IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2018-404-1525
[2019] NZHC 767

BETWEEN	KHIENG CHIV First Plaintiff
	KC PARTNERS CHARTERED ACCOUNTANTS LIMITED Second Plaintiff
	ACCOUNTING CAREER CONNECT LIMITED Third Plaintiff
AND	STUFF LIMITED First Defendant
	MEDIAWORKS RADIO LIMITED Second Defendant

…/cont

Hearing:	5 April 2019
Appearances:	First Plaintiff on own behalf No appearance by or on behalf of the Second and Third Plaintiffs RKP Stewart for the First Defendant No appearance by or on behalf of the Second to Fifth Defendants
Judgment:	10 April 2019

JUDGMENT OF GORDON J

This judgment was delivered by me on 10 April 2019 at 2.30 pm, pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar
Date:

Solicitors:	Darroch Forrest, Wellington
Counsel:	RKP Stewart, Auckland
Copy To:	K Chiv, Auckland

GOGO HOLDINGS LIMITED
Third Defendant

HOUGARDEN.COM LIMITED
Fourth Defendant

SKY MEDIA LIMITED
Fifth Defendant

Introduction

[1] This is a judgment on an application for an interim injunction.

[2] The plaintiffs commenced a proceeding in defamation on 18 July 2018 against the five defendants. On 30 January 2019, the plaintiffs filed an application for an interim injunction against the first defendant, Stuff Ltd, seeking an order requiring Stuff Ltd to take down its internet article concerning the plaintiffs, published on its website, until such time as the substantive proceeding is heard and determined.

[3] The application for an interim injunction is opposed by Stuff Ltd.

Representation

[4] The application on behalf of all plaintiffs was filed by the first plaintiff, Khieng Chiv (Mr Chiv) who is a director of the second and third plaintiffs. All three plaintiffs were briefly represented by counsel from around mid-February 2019 until 29 March 2019 when counsel and the instructing solicitors were given leave to withdraw. Mr Chiv now represents himself. He accepts that an earlier order by the Court means that he is not able to appear on behalf of the two companies. The second and third plaintiffs were accordingly not represented at the hearing.

[5] I will therefore confine my consideration to matters as they relate to or otherwise affect Mr Chiv.

Background

[6] I draw part of the following background from Mr Chiv's memorandum filed in support of the application, although not all of the "facts" are deposed to in his affidavits. Mr Chiv is an accountant. He is a New Zealand citizen of Cambodian ethnicity. Mr Chiv operates an accountancy practice, the second plaintiff, which is a limited liability company practising as a firm of accountants in East Tamaki Auckland. The clients of the second plaintiff are mainly small and medium sized businesses in South Auckland and it deals with business taxation administration and problem solving.

[7] Mr Chiv says he set up the third plaintiff many years ago to operate as a recruiting business, recruiting workers and specialist workers from off-shore to fill needs within New Zealand. After October 2017, the third plaintiff also set up an operation to train graduate accountancy students in the day-to-day practice of conducting a taxation accountancy business.

[8] Mr Chiv says that the accountancy course offered by the third plaintiff is for three months full time, for students who are accountancy graduates, or six months part time for students who are final year university accountancy students. Mr Chiv says that the third plaintiff offers employment assistance to those graduating from its training programme. A job placement manager attends to this aspect.

[9] Mr Chiv says the third plaintiff charges a fee for its training services and charges another fee if the services of the third plaintiff are used for job placement. This second fee is not charged "up-front" but is paid week by week from salary earned and only if the student obtains a position through the services of the third plaintiff. The fee depends on the size of the salary paid and is a percentage of the salary over the initial period of employment. Otherwise no fee is charged.

[10] Mr Chiv says that in the early stage of the business of the third plaintiff, two students were disgruntled. One transferred to a similar course in Queenstown and the other did not complete the course. They both sought a refund of fees. They also complained to the media about the nature and content of the course.

[11] On 24 June 2018, Stuff Ltd published an article on its online bulletin. The second to fifth defendants also published articles. Mr Chiv asked the defendants to remove the relevant articles from the internet. Stuff Ltd has not done so.

Publication by Stuff Ltd

[12] In the amended statement of claim, the plaintiffs allege that two statements by Stuff Ltd are defamatory. The online bulletin published on 24 June 2018 included the following (first statement):

> An accounting firm owned by a Cambodian migrant whose training scheme is allegedly "scamming" international students wanting work, is being investigated by Immigration New Zealand.

[13] Mr Chiv claims that the context in which the statement was published made it clear that he was the Cambodian migrant and the accounting firm was the second plaintiff.

[14] Mr Chiv claims that the word "scamming" is defamatory. He says the online Oxford Dictionary defines "scam" as a dishonest scheme; a fraud and this is also the ordinary and natural meaning of the word "scam". Mr Chiv claims that it is untrue that any of the plaintiffs have "scammed" international students.

[15] Mr Chiv also alleges that it is defamatory to say that the accounting firm is being investigated by Immigration New Zealand (INZ). He says that in the natural and ordinary meaning it would not be defamatory to say that INZ is investigating. But, in the context of the publication, it is a necessary inference that INZ is investigating either the "scamming" by the plaintiffs, or it is investigating because one or more of the plaintiffs are "scamming" international students.

[16] Mr Chiv alleges that it is untrue that INZ is investigating the plaintiffs and that it has ever investigated any of the plaintiffs. He says it is true that INZ made an inquiry of the first plaintiff but that did not amount to an investigation.

[17] It is also untrue, Mr Chiv alleges, that INZ is investigating dishonest or fraudulent practices and it is untrue that any of the plaintiffs have run or taken part in dishonest fraudulent practices.

[18] The second statement complained of is in the same article. It says:

> Chiv's accounting firm KC Partners Chartered Accountants, was liquidated in the High Court.

[19] Mr Chiv says that the second plaintiff has not been liquidated. Nor has there been an application to liquidate it. Mr Chiv says in the natural and ordinary meaning of the words used, the article is claiming that the second plaintiff has been liquidated. He says this is false.

[20] Mr Chiv says that the meaning is evident from the words used in the article and is defamatory to the first and second plaintiffs.

Amendments to online article

[21] On 13 December 2018 and without accepting that the article carried any of the meanings alleged by the plaintiffs, and without admitting liability, Stuff Ltd replaced the first statement with the following (the amended first statement):

> Immigration New Zealand is continuing its enquiries into an accounting firm owned by a Cambodian migrant whose training scheme has been criticised by international students wanting work.

[22] Although the word "scamming" no longer appears in the amended first statement, the article still contains one reference to "scamming" in a quote attributed to a migrant who attended one of the third plaintiff's courses. The quote as recorded in the article is as follows:

> [Chiv] is doing this on purpose, scamming them. I'm not the only one who is a victim of this organisation [Accounting Career Connect].

[23] Also on 13 December 2018 Stuff Ltd added a clarification in relation to the second statement at the foot of its article in the following terms:

> **Clarification**
>
> KC Partners Chartered Accountants Limited Partnership was placed into liquidation by the High Court on 15 June 2018. The company now known as KC Partners Chartered Accountants Limited is not in liquidation and never has been.

Mr Chiv's position

[24] Mr Chiv says that he and his businesses are suffering loss and damage because of the article and are suffering continuous loss because of the refusal on the part of Stuff Ltd to take down its article.

[25] In his second affidavit, sworn 11 February 2019, Mr Chiv says that he has been involved in recent discussions to set up an enterprise selling crude oil purchased from Libya. He has been to Libya with others involved in the enterprise and has had a discussion with the Chairman of the Board for General Libyan Union of Chambers

and the business arrangement is close to being put in place. The business arrangements include bilateral trading to export dairy and other products from New Zealand to Libya, "engineering supplies to power plant and reconstruction of Libyan cities", as well as other engineering and construction projects. Mr Chiv says that the article published by Stuff Ltd online has the potential to cause serious damage to these arrangements.

[26] Mr Chiv filed an updating affidavit sworn 27 March 2019 in which he deposes that he is also a chartered accountant in Australia. He says that on 22 February 2019, CPA Australia Ltd wrote to him and indicated that because of the Stuff Ltd article it was instigating an investigation into his membership. He says that this will cause him significant inconvenience and cost.

[27] Additionally, he recently applied to refinance his mortgage. He had to do this because of the losses the Stuff Ltd article has caused him. On 11 March 2019 he received an email from the mortgage broker to say that the company that the mortgage broker had approached for a loan, refused his application because of the Stuff Ltd article. Additionally, the mortgage broker himself has now declined to do further business with him. This has caused him serious inconvenience and cost. It is damaging to him personally and his business.

[28] In his oral submissions Mr Chiv said that his house is to be sold in a mortgagee sale a week after the hearing. He has not been able to make the mortgage payments as his income from the second and third plaintiffs is his sole income and their business has been substantially affected by the publication of the Stuff Ltd article.

The opposition

[29] Stuff Ltd opposes the application for an interim injunction on the following grounds:

(a) The plaintiffs have sought a remedy in damages and can be adequately compensated in damages in the event the article is found to be defamatory.

(b) Stuff Ltd has denied the plaintiffs' claim and has raised affirmative defences that have more than a reasonable possibility of succeeding;

(c) The plaintiffs delayed seven months before bringing an application for interim relief;

(d) The balance of convenience lies with Stuff Ltd being permitted to exercise its right to freedom of expression;

(e) The order sought is futile because:

(i) Stuff Ltd has voluntarily amended the article;

(ii) One of the words sued on (scamming) is clearly presented as opinion and the others (being investigated by Immigration New Zealand) are protected by the defence of statutory qualified privilege.

Interim injunctions in defamation cases

[30] The general rule for interim injunctions is that there is a three-step process. The plaintiff does not have to make out a clear case but must simply establish that there is a "serious question to be tried". If the plaintiff satisfies the Court on that issue, the question is then whether, weighing the competing interests, on "the balance of convenience" the interim injunction should be granted. The final decision must be in the overall interests of justice.[1]

[31] The position in a defamation case is said to be somewhat different. The learned authors of *Gatley on Libel and Slander* describe the common law jurisdiction to grant an interim injunction in a defamation proceeding in the following way:[2]

> The jurisdiction to grant interim injunctions to restrain publication of defamatory statements is "of a delicate nature" which "ought only to be

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1 *Klissers Farmhouse Bakeries Ltd v Harvest Bakeries Ltd* [1985] 2 NZLR 129 adopting *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.

2 Alastair Mullis and Richard Parkes (eds) *Gatley on Libel and Slander* (12th ed, Sweet & Maxwell, London, 2013) at 25.2.

> exercised in the clearest cases". That was stated by Lord Esher M.R. in *Coulson v Coulson*, and it encapsulates the general approach of the Court. The reluctance to grant peremptory injunctions is rooted in the importance attached to the right of free speech, and the consideration that damages are liable to be an adequate remedy. Thus, the Court will only grant an interim injunction where:
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> (1) the statement is unarguably defamatory;
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> (2) there are no grounds for concluding the statement may be true;
>
> (3) there is no other defence which might succeed;
>
> (4) there is evidence of an intention to repeat or publish the defamatory statement.
>
> (citations omitted)

[32] The learned author of *Burrows and Cheer Media Law in New Zealand* put the position this way:[3]

> However, it has been established for many years that in cases of defamation the plaintiff has a stiffer burden [than the *American Cyanamid* test] to satisfy. An injunction, even an interim one, should be issued in defamation cases only where it is very clear that the matter is defamatory. The jurisdiction in defamation cases has been said to be one of a "delicate" nature; it should only be exercised with great caution, and is almost never exercised where the defendant says he or she is going to plead a defence such as truth.
>
> (citations omitted)

[33] The author continues, that the position in New Zealand has been strengthened by the statutory endorsement of freedom of expression in s 14 of the New Zealand Bill of Rights Act 1990[4] citing *Auckland Area Health Board v Television New Zealand Ltd*, where Cooke P said:[5]

> By reason of the principle of freedom of media, which has been emphasised by this Court … and which is reinforced by s 14 of the New Zealand Bill of Rights Act 1990 as to the right of freedom of expression, [the jurisdiction to restrain the publication of defamatory matter] is exercised only for clear and compelling reasons. It must be shown that defamation for which there is no reasonable possibility of a legal defence is likely to be published.

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3 Ursula Cheer, *Burrows and Cheer Media Law in New Zealand*, (7th ed, LexisNexis, Wellington, 2015) at 3.

4 Cheer, above n 3 at 4.

5 *Auckland Area Health Board v Television New Zealand Ltd* [1992] 3 NZLR 406 at 407.

[34] I also refer to *Ron West Motors Ltd v Broadcasting Corporation of New Zealand* where Smellie J said:[6]

> … [A]s was first held in New Zealand in *McSweeney v Berryman* [1980] 2 NZLR 168 by Barker J, that, whilst the Court has jurisdiction to grant interlocutory injunctions to restrain the publication of threatened libels, nonetheless the occasions when orders will be made are rare. In particular, where a defendant provides evidence that it will justify the material to be published, the injunction will be refused or, if already made, will be dissolved.

[35] Smellie J then referred to the Court of Appeal judgment in *New Zealand Mortgage Guarantee Co Ltd v Wellington Newspapers* where the Court stated as follows:[7]

> The principle on which the Judge acted is established in other common law jurisdictions – in England, Australia and, we understand, Canada. Earlier authorities are collected in Barker J's judgment in *McSweeney v Berryman* [19080] 2 NZLR 168 where the Judge applied it in New Zealand, apparently for the first time as far as reported decisions go. A recent application of it in the English Court of Appeal is *Khashoggi v IPC Magazines* Ltd [1986] 3 All ER 577. In the classic authority, *Bonnard v* Perryman [1891] 2 Chelsea 269, 284, the reasons for it are stated succinctly:
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>> "Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.
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> In *28 Halsbury's Laws of* England (4th ed) para 168, the principle is put in this way:
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>> "It is well settled that no injunction will be granted if the defendant states his intention of pleading a recognised defence, unless the plaintiff can satisfy the court that the defence will fail."

[36] Mr Stewart, appearing for Stuff Ltd, did not seek to argue by reference to the passage from Halsbury in the above extract that Stuff Ltd simply needed to state its intention of pleading a well-recognised defence. His position was that there would need to be some basis to satisfy the Court in relation to the defence raised. Or in other words, the defences pleaded must have a reasonable possibility of succeeding. That seems to be another way of stating the position set out in Gatley that the Court must be satisfied that there is no defence "which might succeed". I will adopt that latter

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6 *Ron West Motors Ltd v Broadcasting Corporation of New Zealand* [1989] 3 NZLR 433 at 436.
7 *New Zealand Mortgage Guarantee Co Ltd v Wellington Newspapers* [1989] 1 NZLR 4 at 6.

test. That seems to approximate to there being "no reasonable possibility of a legal defence".

[37] Mr Stewart submits that applying the test he proposes to the pleaded defences, the application must fail.

[38] I will now consider whether the statements are unarguably defamatory and then the pleaded defences of honest opinion, statutory qualified privilege and responsible communication of a matter of public interest. I will also comment briefly on truth which Mr Stewart says Stuff Ltd may plead in an amended statement of defence.

Are the statements unarguably defamatory?

[39] It is not sufficient for a claimant to establish that the words are capable of being defamatory; the Court must be satisfied that a jury would inevitably come to the conclusion that they were defamatory.[8]

[40] As noted, although the amended first statement no longer uses the word "scamming" that word remains in a later paragraph in the article. However, the statement that remains in the article and which uses the word "scamming" is presented as an opinion of one of the migrants concerned. The statement from the migrant is contained within quotation marks. The allegation was not adopted or endorsed by Stuff Ltd. In those circumstances the pleading that the word carries the meaning that the plaintiffs are defrauding those enrolled in the training programme, or that the plaintiffs have run or taken part in dishonest or fraudulent practices, would not be likely to succeed. I therefore do not consider the statement that uses the word "scamming" is unarguably defamatory.

[41] The amended first statement now uses the words "continuing its enquiries" as opposed to "is being investigated". The enquiries by INZ are said to relate to the second plaintiff, but the article refers to "… Khieng Chiv's businesses". To that extent the complaint Mr Chiv makes could be said to relate to him as well as to the second plaintiff.

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8 Alastair Mullis and Richard Parkes, above n 3 at 25.3.

[42] The pleaded meanings are alleged to be:

(a) the plaintiffs are being investigated by INZ for defrauding those enrolled in the training programme; and

(b) Immigration New Zealand is investigating the plaintiffs because one of them is scamming international students.

[43] I do not consider it could be said that the meanings pleaded would be likely to succeed. The word "scamming" no longer appears in the first statement and Mr Chiv himself accepts that INZ made an inquiry of him. I therefore do not consider the amended first statement is unarguably defamatory.

[44] The second statement complained of (accounting firm liquidated) is said to relate to the second plaintiff. But, the statement also says "Chiv's accounting firm". To that extent it relates to Mr Chiv. However, Stuff Ltd has published a clarification. That, in my view, is the end of the matter in relation to the second statement, at least, for the purposes of this application.

Honest opinion

[45] Stuff Ltd pleads that to the extent that the first statement has any of the meanings alleged (which I have referred to earlier in this judgment) such meaning(s) were conveyed by the statement, considering the content of the Stuff Ltd article as a whole, as its expression of genuine opinion. Such opinions were based on true facts which are referred to in the publication or which were generally known at the time. Particulars are then set out.

[46] This pleading relates to the first statement, which will be a consideration at the substantive hearing. For the purposes of this judgment, I have considered the amended first statement plus the use of the word "scamming" in another part of the article, as that is how the article (which Mr Chiv seeks to be removed) now appears.

[47] I therefore refer to the particulars pleaded by Stuff Ltd which relate to the current format of the article:

58.8 Two migrants paid the first plaintiff $5,759 and $5,900 each to undergo a three-month "job ready programme" course offered by his company Accounting Career Connect, in return for employment in New Zealand.

58.9 The placement offer document one migrant signed said a "job is guaranteed after the successful completion of the training".

58.10 After completing the course, the migrant was never given or helped into a job.

58.11 The material in the curriculum included information taken from Inland Revenue's website, and the first plaintiff made the curriculum from his own work papers and knowledge.

58.12 The first plaintiff did not respond to the migrant's requests for meetings to organise employment, and refused her a refund stating a strict "no refund" policy in an email.

[48] Stuff Ltd also pleads honest opinion in a second way alleging that to the extent the first statement has any of the alleged meanings (to which I have referred) in relation to the word "scamming", such meaning(s) were conveyed, considering the context of the publications as a whole, as expressions of the migrants' honest opinions which did not purport to be Stuff Ltd's opinion. Stuff Ltd believed that the opinions were the migrants' genuine opinions and those opinions were based on true facts which were referred to in the publication or which were generally known at the time. Stuff Ltd relies on the same particulars as referred to in [47] above.

[49] Having regard to the pleaded defences, including the particulars, I consider that the defence of honest opinion might succeed.

Statutory qualified privilege

[50] Although the amended first statement now uses the word "enquiries" there is a reference to "investigating" later in the article as follows:

> Immigration Assistant General manager Peter Devoy confirmed it was investigating K C Partners but he could not say what for. "Our enquiries into this company are on-going".

[51] Stuff Ltd pleads that the statement that INZ was investigating the second plaintiff is protected by statutory qualified privilege.[9] It says that the article fairly and

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[9] Defamation Act 1992, s 16(2) and cl 15 of Part 2 to Schedule 1.

accurately reported a statement by the INZ Assistant General Manager on behalf of INZ for the information of the public.

[52] I consider that is a defence which might succeed.

Public interest?

[53] Stuff Ltd pleads the defence of public interest.[10]

[54] It pleads that the following are matters of legitimate public interest:

> 62.1 The ability for international students to obtain professional services training and employment within New Zealand.
>
> 62.2 The manner in which education providers operate training courses to international students seeking employment in New Zealand.
>
> 62.3 The competency of teachers and professionals who provide training programmes to international students.
>
> 62.4 Allegations of professional services firms exploiting or taking advantage of international students undertaking study and seeking employment in New Zealand.
>
> 62.5 Allegations of New Zealand professional services firms being managed inappropriately or poorly.

[55] Stuff Ltd says that the statement complained of was directly relevant to the matters of public interest referred to above and accordingly were all communications in the public interest.

[56] Stuff also says that the statement was reasonably and responsibly published for the following reasons:

> 64.1 The nature and extent of the matters of legitimate public interested identified at paragraph 62 above justified the nature and extent of the publication.
>
> 64.2 The public's need to know required [Stuff Ltd] to publish the communication when it did.
>
> 64.3 The sources relied on by [Stuff Ltd] could reasonably be considered reliable in relation to the information they provided and which was attributed to them in the publication.

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10 Relying on *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

> 64.4 Comment from [Mr Chiv] was sought and was accurately reported.
>
> 64.5 The tone of the publication was appropriate to the subject matter.
>
> 64.6 [Stuff Ltd's] publication did not include any (allegedly) defamatory statements which were not necessary to communicate on the matters of legitimate public interest identified in paragraph 62 above.
>
> 64.7 [Stuff Ltd] reported allegations as opposed to adopting them.

[57] I accept, based on the pleading including the above particulars, a defence of public interest might succeed.

Truth?

[58] Although there has been a correction to the statement regarding liquidation, I address the issue of truth (formerly justification) briefly.

[59] The defence of truth is not currently pleaded but Mr Stewart advises that Stuff Ltd is giving consideration to further amending its statement of defence to plead truth pursuant to s 8(3)(b) of the Act. That is, the publication taken as a whole was, in substance, true or was, in substance, not materially different from the truth. The submission is that the statement that Mr Chiv's accounting firm, KC Partners Chartered Accountants, was liquidated by the High Court was true as it related to KC Partners Chartered Accountants Limited Partnership which, by Mr Chiv's own admission, was the entity through which he initially conducted his practice.

[60] In the end, it is not necessary for me to make a finding in relation to this defence (if pleaded) for the purposes of this hearing. There has been a clarification of the statement in the article.

Balance of convenience

[61] The conventional balance of convenience consideration examines whether damages will be an adequate remedy. The commonly cited passage from *American Cyanamid* is as follows:[11]

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[11] At 408.

> The Court should first consider whether if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage.

[62] In this case the plaintiffs have sought a remedy in damages only. The prayer for relief in the amended statement of claim does not include a permanent injunction.

[63] Mr Chiv submits that damages would not be a sufficient remedy because of the damage to his reputation, and the damage he will suffer in the meantime including losing his house in a mortgagee sale.

[64] Damages are the primary remedy in common law actions for defamation. An award of general damages:[12]

> serve[s] three functions, … to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation.

[65] I accept that Stuff Ltd would be in a position to pay damages. In this case the balance of convenience favours Stuff Ltd.

Overall justice

[66] The thrust of Mr Chiv's submission is that Stuff Ltd's publication is the source and cause of his current financial difficulty. However, in a memorandum dated 29 March 2019 he said that "… I have some financial problems which, although not solely caused by the publication of the Stuff article, have been serious [sic] compounded by that article". This statement casts doubt on the plaintiffs' position that the Stuff Ltd publication caused the losses as pleaded in the amended statement of claim.

[67] I refer also to other related and further matters as follows.

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12 Alastair Mullis and Richard Parkes, above n 3 at 9.4.

[68] Mr Chiv owned and operated two businesses; JK Nails 89 Ltd (in liq) and Regal Nails Ltd (in liq) that failed and were liquidated on the application of the Inland Revenue Department (IRD) for non-payment of tax in May and June 2018. The liquidators' reports on the Companies Office website suggest total creditors exceed $300,000 including almost $100,000 owed to the IRD. This information is public and available to anyone searching the Companies Office website.

[69] Additionally, Mr Chiv's original accountancy practice, KC Partners Chartered Accountants Limited Partnership, was also liquidated in June 2018. The most recent liquidators' report for the limited partnership discloses unpaid creditors in excess of $184,000. Again, this is information that is publicly available via the Limited Partnerships Register.

[70] Further, before the limited partnership was liquidated, Mr Chiv did what he could to transfer his practice to a different entity but using the same "brand", that is, K C Partners Chartered Accountants. There may be an argument available that the reputation of the new practice has been associated with the failure of the old one.

[71] As to Mr Chiv's claims relating to an enterprise to sell crude oil from Libya, it is apparent that the various items of correspondence and signed memoranda annexed to his affidavit are dated after the publication of the Stuff Ltd article. It would therefore appear that the publication of the article did not affect Mr Chiv being received in Libya or entering into a memorandum of understanding. Additionally, the United Nations Sanctions (Libya) Regulations 2018 came into force on 14 June 2018. Regulation 16 places prohibitions on transporting petroleum (which includes crude oil) on a designated ship to any place from Libya.[13]

[72] Regarding the investigation being undertaken by CPA Australia Ltd, the letter from that organisation dated 22 February 2019 refers to both the Stuff Ltd article and a web page publication from the New Zealand Immigration Advisors Authority of refused licences. The letter continues, "As a member of CPA Australia, you are

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[13] The person must know that the ship is a designated ship; that the ship is transporting or is to transport petroleum; and the transportation is, or forms part of, the transportation of that petroleum to any place from Libya. (Reg 16(1)(a)-(c)). Subclause (1) applies to a person in New Zealand and a New Zealand citizen in any place outside New Zealand.

required to provide a sufficient and satisfactory response to the circumstances that led to your licence being refused". The focus therefore appears to be on the refusal of licences which is based on the second publication referred to in the CPA Australia Ltd letter and not the Stuff Ltd article.

[73] The letter also refers to two of Mr Chiv's other companies (JK Nails 89 Ltd and Regal Nails Ltd) having been placed into liquidation. Although those companies were referred to in the Stuff Ltd article, Mr Chiv does not make a complaint about that.

[74] In short, the inquiry by CPA Australia Ltd appears to be focussed on matters other than those Mr Chiv complains of in the Stuff Ltd article.

[75] As to the mortgage lending, it is not clear what part or parts of the article were considered by the financier to be relevant to its decision.

[76] I also consider that requiring Stuff Ltd to remove the online article from its website would be futile. The original article was online from 24 June 2018. Mr Chiv did not request its removal until late October 2018. In that three-month period the article received over 95 per cent of the total number of page views. I accept Mr Stewart's submission that the horse has bolted. Both the delay and the futility of the order sought are relevant to the overall justice of the position.

[77] Finally, on the overall justice, the original article was amended once the plaintiffs indicated what they considered to be the natural and ordinary meaning of the words complained of. Stuff Ltd makes it clear it does not agree with the plaintiff but says out of an abundance of caution and as a gesture of goodwill, it amended the article and added a clarification.

[78] Taking into account all the above considerations the overall interests of justice favour a refusal of the application.

Conclusion

[79] The statements in the amended publication are not unarguably defamatory; the pleaded defences might succeed; the balance of convenience favours Stuff Ltd as damages would be an adequate remedy if the plaintiffs were to succeed at trial; and the overall interests of justice also favour Stuff Ltd. The application is refused.

Costs

[80] I heard from the parties on costs at the hearing. I see no reason to depart from the principle that, as the successful party, Stuff Ltd is entitled to costs. I award costs on a 2B basis against the plaintiffs in favour of Stuff Ltd.

Gordon J