

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

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

**CIV-2015-404-2524
[2022] NZHC 1764**

UNDER	the Defamation Act 1992
BETWEEN	JOHN CHARLES STRINGER Plaintiff
AND	COLIN GRAEME CRAIG First Defendant
AND	HELEN RUTH CRAIG Second Defendant
AND	ANGELA MARIA STORR Third Defendant
AND	KEVIN ERIC STITT Fifth Defendant
AND	STEPEHN DYLAN TAYLOR Sixth Defendant

Hearing: On the papers

Appearances: J C Stringer in person
C G Craig, H R Craig, A M Storr, K E Stitt, S D Taylor in person

Judgment: 21 July 2022

**JUDGMENT No 6 OF PALMER J
(Costs revisited)**

Costs

[1] On 3 April 2020, I issued judgment in these proceedings, in favour of the defendants.¹ On 18 May 2020, I awarded costs to the defendants saying, in summary:²

[1] The New Zealand legal system gives litigants incentives to bring and defend litigation according to the expected merits of their cases by directing a losing party to pay a winning party a contribution towards their legal costs and reasonable disbursements. That is in the interests of all litigants and in the interests of the legal system. Mr John Stringer was unsuccessful in bringing defamation proceedings against five defendants. He must pay the reasonable disbursements of the defendants. The defendants were not legally represented but paid fees for legal advice and assistance. I order Mr Stringer to pay part of these fees up to and including 29 July 2019. But from then on, he can fairly be regarded as having been on notice of the strength of the defendants' case and the likelihood that they would seek payment of their disbursements. So, after 29 July 2019, Mr Stringer must pay the full amount of their legal fees, as reasonable disbursements.

[2] I ordered Mr Stringer to pay, as reasonable disbursements:³

- (a) the defendants' filing fees, courier fees, printing and compilation of bundles and travel costs disbursements, totalling \$7,509.43;
- (b) the proportion of the defendants' disbursements for legal advice and assistance relating to Mr Stringer's proceeding in schedule 2 to the defendants' memorandum of 14 April 2020, up to and including 29 July 2019; and
- (c) the defendants' disbursements for legal advice and assistance relating to Mr Stringer's proceeding in schedule 3 to the defendants' memorandum of 14 April 2020, after 29 July 2019, but not the lost income claimed by Mr Taylor and Mrs Storr.

[3] On 18 June 2020, I made further directions as to costs.⁴ Costs were fixed at \$77,238.43. On 27 August 2020, pending appeal to the Court of Appeal, I stayed any steps to enforce the costs award, including through the bankruptcy process and through taking further steps in relation to a charging order.⁵ I also released to the defendants the security for costs paid by Mr Stringer to the Registry.

¹ *Stringer v Craig (No 3)* [2020] NZHC 644.

² *Stringer v Craig (No 4)* [2020] NZHC 1021.

³ At [26].

⁴ *Stringer v Craig* CIV-2015-404-2524, 18 June 2020 (Minute No 17).

⁵ *Stringer v Craig (No 5)* [2020] NZHC 2210.

[4] On 9 May 2022, the Court of Appeal dismissed Mr Stringer’s appeal of the substantive judgment.⁶ But it allowed his appeal against the costs judgment in relation to the legal fees as disbursements.⁷ The Court:

- (a) held that the principles relating to indemnity costs under r 14.6(4) of the High Court Rules 2016 should not be imported to the recovery of disbursements because lay litigants may not recover a partial indemnity of disbursements;⁸
- (b) accepted that, from 29 July 2019, Mr Stringer was on notice as to the strength of the defendants’ case but considered that whether he was on such notice ought not to have been the basis on which an award against him was made;⁹
- (c) remitted the issue of costs to the High Court to determine what is a reasonable contribution by Mr Stringer to disbursements in this case, based on a partial indemnity approach;¹⁰ and
- (d) stated that a thorough assessment of what legal fees were genuinely paid in relation to the present proceedings would be needed first.¹¹

[5] On 31 May 2022, in response to a query from Mr Stringer, I confirmed that I would decide the costs issues remitted by the Court of Appeal.¹² I set a timetable for submissions. I also made directions for the filing of evidence on what legal fees were genuinely paid in relation to these proceedings.

Evidence of fees

[6] The defendants have provided evidence about the costs incurred, including an affidavit by Mr Justin Graham of Chapman Tripp. He states that the Court of Appeal’s

⁶ *Stringer v Craig* [2021] NZCA 168.

⁷ At [124].

⁸ At [107].

⁹ At [110]–[111].

¹⁰ At [113].

¹¹ At [117].

¹² *Stringer v Craig* CIV-2015-404-2524, 31 May 2022 (Minute No 21) at [5].

concern, that some of the fees claimed related only to Mr Craig's proceeding against Mr Stringer, rather than these proceedings, was not so. His evidence is that the total amount of fees paid by Mr Craig to Chapman Tripp for legal advice relating to Mr Stringer's claim is \$70,241.51, or \$56,793.66 if estimated fees (the last item below) are excluded:

- (a) Claimed attendances totalling \$50,836.41 (GST excl) related to the present proceeding, in relation to assistance with the trial and legal submissions.
- (b) Once the two sets of proceedings were determined to be held together, he has taken a conservative approach to identifying the time entries which clearly relate to these proceedings, totalling \$3,589.50.
- (c) He also identified mixed attendances which related to both sets of proceedings and conservatively allocated 50 per cent of them to these proceedings, totalling \$2,367.75.
- (d) Of the remaining unallocated fees by Chapman Tripp, he conservatively estimates that around 25 per cent would be referable to Mr Stringer's claim, totalling \$13,447.85.

Submissions

[7] The defendants submit that a reasonable contribution to their legal fees does not lead to a materially different outcome from the previous High Court award of costs. They submit that Mr Stringer had little or no chance of success, that he rejected several generous settlement offers and proceeded recklessly to trial. They submit Mr Stringer could have abandoned the case on the first day of trial when, despite his best attempts to hide emails he had sent to Mr Pete Belt, Deputy Editor of Whaleoil, their disclosure doomed his case. They submit that, in these circumstances, awarding 100 per cent of the legal disbursements to the defendants from 29 July 2019 onwards, as the High Court judgment did, was reasonable. Notwithstanding that, taking a "partial indemnity approach", the defendants seek a reasonable contribution to their legal fees of 75

per cent of legal disbursements after 29 July 2019 and 50 per cent of other legal disbursements, plus GST, totalling \$55,004.33.

[8] Mr Stringer submits, relevantly:

- (a) He has already paid \$10,000 to the defendants by way of \$5,000 security for costs and \$5,000 for disbursements at the direction of Associate Judge Osborne. That is a reasonable contribution. Additional partial costs are unsafe.
- (b) There has still not been a thorough assessment of the legal disbursements because no invoices have been provided, which is an abuse of the processes of the Court. The invoices which have been provided (contrary to that submission) repeatedly detail Mr Craig's proceeding.
- (c) His own correspondence with Chapman Tripp is consistent with the absence of invoices by Chapman Tripp. He finds aspects of Mr Graham's affidavit are unlikely, include retrospective assumptions and are unsafe for the Court to rely on.
- (d) It is unreasonable for him to make a contribution to alleged legal advice or professional services when no paperwork can be adduced despite repeated requests.

What disbursements should be paid?

[9] The Court of Appeal did not interfere with the High Court decision that Mr Stringer must pay \$7,509.43 for filing fees, courier fees, printing and compilation of bundles and travel costs.¹³ That decision stands.

¹³ *Stringer v Craig* [2021] NZCA 168 at [95].

[10] Previous payment by the defendants of \$5,000 for disbursements ordered by Associate Judge Osborne in relation to interlocutory proceedings is not relevant to the decision at issue here.

[11] I am satisfied that Mr Graham's affidavit sets out sufficient evidence of what legal fees were genuinely paid by the defendants in relation to the present proceedings for me to make a decision on them. Contrary to one of Mr Stringer's submissions, but consistent with another, there is sufficient evidence of the invoices before the Court.

[12] I consider that a reasonable contribution by Mr Stringer to the defendants' legal fees as disbursements, on a partial indemnity basis, would involve him paying \$54,425.91, comprising:

- (a) the \$50,836.41 (GST excl) identified as relating to assistance with the trial and legal submissions; and
- (b) the \$3,589.50 identified as relating to these proceedings.

[13] I do not require Mr Stringer to pay Mr Graham's estimates of 50 per cent of mixed attendances and 25 per cent of remaining unallocated fees. Their connection to these proceedings is too uncertain and dropping them fairly satisfies the Court of Appeal's requirement that legal costs be paid on only a partial indemnity basis.

[14] Accordingly, I order that Mr Stringer pay the defendants' disbursements on a partial indemnity basis in the amount of \$61,935.34, of which \$5,000 has effectively been paid from the security.

Palmer J