

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

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

**CIV 2021-404-000992  
[2023] NZHC 1173**

UNDER the Defamation Act 1992  
IN THE MATTER OF a claim for injurious falsehood  
BETWEEN MARC ROBERT SPRING  
Plaintiff  
AND CORY DAVID BROWNE  
First Defendant  
GLENN CHARLES TULLOCH  
Second Defendant

Hearing: 20 & 21 March 2023  
Appearances: M R Spring, Plaintiff in person  
J D Evans for the Defendants  
Judgment: 17 May 2023

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**JUDGMENT OF TAHANA J**

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*This judgment was delivered by me on 17 May 2023 at 4.00pm  
Pursuant to Rule 11.5 of the High Court Rules*

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*Registrar/Deputy Registrar*

Solicitors/Counsel:  
Hayman Lawyers, Wellington  
Copy to:  
Mr Spring (Plaintiff)

## Introduction

[1] On 14 February 2020, Mr Marc Spring undertook a search on the motor vehicle register (MVR) maintained by the New Zealand Transport Authority (NZTA). Mr Spring accessed the MVR via the MotorWeb site using login details provided to him by Corporate Cars Ltd<sup>1</sup> (Corporate Cars). The search was of a vehicle (REDACTED), which a Mr Matthew Blomfield had been seen driving.

[2] The MVR search disclosed that the vehicle was registered in the name of Mr Blomfield's wife. Mr Spring shared the results of that search with the liquidator of a company in which Mr Blomfield has interests.

[3] Upon receiving a complaint from Mr Blomfield and making enquiries with Mr Spring, NZTA stopped Corporate Car's access to the MVR and notified Mr Spring that the search was not for an authorised purpose.

[4] In March 2020 Mr Blomfield phoned the first defendant, Mr Cory Browne (a director<sup>2</sup> of Corporate Cars). NZTA had informed Mr Blomfield that the search was by Corporate Cars. Mr Blomfield also complained to the police, and in July 2020 a Constable Warren telephoned the second defendant, Mr Glenn Tulloch, the other director of Corporate Cars.

[5] In September 2020, Constable Warren obtained a search warrant and this was executed at Mr Spring's address. Constable Warren then obtained a written statement from Mr Tulloch in November 2020.

[6] Mr Spring says that the statements, made by Mr Browne (to Mr Blomfield) and by Mr Tulloch (to Constable Warren), that Mr Spring was not authorised to access the MotorWeb system on 14 February 2020 were false. The defendants say they told the truth – they had not authorised Mr Spring to use the MVR for an unauthorised purpose. Further, Mr Tulloch says the statements to Constable Warren are subject to qualified privilege.

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<sup>1</sup> Named Clearance Cars Ltd from 21 April 2020.

<sup>2</sup> Mr Browne was a director of Corporate Cars from December 2014 to March 2015 and became a director again from 27 March 2019 to 3 May 2021.

[7] Mr Spring claims that the defendants are liable in tort for injurious falsehood by reason of their statements and seeks:

- (a) declarations that each of Mr Browne's and Mr Tulloch's statements were false;
- (b) special damages (\$150,000 against Mr Browne, and \$250,000 against Mr Tulloch); and
- (c) aggravated damages (\$100,000 against Mr Browne, and \$300,000 against Mr Tulloch).

### **Factual background**

[8] Mr Spring was employed by Corporate Cars as a principal dealer until March 2019 when Corporate Cars was restructured. After that, Mr Spring's company (WBC Ltd (WBC)) contracted to a company owned by Mr Tulloch, then named Cross Creek Car Brokers Ltd<sup>3</sup> (Cross Creek).

[9] Mr Spring says that he had access to MotorWeb while he was at Corporate Cars and continued to use that access while providing services to Cross Creek.

[10] Ms Van Geet of Corporate Cars identified the searches undertaken by Mr Spring using the Corporate Cars account after he was no longer employed by the company. The costs of those searches were then allocated to Mr Spring's company, WBC, and Ms Van Geet emailed Mr Spring his own login details for MotorWeb on 20 November 2019. Mr Tulloch was copied into that email.

[11] It is undisputed that Mr Spring undertook the search of (REDACTED) on 14 February 2020.

[12] Mr Blomfield complained to NZTA upon learning of the search and called Mr Browne.

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<sup>3</sup> Now called Maximilian Properties Ltd.

[13] NZTA made enquiries with Mr Spring as to the reasons for his search and on 16 April 2020, notified Mr Spring that the search was not authorised because it was contrary to the conditions of use. NZTA's conditions include that access to the MVR is for approved purposes, as follows:

- to assist in verifying the registered person[']s details in respect of a motor vehicle when purchasing that vehicle;
- to check or confirm that a change of registered person has been completed correctly in relation to a transaction in which the motor vehicle trader has a business interest;
- in the case of wholesalers only, to obtain names and addresses of persons registered in respect of vehicles that are the subject of a safety recall;
- any other purpose that is necessary to facilitate the sale or purchase of a motor vehicle in relation to a transaction in which the motor vehicle trader has a business interest, other than marketing purposes; and
- to assist in verifying the registered person[']s details in respect of a motor vehicle when assessing a warranty claim in respect of that vehicle.

[14] In that same letter, NZTA also notified Mr Spring that:

Considering this search has been deliberately made, knowingly outside of the authorised purposes, this letter is a formal notification that this breach of authorisation has resulted in access to names and address[s] of registered persons being withheld from Corporate Cars Limited.

[15] Corporate Cars were notified that their access to the MVR had been terminated. Mr Blomfield also contacted Corporate Cars informing them that he had complained and NZTA had confirmed that Mr Spring had undertaken the search.

[16] On 8 May 2020, Mr Tulloch emailed Ms Van Geet and Mr Browne. Mr Tulloch's email records that they had no knowledge of what occurred and "[i]t was an error in our Administration department that enabled Mr Spring continued use of our MVR and we [will] tighten up this aspect of our business." Corporate Cars deleted Mr Spring's access to MotorWeb.

[17] On 19 May 2020, the police applied for a production order requiring NZTA to produce documents. The application records that Mr Browne had told Mr Blomfield that Mr Spring was a former employee and that it was his view that he had used Corporate Cars' login without authorisation. The production order sought copies of

information held by NZTA in relation to the search by Mr Spring, including copies of correspondence from NZTA to Mr Spring.

[18] Constable Warren telephoned Mr Tulloch on 6 July 2020 and his job sheet records his notes of that conversation, as follows:

06/07/2020 Spoke to Glen TULLOCH from Corporate Cars [redacted].  
He told me that:

- SPRING was employed by Corporate Cars Grey Lynn until January 2019 as a dealer principle [sic] (salesman).
- TULLOCH's business partner is Cory [Browne] at Corporate Cars.
- When SPRING left, he became self-employed. He continued a relationship with Corporate Cars in that he supplied vehicles to Corporate Cars (he sourced them and sold them onto Corporate Cars). Corporate Cars would not have expected him to continue to use their TradeMe MotorWeb account, as he was no longer an employee. However, they were busy and didn't take his name off of [sic] the account at the time.
- Following revocation of the account, TULLOCH removed SPRING from the account.

[19] On 3 September 2020, the police applied for a search warrant of Mr Spring's home. The suspected offence was accessing a computer system without authorisation under s 252 of the Crimes Act 1961. That application records that NZTA had revoked Corporate Cars' access as from 22 April 2020. It also records that Mr Spring had admitted to accessing the MVR and explained that he had done so in relation to a personal dispute. The search warrant was granted and Mr Spring's home was searched.

[20] Constable Warren obtained a written statement from Mr Tulloch dated 11 November 2020. That statement records that Mr Spring had not been removed from the Corporate Cars account and the failure to remove him was an oversight.

[21] On 8 December 2020, Constable Warren again spoke to Mr Tulloch to clarify an email that he had located on Mr Spring's computer. The email was sent by Mr Spring to Mr Tulloch on 8 May 2020, and included the email sent by Ms Van Geet to Mr Spring, on 20 November 2019. Mr Tulloch informed Constable Warren that

Ms Van Geet had set up the new account for Mr Spring and that she had done this without Mr Tulloch's knowledge. Mr Tulloch confirmed to Constable Warren that he had not appreciated what the email meant when Mr Spring had sent it to him on 8 May 2020. He acknowledged to Constable Warren that when he read it, he realised that Mr Spring was actually telling him that he had access through Corporate Cars.

[22] On 26 May 2021, Mr Spring wrote separately to Mr Browne and Mr Tulloch asking each of them to withdraw their "false statement" by 5 June 2021. Neither of them responded to Mr Spring.

### **Elements of the tort of injurious falsehood**

[23] Injurious falsehood is an economic tort concerned with the malicious infliction of pecuniary loss on a person by making false statements to a third person.<sup>4</sup> To establish injurious falsehood, the plaintiff must prove:<sup>5</sup>

- (a) a false statement about himself or herself;
- (b) the statement was made to a third person;
- (c) that it was made maliciously; and
- (d) that it either has caused special damage or is calculated to cause pecuniary damage.

### **Did Mr Browne make a false statement to Mr Blomfield?**

[24] Mr Browne gave evidence as to his conversation with Mr Blomfield, as follows:

For over a week we could not find out why we had been terminated by NZTA, that is until 6 March 2020 when I received a phone call at around 6pm from a Mr Matthew Blomfield. Mr Blomfield was straight to the point, he asked me if Mr Spring was employed by our company to which I replied no he was not. He then asked me if I had authorised Mr Spring to run a Motor Registration

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<sup>4</sup> Stephen Todd *Todd on Torts* (online ed, Thomson Reuters, 2019) at [59.15.3.01].

<sup>5</sup> *Palmer Bruyn & Parker Ltd v Parsons* [2001] HCA 69, (2001) 208 CLR 388 at 404 cited in Stephen Todd *Todd on Torts* (online ed, Thomson Reuters, 2019) at [59.15.3.03].

check on his Range Rover, registration number (REDACTED), to which I replied “I certainly did not”. Mr Blomfield then chatted to me for around 10 minutes explaining what had occurred, namely that his partner’s details had been downloaded and shared by Mr Spring with other people and that he was sorry that we had become involved in all of this.

[25] Mr Blomfield also gave evidence and recalled his conversation with Mr Browne as follows:

- A. I think I rang Cory [Browne] who I knew was involved with Corporate Cars, ... I called him up and asked him whether or not he had authorised Marc [Spring] to access the Corporate Cars web ... to search up the Range Rover.
- Q. And what did Mr Browne say?
- A. He said he never authorised him to search up the Range Rover and – I mean it was a long time ago but he talked about how it had caused various issues for them as far as access to their system goes.

[26] Mr Spring argues that it is what Mr Browne omitted to say that created the falsehood. That is, Mr Browne did not tell Mr Blomfield that Mr Spring had a login to access the MVR. Mr Spring relies on *Jorgensen v Jaggard* where the Court held:<sup>6</sup>

Representation may be by acts as well as by words, and a true statement of part of the facts may in effect be made false by a suppression of the remainder.

[27] Mr Spring says that in discussions with Mr Browne and Mr Tulloch, it was agreed that Mr Spring would pay for any MotorWeb searches, and then from 20 November 2019, Ms Van Geet of Corporate Cars provided Mr Spring with his own login under the Corporate Cars account. The costs of the MotorWeb searches were deducted from WBC’s invoices to Cross Creek so that WBC bore the cost of those searches.

[28] Mr Browne denies that there was any discussion with Mr Spring about MotorWeb searches. Mr Browne says he did not have any login details for any vehicle checking system and the search fees had no bearing on him, as he was on a retainer. He therefore had no interest in knowing whether Mr Spring had a login to undertake searches. While that may be relevant to Mr Browne’s income, as a director of Corporate Cars, Mr Browne would have had an interest in the cost of the searches

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<sup>6</sup> *Jorgensen v Jaggard* [1917] GLR 68 (SC) at 70.

being allocated to Mr Spring's company (WBC) because those searches were not for Corporate Cars' business. By that time, WBC was contracting to Cross Creek. The emails from Ms Van Geet indicate that the costs were reallocated to WBC.

[29] There is no evidence that Mr Browne was forwarded the 20 November 2019 email when Mr Spring was provided with a login to MotorWeb. Mr Browne is also not copied into the emails about allocating the costs to WBC.

[30] Mr Browne could not have conveyed information to Mr Blomfield of which he was not aware. Further Mr Browne had been asked whether he had authorised the 14 February 2020 search. Mr Browne was not asked whether Mr Spring was authorised to undertake searches generally or whether he had a login. Mr Browne had no knowledge of what the information would be used for or whether it was relevant whether Mr Spring had a login or not. It was therefore reasonable for Mr Browne to understand that he was being asked whether he had agreed to Mr Spring undertaking the search on the vehicle in question.

[31] Mr Spring's concern arises from the police's decision to apply for a search warrant on the basis that the police had reasonable grounds to suspect an offence under s 252 of the Crimes Act, which provides:

**252 Accessing computer system without authorisation**

- (1) Every one is liable to imprisonment for a term not exceeding 2 years who intentionally accesses, directly or indirectly, any computer system without authorisation, knowing that he or she is not authorised to access that computer system, or being reckless as to whether or not he or she is authorised to access that computer system.
- (2) To avoid doubt, subsection (1) does not apply if a person who is authorised to access a computer system accesses that computer system for a purpose other than the one for which that person was given access.
- (3) *[Repealed]*

[32] There is no evidence that Mr Browne understood what Mr Blomfield or the police were proposing to do with the information he provided. Mr Browne reasonably understood that he was being asked whether he had authorised the search. He had not. Mr Browne had not authorised the search and he was telling the truth when he



conveyed that to Mr Blomfield. I am not satisfied that Mr Spring has established, on the balance of probabilities, that Mr Browne made a false statement.

**Was Mr Browne’s statement to Mr Blomfield made maliciously?**

[33] Even if the statement was false (which I do not accept), I am not satisfied that Mr Browne made it maliciously. The second amended statement of claim alleges that Mr Browne was reckless about ascertaining whether his statement was true or false. It also alleges that Mr Browne was made aware of the falsity on 26 May 2021 and has failed to retract it.

[34] There is no evidence that Mr Browne acted maliciously in conveying to Mr Blomfield that Corporate Cars had not authorised the search. Mr Browne had no knowledge of how Mr Blomfield (and subsequently the police) would use the information or why they wanted the information.

[35] To establish malice, it is necessary to show dishonest motive or lack of good faith.<sup>7</sup>

That sense [of malice] includes an intent to injure the true owner of the property or, alternatively, publication with an indirect or dishonest motive: *Balden v Shorter* [1933] Ch 427. The formulation preferred in *Joyce v Motor Surveys Ltd* [1948] Ch 252 was “an intent to injure without just cause or excuse”.

[36] Mr Spring argues that Mr Browne’s statement was maliciously made because Mr Browne was reckless about ascertaining whether the statement was true. I disagree. There is no evidence that Mr Browne intended to harm Mr Spring. It was not unreasonable for Mr Browne to understand that he was being asked if the search was authorised. It was not. That was a true statement. Mr Browne had no knowledge of what Mr Blomfield would do with the statement and had no basis for appreciating whether Mr Spring having login access was relevant. It was not relevant to the question he was asked by Mr Blomfield.

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<sup>7</sup> *Customglass Boats Ltd v Salthouse Brothers Ltd* [1976] 1 NZLR 36 (HC) at 49.

[37] There is no evidence that Mr Browne was motivated to disparage Mr Spring. Mr Browne truthfully conveyed to Mr Blomfield that he had not authorised Mr Spring's to use the MVR to search the vehicle. Mr Browne's primary concern was that Corporate Cars continued to have access to MotorWeb for the purposes of its business.

[38] I am not satisfied that Mr Spring has established on the balance of probabilities that Mr Browne made a false statement or acted maliciously. The claim against Mr Browne fails.

**Did Mr Tulloch make a false statement to Constable Warren?**

[39] Mr Spring alleges that Mr Tulloch made a false statement to Constable Warren on 6 July 2020 and again on 11 November 2020 when he provided a written statement. Mr Spring's position is that Mr Tulloch falsely stated that Mr Spring did not have access to the MVR via a Corporate Cars login, when in fact he did.

[40] I accept that Constable Warren's notes are likely to be an accurate record of what was discussed on 6 July 2020. The notes indicate that Mr Tulloch had communicated to Constable Warren that it was likely that Mr Spring continued to have access to the Corporate Cars login as his name had not been taken off the account. That statement was true.

[41] Mr Tulloch's 11 November 2020 statement includes the following:

9. As a dealer principal employed by the company, Marc SPRING had access to the Corporate Cars MotorWeb account.
10. After leaving Corporate Cars in January 2019, my expectation was that Marc SPRING would no longer use company resources, including the MotorWeb account.
11. Marc SPRING was not removed from the Corporate Cars MotorWeb account. When he resigned from Corporate Cars, it was a busy time for the company, and it was an oversight that access to the MotorWeb account was not updated to remove Marc SPRING.
12. After leaving Corporate Cars, Marc SPRING continued a relationship with the company. He was self-employed and sourced suitable cars for the company.

[42] Mr Tulloch's statements to Constable Warren did not include the fact that Mr Spring had been provided with a login in November 2019 after he ceased being employed by Corporate Cars. Mr Tulloch had received a copy of Ms Van Geet's November 2019 email from Mr Spring on 8 May 2020.

[43] Did Mr Tulloch's failure to relay the information contained in Ms Van Geet's email have the effect of making his statement false? The status of Mr Tulloch's comments must be determined in the context in which they were given, the questions to which they responded, and Mr Tulloch's understanding of the purpose of the inquiry.

[44] Mr Tulloch had been telephoned by a police officer when he was questioned on 6 July 2020. Constable Warren's notes do not include the question he asked Mr Tulloch. Mr Tulloch says Constable Warren asked him if they had authorised Mr Spring to undertake the check on Mr Blomfield's car, to which Mr Tulloch answered no. Constable Warren subsequently sent Mr Tulloch a statement in November 2020 to sign.

[45] There is no evidence that Mr Tulloch knew what the police were intending to do with the information or whether the key issue was whether Mr Spring had a login, or whether the particular search was authorised. It was not unreasonable for Mr Tulloch to understand that he was being asked if they had authorised the particular search, as opposed to whether Mr Spring had authorised access to Corporate Cars login details (or had been provided with a login of his own for business purposes). Mr Tulloch's response to Constable Warren indicates that he conveyed to Constable Warren that Mr Spring continued to have a relationship with Corporate Cars. This was true.

[46] Mr Tulloch's statement that "my expectation was that Marc SPRING would no longer use company resources, including the MotorWeb account" was a statement as to Mr Tulloch's expectation as at January 2019. It was correct. The statement suggests that Mr Spring should not have continued to use the MotorWeb account, but it did not say that Mr Tulloch had communicated this expectation to Mr Spring or that Corporate Cars had stopped the access. It did imply that Corporate Cars had not agreed to any continued access, which is contrary to Ms Van Geet's email.

[47] Had Mr Tulloch told Constable Warren that Corporate Cars had in fact provided a new login, this would have made it clear that Mr Spring was able to continue to use the Corporate Cars account and Ms Van Geet had enabled this continued use. The key difference being that Corporate Cars had consciously allowed the access rather than the access having been inadvertent.

[48] Constable Warren was therefore aware that it was likely Mr Spring continued to have access to the account and that Corporate Cars had not withdrawn that access. There was no evidence that Mr Tulloch's expectation had been communicated to Mr Spring or that Mr Spring was aware he could no longer use the account. Mr Tulloch also informed Constable Warren that Mr Spring continued to have a relationship with Corporate Cars but in a different capacity. If Constable Warren drew a conclusion from Mr Tulloch's statement that Mr Spring had knowledge that he was not authorised to use the account at all, such a conclusion is contrary to Mr Tulloch's statement that Corporate Cars had not stopped the access.

[49] I am not satisfied that Mr Tulloch's failure to inform Constable Warren about Ms Van Geet's November 2020 email had the effect of making his statement false in circumstances where he indicated that access had continued. The only potential falsity is that the continued access was inadvertent when in fact, Ms van Geet had enabled it. Further, Mr Tulloch understood he was being asked about whether he had authorised the particular search, and he clearly had not, so I do not consider that the evidence establishes that Mr Tulloch deliberately sought to mislead Constable Warren by failing to tell him about Ms van Geet's email.

### **Were Mr Tulloch's statements made maliciously?**

[50] The issue is then whether there was malice in Mr Tulloch making the statement and then failing to withdraw it when, on 26 May 2021, Mr Spring invited him to withdraw it on the basis that Mr Spring did have authorisation to use the Corporate Cars login.

[51] By May 2021, Mr Tulloch had spoken with Constable Warren about Ms Van Geet's email of November 2019. Constable Warren's notes of his 8 December 2020 conversation with Mr Tulloch record:

8/12/2020 Spoke to Tulloch to clarify an email message located on SPRING's computer. The email message was sent by SPRING to TULLOCH on 08/05/2020, and included an email sent by Jo van GEET (administrator at Corporate Cars) to Spring on 20/11/2019. The email stated that GEET had created a new MotorWeb account for SPRING, giving him username "Marc Spring" and password "Marc2019". She explained that this was so that the charges for using the account could be split between Corporate Cars and Cross Creek (the name that SPRING was trading under). This was set up prior to SPRING's illegitimate access on 14 February 2020. TULLOCH told me that:

- GEET set up the new account for SPRING because she realised that he was continuing to use the Corporate Cars MotorWeb after he'd left the company, and wanted to apportion future costs of SPRING's accesses to him. She did this without TULLOCH's knowledge.
- After confronting SPRING, TULLOCH received email (08/05/2020) from him. TULLOCH didn't appreciate what it meant at the time, but when I mentioned it to him he read it and realised that SPRING was actually telling him that he had ato [sic] MotorWeb ccess [sic] through Corporate Cars.

[52] There was no reason for Mr Tulloch to withdraw the statement because by May 2021, Mr Tulloch had spoken with Constable Warren and he was therefore aware that Corporate Cars had provided Mr Spring with login details. It was unnecessary to have a further conversation with Constable Warren to retract the statement.

[53] Mr Spring has failed to establish that Mr Tulloch made a false statement on 6 July 2020 or on 11 November 2020. Mr Tulloch believed the statement to be true. The statement as to Mr Tulloch's expectation is a statement as to his view and not a statement as to a fact. It was correct. Further, Mr Tulloch truthfully relayed to Constable Warren that Mr Spring likely continued to have access from Corporate Cars.

#### *Qualified privilege*

[54] I accept that the statements to Constable Warren are subject to qualified privilege. The decision in *Tipene v Apperley* indicates that statements made to police officers are subject to qualified privilege.<sup>8</sup> The police approached Mr Tulloch for a statement. Mr Tulloch had no knowledge as to how the police would use the information or the relevance of Mr Spring having login access. Mr Tulloch also indicated to Constable Warren that Mr Spring likely continued to have access because Corporate Cars had not terminated his access. That information infers that Mr Spring

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<sup>8</sup> *Tipene v Apperley* [1978] 1 NZLR 761 (CA).

continued to have access and this had not been withdrawn. How Constable Warren then decided to use that information should not be used to infer that Mr Tulloch had acted maliciously in responding to Constable Warren's queries as to the particular vehicle search.

[55] Mr Spring submits that qualified privilege does not apply because Mr Tulloch was reckless in making the statements to Constable Warren. Mr Spring refers to the decision in *Lange v Atkinson*<sup>9</sup> and says that qualified privilege does not apply if the maker of the statement is reckless as to the truth when making the statement. In that case, the Court of Appeal considered that what constitutes recklessness is something that must take its colour from the nature of the occasion, and the nature of the publication. The Court noted:<sup>10</sup>

... Lord Diplock gave a helpful description of recklessness in the present field when he spoke of someone who publishes defamatory material "without considering or caring" whether it was true or false. Indifference to truth is, of course, not the same thing conceptually as failing to take reasonable care with the truth but in practical terms they tend to shade into each other. It is useful, when considering whether an occasion of qualified privilege has been misused, to ask whether the defendant has exercised the degree of responsibility which the occasion required.

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... What amounts to a reckless statement must depend significantly on what is said and to whom and by whom. It must be accepted that to require the defendant to give such responsible consideration to the truth or the falsity of the publication as is required by the nature of the allegation and the width of the intended dissemination, may in some circumstances come close to a need for the taking of reasonable care. In others a genuine believe in truth after relatively hasty and incomplete consideration maybe sufficient to satisfy the dictates of the occasion and to avoid any inference of taking improper advantage of the occasion.

[56] Mr Tulloch made his statement in response to a call from a police officer. Mr Tulloch indicated that Mr Spring likely continued to have access from Corporate Cars. Mr Tulloch understood that he was being asked whether Corporate Cars had authorised the search in question. In those circumstances, I am not satisfied that Mr Tulloch was reckless in providing the response that he provided. Mr Tulloch was also not aware of what the police may do with the statement or whether it was relevant

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<sup>9</sup> *Lange v Atkinson* [2000] 3 NZLR 385.

<sup>10</sup> *Lange v Atkinson* [2000] 3 NZLR 385 at [46]–[48].

that Mr Spring had a login or not. He had reasonably understood that the key issue was whether Corporate Cars had authorised the search in question. It had not. In these circumstances I am not satisfied that this is a situation where qualified privilege does not apply.

[57] Further, Mr Tulloch's email to Ms Van Geet in May 2020 indicates that he did genuinely believe that Mr Spring should not have continued to have access to the Corporate Cars account. While it is acknowledged that Mr Tulloch was copied into the 20 November 2019 email, there is no evidence that Mr Tulloch confirmed that that was the appropriate action to take. Further, the real issue from Corporate Cars' perspective was that they did not wish to be implicated in Mr Spring's unauthorised search. That was not motivated by any desire to cause intentional harm to Mr Spring, nor any other improper purpose. The statements that Mr Tulloch made to Constable Warren are therefore subject to qualified privilege.

## **Result**

[58] Mr Spring's claims against the defendants fail.

## *Costs*

[59] The defendants are the successful parties. They would ordinarily be entitled to an order of costs on a category 2B basis together with disbursements as fixed by the Registrar. If the parties are unable to reach agreement regarding costs, they may file concise memoranda and I will fix costs on the papers.

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Tahana J