IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2021-004-001568
[2025] NZDC 6440

BETWEEN	CHAOQUN HU Plaintiff
AND	CHEN QI First Defendant
AND	SKY MEDIA LIMITED Second Defendant

Hearing: 15 October and 15 November 2024

Appearances: No Appearance by the Plaintiff
A Romanos for the First Defendant and Counterclaim Plaintiff
S Judd and A Shinkarenko for the Second Defendant and Crossclaim Plaintiff

Judgment: 14 April 2025
(On the papers)

COSTS JUDGMENT OF JUDGE DAVID J CLARK

Introduction

[1] In a reserved judgment dated 27 February 2025 I found Ms Qi had been defamed by Ms Hu and Sky Media Limited.

[2] I also found that Ms Qi was entitled to costs against Ms Hu and Sky Media. Furthermore, I found that Sky Media was also entitled to costs against Ms Hu.[1]

[1] *Hu v Qi and Sky Media Limited* [2025] NZDC 1476 at [284] and [287].

[3] I am informed by counsel, costs between Ms Qi and Sky Media have been resolved. Skykiwi will pay Ms Qi a total sum of $41,500 which covers costs and disbursements.

[4] What remains to be determined is costs to be awarded against Ms Hu in favour of Ms Qi and Sky Media. Ms Qi seeks indemnity costs of $140,497.24. This sum has been calculated on Ms Qi's actual solicitor/client costs of $181,095 less the legal costs recovered against Skykiwi ($24,986.96), less a further 10 per cent discount.

[5] Sky Media also seeks indemnity costs against Ms Hu. The costs claimed are $131,977.80. In my judgment I awarded Sky Media the ability to recover 50 per cent of any costs it paid to Ms Qi against Ms Hu.[2] Accordingly, Sky Media seeks costs of $20,750 being the 50 per cent of the costs it has paid Ms Qi. This sum is in addition to the indemnity costs of $131,977.80.

Legal Framework

[6] The exercise of the Courts discretion on questions of costs is set out in Rule 14.1 of the District Court Rules (DCR). The relevant principles for the determination of costs are set out in DCR 14.2 which provides:

> **14.2 Principles applying to determination of costs**
>
> (1) The following general principles apply to the determination of costs:
>
> (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
>
> (b) an award of costs should reflect the complexity and significance of the proceeding:
>
> (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
>
> (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:

[2] Ibid at [287].

(e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

(f) an award of costs should not exceed the costs incurred by the party claiming costs:

(g) so far as possible the determination of costs should be predictable and expeditious.

[7] DCR 14.6 provides:

14.6 Increased costs and indemnity costs

(1) Despite rules 14.2 to 14.5, the court may make an order—

(a) increasing costs otherwise payable under those rules (increased costs); or

(b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (indemnity costs).

(2) The court may make the order at any stage of a proceeding in relation to any step in the proceeding.

(3) The court may order a party to pay increased costs if—

(a) the nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

(b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—

(i) failing to comply with these rules or a direction of the court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or

(d) some other reason exists that justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(4) The court may order a party to pay indemnity costs if—

(a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or

(b) the party has ignored or disobeyed an order or a direction of the court or breached an undertaking given to the court or another party to the proceeding; or

(c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or

(d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or

(e) the party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) some other reason exists that justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

[8] The Court of Appeal in *Bradbury v Westpac Banking Corporation*[3] explained the costs regime as follows:

> [27] The distinction among our three broad approaches – standard scale costs, increased costs and indemnity costs – may be summarised broadly:

[3] Supra at 4.

(a) Standard scale applies by default where cause is not shown to depart from it;

(b) Increased costs may be ordered where there is a failure by the paying party to act reasonably; and

(c) Indemnity costs may be ordered where that party has behaved either badly or very unreasonably.

[28] … Indemnity costs, which depart from the predictability of the Rules Committee regime, are exceptional and require exceptionally bad behaviour. That is why to justify an order for such costs the misconduct must be "flagrant" (*People v Aotea Huata* (No. 2) [2005] 2 NZLR 467 (SCNZ) at [6]).

[9] The threshold to grant indemnity costs then is a high one.[4] As noted in *Bradbury* the conduct must be flagrant. That has been expanded upon in DCR 14.6 where indemnity costs may be awarded where the party has acted vexatiously, frivolously, or improperly relative to the proceeding.

The Submissions in Support of Why Indemnity Costs Should be Awarded

[10] Mr Romanos submissions set out the basis of why indemnity costs should be awarded against Ms Hu. Sky Media has adopted Mr Romanos' submissions in support of its own claim for indemnity costs.

[11] In summary Mr Romanos has pointed to Ms Hu as the instigator of these proceedings who made the defamatory posts, filed her own defamation proceedings, denied any wrongdoing and then disappeared at a relatively late stage in these proceedings.

[12] Mr Romanos cites many of the evidential findings which I made against Ms Hu in respect of Ms Qi's and Sky Media's formal proof claims against her. They include how I described her behaviour as "bizarre" and "unjustified", was persistent (in terms of the posts made); blatantly lied about her role; and then after causing all the "mayhem" disappeared. The fact that I awarded punitive damages against her further supports the Court's disapproval of her conduct. Whilst the above were findings I made on the evidence, Mr Romanos also points to Ms Hu's conduct throughout the

[4] *Paper Reclaim Limited v Aotea International Limited* [2006] 3 NZLR 1888 (CA).

period she was engaged in the proceedings to further support why indemnity costs are justified.

[13] This includes breaching timetabling directions; failing to plead any quantum of damages; disputing translations but not offering any other translations; failing to attend conferences and failing to comply with discovery obligations.

[14] Given all of the above, Mr Romanos submits Ms Hu behaviour has well and truly met the threshold of exceptionally bad behaviour and indemnity costs should be awarded.

Discussion

[15] The award of costs is an exercise of a discretion by the Court under DCR 14.1. I approach this exercise as a dual consideration of determining whether indemnity costs are justified and whether the costs sought are reasonable.

[16] In my view, for the reasons set out by Mr Romanos I accept costs higher than scale are appropriate. Ms Hu's conduct, as the perpetrator of all that followed was bizarre and unjustified. Her claims and defence to the claims made against her were entirely without merit. However, these grounds alone may not justify indemnity costs being awarded.

[17] In undertaking this exercise, I also need to consider whether the claims which are made are reasonable. Both claims of $140,497.24 and $131,977.80 respectively for a two-day hearing are considerable.

[18] I do not for the moment question the time was put into the proceedings by counsel.[5] However, an assessment of whether indemnity costs are reasonable is done on a principled basis. In *Exuberant Limited v Quinovic Property Management Limited*[6] the High Court emphasised the need to ensure the costs incurred were commensurate with the tasks which were needed to be completed in the

[5] Details of the time and attendances/invoices have been provided as they should.
[6] Supra at 4.

litigation. This principle was reinforced by Judge Nichols in *Body Corporate 45131 v 88 Chi Limited*:[7]

> [5] The basics of the relevant legal framework were not at issue in this appeal. They are:
>
> (a) The relevant test as set out in s 124(2) of the Unit Titles Act – the body corporate is entitled to recover "any reasonable costs incurred in collecting the levy";
>
> (b) Solicitor/client costs are a category of costs that can be recovered under this provision; and
>
> (c) The task is to assess the reasonableness of the solicitor/client costs that are claimed.
>
> [6] When undertaking this task of assessing the reasonableness of the solicitor/client costs that are claimed, the essential method is as follows:
>
> (a) First, ask whether the work that was done was reasonably necessary;
>
> (b) Second, ask whether the amount charged for the reasonably necessary work was reasonable;
>
> (c) In both instances, the NZLS Rules and Rule 9 in particular are a prime reference point when assessing reasonableness;
>
> (d) Third, test the analysis against other available reference points.
>
> [7] This methodology for assessing reasonableness is different from:
>
> (a) Accepting actual solicitor/client costs without checking for reasonableness;
>
> (b) Substituting a personal view as to what legal services should cost or are worth;
>
> (c) Scaling costs. In Exuberant Judge Johnson contrasted the concept of "actual and reasonable costs" against the concept of scale costs, and observed that while having regard to scale costs as a point of reference is available, [he] would not expect information on scale costs to be especially influential in any assessment of reasonable costs.

[19] Whilst *Exuberant* and *Body Corporate 45131* were dealing with costs claimed on a contractual and statutory basis, the issue of reasonableness in terms of quantum is still a relevant consideration if indemnity costs are claimed under the Rules.

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[7] *Body Corporate 45131 v 88 Chi Limited* [2023] NZDC 9036 (12 May 2023).

[20] I have been provided with details of the costs incurred on a time and attendance basis from counsel. As I have noted I do not question the time which has been spent. The real issue though for me is what took most of time in this hearing?

[21] In my view significant focus was on two issues which arguably had little to do with Ms Hu. They were whether Sky Media was a publisher which engaged a lengthy debate on the application of *Murray v Wishart* and whether Sky Media came under the umbrella of the safe harbour provisions of the Harmful Digital Communications Act. As I say, these arguments, which occupied considerable time, had little direct involvement with Ms Hu's behaviour.

[22] Notwithstanding these observations I still find Ms Hu's conduct was of sufficient concern costs above scale should be awarded to both Ms Qi and Sky Media. However, such costs should be awarded as a mixture of increased basis under DCR 14.6(3) and indemnity costs under 14.6(4). To do so reflects the Courts concern about her conduct but does not totally punish her for arguments which were between Ms Qi and Sky Media.

[23] I award then Ms Qi the sum of $85,000 costs as a global figure which represents approximately 60% of the total claimed and an increase on scale costs. In my view this is an appropriate percentage based on all of the factors set out above.

[24] Sky Media are awarded $20,750 being 50% of the costs it must pay to Ms Qi plus $50,000 as a contribution towards its costs. Again, in my view this is an appropriate sum based on all of the factors I have set out above and, as I said in my judgment,[8] Sky Media could have mitigated the harm but failed to do so.

Signed at Auckland 14th day of April 2025 at 4.30 pm

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Judge D J Clark
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 14/04/2025

[8] At [274].