

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2021-485-663
[2024] NZHC 2372**

UNDER Section 24 of the District Court Act 2016

IN THE MATTER of an appeal against a decision of the District Court [2021] NZDC 20011

BETWEEN GRACE HADEN
Appellant

TRANSPARENCY NEW ZEALAND
LIMITED
Second Appellant

AND VIVIENNE KAREN HOLM
Respondent

Hearing: On the papers

Counsel: Self-represented Appellant
Self-represented Respondent

Judgment: 23 August 2024

JUDGMENT OF PETERS J

This judgment was delivered by Justice Peters on 23 August 2024 at 11 am
pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date:

Copy for: Appellant
Respondent

Introduction

[1] By application dated 10 July 2024, Ms Haden seeks leave to appeal to the Court of Appeal against my decision of 13 June 2024, in which I dismissed (in large part) Ms Haden's appeal against a decision of Judge D G Smith of 12 October 2021.¹

[2] Ms Holm, the respondent, has recently advised that she will abide the decision of the Court on the application.

[3] I have submissions and an affidavit in support from Ms Haden and so am able to determine the application for leave on the papers.

[4] As the application is for leave to bring a second appeal, leave may only be granted if the proposed appeal raises a question of law or fact capable of bona fide and serious argument, and in a case involving some interest of sufficient public or private importance to outweigh the cost and delay of a further appeal.²

District Court

[5] Judge Smith's decision was to the effect that Ms Haden had defamed Ms Holm on numerous occasions between 2010 and 2019 and that Ms Haden had not established her defences of truth or honest opinion.³ The Judge awarded Ms Holm damages of \$100,000, including \$25,000 in punitive damages, and issued a permanent injunction prohibiting Ms Haden from publishing any further material, on any site or by any media, which relates to or refers to Ms Holm, directly or indirectly.

Appeal to the High Court

[6] Ms Haden advanced 12 grounds of appeal against Judge Smith's decision. I dismissed her appeal, subject to quashing the award of punitive damages referred to in [5] above. No issue arose as to costs.

¹ *Haden v Holm* [2024] NZHC 1556.

² *Waller v Hider* [1998] 1 NZLR 412 (CA); *Snee v Snee* [2000] NZFLR 120 (CA); and *Butch Pet Foods Ltd v Mac Motors Ltd* [2018] NZCA 276 at [4].

³ *Holm v Haden* [2021] NZDC 20011.

Proposed appeal to the Court of Appeal

[7] Ms Haden identifies five matters which she contends are errors of fact and/or law, each discussed below. Only the fifth of these arises from a submission Ms Haden made in support of her appeal to the High Court. That on its own might be considered determinative of the question of leave on the first four. Regardless, I shall address each of the proposed grounds.

The Court made a serious error of fact by failing to recognise the difference between Ms Holm's statement of claim and her amended statement of claim, concluding that the claims were the same when they were not

[8] Ms Holm's first statement of claim, filed on 4 April 2018, contained 17 causes of action, each in respect of a statement published by Ms Haden (and there was no dispute that Ms Haden had made the statements) between January 2010 and March 2018.

[9] Ms Holm filed an amended statement of claim on 30 November 2020, in which she added a further six causes of action, each in respect of a statement that Ms Haden had published between March 2018 and December 2019.

[10] Ms Haden contends there has been an error of fact in that I proceeded on the basis the claims (by which I think Ms Haden means the first 17 causes of action) were the same, when they were not.

[11] In [16] of my judgment I said:

On 30 November 2020, Ms Holm filed an amended statement of claim in which she retained her first 17 causes of action but added a further six in respect of statements published between 19 March 2018 and December 2019.

...

[12] What I said in [16] is accurate. Ms Holm did retain her first 17 causes of action.

[13] As I apprehend it, Ms Haden's submission is that the two pleadings are not identical as regards the first 17 causes of action. That is correct. In both pleadings, Ms Holm has a section headed "Background to causes of action". There is a difference in this section in the two pleadings. There is also a difference in that Ms Holm

abandoned an allegation in her third, fourth, sixth, eighth and eleventh causes of action that the statements in issue implied that she did not hold a practising certificate when required to do so. That difference was irrelevant to the outcome of Ms Haden's appeal to the High Court. Nothing in my decision turned on that particular point and thus it is not a matter on which to grant leave to appeal.

The Court was misled by Ms Holm's pleadings as regards whether or not Ms Holm had held a practising certificate

[14] The second alleged error arises in my [17] in which I said:

Ms Holm's case was that the statements bore a variety of meanings. Some meant or implied that she had behaved in an intimidating manner towards Ms Haden. Others meant or implied that she had harassed or bullied Ms Haden, or that she had not held a practising certificate when required to do so, or that she had misled the Court and was corrupt, and so on. Thus, Ms Holm alleged the statements were defamatory of her.

[15] Ms Haden submits that the sentence in this paragraph concerning whether or not Ms Holm had held a practising certificate evidences a failure on my part to appreciate the difference between the two pleadings to which I referred above. That is incorrect. There is some substance in this submission. Ms Holm did continue to make allegations concerning her holding of a practising certificate or otherwise in her amended pleading, but to be fair to Ms Haden, not as often as in her first pleading. Regardless, the point is irrelevant. It had no effect on the outcome of the appeal, and I decline to grant leave accordingly.

There has been a breach of s 14 New Zealand Bill of Rights Act 1990

[16] As to the third error, Ms Haden submitted on appeal that the injunction granted against her by Judge Smith infringed her rights under s 14 NZBORA, which provides:

14 Freedom of expression

Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

[17] I did not accept this submission, given the Court of Appeal's decision in *Low Volume Vehicle Technical Association Inc v Brett*.⁴ No error of law arises on this point.

The defences of truth and/or honest opinion ought to have been assessed from Ms Haden's perspective

[18] Ms Haden did not seek to advance this ground in the High Court. Rather, she submitted that Judge Smith had failed to assess the defences and failed to cite or apply the correct test(s).

[19] What a defendant relying on a defence of truth or honest opinion must satisfy is well-established. The submission that Ms Haden now seeks to advance in the Court of Appeal is simply unarguable. I decline to grant leave on this ground.

The Court failed to correctly assess the damages

[20] This proposed ground is in Ms Haden's submissions but not in her application for leave.

[21] Ms Haden did challenge Judge Smith's award of general damages of \$75,000. The Judge set out his reasons for making that award, including some matters in Ms Haden's favour. I declined to vary the award for reasons set out in my judgment.

[22] Ms Haden submits that I failed to take into account what, in Ms Haden's view, are falsehoods perpetrated by Ms Holm, and Ms Holm's persistence with litigation when the dispute might have been resolved. This submission is incorrect. In [84] of my judgment, I referred to Ms Haden's submission that she had been willing to resolve matters with Ms Holm. However, I considered that of no consequence for the reasons I set out in that same paragraph. I decline leave to appeal on this ground also.

⁴ *Low Volume Vehicle Technical Association Inc v Brett* [2019] NZCA 67, [2019] 2 NZLR 808.

Conclusion

[23] I am not satisfied that the proposed appeal raises a question of law or fact capable of bona fide and serious argument.

[24] If I am wrong in that, the proposed appeal does not raise any matter of public importance. The only matter of private importance that might arise is in respect of the fifth proposed ground of appeal, and the financial consequence for Ms Haden of the \$75,000 award of damages against her. Even if I were persuaded this was of *substantial* private importance (and I am not), it does not outweigh the cost and delay of a further appeal.

Result

[25] I decline the application for leave to appeal to the Court of Appeal.

Peters J