

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

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

**CIV-2023-404-366
[2025] NZHC 185**

UNDER the Defamation Act 1992

BETWEEN PETER T. REX, LLC
First Plaintiff

AND BARBARA T. REX, LLC
Second Plaintiff

AND [NAME SUPPRESSED]
Third Plaintiff

AND NZME PUBLISHING LIMITED
Defendant

Hearing: on the papers

Counsel: N L Walker and J Edwards for plaintiffs
I A S S Ieremia for defendant
M Hanna, applicant for access, self-represented

Judgment: 14 February 2025

**JUDGMENT OF JOHNSTONE J
(access to court documents)**

*This judgment was delivered by me on 14 February 2025 at 4pm
pursuant to r 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Solicitors:
Russell McVeagh, Auckland

[1] Dr Mark Hanna, of the University of Canterbury's Faculty of Law, applies under r 11(2) of the Senior Courts (Access to Documents) Rules 2017 for access to the following documents in this proceeding:

- (a) Whata J's judgment dated 20 March 2023 (the Judgment);¹
- (b) the pleadings; and
- (c) any available transcripts of hearings.

[2] Dr Hanna seeks access for the purpose of legal research. He undertakes not to on-publish documents to which he is granted access.

[3] No transcripts of hearings have been prepared. As for the balance of Dr Hanna's request, the defendant (NZME) abides, but the plaintiffs oppose.

Background

[4] In this proceeding, the plaintiffs seek an award of damages in respect of the publication of material they say is defamatory, and an injunction preventing NZME, a substantial media enterprise, from publishing that material. They obtained without notice interim orders prohibiting publication.² The Judgment narrowed, but did not entirely rescind, that prohibition, so that it would apply only to statements described at paragraph [51] of the Judgment. The Judgment was issued following a hearing in which NZME participated, but the prohibition remained interim in nature. The substantive hearing of the plaintiffs' claim in defamation has yet to be heard.

[5] On 24 March 2023, Whata J heard and granted an application for leave to appeal against the Judgment, and made orders intended to preserve the plaintiffs' position in the meantime (the Leave Judgment).³ In doing so:

¹ *Peter T Rex LLC and ors v NZME Publishing Ltd* [2023] NZHC 537 (Whata J) [the Judgment].

² *Peter T R LLC v NZME Publishing Ltd* [2023] NZHC 456 (Venning J).

³ *Peter T Rex LLC and ors v NZME Publishing Ltd* [2023] NZHC 625 (Whata J) [Leave Judgment].

- (a) The Judge granted an application on behalf of another substantial media enterprise (Stuff) for access to the Court’s rulings and to the plaintiffs’ interlocutory application for injunction (including affidavits). The Judge did so on the basis that the unfolding of the litigation itself, particularly as it engages the media as guardians of freedom of expression and open justice, is a matter of public interest.⁴ However, the Judge directed that commercially sensitive information and information personal to the third plaintiff be redacted from the interlocutory application (including affidavits) to which Stuff would have access.⁵
- (b) Further, the Judge ordered that, if an appeal were not filed, the material described at paragraph [51] of the Judgment, and any descriptor of, or inference to be drawn from, that material, was suppressed from publication.⁶ And the Judge indicated that a version of the Judgment redacting that material would be circulated for the parties’ consideration prior to publication.⁷

[6] By judgment dated 28 September 2023, the Court of Appeal maintained that narrower scope of potentially defamatory information and, further, prohibited publication of the third plaintiff’s identity.⁸

The plaintiffs’ position

[7] The plaintiffs submit, in respect of the pleadings, that they contain information the subject of an active injunction, which they sought to protect themselves against by objecting to the dissemination of defamatory statements. It would be contrary to the orderly and fair administration of justice to disseminate that information to a member of the public, such as Dr Hanna, irrespective of his stated intentions for use and further dissemination. Further, the pleadings contain private information concerning the

⁴ At [26].

⁵ At [25].

⁶ At [20].

⁷ At [21].

⁸ *Peter T Rex LLC and ors v NZME Publishing Ltd* [2023] NZCA 469.

third plaintiff. The significance of the third plaintiff's privacy interests in this proceeding have already been endorsed by the Court of Appeal.

[8] The plaintiffs submit that it is not appropriate for a copy of the Judgment to be provided to a member of the public, when it has been withheld from the public at large due to concerns about the inclusion of defamatory and suppressed material. The material described at paragraph [5](b) above is referred to throughout the Judgment. It would be contrary to the orderly and fair administration of justice to disseminate it to a member of the public before the substantive hearing.

Discussion

[9] I do not accept the plaintiffs' submissions.

[10] First, I note that the Judgment was originally published under a banner prohibiting publication of the third plaintiff's identity, and of the Judgment in its entirety only until the hearing of the application for leave to appeal. And that the Court of Appeal's judgment was published under banners which (relevantly, given that no application for leave to appeal that judgment was brought) confirm the prohibition against publication of the third plaintiff's identity and Whata J's order prohibiting publication of the matters at paragraph [51] of the Judgment. On that basis, it appears that the Court of Appeal anticipates publication of the Judgment except in respect of the paragraph [51] matters and the third plaintiff's identity.

[11] Further, I observe that Dr Hanna's research is, broadly speaking, directed to the way in which litigation taken for private purposes may impact upon broader public interests. Given Dr Hanna's qualifications and role, he can confidently be expected to understand that the plaintiffs have brought their proceeding because they consider the material of which they complain to be untrue and, if published at all widely, likely to cause significant and unjustifiable damage. Dr Hanna can further be expected to understand and comply with the orders of this Court and the Court of Appeal suppressing publication of the third plaintiff's identity and the paragraph [51] matters (including all details tending to disclose these matters). The pleadings include NZME's statement of defence which, again generally speaking, confirms that NZME does not assert that the allegedly defamatory material is true.

[12] On this basis, general release to Dr Hanna of the Judgment and the pleadings, albeit that he is, strictly speaking, a member of the public, is unlikely to be any more damaging to the plaintiffs than release of the Judgment to Stuff, to which the plaintiffs consented. In my view, the orderly and fair administration of justice does not require that access by Dr Hanna to the Judgment, in accordance with the general principle of open justice (including the encouragement of comment, compliant with the scope of applicable suppression orders, upon court hearings and decisions), be declined.⁹

[13] That said, given the ongoing protection of the third plaintiff's identity, I consider it appropriate that private information concerning the third plaintiff should be redacted from the pleadings to which Dr Hanna should have access. This is recognition of the third plaintiff's right to bring and defend civil proceedings without the disclosure of any more information about his private life, than is necessary to satisfy the open justice principle.¹⁰

[14] It is unclear whether Stuff received access to a version of the interlocutory application (including affidavits) redacted in accordance with Whata J's Leave Judgment. In the present context, I will make directions (below) intended to ensure access is granted in accordance with this judgment.

Result

[15] Dr Hanna's application for access to the Judgment is granted.

[16] Dr Hanna's application for access to the pleadings is also granted, on condition that:

- (a) Prior to access being given, the plaintiffs are by **5 pm on Wednesday, 17 February 2025** to file copies of the pleadings, marked up to indicate any passages which were redacted from material provided to Stuff in accordance with the Leave Judgment, and (separately) which they now maintain is so personal to the third plaintiff as to require its redaction prior to disclosure of the pleadings to Dr Hanna.

⁹ Senior Court (Access to Court Documents) Rules 2017, rr 12(a) and (e).

¹⁰ Senior Court (Access to Court Documents) Rules 2017, r 12(c).

- (b) I will then determine the scope of appropriate redaction.
- (c) Dr Hanna will be given access only to the appropriately redacted version of the pleadings.

Johnstone J