IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE

CIV-2018-404-530
[2023] NZHC 496

BETWEEN	ZAINULABIDIM SYED Plaintiff
AND	AMER FAZAL MALIK First Defendant
AND	TRINITY JOAN WILSON Second Defendant

Hearing: 13 March 2023 (via VMR/AVL)

Counsel: D A Jacques for Plaintiff
G A Paine for Defendants

Judgment: 14 March 2023

JUDGMENT OF ISAC J
[Application for trial by judge alone]

Introduction

[1] This defamation proceeding commenced in March 2018. In a decision of 30 August 2018, Churchman J entered judgment for liability against the defendants, Mr Amer Malik and Ms Trinity Wilson.[1] He refused judgment on quantum. The procedural history thereafter has been regrettably protracted.

[1] *Syed v Malik* [2018] NZHC 2278 at [72].

[2] In a Minute of 20 August 2020, Associate Judge Paulsen, on an application by the defendants, set the issue of quantum down for a trial before a jury pursuant to s 16(1) of the Senior Courts Act 2016. It appears at the time the application was made the plaintiff did not oppose it.

[3] As a result, a three day trial will commence in the High Court at Dunedin on 20 March 2023 to determine the question of Mr Syed's entitlement to damages, if any. I convened a case management conference as the assigned trial Judge on 16 February 2023. As I recorded in a Minute of 17 February 2023:

> [4] I raised with counsel a question in relation to whether this is an appropriate matter to proceed before a jury. Unlike most jury trials involving a claim in defamation, the current jury will not be permitted to consider the question of liability, that matter having been conclusively determined by a judgment of the Court. Despite that, it seemed likely that the defendants wished to put in issue facts which might be understood by a jury to go to the question of liability. In particular, Mr Paine has indicated that the defendants consider that no reputational damage has been suffered by the plaintiff in light of his reputation within New Zealand. This prompted Mr Jacques to suggest that there may be significant room for evidential objections during the trial, and the need for me to direct on matters of relevance and admissibility, including any elements of the defence that might be res judicata. In addition, there are questions of the just, expeditious and inexpensive determination of the proceeding given there is a risk that the trial of quantum could take as long as a trial involving both liability and quantum.

[4] I therefore directed the plaintiff to file any application under s 16(4) of the Senior Courts Act to have the issue of quantum tried before a judge alone within two working days. Mr Syed duly made such an application and it was opposed by Mr Malik and Ms Wilson. As the defendants wished to be heard in opposition to the application (rather than have the matter determined on the papers), I convened a hearing on 13 March 2023. In this judgment I determine the plaintiff's application. Of necessity my reasons are briefly stated.

Legal principles

[5] The starting point is s 15 of the Senior Courts Act 2016. It provides that a civil proceeding must be tried before a High Court Judge "sitting alone". This reflects the approach not only in this country but in the common law world, where the

overwhelming majority of civil litigation is tried before a judge alone.[2] However, s 15 is expressly made subject to s 16.[3] Section 16 in turn provides:

> **16 Certain civil proceedings may be tried by High Court Judge with jury**
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> (1) Any party to a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the proceeding to be tried by a High Court Judge with a jury.
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> (2) Any party to a counterclaim in a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the counterclaim to be tried by a High Court Judge with a jury.
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> (3) If a notice is given under subsection (1) or (2), the proceeding or counterclaim must be tried in accordance with the subsection that applies.
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> (4) A High Court Judge may, on the application of either party, order that a proceeding for defamation, false imprisonment, or malicious prosecution or any issue in the proceeding be tried before a Judge without a jury if it appears to the Judge before the trial that the trial of the proceeding or the issue will—
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> (a) involve mainly the consideration of difficult questions of law; or
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> (b) require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation that cannot conveniently be made with a jury.
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> (5) A proceeding for defamation, false imprisonment, or malicious prosecution that also contains other causes of action may be tried only before a High Court Judge without a jury.
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> (6) No civil proceeding other than for defamation, false imprisonment, or malicious prosecution may be tried by a High Court Judge with a jury.

[6] The effect of s 16(1) and (4) is that while any party to a proceeding for defamation may require the proceeding to be tried by a Judge and jury, the right is not absolute. It is subject to the discretion in subs (4).[4] That provision gives rise to several elements:

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2 *Harvey v Mediaworks Holdings Ltd* [2019] NZHC 1414 at [8].
3 Senior Courts Act 2016, s 15(2).
4 *Harvey v Mediaworks Holdings*, above n 2, at [11].

(a) The Court's discretion is not at large. It only arises on the application of a party.

(b) The discretion to make an order relates both to the proceeding itself, and also to "any issue in the proceeding".

(c) The requisite level of judicial certainty for the matters identified at subs (4)(a) and (b) is qualified. It will be sufficient "if it appears to the Judge" that one or both of the issues may arise in the trial.

(d) In terms of subs (4)(a), the proceeding or issue must involve "mainly" the consideration of difficult questions of law.

(e) In terms of subs (4)(b), the emphasis is on the proceeding or issue requiring an examination or investigation "that cannot conveniently be made with a jury". The categories of examination or investigation identified in the subsection are not exhaustive.[5]

[7] Section 16(4) contemplates a two-stage analysis. The first is whether one of the jurisdictional grounds under either s 16(4)(a) or (b) is made out. If so, the second stage involves consideration of the court's discretion whether to grant the order.[6] This involves a "balancing exercise", as the Court of Appeal emphasised in *McInroe v Leeks*:[7]

> The importance of the right to a jury trial is not to be undervalued, even in today's conditions where such trials are, comparatively speaking, not common in the civil jurisdiction of the High Court. At issue is a balancing exercise, under which if the threshold requirements are made out the Court must give careful consideration to how best the trial process and its management can meet the overall justice of the case, placing due weight on the entitlement of a party to seek trial by jury. The significance of the jury influence on standards of behaviour, and of vindicating in an appropriate way those who have been

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5 In *Craig v Slater (mode of trial)* [2017] NZHC 735, [2017] NZAR 637 at [39]–[41], Toogood J found that the factual complexity of a case involving 18 separate publications and 50 possibly defamatory meanings was sufficient to meet the threshold criterion. And in *Couch v Attorney-General* [2012] NZHC 2186, at [24]–[26], Brewer J concluded that it would not be convenient for a jury to determine factual issues arising in Ms Couch's claim in negligence because the claim was novel, and it would be difficult to keep the respective functions of judge and jury separate from one another.

6 *Craig v Slater*, above n 5, at [22]–[23].

7 *McInroe v Leeks* [2000] 2 NZLR 721 (CA) at [21].

> wronged and also vindicating those who have been wrongly charged with infringing another's rights, must be kept firmly in mind.

[8] Equally, however, a court will not leave selected issues to be submitted to a jury unless they are sufficiently important to warrant a jury and can be satisfactorily defined in advance and clearly isolated from the issues reserved to the judge.[8] It has also been held to be disproportionate in relation to a claim in defamation to require a jury to make findings of fact and fix damages where the claim is within the jurisdiction of the District Court.[9]

[9] Finally, a favourable verdict on liability is the successful plaintiff's primary vindication in a claim for defamation.[10] The Court of Appeal has said its primacy is acknowledged in the introduction by s 24 of the Defamation Act 1992 of the plaintiff's right to seek only a declaration of liability with consequential right to indemnity for an award of a solicitor and client costs.[11] In *Williams v Craig*, the Court observed:[12]

> … The liability verdict is itself public recognition that a statement or statements made by a defendant is false and defamatory. It is that verdict which restores the plaintiff's reputation (which may explain the tradition, followed at least by politicians, of donating damages awards to charity). We emphasise that the function of general damages is solely compensatory. They must bear a "relation to the ordinary values of life [and not operate] as a road to untaxed riches". Assessment of compensatory damages is by its very nature a subjective exercise. But it must be kept within reasonable bounds.
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> Compensatory damages may be aggravated where a jury is satisfied the defendant has acted towards the plaintiff in a manner which compounds or increases the effect of the original defamation. The defendant's behaviour after the original publication, including in conducting his or her defence, can operate in this way. …

[10] It follows from this that the conduct of a defendant in the defence of a defamation trial may be a relevant factor in determining the extent of damages.[13]

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8 *Bearman v Dunn* [1974] 2 NZLR 405 (HC) at 411–412.

9 *Craig v Stiekema* [2017] NZHC 614, [2017] NZAR 633 at [13]. Associate Judge Bell considered that a defamation claim for less than $350,000 should proceed in the District Court. In doing so he noted that is there are no civil jury trials in the District Court, and the amounts in issue are not so great that the resources of a jury should be applied to decide cases.

10 *Williams v Craig* [2018] NZCA 31, [2018] 3 NZLR 1 at [32]; and *Harvey v Mediaworks Holdings*, above n 2, at [20].

11 *Williams v Craig*, above n 10, at [32].

12 At [32]–[33] (footnotes omitted).

13 See Stephen Todd and others (eds) *Todd on Torts* (6th ed, Thomson Reuters, Wellington, 2019) at [16.9.05]; and *Leishman v Levie* [2018] NZHC 721, [2018] NZAR 984 at [25].

Consideration of difficult questions of law: subs (4)(a)

[11] Section 16(4)(a) is not concerned with whether the questions of law arising from the proceeding are difficult per se.[14] Rather, it concerns cases where matters of law and matters of fact so merge into one another that the task of the jury becomes complicated in the application to the facts of questions of law which it is difficult for the judge to explain in language they could be expected to appreciate and apply.[15] The Court of Appeal helpfully explained the focus of the predecessor to subs 4(a) in *Guardian Assurance Company Limited v Lidgard* in these terms:[16]

> … it is not possible to describe exhaustively any category of cases in which the power conferred by the paragraph might properly be exercised, but we have said enough to show that, in our opinion, *the principal matter for consideration under the paragraph must be the extent to which the exposition and application of matters of law may cause difficulty to the Judge and the jury in the discharge of their respective functions*.
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> We think this construction of para. (a) enables effect to be given to the word "difficult" in the phrase "difficult questions of law". … If, … as we think, the paragraph contemplates the effect which questions of law may have on the convenient discharge of their respective tasks by both Judge and jury in the course of a trial, then *the more difficult the questions of law become the more complex those tasks may become, especially when matters of law and matters of fact are inextricably mingled*. …
>
> (emphasis added)

[12] Subsequent decisions of this Court indicate that defences in defamation such as qualified privilege have been found to involve mixed questions of fact and law of such a nature that it may be difficult to keep the respective functions of judge and jury separate from one another.[17]

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14 *Craig v Slater*, above n 5, at [12].
15 *Guardian Assurance Company Limited v Lidgard* [1961] NZLR 860 (CA) at 863–864.
16 At 864.
17 *Craig v Slater*, above n 5, at [14], citing *Buchanan v Jennings* HC Wellington CP109/98, 25 August 2000.

Prolonged examination or investigation that cannot conveniently be made with a jury: subs (4)(b)

[13] In *Guardian Assurance Company limited v Lidgard*, the Court of Appeal also observed that when considering questions of convenience under subs (4)(b) the Court should have regard to:[18]

> ...the interests of the parties, of the Court and jury whose time is occupied, and the general interests of the administration of justice.

[14] Consideration is required not only of the position of the jury in such a trial, but also the position of the Judge, on whom would fall the responsibility of giving the jury an adequate direction to enable them to proceed with the "examination" or "investigation" as the case might be.[19]

[15] Brewer J described the purpose of subs (4)(b) in these terms:[20]

> The point of subs [(4)(b)] is that some cases will simply be too long and/or the issues too complex to be conveniently tried with a jury. In my view the emphasis of subs [(4)(b)] is on "conveniently". A jury is presumed competent to determine any factual issue, just as a Judge sitting alone is presumed competent to determine any factual issue. However, some issues may take a very long time to define. Some issues require the parties to take considerable care to educate the tribunal of fact, be it Judge or jury, on the area of specialist expertise involved so it will be in a position to determine the issues of fact properly.
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> A jury consists of 12 members of the public chosen by ballot. Jurors have to suspend the normal passage of their lives to serve on a jury. Once a trial starts they have to continue serving until they have delivered their decision. There is a limit to what they can be expected to do in order to decide a dispute about liability to pay money. There is also a limit to what the parties and the Judge can be expected to do to assist the jury so as to ensure that its decisions on the facts are made on a proper basis.
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> On the other hand, a Judge's job includes sitting on lengthy and complex civil cases. It includes working outside sitting hours as the trial progresses to ensure he or she is abreast of the evidence and understands it. Crucially, the Judge can reserve his or her decision at the conclusion of the trial and take whatever time he or she needs to review the materials and the arguments of counsel. Once the Judge has reached a view on the facts, the law can be applied and written judgment given. The judgment, of course, gives reasons for the decisions reached.

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18 *Guardian Assurance Company Limited v Lidgard*, above n 15, at 863, citing *Moore v Commercial Bank of Australia* [1934] NZLR 106 (FC) at 111, [1934] GLR 103.

19 At 863; and Sim's Court Practice (NZ) (online looseleaf ed, LexisNexis) at [SEN 16.5(b)].

20 *Couch v Attorney-General*, above n 5, at [10]–[13] (footnote omitted).

> There is a broad interests of justice criterion in the evaluation of whether, against the statutory criteria, a case can be tried conveniently with a jury.

[16] It has also been held that a detailed examination of business records in relation to the issue of quantum is a proper basis on which to remove the issue of quantum from a jury in respect of a defamation claim.[21]

[17] Finally, as noted above, it seems clear that the categories of investigations contemplated by subs (4)(b) are not confined to those identified within the provision itself. In at least two cases this Court has granted an application to try proceedings before a judge alone on the basis of the factual or legal complexity in the case.[22]

The application

[18] Mr Syed's application is advanced in reliance on both ss 16(4)(a) and (b).

[19] In relation to s 16(4)(b), the first defendant proposes to give evidence about his former business partnership with the plaintiff over a six-and-a-half year period, which involved 10 named companies in New Zealand and Australia. Apart from a question of relevance given judgment for liability has already been entered, Mr Syed expects that there may be very large amounts of technical business information provided to the jury concerning these interests. Moreover, Mr Malik's brief of evidence suggests he intends to give evidence of complex arrangements between the plaintiff and other named individuals concerning companies said to have been shut down by "Australian authorities".

[20] Turning to s 16(4)(a), Mr Syed argues that the case will involve complex questions of law or mixed law and fact. Judgment has been entered against Mr Malik and as a result it is not open to him to challenge liability on the basis that his defamatory statements were true. However, it appears that is precisely what Mr Malik proposes to establish in mitigation of damages. Mr Paine indicated that his client's intended defence is that Mr Syed's general reputation is so reprehensible that it was not harmed as a result of the publication of the defamatory statements. Given liability

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21 *Mosen v Donselaar* (1978) 2 PRNZ 482 (HC) at 484.

22 See above n 5.

has been removed from the jury, but the nature of the case Mr Malik intends to advance looks very much in substance like a defence of truth, Mr Syed argues that the jury will find it difficult to confine themselves to the assessment of quantum when the question of liability for the defamatory statements is raised by a side-wind under the guise of mitigation.

[21] Finally, it is said that there are a large number of objections to be made to the defendants' evidence, which will have an impact both on the burden falling on the Court and, potentially, the jury if they effect the directions which the jury may be required to contend with when it retires to deliberate.

The defendants' opposition

[22] On behalf of the defendants, Mr Paine advanced the following grounds in opposition:

(a) The application is made too late. His preparation for the trial will be prejudiced by a late change to a trial before a judge alone. That is due to the fact that his approach to advocacy will be significantly different between the two tribunals of fact. If a trial before a judge alone is ordered, the trial will have to be adjourned and his clients may need to appeal the interlocutory order.

(b) Questions of admissibility are quintessentially matters for a judge to determine. There is no complex question of law, or mixed question of law and fact, likely to arise for the jury.

(c) Section 16(4)(b) is limited to the classes of examination or investigation identified within the subsection. I took him to argue that factual complexity generally will not qualify unless it falls within one of the specified categories, being:

(i) the "prolonged" examination of documents or accounts; or

(ii) investigations involving difficult questions in relation to scientific, technical, business or professional matters.

Mr Malik submits that the issues in the trial concerning quantum do not fall within either of those categories.

(d) When asked what additional advantage the defendants expect to obtain if the trial proceeds with a jury (or what prejudice might accrue without one), Mr Paine explained that a judge may conclude that the plaintiff "may not be a very nice person" but award damages to him nevertheless, but a jury "might decide that he is not a nice person so he shouldn't gain anything". Mr Paine also submitted that advocacy before a jury, in contrast to a judge, entails "emotive" technique, which I took to mean a plea to the jury's sympathy or prejudice.

The pleadings

[23] The second amended statement of claim runs to 170 paragraphs and contains no less than 20 causes of action relating to 20 separate defamatory publications. Some of the publications are in the form of emails and written publications on social media. Others, however, involve video clips posted to YouTube and are in the Urdu language. An interpreter is required to conduct the hearing. It seems entirely possible that some of the evidence will be given in Urdu.

[24] Each of the 20 publications are then said to have a number of defamatory statements contained within them. For instance, the first defamatory publication (forming the basis of the first cause of action) contains 17 defamatory statements. A loose estimate suggests that over across the 20 publications there are in the order of 200 separate defamatory statements, each of which will require consideration in relation to the assessment of damages.

[25] In response to the amended statement of claim, Mr Malik and Ms Wilson have filed a seven-paragraph amended statement of defence occupying just one and a half pages. The critical pleading is an affirmative defence in these terms:

> 6. That the plaintiff has a bad reputation:
>
> (i) The plaintiff was ordered by the Tenancy Tribunal to repay $60,000.00 of rent received from the tenants in need of emergency accommodation. The Tenancy Tribunal found that the plaintiff had illegally sublet the property.
>
> (ii) A report in the national news media that one of the plaintiff's companies made in excess of $6M from government funding for people in need of emergency accommodation.
>
> (iii) Following these reports in the national media the plaintiff stated he had sold the motels subject to the media reports which was incorrect in that the motel had been transferred to a related company still under the plaintiff's control with the land and buildings remaining in the name of another plaintiff controlled company.

[26] At paragraph [7], the statement of defence pleads a matter of law, namely s 30 of the Defamation Act 1992. That section provides:

> **30 Misconduct of plaintiff in mitigation of damages**
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> In any proceedings for defamation, the defendant may prove, in mitigation of damages, specific instances of misconduct by the plaintiff in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate.

[27] The purpose of s 30 is to enable a defendant who wishes to prove in mitigation of damages specific instances of misconduct by a plaintiff to advance those matters "in order to establish that the plaintiff is a person whose reputation is generally bad in the aspect to which the proceedings relate". This is a general correction of the position as it stood at common law.

[28] On its face, the pleading at para [6] is limited to the three specific instances of alleged misconduct by Mr Syed. However, during the hearing Mr Paine indicated that his intention at trial is to challenge the plaintiff's reputation generally, and that he does not consider his clients are limited to the specific instances as pleaded.

[29] Whether the defendants will be permitted to do so is a matter for trial but given the requirement for pleadings and briefs of evidence to ensure natural justice is observed in trials, it is likely that a challenge will be mounted by Mr Syed to evidence (either in chief or in cross-examination) that goes beyond that set out in the defendants' briefs of evidence or pleadings. It also follows that there is significant uncertainty about the scope of the defence case, and whether it is limited to the matters set out in the briefs of evidence and pleadings. As a result, there is also a substantial likelihood of further objections to evidence both on the basis of relevance and admissibility.

Consideration

Does the issue of quantum involve mainly the consideration of difficult questions of law?

[30] I am not satisfied the likelihood of a significant number of evidential objections is sufficient to meet the necessary threshold criterion in s 16(4)(a). While a question of law, admissibility of evidence is a matter for a judge to determine (often in the absence of the jury) and outside the scope of matters recognised by courts as qualifying.

[31] Mr Syed is on stronger ground, however, when he submits that it will be difficult for the jury to understand the limits of their role given liability has been determined when the defendants nevertheless intend to mount an attack on his general reputation not far removed from a defence of truth.

[32] In my view, given that the question of liability has been determined, the defence which Mr Malik and Ms Wilson intend to make on the issue of quantum will create a complex question of mixed fact and law such that it will be difficult to keep the respective functions of judge and jury separate from one another. The jury will not be permitted to question the liability of the defendants but will be invited to find that no damages should be awarded because the plaintiff is, to use Mr Paine's words, "a bad person" and his general reputation does not warrant any compensatory award. Even with careful judicial direction, it is questionable whether a jury will be able to confine themselves to consideration of the narrow issue—quantum—that would be left to them.

[33] I am therefore satisfied that the necessary jurisdictional threshold for exercise of the discretion is met under s 16(4)(a).

Will the issue of quantum involve prolonged examination of documents or an investigation which cannot be conveniently made with a jury?

[34] As noted, there are 20 defamatory publications in issue. Some of them are in Urdu, necessitating the assistance of an interpreter. And there are in the order of 200 separate defamatory statements contained within those publications. The assessment of damages will require a consideration of all of the relevant statements.

[35] In addition, Mr Malik's brief of evidence suggests that the imputation he proposes to make to Mr Sayed's general reputation will be derived in part from the complex corporate and business arrangements undertaken by the plaintiff and the first defendant both in New Zealand and Australia over a period spanning the better part of a decade. The challenge also appears to rely at least in part on what is claimed to be an association between the plaintiff and identified third parties, and the conduct of those third parties in business. The defendants also wish to rely on events in 2018 and 2019 relating to what is said to be the plaintiff's involvement in emergency housing in Auckland, in support of their challenge to Mr Sayed's general reputation.

[36] Given Mr Paine's submission that the defendants consider they are permitted to make a general challenge to Mr Syed's reputation notwithstanding the limits of their pleadings, I am satisfied that the threshold in s 16(4)(b) is also made out. Overall, the matters I have identified for consideration cannot conveniently be made with a jury. The number of defamatory statements alone satisfy me that there is likely to be a prolonged examination of documents, namely the 200 or so defamatory statements across 20 defamatory publications. Moreover, there is a broad interests of justice criterion in the evaluation of whether, against the statutory criteria, a case can be tried conveniently with the jury.[23] That factor in my view weighs also firmly in favour of a trial before a judge alone.

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[23] *Couch v Attorney-General*, above n 5, at [13]; and *Guardian Assurance Company Limited*, above n 15, at [863].

Exercise of the discretion

[37] Balancing all relevant considerations, I am unable to discern any prejudice to the defendants if they are denied the opportunity to advance their case before a Judge with a jury. The critical jury question—whether the plaintiff has been defamed—has already been determined. And given the lack of clarity in relation to the scope of the defendants' proposed challenge to the plaintiff's general reputation, and the burden falling on the Court to ensure the jury remains focused only on those issues open for determination, I am satisfied that this is an appropriate case to exercise the discretion in favour of a trial of the issue of quantum by judge alone. I also consider that it is disproportionate to require 12 members of the community to attend for jury duty in relation to a matter that can more conveniently be dealt with by a judge. The prayers for relief in the statement of claim seek "a gross award of damages covering all causes of action in the amount of $300,000". That sum is significantly below the jurisdiction of the District Court, to which the proceeding could be transferred for hearing and where there is no right to a civil trial involving a jury.

[38] I am reinforced in my view that it is appropriate to determine the issue of quantum without a jury because of the prospect of admissibility and relevance challenges arising from the broad attack to the plaintiff's reputation foreshadowed, and the risk of a mistrial if evidence is inadvertently put before the jury that should not be. And while Mr Paine considered that the prospects of a more favourable outcome for his clients are greater with a jury, I am not so sure his confidence is well placed. The defence trial strategy is essentially focused on an attack on Mr Syed's character. In taking that approach there is of course a risk a jury may consider the challenge was a gratuitous continuation of the libellous conduct that gave rise to the claim in the first place. The jury is also likely to be directed that in fixing damages they are entitled to have regard to the defendants' conduct in the trial. If that is correct, it seems to me there is a risk a jury will take a sterner view of the measure of loss than might a judge. Ultimately whether taking such risks is prudent is for the defendants.

[39] Mr Paine also argued that the application should be declined because no evidence had been filed in support of it, and r 7.20 of the High Court Rules 2016 requires any evidence in support of an interlocutory application to be filed with the

notice of application. This overlooks the discussion at the case management conference, and my subsequent minute,[24] in which I granted both parties leave to rely on the evidence already filed should they wish. There is nothing in this point.

[40] Finally, while Mr Paine submitted that he would be unable to prepare for a trial with a judge alone, he was unable to identify the different form of preparation that might be required or how the burden for counsel or his client would be materially different. This point too is without merit.

Conclusion and result

[41] Pursuant to s 16(4) of the Senior Courts Act 2016, I direct that the issue of quantum shall be determined by a Judge without a jury. Costs are reserved.

[42] In light of Mr Paine's indication that his clients may wish to appeal my order, I direct that the jury panel is not to be discharged until further order of the Court.

Isac J

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[24] Minute of Isac J, 17 February 2023 at [5].