award of costs should reflect the complexity and significance of the proceeding; and
- (c) so far as possible the determination of costs should be predictable and expeditious.

Submissions

[9] The plaintiff says she has been substantially successful in her application, and that costs should follow the event. She says there is no basis for a reduction under r 14.7.³

[10] The defendants say the plaintiff has not been substantially successful. They say seven of the eight pleaded meanings have been struck out in whole or in part. They also submit many of the meanings that were struck out were the more serious ones.

[11] In addition, they say the plaintiff failed to sufficiently particularise her claim before the hearing, such that a significant amount of the hearing was spent on discussing the extent to which the particulars were required, and working through the links between the specific sections of the article and the meanings alleged, as these were not identified in the statement of claim. This was combined, say the defendants, with the fact that the meanings application was supposed to be determined for the

² High Court Rules 2016, r 14.1.

³ High Court Rules 2016, r 14.7.

purpose of the plaintiff's contemporaneous application for a recommendation under ss 26 and 27 of the Defamation Act 1992, which was intended to achieve an early resolution of the proceeding, but which was withdrawn part-heard.

[12] For these reasons, the defendants submit it would not be fair, just or reasonable for costs to follow the event, and they should lie where they fall. They say if they had brought the application, they would have had an arguable case as to being reasonably successful themselves.

Discussion

[13] I consider the defendants put it too strongly when they say the plaintiff has not been substantially successful. The meanings that were struck out concerned the suggestion that Ms Cato had acted improperly in not giving the statement to Horse & Pony, and had published the statement without the consent of her clients. I consider the first of those was one of the less serious pleaded meanings. As a result of her application, the plaintiff has confirmed she has an arguable case.

[14] I do not consider the withdrawn ss 26 and 27 application has any bearing on this costs application. That has already been the subject of an adverse costs award against the plaintiff.

[15] I also do not consider that issues about further particulars, and the consequential time taken at the hearing, justify other than a modest reduction in costs. While those aspects did add time to the hearing, it was not significant.

[16] Although it was not my immediate view, I have decided that a costs award is appropriate.

[17] However, I do have to take into account that reasonable portions of the plaintiff's claim have been struck out on her own application. She asked this Court to effectively endorse her pleadings, and they were found somewhat wanting. I note the defendants' submission that, if they had brought the application, which they could equally have done as a strike-out in this somewhat peculiar situation, they would have a reasonable argument to having succeeded in part.

[18] In these circumstances, I consider the appropriate course is for costs to follow the event, but with a sizeable reduction.⁴

[19] The plaintiff claims scale costs of \$8,920, plus \$1,300 in disbursements. I consider that costs should be less than 50 per cent and fix them at \$4,000. With disbursements, this comes to \$5,300.

Conclusion

[20] I therefore award costs and disbursements of \$5,300 in favour of the plaintiff.

Hinton J

⁴ High Court Rules 2016, r 14.7(g).