

IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY

I TE KŌTI MATUA O AOTEAROA  
ŌTEPOTI ROHE

CIV-2024-412-110  
[2024] NZHC 2621

BETWEEN

ARTEMIS INDIGO DELILAH DAVIS  
Plaintiff

AND

EMMA JULIE HOGG  
Defendant

Hearing: On the papers  
Appearances: Plaintiff in person  
Judgment: 11 September 2024

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**JUDGMENT OF DUNNINGHAM J**

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*This judgment was delivered by me on 11 September 2024 at 2.45 pm, pursuant  
to r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar  
Date:*

[1] The plaintiff has filed proceedings advancing a claim in defamation, along with an interlocutory application for summary judgment on that claim. The application for summary judgment is supported by an affidavit of the plaintiff. It purports to adduce video footage as Exhibit A to the affidavit. However, no such exhibit is attached. Instead, the plaintiff has sent a video file separately to the High Court Registry.

[2] On filing the application, the plaintiff said “if a flash drive is required [of exhibit A] please let me know and I will get one into [sic] the Registrar [sic].” A Deputy Registrar responded saying “unfortunately, you must use the High Court Rules 2016 prescribed forms when filing documents – please note this Exhibit A (video) is not accepted for filing with your proceeding.” The plaintiff again replied that “if a flash drive is required I can get one ....”.

[3] The plaintiff has now filed an application for review pursuant to HCR 2.11, in respect of the Registrar’s decision to “refuse to accept a singular exhibit from my affidavit for filing.” The plaintiff goes on to say that “given the geographical distance between Dunedin and Christchurch, and the fact that the affidavit to which the exhibit relates has been filed digitally, I propose that accepting “Exhibit A” for digital filing is the most logical means of allowing for this proceeding to move ahead in a timely manner, ...”.

[4] At issue is whether the video exhibit to the plaintiff’s affidavit has been formally adduced and should be accepted for filing when it is not annexed in some manner to the affidavit, but rather, sent separately, and electronically.

[5] This question raises a practical difficulty as the Courts move from a paper-based system to an electronic system, particularly when exhibits are being produced as part of an affidavit. I note that files under the Higher Courts Civil Electronic Document Protocol are required to be filed “using a USB flash drive”, although that issue does not address the practical question of how a video is exhibited to an affidavit.

[6] The most pertinent guidance I can find is in r 9.22 of the High Court Rules 2016. That rule governs how exhibits to an affidavit should be presented. At r 9.77(3) it provides that:

If the size, shape or nature of an exhibit makes it impracticable to comply with subclause 1(b) or 2, the exhibit must have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

[7] In my experience, a video file will commonly be annexed to an affidavit by way of a USB flash drive which is taped to a sheet of paper which displays the exhibit number, and which is annexed to the affidavit. This firmly connects the exhibit to the evidence which has been sworn as being true and correct. At present, that connection is not established. There is no exhibit to the plaintiff's affidavit.

[8] The second advantage is that, when the file is archived, the evidence which supported the claim is physically housed with the other documents relating to it. That would not be possible if the video file was only sent to the Court electronically.

[9] Accordingly, on review, I am satisfied the Deputy Registrar was correct to require the video footage to be filed by way of flash drive. I would go further and say that, at present, there is no such exhibit to the affidavit which has been sworn in support of the application for summary judgment. The affidavit needs to comply with HCR 9.77 if it is to adduce the video file as evidence.

Copy to:  
Plaintiff