IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2023-404-2690
[2024] NZHC 1709

UNDER	The Defamation Act 1992
IN THE MATTER OF	A claim against the defendants by James John McConnor for defamation
BETWEEN	JAMES JOHN MCCONNOR Plaintiff
AND	AUCKLAND TRANSPORT First Defendant
	BAYCORP (NZ) LIMITED Second Defendant

Hearing:	13 June 2024
Counsel	Plaintiff in person T C Goatley / I Ieremia for the First Defendant J Ussher/ C Kim for the Second Defendant
Judgment:	26 June 2024

JUDGMENT OF ASSOCIATE JUDGE BRITTAIN

This judgment was delivered by me on 26 June 2024 at 12 Midday.
Pursuant to r 11.5 of the High Court Rules.

……..
Registrar/Deputy Registrar

Solicitors/Counsel
United Legal Limited, Auckland
Bell Gully, Auckland

Introduction

[1] On 15 October 2022, a vehicle registered in the name of the plaintiff, Mr McConnor, was driven in a bus lane on Mayoral Drive in Auckland. The first defendant, Auckland Transport (AT), issued an infringement notice to Mr McConnor for an offence under the Land Transport (Road User) Rule 2004 (LT Rule). Mr McConnor disputes the validity of the infringement notice and he has not paid the infringement fee of $150.

[2] On 25 December 2022, AT electronically referred the infringement fee to its debt collection agent, the second defendant, Baycorp (NZ) Ltd (Baycorp). In early 2023, Baycorp sent communications to Mr McConnor demanding payment. Some of those communications were sent by an Australian company related to Baycorp, and part of the Baycorp Group of companies.

[3] On 31 March 2023, AT followed the process in s 21 of the Summary Proceedings Act 1957 (SPA), to commence proceedings in the District Court by automated electronic means in respect of the alleged infringement offence.

[4] In this proceeding, Mr McConnor applies for summary judgment, alleging that he was defamed by:

(a) AT's electronic communications with Baycorp on 25 December 2023 and the District Court on 31 March 2023; and

(b) Baycorp's communications with other companies in the Baycorp Group.

[5] AT says that its communications were not defamatory and stated facts that are true. Further, its communication to the District Court is protected by absolute privilege under s 14 of the Defamation Act 1992 (DA), being a step taken in proceedings before a court. Finally, AT says that this proceeding is an abuse of process because even if there was an unprotected defamatory statement, Mr McConnor cannot establish that it affected his reputation adversely in more than a minor way. AT applies for summary

judgment dismissing Mr McConnor's claim, or alternatively, for an order striking out the claim.

[6] Baycorp makes the same applications and adopts the arguments advanced by AT. Baycorp says: it is not a credit reporter; it did not publish a default by Mr McConnor with any credit reporter; and its communication of the information provided by AT to a related Australian company within the Baycorp Group was for the sole purpose of enabling it to perform its debt collection services for AT.

[7] If Mr McConnor's application for summary judgment and the applications for summary judgment and/or strikeout by AT and Baycorp are all dismissed — AT and Baycorp apply for security for costs.

[8] The applications before the Court can be resolved by considering the following issues:

(a) Is AT's communication to the District Court protected by absolute privilege?

(b) What is the meaning of the other statements complained of?

(c) Is that meaning true?

(d) Were the other statements complained of defamatory?

(e) If the statements were defamatory, was Mr McConnor's reputation adversely affected in a more than minor way?

Background

[9] On 20 October 2022, AT sent the infringement notice by post to Mr McConnor at Glenbrook Road, Pukekohe (the Pukekohe address). AT says that this was Mr McConnor's address recorded on the Register of Motor Vehicles. Mr McConnor says that he ceased residing at that address in early 2022, and that he had updated his address with the New Zealand Transport Authority. Despite that, Mr McConnor says

that he collected the infringement notice from the Pukekohe address on 2 November 2022.

[10] The infringement notice was in the form prescribed for a special vehicle lane offence by the Land Transport (Infringement and Reminder Notices) Regulations 2012 (LT Regulations). The infringement notice recorded that it was issued under the Land Transport Act 1998 (LTA).

[11] The infringement notice described the offence as:

> While driving, used a special vehicle lane reserved for specific classes of vehicle, when the vehicle being driven was not one of those classes or an emergency vehicle

[12] The infringement notice included the following advice:

> **Further action**
>
> 4 You must write to the enforcement if you wish to do any of the following things:
>
> (a) raise a matter concerning the circumstances of the alleged offence for consideration by the enforcement authority; or
>
> (b) deny liability for the alleged offence and request a court hearing; or
>
> (c) admit liability for the offence, but have the court consider submissions as to penalty or otherwise. In your letter you must request a hearing, admit liability in respect of the offence, and set out the submissions that you would like the court to consider.

[13] On 7 November 2022, AT received a letter from Mr McConnor dated 2 November 2022. Mr McConnor's letterhead recorded his address in central Auckland. The letter acknowledged receipt of the notice of infringement, and requested further particulars relating to the alleged infringement, including the statutory provisions allegedly breached. The letter did not deny liability or request a court hearing.

[14] Mr McConnor says that he sent a follow up electronic message to AT using AT's website. There is no record of that message in evidence.

[15] On 11 November 2022, AT sent a letter to Mr McConnor (via email and to the Pukekohe address) confirming that AT was proceeding with enforcement of the infringement fee. AT referred to cl 2.3(1)(f) of the LT Rule as the relevant statutory provision creating the infringement offence.

[16] AT's letter reminded Mr McConnor of his right to request a court hearing and enclosed a "Court Hearing Request" form. The letter advised that if AT did not receive the completed form or payment by the due date then the infringement notice would be automatically lodged with Baycorp for collection.

[17] Mr McConnor sent a reply email the same day, acknowledging receipt of AT's email and attachments. Mr McConnor stated that he was unable to:

> … respond to your demands until such time that you inform me clearly of the statutory provisions that my vehicle had allegedly breached authorising you to impose a fine on me as vehicle owner.
>
> I apprehend that you may resolve to put the matter though as an unpaid fine against me as vehicle owner, however, if you do that, you will have broken the law. In any such case I will issue High Court Proceedings against the Chief Executive of Auckland Transport for acting *ultra vires*. It will take the matter out of your hands, and most probably Crown Counsel will be instructed to defend the matter in the High Court, with financial consequences for both me and AT, your employer.

[18] On 24 November 2022, AT issued a reminder notice to Mr McConnor under s 21 of the SPA, posted to the Pukekohe address. The reminder notice was in the form prescribed in the LT Regulations.

[19] The reminder notice described the alleged infringement offence as follows:

> ON Saturday 15 October 2022 AT 8:37 am ON Mayoral Drive, AUCKLAND CENTRAL IN THAT YOU BEING THE PERSON IN CHARGE OF A MOTOR VEHICLE MJC118 Drove a vehicle on a road and used a special vehicle lane reserved for a specific class or classes of vehicle other than the one being driven.
>
> This is an offence against Section 40 Land Transport Act 1998 & r.4 Offences & Penalties Regs 1999 & 2.3(1)(f) Road User Rule 2004.

[20] The reminder notice recorded that the last date for payment of the infringement fee was 21 December 2022. Mr McConnor does not acknowledge receiving the reminder notice.

[21] On 28 November 2022, AT responded to an email Mr McConnor had sent on 11 November 2022. AT's email on 28 November 2022 referred to the same statutory provisions that were stated in the reminder notice, attached redacted video footage of the alleged infringement and provided a link to AT's website for access to photographs of the alleged infringement. The email did not refer to the reminder notice that had been issued on 24 November 2022.

[22] On 11 December 2022, Mr McConnor responded to AT's email of 28 November 2022. Mr McConnor denied liability, citing statutory exceptions to liability under cl 2.3(1)(f) of the LT Rule and claiming that his vehicle had entered the bus lane as evasive action to avoid another vehicle, before using the bus lane for the purpose of turning. Mr McConnor requested that AT cancel the infringement notice. Mr McConnor did not request a court hearing.

[23] On 12 December 2022, AT emailed Mr McConnor, with what appears to be an auto-reply, which stated:

> **We've started working on your case**
>
> We're looking into it carefully. Please note, that due to the holiday period, it may take us a little longer to get back to you. But be assured we have received your case.

[24] Despite that response, AT sent an automated electronic message to Baycorp on 25 December 2023, instructing Baycorp to collect the infringement fee. That resulted in Baycorp issuing an "INFRINGEMENT FEE NOTICE" to Mr McConnor at the Pukekohe address on 4 January 2023. Mr McConnor acknowledges receiving that document. Further communications ensued between Mr McConnor and Baycorp. Mr McConnor denied liability.

[25] On 9 February 2023, AT sent an email to Mr McConnor, advising that AT had reviewed the infringement. AT confirmed its decision to enforce the infringement notice. The email advised Mr McConnor that he could elect to refer the matter to court

by completing and returning the court form, including a link to the form on the AT website.

[26] On 30 March 2023, Mr McConnor sent an email to AT reiterating his defences to the alleged infringement. Mr McConnor requested that AT cancel the infringement notice, write to Baycorp confirming withdrawal of the infringement notice and cancellation of the infringement fee, and write a letter of apology to Mr McConnor.

[27] The following day, AT commenced the District Court enforcement process under s 21 of the SPA, by electronic lodgement of the infringement reminder notice with the Court.

[28] On 24 July 2023, Mr McConnor filed a proceeding in the Auckland District Court alleging defamation against AT and Baycorp. The interlocutory applications that are now before this Court were first filed in the District Court.

[29] On 6 November 2023, Mr McConnor commenced this proceeding, which duplicated his claims of defamation in the District Court, but increased the damages claimed beyond the jurisdiction of the District Court.

[30] On 20 November 2023, Mr McConnor filed a proceeding in this Court seeking judicial review of AT's various decisions and actions related to the infringement fee.

[31] On 23 January 2024, the District Court transferred its proceeding to this Court. On 20 February 2024, I ordered that the District Court claims be consolidated in this proceeding, and that all applications filed in the District Court be determined in this proceeding.

Legal principles

Plaintiff's summary judgment

[32] The Court may give judgment against a defendant if satisfied that the defendant has no defence to a cause of action in the statement of claim.[1]

[33] The leading authority on applications for summary judgment is *Krukziener v Hanover Finance Ltd*.[2] The Court of Appeal set out the following principles:[3]

(a) The question on a summary judgment application is whether the defendant has no defence to the claim; that is, that there is no real question to be tried. The Court must be left without any real doubt or uncertainty.

(b) The onus is on the plaintiff, but where its evidence is sufficient to show there is no defence, the defendant will have to respond if the application is to be defeated.

(c) The Court will not normally resolve material conflicts of evidence or assess the credibility of deponents. But it need not accept uncritically evidence that is inherently lacking in credibility, as, for example, where the evidence is not consistent with undisputed contemporary documents or other statements by the same deponent, or is inherently improbable. In the end the Court's assessment of the evidence is a matter of judgment. The Court may take a robust and realistic approach where the facts warrant it.

[34] The defendant is under an obligation to lay a proper foundation for the defence in the affidavits filed in support of the notice of opposition.[4]

---

1 High Court Rules 2016, r 12.2(1).
2 *Krukziener v Hanover Finance Ltd* [2008] NZCA 187, (2008) 19 PRNZ 162.
3 At [26].
4 *Middleditch v New Zealand Hotel Investments Ltd* (1992) 5 PRNZ 392 (CA) at 394.

[35] If the defendant fails to provide an evidential foundation for a defence, then the plaintiff's verification of the statement of claim stands unchallenged and ought to be accepted, unless it is patently wrong.[5]

Defendant's summary judgment

[36] Rule 12.2(2) of the High Court Rules 2016 (HCR) provides that the Court may enter judgment against a plaintiff if the defendant satisfies the Court that none of the causes of action in the plaintiff's statement of claim can succeed.

[37] The test for defendant's summary judgment was set out by the Court of Appeal in *Stephens v Barron*:[6]

> (a) The defendant has the onus of proving on the balance of probabilities that the plaintiff cannot succeed. Usually this will arise where the defendant can offer evidence which is a complete defence to the plaintiff's claim.
>
> (b) An application for summary judgment will be inappropriate where there are disputed issues of material fact or where material facts need to be ascertained by the Court and cannot confidently be concluded from affidavits. It may also be inappropriate where ultimate determination turns on a judgment able to be properly arrived at only after a full hearing of the evidence.
>
> (c) The Court must be satisfied that none of the claims can succeed. It is not enough that they are shown to have weaknesses. The assessment is not to be arrived at on a fine balance of the available evidence as would be appropriate at a trial.
>
> (d) The residual discretion of the Court to refuse summary judgment would be properly invoked to avoid the oppression which would otherwise result if an application by a defendant for summary judgment would pre-empt a plaintiff exercising the right to amend the pleadings.
>
> (e) Summary judgment should not be applied for unless the substantive merits of the case are clear and capable of summary disposal.

[38] In *Bernard v Space 2000 Ltd*,[7] Thomas J, referring to the predecessor of r 12.2(2), noted that the onus on the defendant could be described as requiring a "king hit".

---

5 *Australian Guarantee Corp (NZ) Ltd v McBeth* [1992] 3 NZLR 54 (CA) at 58–59.
6 *Stephens v Barron* [2014] NZCA 82 at [9] (footnotes omitted).
7 *Bernard v Space 2000 Ltd* (2001) 15 PRNZ 338 (CA) at [21].

Strike-out

[39] Pursuant to r 15.1(1) of the HCR, the Court may strike out all or part of a pleading if it:

(a) discloses no reasonably arguable cause of action;

(b) is likely to cause prejudice or delay;

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of the process of the Court.

[40] The principles governing strike-out applications are summarised in the Court of Appeal decision in *Attorney-General v Prince*:[8]

(a) A strike-out application is to proceed on the assumption that the facts pleaded in the statement of claim are true unless those pleaded facts are entirely speculative and lack any foundation.

(b) It is only where, on the facts alleged in the statement of claim, however broadly they are stated, no private law claims of the kind or kinds advanced can succeed that it is appropriate to strike out the proceedings at a preliminary stage.

(c) The threshold for strike-out is high. Before a proceeding may be struck out the causes of action must be so clearly untenable that they cannot possibly succeed.

(d) The jurisdiction is one to be exercised sparingly, and only in a clear case where the Court is satisfied it has the requisite material.

(e) The fact that an application to strike out raises difficult questions of law, and requires extensive argument, does not exclude the jurisdiction.

---

8 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA) at 267.

[41] Under r 15.1(3), the Court has a discretion to stay all or part of the proceeding instead of striking out all or part of a pleading. It may be appropriate to make an order staying part of a proceeding if justice may require the cause of action to be determined at a later date.[9]

Defamation

[42] A plaintiff alleging defamation must prove that the statements complained of:[10]

(a) identified the plaintiff;

(b) were published by the defendant; and

(c) were defamatory.

[43] The application of the law of defamation in the context of an application for defendant's summary judgment was recently reviewed by this Court in *Wilson Parking New Zealand Ltd v DLA Piper New Zealand.*[11] The principles were summarised as follows:

> [37] Whether a statement is capable of bearing the defamatory meaning pleaded by a plaintiff is an issue that can be resolved on a strike-out application. The test for making that determination was stated by Barker J in *New Zealand Magazines Ltd v Hadlee (No 2)*:[12]
>
> (a) The test is objective. In the circumstances in which the words are published, what would the ordinary, reasonable person understand or infer from them as a matter of impression?
>
> (b) The stereotype of the ordinary, reasonable person is one of ordinary intelligence, general knowledge and experience of the world, with a capacity for reading between the lines; but not one who would indulge in strained or forced interpretation or groundless speculation. This hypothetical person must also be fair-minded, not avid for scandal, not unduly suspicious, nor one prone to fasten on to one derogatory meaning when other innocent or at least less serious meanings could apply.

---

9 *Hyslop v Society of Lloyd's* (1992) 6 PRNZ 204 (HC) at 217.
10 *Blomfield v Slater* [2024] NZHC 228 at [16].
11 *Wilson Parking New Zealand Ltd v DLA Piper New Zealand* [2023] NZHC 2705.
12 Footnotes omitted.

(c) The words complained of must be read in context; in other words, the article as a whole must be construed with appropriate regard to the mode of publication and surrounding circumstances.

[38] In *Craig v Slater*, Kós P characterised the assessment as follows:

> [16] Whether a statement is capable of bearing a particular meaning is a question of law; whether it in fact conveys that meaning is a question of fact …

[39] Where defamatory statements involve allegations of misconduct, there are three tiers of possible meaning:

(a) that the claimant is guilty of the misconduct;

(b) that there are reasonable grounds to suspect that the claimant is guilty of misconduct; or

(c) that there are grounds to investigate whether the claimant is guilty of misconduct.

While convenient, these tiers are not closed nor exhaustive. Ultimately, the precise meaning of the words and the overall context will be determinative.

[40] For a pleaded meaning to be defamatory, it must tend to affect a claimant's reputation adversely in more than a minor way, referred to as the "threshold of seriousness". In *Sellman v Slater*, Palmer J treated the threshold as an element of the tort, describing it as follows:

> … a statement is defamatory if it causes the reasonable person reading or hearing it to think worse of the person concerned in a more than minor way.

[41] It is open to a defendant to apply to strike out a cause of action as untenable if a defendant can show their statement has caused less than minor harm to the plaintiff's reputation.

[42] In assessing the level of reputational harm behind a statement, the character of that statement will be a primary factor. Also pertinent is the extent of publication. In *Driver v Radio New Zealand Ltd*, alleged defamatory statements were published online, but viewed by very few people. On that basis, Clark J struck out the defamation claims, holding that it was not seriously arguable that the plaintiff had suffered more than minor reputational harm.

[43] It is not possible to assess the character of an alleged defamatory statement without first determining whether the pleaded meanings are made out. If they are, then it is appropriate to consider whether the threshold of seriousness is met. A similar approach was taken by this Court in *CPA Australia Ltd v New Zealand Institute of Chartered Accountants*, and the Court of Appeal in *Craig v Slater*.

[44] Section 14(1) of the DA relevantly provides:

> **14 Absolute privilege in relation to judicial proceedings and other legal matters**
>
> (1) Subject to any provision to the contrary in any other enactment, in any proceedings before—
>
> (a) a tribunal or authority that is established by or pursuant to any enactment and that has power to compel the attendance of witnesses; or
>
> (b) a tribunal or authority that has a duty to act judicially,—
>
> anything said, written, or done in those proceedings by a member of the tribunal or authority, or by a party, representative, or witness, is protected by absolute privilege.

Is AT's communication to the District Court protected by absolute privilege?

[45] Section 21(1)(b) of the SPA provides that proceedings in respect of an infringement offence may be commenced by providing particulars of a reminder notice to the District Court. Section 21(4A)(a) provides that the particulars of a reminder notice must be provided by the informant in electronic form.

[46] AT's electronic lodgement of the infringement reminder notice with the District Court on 31 March 2023 was a step taken in the proceeding commenced in the District Court by AT as the informant. That communication is protected by absolute privilege.

[47] For the purposes of the applications before the Court, AT and Baycorp accept that the other statements complained of identify Mr McConnor and were published by AT. Baycorp does not accept that it published the statement. Both AT and Baycorp deny that the statements were defamatory.

What is the meaning of the other statements complained of?

[48] Mr McConnor's latest statement of claim is dated 6 November 2023 and contains one cause of action for defamation. The cause of action begins with extensive pleadings of alleged failures by AT to comply with various statutory provisions applicable to the infringement notice procedure that was followed.

[49] The statement of claim includes discursive allegations of failures by AT to comply with statutory duties; AT generating false documents; AT acting illegally or irrationally or with procedural impropriety; AT acting deceptively and negligently; AT acting maliciously; Baycorp acting recklessly and maliciously; and AT and Baycorp "purporting" falsehoods. These pleadings do not assist Mr McConnor.

[50] In respect of AT, the relevant pleaded defamatory statement is AT's communication to Baycorp in December 2022, which is pleaded to include:

(a) a false claim that AT had issued and served an infringement notice on Mr McConnor on 15 October 2022; and

(b) a false claim that a debt of $150 was owed by Mr McConnor to AT.

[51] In respect of Baycorp, the pleaded defamatory statement is Baycorp's dissemination of the statement it received from AT to its "affiliated entities in Australia."

[52] AT's communication to Baycorp on 25 December 2023 comprised lines of code automatically generated by a computer, which the parties accept conveyed the following statement (the Statement):

(a) James John David McConnor;

(b) committed a moving vehicle infringement offence by using "a special vehicle lane reserved for a specific class or classes of vehicle other than the one being driven" when driving his vehicle on Mayoral Drive, Central Auckland on 15 October 2022;

(c) the associated infringement fee of $150 is due; and

(d) the associated infringement fee of $150 has not been paid.

[53] Baycorp's communication to its related company was a repetition of the Statement.

[54] In his written submissions, Mr McConnor argued that the defamatory meaning of the Statement is that the plaintiff was a debt defaulter, or debtor, indebted to the first defendant for $150.

[55] Counsel for AT argued that the notion of a default is not part of the ordinary meaning of the words used in the Statement. The meaning is simply that there is an unpaid fine for a traffic offence.

[56] The Statement was first made by AT to a debt collector. It carries the inference that there has been default in payment of a debt. I accept that the meaning of the Statement asserted by Mr McConnor is one that would be held by an ordinary reasonable person receiving the Statement.

Is that meaning true?

[57] Whether Mr McConnor is a debtor of AT depends on whether the infringement fee is valid. AT argues that the Statement was true at the time it was made because Mr McConnor had not requested a court hearing and the infringement fee had not been paid. Mr McConnor argues that he was not a debtor because the process that led to the infringement fee was ultra vires the legislation.

[58] This raises numerous issues regarding the relevant statutory provisions and the sequence of events discussed earlier in this judgment, including:

(a) Did the infringement notice satisfy the requirements in s 140 of the LTA?

(b) Did Mr McConnor exercise his right under s 21(6) of the SPA to request a hearing?

(c) Was the reminder notice served on Mr McConnor's last known address?

[59] It is not appropriate to determine these issues of mixed fact and law on cross‑applications for summary judgment when those issues are already before the Court in a judicial review proceeding commenced by Mr McConnor.[13]

[60] Depending on the findings in the judicial review proceeding, Mr McConnor may be able to establish that at the time of AT's communication to Baycorp on 25 December 2022 there was no infringement fee due and he was not a debtor.

[61] However, the cross-applications for summary judgment can be determined by considering the position assuming that Mr McConnor is correct and the infringement fee was invalid. If that factual position is assumed, was Mr McConnor defamed?

Was the statement defamatory?

[62] A statement that a person is a debtor when they are not is potentially defamatory.

[63] The events surrounding the alleged driving offence must be kept in perspective. It is a minor traffic offence that carries a fine of $150. A reasonable person reading or hearing that Mr McConnor had an unpaid fine of $150 for a minor traffic offence would not think worse of Mr McConnor. The Statement would not tend to lower Mr McConnor in the estimation of reasonable people.

[64] AT's publication was confined to one automated electronic communication to Baycorp, its agent for the purpose of debt recovery. The publication was extremely limited and to an audience who would not think any less of Mr McConnor as a result.

[65] Baycorp's evidence is that its only communications in respect of the infringement notice were with AT or Mr McConnor, or otherwise internal communications within the Baycorp Group. Baycorp's communication of the Statement to other companies in the Baycorp Group, so that debt collection steps were taken by the appropriate company in the Group, was unremarkable and equally confined.

---

13 *McConnor v Auckland Transport*, CIV 2023-404-2805.

[66] If the Statement was only published by AT to Baycorp and then within the Baycorp Group then Mr McConnor was not defamed.

[67] However, Mr McConnor asserts that Baycorp is "a credit reporting agency". Mr McConnor produced an extract from Baycorp's website, which states:

> WELCOME TO OUR CREDIT REPORTING SERVICE
>
> Baycorp has partnered with Centrix to deliver an innovative credit reporting service to our clients.

[68] Credit reporting is now governed by the Credit Reporting Privacy Code 2020 (the Code). The Code defines a credit reporter to mean:[14]

> … an agency that carries on the business of reporting to other agencies, for payment, information relevant to the assessment of the creditworthiness of individuals

[69] Mr McConnor says that he will be barred from accessing any kind of credit or finance for the next seven to 10 years but offers no evidential basis for that assertion. Mr McConnor relied on an affidavit from a former mortgage manager engaged by ASB. That evidence is of no assistance, as it is general in nature and relates to how lenders generally assess loan applications.

[70] Mr Carpenter, the head of legal and compliance for Baycorp's ultimate holding company, provided affidavit evidence regarding the structure of the companies in the Baycorp Group, and the functions performed by some of those companies relevant in this proceeding.

[71] Mr Carpenter confirmed that entities in the Baycorp Group were previously involved in credit reporting, but neither Baycorp nor any entity in the Group has had any credit reporting function since before the events in question in this proceeding. Baycorp Group does not publish credit records in respect of debtors.

[72] Mr Carpenter's evidence is that there are two primary credit reporters operating in New Zealand, Centrix Group Ltd (Centrix) and Equifax New Zealand Information

---

14 Credit Reporting Privacy Code 2020, cl 4.

Services and Solutions Ltd (Equifax). Neither are part of the Baycorp Group. Mr Carpenter confirmed that Baycorp does have a contractual arrangement with Centrix, and Baycorp introduces its customers to Centrix's credit reporting services.

[73] Mr Carpenter says that Baycorp did not at any time list Mr McConnor's AT fine with any credit reporter, including Centrix and Equifax. Mr Carpenter's evidence is that Baycorp's sole function was to collect the debt from Mr McConnor on AT's behalf.

[74] Mr McConnor has not produced any evidence that the infringement fee appears on a credit record in his name held by any entity, other than as disclosed by AT and Baycorp in respect of their own internal records.

[75] Mr McConnor has the right under the Code to obtain a copy of his credit report from any credit reporter. He has not done so, despite Counsel for Baycorp suggesting that he do so in November 2023, including providing a link to the relevant website.

[76] I accept Mr Carpenter's affidavit evidence. There is no evidence that Baycorp communicated the existence of the infringement notice or the infringement fee to any credit reporter.

[77] Mr McConnor was not defamed by publication of the statement by AT to Baycorp and then within the Baycorp Group.

If the Statement was defamatory, was Mr McConnor's reputation adversely affected in a more than minor way?

[78] For completeness, I will consider whether it is arguable that Mr McConnor's reputation was adversely affected in a more than minor way if he was defamed.

[79] The only pleadings of loss or damage are that:

(a) the deliberate misrepresentations by both defendants have had tangible, adverse effects on the plaintiff's personal, professional, and financial

well-being, including but not limited to impairing his ability to secure financial resources for his business endeavours; and

(b) the defendants have committed egregious and wilful violations of not only specific statutory provisions but also of universal principles of good faith, fairness, and equitable dealings in their intentional acts against the plaintiff, exacerbated by the first defendant's vindictive state of mind, as evidenced by their explicit intent to "teach the plaintiff a lesson."

[80] On that basis, Mr McConnor claims general damages of $650,000 and punitive damages of $20,000.

[81] During argument, it became evident that Mr McConnor's main claim of damage to his reputation is related to the potential publication of the Statement in a credit report. There is no evidential basis for that claim, and I disregard it.

[82] There are two factors to consider:

(a) the character of the Statement; and

(b) the limited nature and extent of the publication.

[83] If the Statement was defamatory, because it inferred that Mr McConnor was a debtor for $150 when he was not, then this is a case where it is safe to conclude on an application for strike-out that Mr McConnor's reputation has not been affected in a more than minor way. I make this finding based on the character of the Statement and the limited extent of any publication as discussed earlier in this judgment.

[84] This is particularly so given other matters which reflect on Mr McConnor's reputation, including:

(a) he was adjudicated bankrupt on 4 June 2010; and

(b) he was struck off the Role of Barristers and Solicitors, including for charges of dishonesty, on 30 September 2011.[15]

[85] Accordingly, this proceeding is an abuse of process and should be struck out. This is exactly the type of case that the threshold of seriousness is intended to eliminate.

[86] It is unnecessary for me to determine the applications for security for costs.

Orders

[87] The plaintiff's application for summary judgment is dismissed.

[88] The plaintiff's claim against the first defendant and the second defendant is struck out in its entirety.

[89] I make the following directions regarding costs:

(a) The defendants may file and serve memoranda on costs, of no more than 3 pages, by **5 July 2024**;

(b) The plaintiff may file and serve a memorandum on costs, of no more than 3 pages, by **12 July 2024**;

(c) I will then determine costs on the papers.

Associate Judge Brittain

[15] *New Zealand Law Society v Dorbu* [2011] NZLCDT 24.