IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2021-004-1422
[2025] NZHC 133

BETWEEN	GURWINDER SINGH BAINS Plaintiff
AND	HARNEK SINGH Defendant

Hearing: On the papers

Counsel: Peter A McKnight and A J Romanos for the Plaintiff
Robert Stewart KC and N Woods for the Defendant

Judgment: 12 February 2025

COSTS JUDGMENT OF ASSOCIATE JUDGE C B TAYLOR

This judgment was delivered by me on ***12 February 2025*** *at* ***3:00pm***
pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors:
Langford Law (J A Langford), Wellington, for the Plaintiff
Rice Craig (N Woods), Papakura, Auckland, for the Defendant

Counsel:
Peter McKnight/A J Romanos, Wellington, for the Plaintiff
Robert Stewart KC, Shortland Chambers, Auckland, for the Defendant

Introduction

[1] On 28 February 2023 the Court delivered a judgment on the plaintiff, Mr Bains' strike-out application (the **Judgment**).[1] The Court declined to strike out the defences of honest opinion and qualified privilege.

[2] On appeal, the Court of Appeal struck out the defence of honest opinion in respect of three meanings to which the defence had been raised. It upheld the refusal to strike-out qualified privilege.[2]

[3] The Court of Appeal held the question of costs on the strike-out application fell to be considered by this Court "*based on the outcome of the appeal*".[3]

Mr Bains' position

[4] Mr McKnight, for Mr Bains, submits that costs should be awarded to Mr Bains "*in the round*" and "*without detailed analysis of the extent to which each side won or lost on each issue*" relying on the decision in *Weaver v Auckland Council*.[4] He submits this reflects the well established principle that while a party may not prevail on a certain issue "*success on more limited terms is still success*", again relying on the *Weaver* decision.[5]

[5] Mr McKnight seeks costs in favour of the plaintiff on a 2B basis (or a 2A basis where specified) of $9,560.00. This includes the cost of sealing the cost judgment unless counsel for the defendant includes an undertaking to pay the costs within 5 days of the judgment being delivered. Mr McKnight also seeks disbursements totalling $1,547.26 (including reimbursement of flights and accommodation for Mr Bains'

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1 *Bains v Singh* [2023] NZHC 332.
2 *Bains v Singh* [2024] NZCA 581.
3 Above n 2, at [66].
4 *Weaver v Auckland Council* (2017) 24 PRNZ 379 (CA) at [18];
see also the decision in *Christian v Bain* [2023] NZLR 859 (CA) at [136].
5 Above n 4, at [26].

counsel) or $1,497.26 if an undertaking to pay costs is provided by the defendant's counsel.

Mr Singh's position

[6] Mr Stewart KC, for Mr Singh, submits that Mr Singh accepts that by virtue of the Court of Appeal's judgment Mr Bains has partially succeeded in relation to his challenge to the honest opinion defence. However, he submits that Mr Singh was wholly unsuccessful in relation to the argument that Mr Singh's qualified privilege defence should also be struck out. He submits that as Mr Bains failed in relation to that issue, it significantly increased Mr Singh's costs and in these circumstances the Court has a discretion to refuse or reduce costs. He refers to the decision in *Weaver* where the High Court found that the appellants had won roughly 50 per cent of their claim in value in relation to claims that took roughly 50 per cent of the hearing time and reduced costs by 50 per cent.

[7] Mr Stewart submits that the issue of qualified privilege accounted for roughly 50 per cent of both preparation and hearing time and accordingly submits that Mr Bains' costs on the strike-out application should be reduced by 50 per cent reflecting the time engaged by Mr Singh on Mr Bains' unsuccessful argument in relation to qualified privilege.

[8] Accordingly Mr Stewart submits that Mr Singh should pay 50 per cent of Mr Bains' costs claimed of $4,541.00 plus disbursements of $1,497.96 (Mr Stewart giving an undertaking to pay the costs awarded within 5 working days of the costs judgment being delivered).

Result

[9] Having considered the memorandum of counsel as to costs submitted by each of the parties I am of the view that, following the approach taken in the *Weaver* case, Mr Singh should pay 50 per cent of Mr Bains' costs, plus disbursements. In my view, the time occupied by the issue of qualified privilege accounted for roughly 50 per cent of the hearing time and the Judgment, and accordingly a reduction of 50 per cent of costs is appropriate.

Orders

[10] I order that Mr Singh is to pay Mr Bains costs of **$4,541.00** together with disbursements of **$1,497.96**.

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Associate Judge Taylor