

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

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

**CIV-2016-404-001805
[2023] NZHC 1508**

UNDER THE Defamation Act 1992 and Part 18 of the
High Court Rules.

IN THE MATTER OF A declaration under Section 24 Defamation
Act 1992 concerning the nature and status of
certain web publications.

BETWEEN ELIZABETH MAY CURRIE
Plaintiff

AND JOHN DOE AND/OR JANE DOE, being the
person or persons publishing certain
statements in this proceeding on the websites
Laudafinem.com and Laudafinem.org
Defendants

Hearing: 8 June 2022
Counsel: K M Muller for Plaintiff
Judgment: 16 June 2023

**JUDGMENT OF HINTON J
(Re: Formal Proof)**

*This judgment was delivered by me on 16 June 2023 at 3.00 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors: DB Law, Auckland

[1] The plaintiff seeks judgment by way of formal proof in terms of the pleading in her amended statement of claim dated 14 December 2020 except that:

(a) she seeks judgment against John Doe and/or Jane Doe only. The former second defendant, Mr Nottingham, was removed by my judgment dated 30 June 2022; and

(b) she seeks judgment only by declaration, not as to costs.'

Background

[2] This matter has a complicated background which is not germane to the formal proof but which I set out briefly for the record.

[3] The proceeding was issued on 2 August 2016. The only relief sought has been the declaration and (previously) an order for costs.

[4] There were originally three plaintiffs but two have since discontinued the proceeding. The background to the defamatory statements was a breakup of a relationship between Ms Currie and her former partner, subsequent prosecutions of her former partner and the involvement thereafter of Mr Nottingham who made threats against Ms Currie and one of the other original plaintiffs.

[5] The defamatory articles on the Laudafinem websites were mounted shortly after that. The original plaintiffs gave evidence that they believe Mr Nottingham was responsible for publication of the material. He denied that.

[6] Mr Nottingham was served with the proceeding although he was not named as the defendant. He then applied to be joined as a second defendant and was so joined by Downs J on 18 November 2016.

[7] Since 2016, Mr Nottingham has made a series of interlocutory applications, primarily aimed at striking out the statement of claim. He also brought appeals from decisions on almost all of those applications. In the process Mr Nottingham has filed numerous documents that are scandalous and/or defamatory of the plaintiff and others.

[8] On 3 March 2020, shortly before Mr Nottingham's last unsuccessful application for leave to appeal to the Supreme Court, the other two original plaintiffs discontinued the proceeding, leaving Ms Currie as the sole plaintiff.

[9] Following the discontinuance by the other two plaintiffs, Ms Currie filed the December 2020 amended statement of claim focusing on the statements published about her. That led her in early 2020 to discover the fifth defamatory publication about her, this time on the Laudafinem.org website, which was apparently first published on 9 October 2013. That publication could be viewed from any internet browser in New Zealand and was still available when downloaded on 14 December 2020 to attach to the amended statement of claim filed that day. Based on the apparent first publication date of the 9 October 2013 publication, it would appear that the cause of action arose before the filing of the initial statement of claim in 2016. If it did not arise before the proceeding was initially filed, Ms Currie seeks the leave of the Court to add it as a cause of action pursuant to rr 7.77(4) and 1.9 of the High Court Rules 2016. I grant leave so as to cover that possibility.

[10] Following filing of the amended statement of claim, Mr Nottingham applied to strike it out (as he had with the previous statement of claim) which led to Ms Currie applying to strike out the statement of defence and to remove Mr Nottingham as a party. On 30 June 2022, I issued a judgment which among other things declined Mr Nottingham's application to strike out the amended statement of claim, struck out Mr Nottingham's statement of defence under r 15.1 of the High Court Rules and removed Mr Nottingham as a party to the proceeding. That judgment has been the subject of an interim suppression order due to both its content and its relationship with non-publication and suppression orders made in District Court criminal proceedings relating to Mr Nottingham. It is about to be released in redacted form.

[11] Following her successful application to remove Mr Nottingham as a party, Ms Currie obviously does not seek relief against him on the amended statement of claim. I record that it remains her firm belief, which on all of the material seems very well based, that he was directly involved with the defamatory publications.

[12] A number of costs orders were made against Mr Nottingham prior to his removal. These remain outstanding.

Formal proof

[13] The plaintiff pleads that five separate website publications that were accessible and therefore published in New Zealand were defamatory of her.

[14] For the purposes of the law of defamation, publication is the communication of defamatory matter to a third person. I am satisfied that the five publications (four on the Laudafinem.com website and one on the Laudafinem.org website) as set out in the draft Judgment on Trial by Judge filed for purposes of the formal proof, were all published to viewers in New Zealand on the dates specified in the draft Judgment. I note that the Laudafinem.org website publication was also still available on the website on 14 December 2020. I rely on the affidavits of Ms Hitchman dated 14 July 2016 and Ms Currie dated 14 July 2016 and 6 June 2023 in this regard.

[15] I am also satisfied that these publications were defamatory of the plaintiff in all of the ways particularised in Schedules A-E inclusive of the draft judgment with the exception of statements at B6 – B8 which I do not consider defamatory.¹ As to the other statements, they all refer to the plaintiff. I consider them to be defamatory in their natural and ordinary meaning – that is, meaning which is evident from the statement itself and/or in a few instances from the statement read in context. I consider that under the circumstances in which the words were published, a reasonable person to whom the publication was made would be likely to understand it in a defamatory sense. In this case the words used made definite charges of crime or of dishonest, unethical, anti-social or immoral conduct and go well beyond words of general abuse. The statements being defamatory, the plaintiff does not have to prove them to be false.

[16] This proceeding is undefended, the only statement of defence having been struck out. So, no defence is pleaded and I can proceed on the basis there is none. I am also satisfied in terms of the affidavit evidence of the plaintiff that there is no basis

¹ The Schedules are not to be attached to this judgment. If an order is made that they be provided to any person, they are to be the subject of strict confidentiality and non-publication orders.

for a defence of truth. It was earlier contended by Mr Nottingham, in respect of the original statement of claim, that the causes of action were subject to the limitation defence provided for by s 11 of the Limitation Act 2010 because they were money claims, being inclusive of an application for costs. Both Fogarty J in this Court and the Court of Appeal² ruled against that argument, and the Supreme Court declined an application for leave to appeal.³ In any event, the application for costs has been abandoned.

[17] I am also satisfied that I can enter judgment against the defendants. The defendants are named as John Doe and/or Jane Doe being the person or persons publishing the defamatory statements. I find that the first four documents were published to viewers in New Zealand by GoDaddy.com, LLC (GoDaddy), a company incorporated in Arizona, USA, the host of the Laudafinem.com website (and also by a related company, Domains by Proxy, LLC). It is not clear who is the host or publisher of the second website that published the fifth statement. However, no relief is sought against the hosts as GoDaddy, while declining to take action without a Court order, said it will remove any illegal content once that determination has been made and that it was not necessary to name it in legal proceedings. The plaintiff therefore considers a declaration will suffice in that regard, and also in regard to the second host, if and when that party is identified. The plaintiff will rely on the declaration to give her the ability to require any host or other publisher to remove the publications.

[18] As noted above, the person believed to be primarily responsible for the publications, Mr Nottingham, has denied involvement and, in any event, has been removed as a defendant on the plaintiff's application. However, proof of his or other parties' connection to the websites or publications is unnecessary. Even if it was another person who was directly responsible, the defamation was or is occurring in New Zealand and affects a New Zealand resident. For that reason, the defendants have been named only as John Doe and Jane Doe. In *Tony Blain Pty Ltd v Splain*, Anderson J stated:⁴

² *Maltese Cat Ltd v Doe* [2017] NZHC 1634 at [24]; *Maltese Cat Ltd v Doe* [2017] NZHC 1728, (2017) 24 PRNZ 254; *Nottingham v Maltese Cat Ltd* [2019] NZCA 641.

³ *Nottingham v Maltese Cat Ltd* [2020] NZSC 36.

⁴ *Tony Blain Pty Ltd v Splain* [1993] 3 NZLR 185 at 187/47.

The second and third defendants are identified as persons who sell unlicensed merchandise at the relevant concert venues. It is expedient to refer to them in this judgment as “John Doe” and “Jane Doe”. The fact that persons cannot be identified at this stage of the proceedings is no bar to relief against persons who may be identified at a relevant time. It is not the name but the identity and identification of infringing persons which is relevant. The indemnity may not be immediately established but persons infringing will be identified by their act of infringement. Jane Doe and John Doe will be known by their works.

[19] I am satisfied for the above reasons, for the other reasons (if any) set out in the plaintiff’s submission for this formal proof hearing, and on the basis of the various affidavits filed by Ms Currie and others in support of her claim that I should exercise my discretion to grant the relief sought by way of declaration under s 24 of the Defamation Act 1992.

[20] Ms Muller, counsel for Ms Currie, abandoned the claim for costs. It would be unenforceable, as any publisher who may be affected by the declaration, was not a party to the proceeding. As noted, various costs orders have previously been made against Mr Nottingham which remain extant.

Judgment

[21] I make the declaration set out at paragraph [1] of the Draft Judgment on Trial by Judge.

Hinton J