

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

**I TE KŌTI MATUA O AOTEAROA  
ŌTAUTAHI ROHE**

**CIV-2021-409-000044  
[2021] NZHC 1252**

UNDER the Defamation Act 1992  
BETWEEN RAYMOND BRUCE SMITH  
Plaintiff  
AND GEOFFREY KING  
First Defendant  
AND ANTHEA KEENAN  
Second Defendant

Hearing: (Determined on the Papers)  
Counsel: B M Russell and M D W King for the Plaintiff  
Judgment: 31 May 2021

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**JUDGMENT OF GENDALL J**

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This judgment was delivered by me on 31 May 2021 at 3 pm  
pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

[1] Mr Raymond Bruce Smith (Mr Smith) applies for judgment by way of formal proof with respect to his claim in defamation against the defendants.

[2] The first defendant, Geoffrey King (Mr King), was served with these proceedings on 2 March 2021. According to the affidavit of the process server, Mr van Beek, Mr King agreed to accept service by email and requested a hard copy of the documents be left at his property. Mr King confirmed receipt of the email and hard copies by email dated 2 March 2021.

[3] The second defendant, Anthea Keenan (Ms Keenan), was served by email on 8 March 2021. Ms Keenan requested the documents be served by email with a hard copy sent by courier. On 2 March 2021, Ms Keenan posted on her personal Facebook page a “Media Release” in which she referred to the proceedings. It appears Mr King had provided her a copy. Ms Keenan has made other Facebook posts since 2 March 2021 referring to Mr Smith trying to silence the defendants through using the court system.

[4] Accordingly, I am satisfied each defendant has been served with the proceedings.

[5] It is now 31 May 2021. The defendants have taken no steps to defend these proceedings, hence Mr Smith now seeks judgment by way of formal proof.

[6] Counsel for Mr Smith has filed submissions in support of the application. The first issue is liability, that is, whether the defendants have defamed Mr Smith. If liability is established, the second issue to be addressed is, what relief should follow.

## **Background**

[7] The plaintiff has been Mayor of the Westland District Council (WDC) since 2016. He has been involved in local governance roles on the West Coast of New Zealand since 1986.

[8] In Mr Smith’s affidavit, sworn 12 May 2021, filed in support of his formal proof application, he recounts years of what he says were allegations against him by

Ms Keenan of, amongst other things, corruption and fraud. Ms Keenan made the allegations largely in letters and emails to the editor of the Hokitika Guardian newspaper and to Local Government Departments.

[9] From approximately October 2016 when he was elected Mayor, up until the present time, Mr Smith says Ms Keenan has also regularly published false and defamatory statements about him and WDC employees on her personal Facebook profile.

[10] From about October 2018, Mr Smith says Mr King joined Ms Keenan in such publications.

[11] The nature of the allegations said to have been made include allegations of corruption, breach of various laws and regulations, and malfeasance in public office.

[12] The plaintiff estimates Ms Keenan's letters to the editor of the Guardian and Facebook posts to be in the hundreds if not thousands.

[13] The picture painted by Mr Smith is one of a sustained and intense campaign of defamatory harassment from the defendants.

[14] The statement of claim, as will be developed below, relies on only two publications in order to keep this proceeding within manageable limits, but the history fully set out in Mr Smith's affidavit is said to be relevant to relief.

### **The law of defamation**

[15] To succeed here, Mr Smith as plaintiff must establish that:

- (a) a defamatory statement has been made;
- (b) the statement was about the plaintiff Mr Smith; and
- (c) the statement has been published by Mr King and Ms Keenan the defendants.

[16] In *Craig v Slater*, the Court of Appeal stated that:<sup>1</sup>

[15] For a statement to bear the [defamatory] meaning alleged, two fundamental preconditions must be met. First, it must be the meaning an ordinary, reasonable person would draw or infer from the words, taken in their context and in light of generally known facts. Secondly, that meaning must be pleaded.

[16] Whether a statement is capable of bearing a particular meaning is a question of law; whether it in fact conveys that meaning is a question of fact.

[17] A defamatory meaning is one that tends to affect the claimant's reputation adversely, and in more than a minor way.<sup>2</sup> The words must be considered in their context, and their publication viewed as a whole. In addition to their literal sense, words may also have a further inferential meaning inherent in them, known as the "natural and ordinary meaning".<sup>3</sup> The relevant meaning is that which the words would convey to ordinary persons.

[18] It is defamatory to charge another with fraudulent, dishonest or dishonourable conduct or motives.<sup>4</sup>

### **A formal proof application**

[19] As I have noted this is a formal proof application brought by Mr Smith pursuant to r 15.9 of the High Court Rules.

[20] Addressing this r 15.9, in *McGechan on Procedure* at r 15.9(4), it is provided:<sup>5</sup>

(4) The plaintiff must, before or at the formal proof hearing, file affidavit evidence establishing, to a Judge's satisfaction, each cause of action relied on and, if damages are sought, providing sufficient information to enable the Judge to calculate and fix the damages.

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<sup>1</sup> *Craig v Slater* [2020] NZCA 305 at [15]-[16].

<sup>2</sup> *Craig v Slater*, above n 1 at [44].

<sup>3</sup> *Slim v Daily Telegraph Ltd* [1968] 2 QB1 57.

<sup>4</sup> *Hewson v Shute* (1900) 3 GLR 132; *Pearce v Symes* (1990) 28 NZLR 5621, 11 GLR 443; *Playle v Riversdale Co-operative Dairy Factory Co Ltd* (1913) 33 NZLR 1, 16 GLR 38 (CA); *Atlantic Union Oil Co Ltd v Bodle* [1933] GLR 441; *Truth (NZ) Ltd v Holloway* [1961] NZLR 22 (PC).

<sup>5</sup> Andrew Beck and Others (eds) *McGechan on Procedure*, Thomson Brookers (online looseleaf ed, Thomson Reuters at 15.9(4)).

[21] Here, Mr Smith has provided a comprehensive affidavit which I am satisfied contains evidence that establishes each of the causes of action against the first defendant, Mr King, and the second defendant, Ms Keenan, he relies upon here, subject to what I specify below. In my view, this is an appropriate matter for which judgment by way of formal proof should be given. Critically, in the formal proof context I am not required to consider hypothetical affirmative defences.<sup>6</sup>

### **The statement of claim**

[22] Paragraphs 9 and 10 of the statement of claim plead as follows:

[9] On 17 July 2020 the second defendant published on the second defendant's personal Facebook page, the following:

FAR OUT – SMITTY'S HI FAULTIN (sic) AGAIN..READ ALL ABOUT IT!!

Approximately 5 weeks later, in reply to the second defendant's Facebook post of 16 July 2020, Suzanne Theyers published the following comment:

"Bloody mad that Smith."

[10] In reply to Suzanne Theyers' comment on the second defendant's Facebook page, the first defendant published the following comment:

"He's not mad he is tick [sic] as only got 22% School Cert English, he is calculating, a lair (sic), deceitful, abuses people like Anthea, is a bully and spreads misinformation about people...don't worry its [sic] all recorded"

(August 2020 Publication)

[23] Mr Smith says that the August 2020 publication identified the plaintiff by responding to the Facebook comment by Suzanne Theyers, which identified him by his last name.

[24] Mr Smith pleads that the August 2020 publication contained statements that in their natural and ordinary meaning are defamatory of him, being that:

(a) the plaintiff Mr Smith was a liar;

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<sup>6</sup> *Solomon v Prater* [2020] NZHC 481 at [11] citing *Booth v Poplar Road Farms Ltd* [2019] NZHC 807.

- (b) he was deceitful;
- (c) he abuses people; and
- (d) he spreads misinformation.

### **The second pleaded publication**

[25] Paragraph 27 of the statement of claim pleads:

NEW ZEALAND and COUNCIL/S Uneconomic [sic] viability – while meddling with heritage, shonky consultation, wasting rate/tax monies ....!.. some do well out of it though ....!!!!

[26] Paragraphs 29 and 30 of the statement of claim go on to plead:

[29] On 30 December 2020, in reply to the Second Defendant's December 2020 Facebook Post, the first defendant published the following comment:

“#1 Ratepayers Debt. Well written Anthea, factual, one of the most indebted council's in the country. Started off with \$10 million in Kitty in 2004 by the end of 2012 the debt had risen to \$12.3 million dollars for 6600 contributors, ratepayers in other words. And remember the \$10 million in kitty needs to be added thus a \$22.3 million over spend [sic] in as little as 8 years and nothing, absolutely nothing, to show for it. Oh and who was responsible for that abuse of power, none other than National List MP Maureen Pugh (as Mayor) and her so called financial advisor the present Mayor Bruce Smith. Since 2012 (another 8 year period) the combined debt is fast reaching \$40 million. Sadly the District governed by people hell bent on spending other peoples [sic] money with gay abandon. Taking trips to rugby test matches in Wellington using ratepayers funds and facilities Playing the big time like running gigs such as the Ute Muster, \$77,000 loss to date but will never know the true loss because the Chair of Directors hasn't a clue about money, but only to abuse and lecture people on Face Book. Trips to China, playing the big time funded against Councillors instructions by the CCO's and taking their spouses/girlfriends with them. Deliberately changing the company structure around so that malfeasance can go undetected. Breaches of the company laws, breaches of judicial instructions, breaches of the duration of Company directors and the non feasance [sic] of directors giving themselves contracts (Westroads fuel contract) without being put out to tender. The list could go on and on, the book would be a best seller. What people do no [sic] understand is that the CCO's are owned by the ratepayers and they are

haemorrhaging and the debt is rising. Anthea did they ever find out what happened to the misappropriated, missing \$8million from 2004/2013 era, the amount Mayor Mike Havill stated that council were looking ahead and not going back over the past. I believe they know what happened to the Property company ute and all the office furniture stacked on the back...heading to Motueka never to be seen again. Then they have the audacity to repeatedly state a 'cool little town', now racked in debt where pensioners find it difficult to pay the rates bill let alone the food bill. A government enquiry needs to instigated [sic] and those responsible for this financial demise held to account."

**(December 2020 Publication)**

[30] In reply to the December 2020 Publication the second defendant replied:

"Well Geoffrey, you are much entitled to have a say and especially to planning of heritage, consultation, funding, etc etc..... The \$8mil was spent..and we well know much wasted..." [sic]

[27] The plaintiff, Mr Smith, says that the December publication identified him by his name and that it contained statements that in their natural and ordinary meaning were defamatory to him being:

- (e) The plaintiff abused his power as a local government official.
- (f) The plaintiff inappropriately spent Westland District Council funds for personal entertainment/travel.
- (g) The plaintiff has engaged in malfeasance, corruption, breach of company laws and breaches of judicial instruction.

[28] On 30 December 2020, Mr Smith, sent an email to the defendants notifying them that the December 2020 publication was defamatory and demanding it be removed. It was removed some 48 hours later on 1 January 2021.

**Cause of action against first defendant Mr King**

[29] The claim against the first defendant, Mr King, relates to the August and December 2020 publications which Mr King entered on Ms Keenan's Facebook page. Mr Smith says both publications were defamatory as the statements were false and would lower him in the estimation of right-thinking members of society generally and injure his reputation. Further, Mr Smith says the December publication identifies him.

### **Cause of action against the second defendant, Ms Keenan**

[30] The plaintiff, Mr Smith, says the second defendant, Ms Keenan, knew of the August 2020 publication and the December 2020 publication and failed to remove them from her Facebook page within a reasonable time. It is said the circumstances give rise to an inference that Ms Keenan took responsibility for both publications.

### **Relief sought**

[31] In each case, the following relief is sought:

- (a) A declaration pursuant to Section 24 of the Defamation Act 1992 that the second defendant is liable to the plaintiff in defamation with respect to the August 2020 Publication and the December 2020 Publication.
- (b) Costs on a solicitor/client basis pursuant to Section 24(2) of the Defamation Act 1992.
- (c) A permanent injunction restraining the second defendant from publishing defamatory statements about the plaintiff.
- (d) Any other relief the Court deems appropriate.

### **Discussion**

[32] The plaintiff, Mr Smith, says he has brought this proceeding in light of the long history of what he considers to be defamatory communications he has suffered from the defendants. He maintains that, if he did nothing, then nothing would change and the defendants would continue with their frequent personal and defamatory comments and letters about him.

[33] I am satisfied here the plaintiff, Mr Smith, has established that the statements complained of are about him and they are defamatory as a reasonable person would take from each publication the pleaded meanings.

[34] The August 2020 publication, which in context refers to Mr Smith, given that it is in reply to a posting that refers to Mr Smith by his surname, says that he is a liar, he is deceitful, he abuses people, is a bully and spreads misinformation. These are the words actually used in the Facebook post. I have no difficulty therefore concluding those meanings would be taken from the August 2020 publication.



[35] At that point it would ordinarily be for the defendants to establish they had a defence. However, they have taken no action in these proceedings.

[36] In relation to the December 2020 publication, it refers to the then Mayor, Ms Pugh and “her so called financial advisor the present Mayor Bruce Smith”. It then makes allegations against the people who govern the district. Mr Smith is among those given, too, he is involved in governing the district. The natural meaning of these allegations is that Mr Smith inappropriately spent Council funds for his own entertainment or travel, breached company law, breached judicial instructions and abused his powers. Again, these are the words used in the publication. I am satisfied the pleaded meanings are what an ordinary reasonable reader would take from those words.

#### **Second defendant’s (Ms Keenan’s) liability**

[37] While the first defendant was the primary publisher of the August and December 2020 publications, it is submitted that Ms Keenan, the second defendant, is also liable in defamation for both publications. Both publications were posted to Ms Keenan’s Facebook page which she controls and were not removed by her within a reasonable time. Ms Keenan’s Facebook profile was publicly accessible and searchable by any person with a Facebook account.

[38] In *Murray v Wishart*, allegedly defamatory comments made by an anonymous third party were posted to a Facebook page established by the defendant.<sup>7</sup> The defendant argued that he was not a publisher but only a mere host of the Facebook page. The Court of Appeal held that in New Zealand, a publisher would be required to have actual knowledge in the sense that they know about the defamatory statement and failed to remove it within a reasonable time, such that it can be inferred they were taking responsibility for the statement.

[39] Here, Mr Smith submits Mr Keenan is liable on that basis.

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<sup>7</sup> *Murray v Wishart* [2014] 3 NZLR 722.

### **August 2020 publication**

[40] The plaintiff, Mr Smith, does not believe the August 2020 publication was ever removed from the second defendant's Facebook page. That Facebook page of Ms Keenan is an active one. Mr Smith submits the fact of that activity means Ms Keenan must have been aware of the August 2020 publication, particularly given it was one of multiple replies to an original Facebook post made by her on 17 July 2020. If that submission is accepted, Mr Smith says Ms Keenan is jointly and severally liable with Mr King as a co-publisher.

### **Second defendant's (Ms Keenan's) liability for the December 2020 publication**

[41] The December 2020 publication was posted by Mr King to Ms Keenan's Facebook page on 30 December 2020. The second defendant, Ms Keenan, had actual knowledge of the December 2020 publication, having replied to it.

[42] Mr Smith wrote to Ms Keenan on the same day, demanding that it be removed, but it was not removed for a further 48 hours. Mr Smith submits that a failure to remove the post for 48 hours meant there was a failure to remove it within a reasonable time and as such, Ms Keenan is jointly liable as a co-publisher of the December 2020 publication.

[43] I agree. It does not take 48 hours to remove a Facebook post. No explanation has been offered as to the delay in removal.

[44] In relation to both publications, I find Ms Keenan was aware of the publication to her Facebook page and by permitting the postings to remain after becoming aware she ratified, adopted and endorsed those statements. By doing so she made herself responsible for those statements.

### **Liability finding**

[45] In respect of each defendant, Mr King and Ms Keenan, there is a declaration pursuant to s 24 of the Defamation Act 1992 that each defendant is liable to Mr Smith, the plaintiff, in defamation with respect to the August 2020 publication and the December 2020 publication.

### **Costs on a solicitor-client basis**

[46] Section 24(2) of the Defamation Act 1992 provides:

(2) Where, in any proceedings for defamation,—

(a) the plaintiff seeks only a declaration and costs; and

(b) the court makes the declaration sought,—

the plaintiff shall be awarded solicitor and client costs against the defendant in the proceedings, unless the court orders otherwise.

[47] These proceedings were commenced by solicitors for the WDC, which I am told had incurred \$20,147.62 in legal costs since January 2021 through to 26 April 2021. This sum apparently did not include legal costs relating to previous attempts to remedy the defendants' defamatory publications.

[48] While the WDC is not the plaintiff in this matter, it is a reasonable inference that the plaintiff, Mr Smith, will be liable to account to WDC as the funder of the proceedings.

[49] There is judgment against Mr King and Ms Keenan for liability for reasonable solicitor-client costs pursuant to s 24(2) of the Defamation Act 1992. An updating memorandum in respect of costs is to be filed. Where solicitor-client costs are sought, the invoices containing a description of the work should be filed and the memorandum detailing costs should attach the invoices.

### **A permanent injunction?**

[50] As [31](c) above notes, amongst the relief sought here by Mr Smith is a permanent injunction. Mr Russell, counsel for the plaintiff, rightly acknowledges that permanent injunctions in defamation cases are not the norm, as such curtail an individual's right to freedom of expression. Mr Russell, however, does refer in his submissions to a number of cases where injunctions have been granted:

[74] In *Korda Mentha v Siemer*,<sup>8</sup> Cooper J granted a permanent injunction having found Mr Siemer deliberately calculated that his defamatory

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<sup>8</sup> *Korda Mentha v Siemer* HC Auckland CIV-2005-404-1808, 23 December 2008.

statements would bring Mr Stiassny and his firm into disrepute and intended that to be the consequence of his defamatory statements.

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[76] In *Karam v Parker*<sup>9</sup> a supporter of David Bain sought a permanent injunction prohibiting further publication of defamatory material (including that he lacked integrity, was dishonest, etc.).

[79] In *Mount Cook Group Ltd v Johnstone Motors Ltd*,<sup>10</sup> a permanent injunction was issued to stop further publication of defamatory posters.

[80] In *Ross v Hunter* a permanent injunction was granted restraining Mr Hunter from publishing “*anything on his website that imputes about either [Mr Ross or Mr Church] that they are liars, lazy, unethical, dishonest or incompetent.*”<sup>11</sup>

[51] Mr Russell submits that a key consideration in determining whether to grant a permanent injunction here is whether the defendants will continue to publish defamatory content about the plaintiff, Mr Smith. Accordingly, he refers at some length to the previous conduct of the defendants.

[52] None of the authorities referred to by Mr Russell as I understand it, however, involve a plaintiff who holds public office. Mr Smith as Mayor of the WDC does hold an important public office.

[53] Issues of freedom of speech and the right of all to properly comment upon and critique decisions of local body politicians like Mr Smith, as I see it are important considerations here. Freedom of expression should not readily be curtailed by an injunction.<sup>12</sup> The application before me is one for judgment by way of a formal proof. Given this, and my comments above, I am satisfied this is not an appropriate situation where the permanent injunction sought should be granted. The application for a permanent injunction, accordingly, is refused.

[54] Having said that, however, my decision should not be taken in any way as condoning behaviour which involves further defamatory statements being made

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<sup>9</sup> *Karam v Parker* [2014] NZHC 737 at [247].

<sup>10</sup> *Mount Cook Group Ltd v Johnstone Motors Ltd* [1990] 2 NZLR 488 (HC).

<sup>11</sup> [2017] NZDC 22579.

<sup>12</sup> *TV3 Network Series Limited v Fahey* [1999] 1 NZLR (CA) at 132-136.

against the plaintiff, Mr Smith. If that is to occur, obviously this will be viewed harshly and repercussions may well follow.

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**Gendall J**

Solicitors:  
Lane Neave, Christchurch