

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

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

**CIV-2023-404-1062
[2024] NZHC 1594**

UNDER Regulation 18(2) of the High Court Fees
Regulations 2013 and the Defamation Act
1992.

BETWEEN JOHN PATRICK MURPHY
Plaintiff

AND JASMINE CAI
Defendant

Hearing: On the papers

Judgment: 27 June 2024

JUDGMENT OF WHATA J

*This judgment was delivered by me on 27 June 2024 at 4.00pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Copy to:
J P Murphy

[1] This is an application to review the registrar's refusal to waive fees pursuant to regulation 18(2) of the High Court Fees Regulations 2013.

Background

[2] The underlying matter is a defamation claim set down for a three-day hearing commencing on 7 October 2024. Mr Murphy applied for scheduling fees of \$1,600 and a hearing fee of \$8,000 to be waived on the basis that he would suffer undue hardship if he paid the fees. In his application he gives some details of his financial circumstances including a copy of his tax returns and states that if he had to pay the fee he would not be able to proceed to trial. The Deputy Registrar was not satisfied Mr Murphy met the criteria set out in reg 19 and declined his application because:

- (a) There is conflicting information on the file about the applicant's financial position;
- (b) Paragraph one of the statement of claim states that the applicant is a multimillionaire domiciled in Auckland; and
- (c) That information conflicts with the fee waiver application which states that the applicant's weekly expenses exceed his weekly income.

Jurisdiction

[3] Under reg 18 (2)(a)(iii) the Registrar, relevantly to this case, may waive the fee if satisfied that the person is unable to pay. Regulation 19 sets out the criteria for determining this, it says that a person will be unable to pay the fee sought to be waived if:

- (a) the person has been granted legal aid in respect of the matter for which the fee is payable; or
- (b) the person—
 - (i) is dependent for the payment of his or her living expenses on a specified benefit (as defined in section 198(3) of the Social Security Act 2018) that is jobseeker support, sole parent support, a supported living payment, or an emergency benefit; or

(ii) is wholly dependent for the payment of his or her living expenses on New Zealand superannuation under the New Zealand Superannuation and Retirement Income Act 2001 or a veteran's pension under the Veterans' Support Act 2014; or

(iii) would otherwise suffer undue financial hardship if he or she paid the fee.

[4] As noted by the authors of *McGechan on Procedure*, hardship will be undue if it is excessive.¹ This might arise, for example, where a plaintiff is in a precarious financial position, and paying the fees may put them into further into debt.²

Analysis

[5] I agree with the registrar that there is conflicting information supplied by Mr Murphy as to his financial means to pay the fees. This information suggests the following:

(a) He has weekly income of \$1,194.67 and expenses of \$1,210, savings of \$1,036 and no other general assets except general furnishings.³

(b) In the year ending 31 March 2023, Mr Murphy earned about \$67,000 from income on interest, income from dividends and shareholder salaries, and had residual tax to pay of \$1,703.11.⁴

(c) He is a multimillionaire.⁵

[6] Based on this information, the claims made in relation to "general assets" appear irreconcilable with the fact of earnings from shareholdings and his claim to be a multimillionaire. In any event, on the information available Mr Murphy falls well short of showing that he will suffer undue hardship if he is required to pay the fees.

¹ AC Beck and others *McGechan on Procedure* (online looseleaf ed, Thomson Reuters) at [HCH19.01].

² *Jaffari v Grabowski* [2014] NZSC 150 at [7]. See also *Opai v Attorney-General* [2018] NZHC 1540 at [7].

³ This information was provided with the application.

⁴ 2023 Taxation Return prepared by trust accountants a division of Nexia New Zealand.

⁵ At [1] of the Statement of Claim.

[7] The review is therefore dismissed.

Whata J