

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

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

**CIV-2022-404-002070
[2023] NZHC 1592**

BETWEEN

AHMED ALKAZAZ
Plaintiff

AND

DELOITTE LIMITED
Defendant

CAREY WONG
Second Defendant

MICHAEL ENDERBY
Third Defendant

Hearing: 29 May 2023

Appearances: Plaintiff in Person
S Armstrong / R J Gordon for the Defendants

Judgment: 26 June 2023

JUDGMENT OF ASSOCIATE JUDGE GARDINER

This judgment was delivered by me on 26 June 2023 at 4.00 p.m.
pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date.....

Solicitors:

Minter Ellison, Auckland

Introduction

[1] The defendants apply to strike-out Ahmed AlKazaz's statement of claim, in which he alleges that they made defamatory statements about him in April 2018 and at other unspecified times.

[2] The defendants say that any cause of action in defamation against them in relation to the April 2018 statements is untenable on limitation grounds. Furthermore, that as Mr AlKazaz has not provided particulars of the other alleged defamatory statements, this part of his pleading is an abuse of process.

[3] The issues to be determined are:

- (a) Is there no reasonable possibility that Mr AlKazaz's claim has been brought within time?
- (b) Is Mr AlKazaz's allegation of other defamatory statements at para 19 of his statement of claim an abuse of process?

Background

[4] Mr AlKazaz was employed by a Deloitte¹ subsidiary, DeloitteAsparona Limited, from September 2013. After a restructuring process affected Mr AlKazaz's employment, he and the employer entered into a "Record of Settlement" on 7 July 2016, and the employment relationship came to an end on 29 August 2016.

[5] Nearly two years later, on 20 April 2018, a recruitment agency retained by Mr AlKazaz (Halcyon Knights) forwarded his curriculum vitae (CV) to Deloitte for consideration for another role. It is out of this contact by the recruitment agency that the allegedly defamatory publication now in issue arose.

[6] On 20 April 2018, Halcyon Knights sent an email to Carey Wong, Senior Recruitment Advisor at Deloitte:

¹ Deloitte Ltd uses the name Deloitte as its trading name.

Please find Ahmed's CV attached for the Technical Consultant role in Auckland. Ahmed comes well-recommended from our network, and has indicated an interest in Deloitte & requested for his details to be presented to you ... Would you be keen to see him?

[7] Mr Wong asked Michael Enderby, then a Senior Specialist in Deloitte's Oracle practice, and Selwyn Brunston for their thoughts. Dr Enderby spoke with Mr Wong about his experience of Mr AlKazaz when they worked together at DeloitteAsparona, indicating that Mr AlKazaz's CV did not accurately reflect the work Mr AlKazaz performed during that time. He followed up with an email to Mr Wong confirming that Deloitte was not interested in Mr AlKazaz.

[8] Mr Wong replied to Halcyon Knights:

No, thank you, the team has declined to proceed.

[9] That same day, Halcyon Knights responded to Deloitte:

Thanks, Carey. Would be helpful to get some intel around where they thought he was lacking, as much for him as to help me get it right on the next profile?

[10] Mr Wong responded with a link to a media article on a case that Mr AlKazaz had, in 2017, successfully brought against another employer:

<https://stuff.co.nz/business/100186473/it-worker-sacked-under-90-day-rule-wins-36k-for-unjustified-dismissal>

Not with us, but the information on CV is inaccurate

(emphasis added)

[11] On 26 April 2018, Mr AlKazaz requested any personal information held by Deloitte about him under the Privacy Act 1993. On 2 July 2018, Deloitte responded attaching, amongst other things, a copy of the 20 April 2018 email from Mr Wong to Halcyon Knights.

[12] Upon receiving this response, Mr AlKazaz sent an email to Deloitte on 2 July 2018 saying:

I have to say this is very disappointing to wait for almost three months, and you come back to me with emails I sent to Deloitte, one email with the recruiter and email body full of ambiguities ... Can you please advise who is

responsible for the following comment, and what inaccuracies is he / she referring to here in my CV?

[13] On 4 July 2018, Mr AlKazaz emailed Deloitte:

Why is Deloitte describing my CV as inaccurate to third parties? While this is not true, and misleading, it is also damaging enough to my reputation.

[14] On 31 July 2018, Mr AlKazaz filed a Statement of Problem in the Employment Relations Authority. Mr AlKazaz stated that he wanted the Authority to resolve Deloitte's:

- (a) breaches of the Privacy Act 1993 and Human Rights Act 1993;
- (b) unjustified coercion of him to sign the Record of Settlement;
- (c) failure to comply with ss 63, 143 and 68 of the Employment Relations Act 2000;
- (d) failure to provide all his personal information as requested under the Privacy Act 1993;
- (e) unjustified dismissal of him;
- (f) breaches of the Record of Settlement by making derogatory comments about him. Mr AlKazaz specifically complained about Deloitte sending the media link to Halcyon Knights and stating that his CV was inaccurate.²

[15] The Employment Relations Authority delivered its determination on 11 April 2019.³ It found that there was no illegitimate pressure on Mr AlKazaz to enter into the Record of Settlement, that the agreement was binding and enforceable and prevented Mr AlKazaz from pursuing a personal grievance for unjustified dismissal, and that it did not have jurisdiction under the Privacy Act 1993 and Human Rights Act 1993. The Authority determined that Mr Wong's comment to Halcyon Knights was

² Statement of problem, dated 31 July 2018, at [2.10(o)] and [2.10(p)].

³ *AlKazaz v Asparona Ltd* [2019] NZERA 215.

disparaging, but as Mr Wong was an employee of Deloitte not DeloitteAspirona (Mr AlKazaz's former employer), Mr Wong (and Deloitte) were not bound by the Record of Settlement.

[16] Mr AlKazaz challenged the determination in the Employment Court. The reserved judgment of the Employment Court was delivered on 15 September 2022.⁴ The Court confirmed that DeloitteAspirona, not Deloitte, was Mr AlKazaz's former employer and that the Record of Settlement resolved all issues between Mr AlKazaz and DeloitteAspirona.⁵

[17] The Court concluded that the statement by Dr Enderby to Mr Wong and from Mr Wong to Halcyon Knights was derogatory and would have been a breach of the Record of Settlement if made by DeloitteAspirona, but neither Mr Wong nor Dr Enderby were employees of DeloitteAspirona when they made the statements.⁶

[18] Mr AlKazaz then commenced this proceeding, suing the three defendants in defamation.

Legal principles

Strike-out

[19] The Court's power to strike out a cause of action is provided by r 15.1(1) of the High Court Rules 2016. Under r 15.1(1):

- (a) The court may strike out all or part of a pleading if it—discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of the process of the court.

⁴ *AlKazaz v Deloitte (No. 3)* [2022] NZEmpC 171.

⁵ At [27], [61] and [85].

⁶ At [110] to [117].

[20] To succeed in striking out a cause of action on limitation grounds, the defendant must satisfy the Court that the plaintiff's cause of action is so clearly statute-barred that the claim can properly be regarded as frivolous, vexatious or an abuse of process.⁷ In essence, the Court must be satisfied that there is no reasonable possibility that the claim has been brought within time.⁸

Limitation period for defamation claims

[21] The normal limitation period for a defamation claim is two-years after the act or omission on which the claim is based.⁹ The relevant "act" is the publication of the alleged defamatory statement upon which the plaintiff claims.¹⁰

[22] The two-year limitation period for defamation claims compares to six-years for other civil claims.¹¹ The principle underlying the shorter limitation period for defamation claims is that a plaintiff should protect her or his reputation with vigour.¹² As observed in a 2007 report prepared for the Law Commission on limitation defences in civil cases:¹³

There are special reasons why defamation claims should be brought more promptly than other claims in tort. It is particularly undesirable to have a defamation claim hanging over a defendant (perhaps by way of threat) for longer than is necessary. The time for bringing a claim for defamation starts from the time of publication. If there has been no republication of the defamation (which would start time running again) a plaintiff who is genuinely affected by a defamation should be able to bring a claim within the present time limits.

(citations omitted)

[23] The commencement of the two-year limitation period for defamation claims may, in some circumstances, be delayed until after a "late knowledge" date occurs.¹⁴ This is the date (i.e., after the normal start date of the "primary" limitation period) when the plaintiff gained knowledge (or, if earlier, the date when the plaintiff ought

⁷ *Trustees Executors Limited v Murray* [2007] NZSC 27, [2007] 3 NZLR 721 at [33].

⁸ *Commerce Commission v Carter Holt Harvey Ltd* [2009] NZSC 120, [2010] NZLR 379 at [39].

⁹ Limitation Act 2010, ss 11(1) and 15.

¹⁰ *Driver v Radio New Zealand Limited* [2019] NZHC 3275, [2020] 3 NZLR 76 at [23].

¹¹ Limitation Act 2010, s 11.

¹² *Driver*; above at n 10 at [31], [81] and [82].

¹³ Law Commission *Limitation Defences in Civil Cases: Update Report for the Law Commission* (NZLC MP16, 2007) at [91].

¹⁴ Limitation Act 2010, ss 11(3)(a) and 14.

reasonably to have gained knowledge) of certain facts, including the fact that the act or omission on which the claim is based had occurred – and that the act or omission was attributable (wholly or in part) to, or involved, the defendant.¹⁵

[24] For the purposes of strike-out, if a defendant demonstrates that the plaintiff's proceeding was commenced after the period allowed by the Limitation Act 2010, the defendant will be entitled to strike-out unless the plaintiff shows that there is a good arguable case for an extension or postponement which would bring the claim back within time.¹⁶

Mr AlKazaz's grounds for opposing strike-out

[25] Mr AlKazaz sets out several reasons why his claim should not be struck out in his notice of opposition. He developed these during oral submissions. Some of these reasons can be dealt with briefly.

[26] Mr AlKazaz says that he was unaware of the Limitation Act 2010 until the defendants filed their interlocutory application. He says that he was unaware of the legal concept of defamation, or the Defamation Act 1992 until the Employment Court delivered its judgment. He then received legal advice and realised he needed to bring a claim for defamation in this Court for the April 2018 statements and other statements he believes Dr Enderby has made about him. He says that he thought he had taken the correct legal action in the Authority and then the Employment Court. He says his claim that Deloitte breached the Record of Settlement by making disparaging remarks about him was in substance a claim for defamation. He asks that the Court overlook his procedural confusion, exercise its discretion and treat his action in the Authority and the Employment Court as reasonable notice to the defendants of his defamation claim against them. Mr AlKazaz emphasises that he is a litigant in person and an immigrant for whom English is a second language.

[27] This Court does not have a discretion to permit a cause of action to proceed if the defendant establishes that it has been brought outside of the statutory limitation

¹⁵ Limitation Act 2010, subs 14(1)(a) to (e).

¹⁶ Limitation Act 2010, ss 11(3)(a) and 15; and *Murray*, above n 7, at [33].

period.¹⁷ Section 11 of the Limitation Act 2010 provides a complete defence in cases where a defendant can show that the claim has been brought outside of the limitation period. As noted, s 15 varies s 11 by reducing the six-year primary period to two years for defamation claims, and the late knowledge period from three years to two years.

[28] The fact that Mr AlKazaz’s complaint to the Authority and subsequent appeal to the Employment Court included his concern about the April 2018 statements is irrelevant. This defamation proceeding is a discrete proceeding in a different forum. The proceeding includes different parties and the cause of action, while relying in part on the same underlying facts, has a different legal foundation.

[29] I acknowledge that Mr AlKazaz represents himself and appears to have represented himself throughout the Authority and Employment Court proceedings. Unfortunately, his ignorance of the law does not justify the Court disapplying the Limitation Act 2010 and nor does the Court have jurisdiction to do so.

[30] On that basis, the central issue is whether there is no reasonable possibility that Mr AlKazaz’s defamation claim against the defendants has been brought in time.

Is there no reasonable possibility that the claim has been brought within time?

The publications at issue

[31] In his statement of claim Mr AlKazaz refers to “Mr Enderby and Mr Wong’s defamatory statements”. He alleges that Dr Enderby told Mr Wong that his CV was not accurate,¹⁸ and that the information in Mr AlKazaz’s CV did not accurately reflect the work that Mr AlKazaz performed while he worked at DeloitteAsparona. He states that Mr Wong then passed this statement on to Halcyon Knights.¹⁹

[32] Mr AlKazaz also claims that Dr Enderby and Mr Wong have made further “slandorous allegations” about him since April 2018:²⁰

¹⁷ *ISP Consulting Engineers Ltd v Body Corporate 89408* [2017] NZCA 160, (2017) 24 PRNZ 81 at [13].

¹⁸ Statement of claim, dated 9 October 2022, at [8].

¹⁹ Statement of claim, dated 9 October 2022, at [10].

²⁰ Statement of claim, dated 9 October 2022.

[19] [Dr] Enderby and Mr Wong have worked in [six] different companies since then, spreading these slanderous allegations against Mr AlKazaz. On the balance of probabilities these slanderous comments spread well beyond those [six] different IT companies in a very niche IT market in New Zealand that is well-connected.

[33] He concludes that “the defendants” must compensate him for reputational damage, hurt, distress and emotional harm resulting from the spread of “these defamatory statements”.

[34] In response to my questioning, Mr AlKazaz confirmed that the specific statements by the defendants of which he is aware and complains of are:

- (a) Mr Wong’s email to Halycon Knights on 20 April 2018; and
- (b) Dr Enderby’s verbal statement(s) and email to Mr Wong that preceded Mr Wong’s email to Halycon Knights.

[35] In terms of his general allegation at para 19 of his statement of claim, Mr AlKazaz confirmed that he is not aware of other specific statements made by Dr Enderby and Mr Wong but considers it likely that they will have made further defamatory statements about him.

[36] The defendants seek to characterise Mr AlKazaz’s defamation claim as relating solely to Mr Wong’s email to Halycon Knights. They submit that Mr AlKazaz’s claim for damages arises out of his concern that the defendants described his CV as “inaccurate” to third parties and thereby harmed his reputation in the IT market. They say that the only third party publication in issue is Mr Wong’s email to Halycon Knights on 20 April 2018. They say that Mr AlKazaz does not point to any alleged defamatory statement made by Dr Enderby to a third party.

[37] I do not accept that characterisation of Mr AlKazaz’s claim. Mr AlKazaz has named Dr Enderby as the second defendant. He specifically describes Dr Enderby’s April 2018 statement to Mr Wong. He specifically refers to Dr Enderby at para 19. He claims that “the defendants” must compensate him for the spread of “these defamatory statements”. I consider it clear that Mr AlKazaz’s claim concerns both Mr

Wong's email to Halcyon Knights on 20 April 2018; Dr Enderby's statement(s) to Mr Wong that preceded that email; and other unspecified statements made by each of them since then.

[38] As Mr AlKazaz became aware of Mr Wong and Dr Enderby's statements at different times, it is necessary to individually consider their limitation defences.

The 20 April 2018 email by Mr Wong

[39] Mr AlKazaz commenced this proceeding on 20 October 2022. As it concerns Mr Wong's 20 April 2018 email to Halcyon Knights it is well outside the two year primary limitation period.

[40] If there is a late knowledge date with respect to Mr Wong's email to Halcyon Knights, it is July 2018. It is indisputable, on the evidence, that Mr AlKazaz knew of the 20 April 2018 email by 2 July 2018 at the latest, when he was sent a copy by Deloitte in response to his Privacy Act 1993 request. The email was part of his complaint to the Employment Relations Authority.

[41] Accordingly, Mr AlKazaz's claims as against Mr Wong and Deloitte concerning this email are obviously time-barred and must be struck out.

Dr Enderby's statements to Mr Wong

[42] Mr AlKazaz claims that he did not become aware of Dr Enderby's allegedly defamatory statements to Mr Wong in April 2018 until 22 October 2020, when Mr Wong filed his brief of evidence in the Environment Court.²¹

[43] In his affidavit, Mr AlKazaz deposes:²²

I was first made aware of the defamatory statements committed by Mike Enderby on behalf of Deloitte on 22 October 2020, at paragraph [12] of Mr Carey Wong's brief of evidence at the Employment Court...

(brackets in original)

²¹ Notice of opposition to the interlocutory application for strike out, dated 7 February 2023 at [2(f)].

²² Affidavit in opposition to the interlocutory application for strike out, affirmed 7 February 2023 at [3].

[44] As such, Mr AlKazaz pleads that a “late knowledge date” of 22 October 2020 applies and therefore, as he filed his proceeding on 20 October 2022, his claim as it concerns these statements is not out of time.

[45] The defendants dispute that Mr AlKazaz was unaware of Dr Enderby’s statements to Mr Wong until October 2020.

[46] It becomes necessary to consider closely what information Mr AlKazaz had prior to and throughout the Authority and Employment Court processes.

Privacy request response

[47] As noted, by July 2018 Mr AlKazaz had received a redacted version of the email chain between Halcyon Knights and Mr Wong from Deloitte. It is not apparent from this email chain on what Mr Wong based his response to Halcyon Knights or to whom he had spoken before sending the email.

The ERA proceeding

[48] Mr Wong provided a brief of evidence during the ERA proceeding on 14 December 2018. In this brief, Mr Wong said that he had “forwarded [Mr AlKazaz’s] application to the hiring managers for their review. But we decided not to proceed”.²³ Thus, the evidence was not specific in attributing any comment to Dr Enderby.

[49] In its determination issued on 11 April 2019 the Authority recorded that “Mr Wong had received the information about the CV [that it was inaccurate] from another member of the team who did not believe the CV was accurate.”²⁴

[50] Thus, by April 2019 Mr AlKazaz knew or ought reasonably to have known that someone in Deloitte had informed Mr Wong that his CV was inaccurate and that this was the basis for Mr Wong’s comment to Halcyon Knights.

²³ Brief of evidence of Mr Wong, dated 14 December 2018, at [10].

²⁴ *AlKazaz v Asparona Ltd*, above n 3, at [43].

[51] A claim's late knowledge date is the date on which the claimant gained knowledge or ought reasonably to have gained knowledge of the fact that the act or omission had occurred and the fact that the act or omission was attributable (wholly or in part) to or involved the defendant.²⁵ There is no evidence that Mr AlKazaz was aware, in April 2019, that it was Dr Enderby who had informed to Mr Wong that his CV was inaccurate.

The Environment Court proceeding

[52] Mr AlKazaz deposes that he only became aware that Dr Enderby was the source of the statement about his CV when Mr Wong filed his brief of evidence for the hearing in the Environment Court. If that is the case, the "late knowledge date" for the claim concerning Dr Enderby's statements to Mr Wong will be 22 October 2020 or shortly thereafter when the brief was served on Mr AlKazaz. Mr AlKazaz's proceeding as it concerns these statements will have been brought in time.

[53] In the brief of evidence in question Mr Wong says:²⁶

I reviewed Mr AlKazaz's application and formed the view that his application was very light on WebLogic and Exalogic skills ... I forwarded the application to the hiring manager, Dr Michael Enderby, and Mr Selwyn Brunson (Associate Directors in the Oracle Team at the time) for their review. Dr Enderby emailed me to tell me not to proceed...

Dr Enderby subsequently told me he did not want to proceed because Mr AlKazaz's CV was not quite accurate. This was in reference to Mr AlKazaz's CV that referred to hands-on experience with Exalogic skills while Mr AlKazaz worked at Deloitte. I don't recall exactly when Dr Enderby and I had this discussion in person.

Given Dr Enderby's view, we decided not to proceed with Mr AlKazaz's application and I advised the recruiter accordingly.

I then saw Dr Enderby at a resourcing meeting that afternoon (these meetings were at 2.30 pm every Friday), and he explained that Mr AlKazaz previously worked at DeloitteAsparona as a trainer. Mr AlKazaz's application was not discussed at the meeting. I only mentioned that he had applied for a role and that seemed to be a point of amusement to the Oracle management team. It was then that I recalled the media articles I had seen about his Employment Relations Authority case.

²⁵ Limitation Act 2010, subs 14(1)(a) and (b). See also subs 14(1)(c) to (e) of the Limitation Act 2010.

²⁶ Brief of evidence of Mr Wong, dated 22 October 2020, at [11]— [16].

That same day, the recruiter asked me for detail as to why we didn't proceed. I responded to the recruiter with a link to the media article regarding Mr AlKazaz's case in the Employment Relations Authority against Enterprise IT, and said that the information on his CV is "*inaccurate*"...

My reply was based on a comment of Dr Enderby, who had worked with Mr AlKazaz during his time at DeloitteAsparona, and had first-hand knowledge of Mr AlKazaz's experience while at DeloitteAsparona. I had no reason to challenge or query Dr Enderby's position.

[54] The defendants dispute that Mr AlKazaz did not know Dr Enderby was the source of the statement that his CV was inaccurate until he received Mr Wong's brief of evidence. They seek leave to adduce a supplementary reply affidavit that they say contradicts Mr AlKazaz's evidence. The affidavit attaches communications between Mr AlKazaz and the Registrar of the Employment Court in July, August, and October 2019 in which Mr AlKazaz refers to Dr Enderby. The supplementary affidavit was served on Mr AlKazaz on 28 April 2023.

[55] Mr AlKazaz objects to this late reply evidence, as he says it gives a misleading picture without further context. He says that in July to October 2019 he was just exploring Dr Enderby's involvement, and it was not clear to him that Dr Enderby was the individual involved until Mr Wong filed his brief of evidence in the Employment Court one year later.

[56] I give the defendants leave to file this late evidence. Mr AlKazaz has put the date that he became aware of Dr Enderby's involvement in the April 2018 statement squarely in issue. It is in the interests of justice that the Court has before it any evidence that is relevant to this issue. Mr AlKazaz is not prejudiced as the defendants served the affidavit on him 10 working days before the hearing. He could have filed a further affidavit to provide context. In any case, I bear in mind the explanation that he has given during the hearing.

[57] Turning to that affidavit, the first document is an email chain between Mr AlKazaz and the Registrar of the Employment Court over 8 to 10 July 2019 concerning his request that a summons be issued against several individuals including Dr Enderby. Mr AlKazaz lists the documents he wants the summoned individuals to produce. He asks that Dr Enderby be required to produce any documents that relate to:

The disparaging comments you made to third parties and/or Deloitte employees;

The grounds of your comments against Mr AlKazaz's CV and its accuracy.

...

Any information you received about Mr AlKazaz that could have in any way led to your disparaging comment made to third parties.

[58] After being advised by the Registrar to file a formal Notice Requiring Disclosure, Mr AlKazaz served a notice dated 9 August 2019 on DeloitteAspirona. Mr AlKazaz required DeloitteAspirona to produce, amongst other things, documents concerning:

The grounds of which Mr Mike Enderby made his disparaging comments to third parties and/or Deloitte employees, and the nature of those comments in detail.

The grounds of Mr Enderby's comments against Mr AlKazaz's CV and its accuracy.

Mr AlKazaz's internal CV copies while working with Deloitte and/or DeloitteAsparona.

Any documents that show engagement in any work history between Mr AlKazaz and Mr Enderby.

Any information Mr Enderby received about Mr AlKazaz that could have in any way led to your disparaging comment made to third parties.

[59] On 14 October 2019, Mr AlKazaz emailed the Registrar asking that the issue of missing documents to be raised with the Judge, including documents concerning:

The grounds of which Mr Mike Enderby made his disparaging comments to third parties and/or Deloitte employees, and the nature of those comments in detail.

[60] Mr AlKazaz's explanation to this Court is that he was simply "exploring" the circumstances surrounding the April 2018 and that he was not certain at that stage that Dr Enderby was the person who had made the statement about his CV to Mr Wong.

[61] That explanation is inconsistent with these documents. It is clear on the face of these documents that in July 2019 Mr AlKazaz understood that Dr Enderby had made comments that his CV was inaccurate to Deloitte employees and possibly third parties.

[62] That conclusion is enough to fix the late knowledge date for his defamation claim as it concerns Dr Enderby's 20 April 2018 statement(s) at July 2019. Accordingly, this part of Mr AlKazaz's cause of action is out of time and must be struck out.

Further evidence filed after the hearing

[63] During the course of the hearing I asked Mr AlKazaz to clarify when he became aware of the discussion between Mr Wong and Dr Enderby which he claims to be defamatory in this proceeding. Mr AlKazaz said that he was not aware of the discussion until he reviewed Mr Wong's brief of evidence dated 22 October 2020, and also the brief of Dr Enderby dated the same day. This brief was not in evidence and I invited Mr AlKazaz to file a copy after the hearing. The defendants consented and Mr AlKazaz filed the brief.

[64] In this brief, Dr Enderby describes how Mr Wong approached him about Mr AlKazaz's application for the role at Deloitte. He recounts that he told Mr Wong that he knew Mr AlKazaz from DeloitteAsparona, and based on this experience he was not interested in progressing Mr AlKazaz's application. He recalls indicating to Mr Wong that Mr AlKazaz's CV did not accurately portray the work he performed at DeloitteAsparona. He referred to an email exchange with Mr Wong ("CB 51"). Mr AlKazaz provided this page of the common bundle with Dr Enderby's brief. It is an email from Dr Enderby dated 20 April 2018 and sent at 2:08 pm to Mr Wong in which Dr Enderby says "No interest in progressing with Ahmed. Do not proceed further".

[65] Mr AlKazaz filing this evidence prompted Deloitte to apply for leave to file further evidence which they said established that Mr AlKazaz was misleading the Court by saying that he only became aware of the discussion between Dr Enderby and Mr Wong on 22 October 2020. I gave Deloitte leave to file that evidence.

[66] The evidence takes the form of an affidavit from Michael O'Brien, law clerk at MinterEllison, attaching a copy of Mr AlKazaz's brief of evidence for the Environment Court hearing. This brief was filed and served on 24 September 2020. In this brief, Mr AlKazaz refers to the email sent by Mr Wong to Halcyon Knights and

states that it was sent because of information given to Mr Wong by Dr Enderby, referring to a document (“DOC 27”). Mr O’Brien deposes that “DOC 27” is the 20 April 2018 email from Dr Enderby to Mr Wong which is “CB 51”. He says Mr AlKazaz provided “DOC 27” in a ZIP file when he served and filed his brief of evidence on 24 September 2020.

[67] It appears that Deloitte provided this email to Mr AlKazaz in discovery in August 2020. Mr O’Brien attaches copies of Deloitte’s sworn and unsworn affidavits of documents dated 12 August 2020 and 16 September 2020 respectively. The affidavit lists four documents “disclosed in August 2020”. Mr O’Brien deposes that he believes that one of those documents is “DOC 27” / “CB 51”.

[68] Mr O’Brien also attaches an extract from the notes of evidence taken before Judge Beck in the Employment Court proceeding, which records Mr AlKazaz reading the relevant paragraphs of his 24 September 2020 brief of evidence.

[69] Mr AlKazaz’s response is to say that even if he did receive the email at that point in time, it was not in itself defamatory or disparaging. But the evidence described earlier establishes that by August 2019 Mr AlKazaz considered that Dr Enderby had made disparaging comments about his CV and its accuracy. Taken together, this evidence does not leave any reasonable possibility of Mr AlKazaz establishing a late knowledge date of 22 October 2020. It is plain that by 24 September 2020 at the latest he considered that Dr Enderby had made defamatory statements about the accuracy of his CV including to Mr Wong in April 2018.

Is Mr AlKazaz’s allegation of other defamatory statements an abuse of process?

[70] At para 19 of his statement of claim (set out in this judgment above at [32]) Mr AlKazaz suggests that there may be other external communications following the 20 April 2018 email that he is also suing for.

[71] As I have said, Mr AlKazaz confirmed at the hearing that the only statements he knows of and complains of in this proceeding are the statements by Mr Wong and Dr Enderby that have already been discussed. He does not know of any other specific allegedly defamatory statements made by Mr Wong, Dr Enderby, or anyone else at Deloitte, but he thinks it is likely that they will have made them.

[72] It is a mandatory requirement that a plaintiff in a defamation proceeding specify the statements that they allege to be defamatory and untrue.²⁷ A statement of claim must properly inform a defendant of the words relied on as constituting the alleged defamation, the meanings inferred from those allegedly defamatory words, and the events said to constitute publication. This is so that a defendant may know what exactly is said to have been published illegitimately and make any available defences to meet that allegation. In defamation cases, pleadings are of foremost importance.²⁸

[73] A general allegation like that found at para 19 of Mr AlKazaz's statement of claim fails to comply with this mandatory requirement. It is clear from Mr AlKazaz's elaboration that he does not have any other specific allegedly defamatory statements in mind. Therefore, there is no purpose in directing Mr AlKazaz to particularise the statements to which he refers.

[74] Accordingly, para 19 of the statement of claim is an abuse of process and must be struck out.

Result

[75] As all aspects of the defamation cause of action contained in the statement of claim are either time-barred or do not meet the requirement of s 37 of the Defamation Act 1992 **I order** that Mr AlKazaz's statement of claim dated 9 October 2022 is struck out.

²⁷ Defamation Act 1992, s 37.

²⁸ *Low Volume Vehicle Technical Association Inc v Brett* [2019] NZCA 67, [2019] 2 NZLR 808 at [62].

[76] As to costs, my preliminary view is that in accordance with the usual principle, as the unsuccessful party Mr AlKazaz should pay the defendants' costs. Costs on a scale 2B basis and reasonable disbursements seem appropriate. If the parties cannot agree costs based on that indication, they may each file submissions of no more than four pages within 25 days.

Associate Judge Gardiner