IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2016-404-1312
[2021] NZHC 414

UNDER	The Defamation Act 1992
BETWEEN	JOHN DOUGLAS SELLMAN First Plaintiff
	BOYD ANTHONY SWINBURN Second Plaintiff
	SHANE KAWENATA FREDERICK BRADBROOK Third Plaintiff
AND	CAMERON SLATER First Defendant

Heard on the papers

Appearances: D Salmon and J Cundy for Plaintiffs
No appearance for or by First Defendant

Judgment: 8 March 2021

JUDGMENT OF WALKER J

This judgment was delivered by me on 8 March 2021 at 4.30 pm
Pursuant to Rule 11.5 High Court Rules

Registrar/Deputy Registrar

CARRICK DOUGLAS MONTROSE GRAHAM
Second Defendant

FACILITATE COMMUNICATIONS LIMITED
Third Defendant

KATHERINE RICH
Fourth Defendant (*Discontinued*)

NEW ZEALAND FOOD AND GROCERY COUNCIL INC
Fifth Defendant (*Discontinued*)

Introduction

[1] The plaintiffs are public health professionals. They issued proceedings against the defendants for defamation. The publications at issue were a series of blog posts by Mr Slater on the Whale Oil website, and comments on the blog posts published by Carrick Graham, the second defendant.

[2] The claims against the fourth and fifth defendants were discontinued with leave of the Court before trial following resolution of those claims.

[3] The plaintiffs and the second and third defendants reached a resolution on the first day of trial. A statement and apology were read in court on behalf of the second and third defendants.

[4] Mr Slater filed a memorandum in court dated 4 June 2020. That memorandum is in the form of a consent to judgment. It reads:

> Given whatever legal capacity I have in respect to this proceeding and my bankruptcy the first defendant consents to judgement [sic] in favour of John Douglas Sellman, Boyd Swinburn and Shane Kawenata Frederick Bradbrook.

[5] The plaintiffs seek to enter judgment against Mr Slater in reliance on this consent memorandum. They seek a declaration that Mr Slater is liable to them in defamation. They also seek costs.

Background

[6] It is unnecessary to traverse the background to these proceedings. A comprehensive background is set out in multiple interlocutory judgments.[1]

[7] For the purposes of this judgment, the relevant background is that Mr Slater was adjudicated bankrupt on 27 February 2019. On 14 March 2019, the Official Assignee advised the Court that it consented to the plaintiffs continuing their claim

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[1] See, for example, *Sellman v Slater* [2018] 2 NZLR 218, [2017] NZHC 2392; *Sellman v Slater* [2017] NZAR 258, [2016] NZHC 2542; *Sellman v Slater* [2019] NZHC 1666; *Sellman v Slater* [2018] NZHC 58; *Sellman v Slater* [2016] NZHC 2594; *Sellman v Slater* [2016] NZHC 2415; and *Sellman v Slater* [2020] NZHC 2062.

against Mr Slater. The Official Assignee did not seek to be made a party to the proceeding under r 4.50(a) of the High Court Rules 2016.[2]

[8] On 20 March 2019, Palmer J made an order under s 76(2) of the Insolvency Act 2006 allowing the proceeding to continue against Mr Slater despite his bankruptcy.[3]

[9] Mr Slater filed his memorandum consenting to judgment on 4 June 2020.

[10] I accept Mr Salmon's submission that the document filed by Mr Slater is an admission of the plaintiffs' causes of action under r 15.16 of the High Court Rules. The only reasonable interpretation of the document is that it is an admission of all extant causes of action pleaded against him as at the time of filing the memorandum.

[11] In accordance with r 15.16, Mr Slater has therefore admitted that:

(a) he published the statements, pleaded, at issue in the proceeding;

(b) those statements bear the imputations pleaded by the plaintiffs; and

(c) those imputations are defamatory of the plaintiffs.

[12] He has also abandoned the affirmative defences he had previously pleaded.

[13] I am satisfied that the plaintiffs are entitled to judgment against Mr Slater without formal application and without the necessity of a formal proof. In *P v Bridgecorp Ltd (in rec and in liq)*, the Chief Justice, referring to r 15.16 stated:[4]

> … where a party has admitted liability to a pleaded cause of action in formal response to the pleading filed in court, there is no need for the court to determine liability to require proof of the admission or further assessment of its effect.

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2 Memorandum of counsel for the plaintiffs and counsel for the Official Assignee, dated 14 March 2019 at [8]–[10].

3 Minute of Palmer J, dated 20 March 2019, at [11].

4 *P v Bridgecorp Ltd (in rec and in liq)* [2014] 1 NZLR 195, [2013] NZSC 152 at [20].

Outcome

[14] The plaintiffs had sought general, aggravated and exemplary damages against Mr Slater. They did not specify quantum. The reason is that s 43(1) of the Defamation Act 1992 requires plaintiffs not to quantify damages sought against media defendants. Mr Slater has previously declared himself to be a journalist and has declared the Whale Oil website a media platform.

[15] This means that the admission did not have to comply with r 15.16(4) which states that an admission relating to any cause of action in which a sum of money is claimed "must state the exact amount admitted".

[16] In view of Mr Slater's bankruptcy the plaintiffs now abandon their damages claim. They also seek only "scale" costs, forsaking claims to increased or indemnity costs for the same reason.

[17] Accordingly, I make the following orders / declarations:

(a) a declaration that the first defendant is liable to the plaintiffs in defamation;

(b) an order for costs against the first defendant in favour of the plaintiffs; and

(c) leave to discontinue the proceeding against the second and third defendants.

[18] The plaintiffs have leave to file a memorandum quantifying the costs sought.

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Walker J