IN THE HIGH COURT OF NEW ZEALAND
TAURANGA REGISTRY

I TE KŌTI MATUA O AOTEAROA
TAURANGA MOANA ROHE

CIV-2025-470-000201
CIV-2025-470-000202
[2026] NZHC 3026

IN THE MATTER	of the Estate of Christopher Graham Applegate
UNDER	Section 28 of the Defamation Act 1992, sections 125 to 131 of the Trusts Act 2019 and the inherent jurisdiction of the Court
BETWEEN	JASON CRAIG APPLEGATE Plaintiff
AND	SUSAN MAE TARR Defendant

Hearing: On the papers

Appearances: Plaintiff in person
G D Stringer for the Defendant

Judgment: 1 October 2026

JUDGMENT OF HARVEY J

This judgment is delivered by me on 1 October 2026 at 4 pm
pursuant to r 11.5 of the High Court Rules

……
Deputy Registrar

Solicitors:
CooneyLeesMorgan, Tauranga

And to:
The Plaintiff

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Introduction

[1] On 31 October and 5 November 2025, the plaintiff, Jason Applegate, who is self-represented, filed new claims against the defendant, Susan Tarr.[1] These are the latest in a series of proceedings concerning the administration of the estate of Christopher Applegate, Jason Applegate's late father (the Estate).[2] Susan was married to Christopher Applegate and was provided for in his will. Susan and Jason were trustees and executors of the Estate.

[2] Jason in the new proceedings makes two principal sets of allegations: that Susan defamed him;[3] and that Susan breached various duties as executor.[4] While brought as two separate proceedings, there is overlap between both claims across the various supporting affidavits, memoranda and submissions filed by the parties.

[3] On 28 November 2025, Mr Stringer, for Susan, filed a memorandum raising that the Court could strike out the proceedings on its own motion under r 15.1 of the High Court Rules 2016. Jason filed submissions on 4 December 2025 in response. On 17 December 2025, I invited further submissions from counsel on the issue of strike out and directed that I would deal with the strike out matter on the papers.

[4] On 5 January 2026, Jason filed an application for default judgement in the defamation proceedings. On the same day, he applied for summary judgment in the executor's duties proceedings. On 14 January 2026, Susan filed statements of defence for both proceedings. On 19 January 2026 Jason applied for summary judgment in the defamation proceedings and applied to strike out parts of Susan's statement of defence in the defamation proceedings. On 18 December 2025 Jason applied for non-party production of documents from Anderson Law in the defamation proceedings, and on 12 February 2026 in the executor's duties proceedings.

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1 To avoid confusion, and meaning no disrespect to the parties, I use given names in this judgment.
2 *Tarr v Applegate* [2025] NZHC 2636 [executor removal judgment]; and *Tarr v Applegate* [2025] NZHC 3415 [costs judgment].
3 CIV-2025-470-201 (defamation proceedings).
4 CIV-2025-470-202 (executor's duties proceedings).

Background

[5] The following background is taken from my earlier judgment removing Susan and Jason as executors of Mr Applegate's estate:

> [1] The late Christopher Applegate was married three times. He had three sons (Wayne, Jason and Matthew) with his first wife. Christopher's third wife was Susan Tarr. Christopher and Susan were in a de facto relationship for four years. In early 2022, he was unexpectedly diagnosed with a terminal illness and was admitted to palliative care at Bayview. He then executed a will on 8 April 2022 (the Will) which appointed Susan, Jason and Matthew executors and trustees of his estate (the Estate). Christopher and Susan were married on 11 April 2022 and he died on 11 May 2022.
>
> [2] Christopher's estate has a value of approximately $2.7 million. This includes a residential property [(the Property)], cash, a catamaran, a berth and a vehicle. The Will provided cash gifts of $400,000 to Susan, $100,000 each to an ex-sister-in-law and two nieces, and $10,000 each to six charities. Susan was also granted a life interest in Christopher's residence until she enters into a relationship in the nature of marriage. This life interest is subject to conditions, including that Susan keeps the property insured and in repair, and pays all of its outgoings. The residue of the Estate is then to be divided between Wayne, Jason and Matthew. The cash gifts were distributed on 10 April 2025 with the exception of the gift to Susan, which Jason opposed.
>
> [3] In short, for over three years, the estate has still not been administered due largely to conflict between Susan and Jason. This has led to deadlock with each party blaming the other…

[6] On 10 September 2025, I ordered Susan and Jason be removed as trustees and executors to ensure the Estate's proper administration.[5]

[7] On 10 November 2025, I awarded costs to Susan against Jason, and to Matthew against Susan.[6] On 11 November 2025, Jason filed an application for leave to appeal the costs judgment on the grounds that I failed to address Ms Tarr's alleged:

(a) breach of duties as executor and trustee;

(b) alleged perjury and presentation of false information during the proceedings; and

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5 Executor removal judgment, above n 2.
6 Costs judgment, above n 2.

(c) misconduct throughout the estate process, including obstruction and dishonest behaviour relevant to costs.

[8] On 19 November 2025, Jason filed an application for a stay of enforcement of costs pending appeal. On 8 December 2025 I issued a judgment finding that leave was not required to appeal the costs decision, and declining Jason's application for a stay.[7]

[9] I first consider strike out of the executor's duties proceedings and briefly address Jason's application for summary judgment. I then consider strike out of the defamation proceedings, and Jason's applications for judgment by default and summary judgment. Finally, I address Jason's application to strike out parts of Susan's statement of defence in the defamation proceeding, and his non-party disclosure applications.

Executor's duties proceedings

[10] As to alleged breaches of executor's duties in respect of the Estate, Jason pleaded that Susan:

(a) wrongfully received and withheld Estate funds for two years;

(b) withheld burglary reports and actively avoided sharing details with co-executors for two and a half years;

(c) through her actions instigated the requirement to change estate solicitors;

(d) through her actions caused significant disruptions and delays to the Estate process, adding significant unnecessary increase in Estate costs, solely and directly financially impacting residual beneficiaries;

(e) her intent was personal financial gain — interest on Susan's gift and by forcing a payout of her life interest;

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7 *Tarr v Applegate* [2025] NZHC 3794.

(f) made serious and untrue allegations about Jason, including unfounded allegations of serious assault and burglaries;

(g) continues to act without consulting co-executors, most recently on structural work carried out to Estate Property, resulting in a breach of duty, delays, disputes, and financial loss;

(h) ignored outstanding questions from 28 March to 10 September 2025 relating to the Estate Property, despite formal requests by co-executors, counsel and Estate solicitors, including:

(i) when and by whom structural work on the deck of the Estate property was performed;

(ii) who authorised the works to be completed; and

(iii) what was the cost of the work;

(i) through her actions delayed access to a vessel, an Estate asset, which has lost significant value, deteriorating from "immaculate condition" to the current state after approximately four years of neglect; and

(j) failed to act honestly and in good faith, and obstructed proper administration of the estate.

[11] Jason argued the beneficiaries suffered loss and damage as a result. Jason sought compensation for personal financial loss, emotional distress and impacts on his family, and compensation to the estate for financial loss caused by breaches of executor's duties. He also sought an order for 50 per cent of the costs required to return the vessel to its former condition as of May 2022, when Mr Applegate died, along with punitive damages due to the "extremely harmful conduct" of Susan. Jason sought such other orders under the Acts or under this Court's inherent jurisdiction and costs on a 2B basis or as the Court sees fit.

[12] Across various memoranda and affidavits Jason also raised several other claims, including that Susan changed the next of kin details held by the Bayview palliative care facility, such that Jason and his brothers were not notified when their father died (they were informed later that evening by distant relatives in Australia); and Susan wrote malicious notes purportedly on Christopher's behalf while at Bayview. Those claims were also canvassed in the earlier proceedings removing Susan and Jason as executors and trustees of the Estate.[8]

Legal principles

[13] Rule 15.1 of the High Court Rules provides for the Court's strike out jurisdiction:

> **15.1 Dismissing or staying all or part of proceeding**
>
> (1) The court may strike out all or part of a pleading if it—
>
> (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
>
> (b) is likely to cause prejudice or delay; or
>
> (c) is frivolous or vexatious; or
>
> (d) is otherwise an abuse of the process of the court.
>
> (2) If the court strikes out a statement of claim or counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
>
> (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as it considers just.
>
> (4) This rule does not affect the court's inherent jurisdiction.

[14] The power to strike out a proceeding under r 15.1 does not depend on an application having been made. The Court has an inherent jurisdiction to strike out proceedings irrespective of any application, providing the Court concludes they are an

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[8] See executor removal judgment, above n 2, at [33].

abuse of process.[9] The principles that apply under r 15.1(a), where it is said a claim discloses no reasonably arguable cause of action, are well established:[10]

(a) pleaded facts, whether or not admitted, are assumed to be true. This does not extend to pleaded allegations which are entirely speculative and without foundation;

(b) the cause of action must be so clearly untenable that it cannot possibly succeed;

(c) the jurisdiction is to be exercised sparingly, and only in clear cases where the Court is satisfied that it has the requisite materials; and

(d) the jurisdiction is not excluded by the need to decide difficult questions of law, requiring extensive argument.

[15] Where a claim turns on a question of law capable of decision on the material before the court, or where the pleading is so deficient as to require a de novo start rather than amendment, it should determine the question on a strike out application.[11]

Susan's submissions on strike out

[16] Mr Stringer, for Susan, submitted that the proceeding should be struck out under r 15.1 on the basis that it fails to disclose a reasonably arguable cause of action, is frivolous or vexatious, and is otherwise an abuse of process.[12] Counsel contended that the proceedings brought by Jason represent further attempts to act vindictively towards Susan, with whom he has long held animosity. Mr Stringer argued that the Court should prevent these ongoing efforts to harass and vex Susan through repeated litigation, which serve only to erode her resources through legal costs that would otherwise contribute to her retirement and the maintenance of the life interest Property.

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9 *Siemer v Stiassny* [2011] NZCA 1 at [14].

10 *Attorney-General v Prince* [1998] 1 NZLR 262 (CA), at 267 per Richardson P, Thomas and Keith JJ, 285 per Henry J and 291 per Tipping J; and confirmed in *Smith v Fonterra Co-operative Group Ltd* [2024] NZSC 5, [2024] 1 NZLR 134 at [74]–[75].

11 See *Telecom NZ Ltd v Clear Communications Ltd* HC Auckland CL 20/97, 18 July 1997 at [10]; and *Marshall Futures Ltd v Marshall* [1992] 1 NZLR 316 (HC) at [324] per Tipping J.

12 Counsel relied on *Lau v Auckland Council* [2018] NZEnvC 148 at [5].

[17] Counsel made three principal arguments. First, Mr Stringer submitted that Jason is estopped from bringing these proceedings. Mr Stringer argued that in substance, Jason's claim is an attempt to relitigate matters already determined "in different garb".[13] Counsel referred to the observation of the Court of Appeal in *Beattie v Premier Events Group Ltd*, referring to *Henderson v Henderson*, about the relationship between res judicata — the doctrine that a final judgment would be undermined if a party were able to commence the litigation again, hoping for a different outcome — and abuse of process:[14]

> The plea of res judicata applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

[18] Mr Stringer outlined that the doctrine is underpinned by the public policy of ensuring finality in litigation and protecting individuals from being vexed twice in respect of the same matter.[15] Fundamentally, the Court should be alert to misuse of its processes and be prepared to exercise its power to stay or strike out where the interests of justice demand it. In addition, counsel argued that although the Court did not find it necessary, in the earlier proceeding removing Jason and Susan as executors of the Estate, to make findings as to Susan's alleged breaches of fiduciary duties, those allegations were essential to or "properly belonged to the subject of the litigation".[16] Mr Stringer noted that the facts pleaded in these new proceedings are substantially similar to the earlier proceedings.

[19] Second, counsel submitted that the proceedings constitute an abuse of process. Mr Stringer referred to the observation of Richardson J in *Moevao v Department of Labour* that the doctrine of abuse of process is concerned:[17]

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13 See *Collier v Butterworths of New Zealand Ltd* (1997) 11 PRNZ 581 (HC) at 586; and *Little v New Zealand Law Society* [2023] NZHC 1880.

14 *Beattie v Premier Events Group Ltd* [2014] NZCA 184, [2015] NZAR 1413 at [43], quoting *Henderson v Henderson* (1843) 3 Hare 100, 67 ER 313 (Ch); and *Gavin v Powell* [2019] NZHC 1277 at [64].

15 *Kidd v van Heeran* [2015] NZHC 517 at [20].

16 *Beatie v Premier Events Group Ltd*, above n 14, at [43].

17 *Moevao v Department of Labour* [1980] 1 NZLR 464 (CA) at 482.

> … with conduct on the part of a litigant in relation to the case which unchecked would strike at the public confidence in the Court's processes and so diminish the Court's ability to fulfil its function as a Court of law.

[20] Mr Stringer contended that attempts to relitigate matters already decided "in different" garb are an example of an abuse of process.[18] Counsel argued that the proceeding is similar to that in *Collier v Butterworths of New Zealand Ltd*, where the Court rejected an attempt by a plaintiff to bring a claim that had already been struck out owing to Limitation Act issues.[19] The Court held that the claim was an abuse of process.[20] Mr Stringer submitted that the various claims asserted by Jason in his statement of claim significantly overlap with the arguments he made in the earlier proceedings. For example, Jason pleaded that Susan failed to act honestly and in good faith, intentionally and actively disrupting the Estate process with the intent of encouraging a "life interest payout" to significantly increase her financial gain.

[21] In the earlier proceedings, Jason submitted that:

> Jason seeks to have Ms Tarr removed as an executor and trustee to ensure proper administration of the Estate. Ms Tarr has continuously refused to cooperate with the co-executors, and made spurious allegations against Jason, all designed to improve Ms Tarr's position as a life interest beneficiary.

[22] Mr Stringer argued that, as was found in *Collier*, Jason's new proceedings are essentially the same allegations repleaded. As such, the proceedings are an abuse of process, and the claims should be dismissed.

[23] Third, counsel submitted that the proceedings do not disclose a reasonably arguable cause of action. Mr Stringer outlined that an actionable claim for a breach of fiduciary duty generally requires that:

(a) the defendant owed a fiduciary duty to the claimant;

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18 *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 541; *Collier v Butterworths of New Zealand Ltd*, above n 13, at 586 (bringing substantively the same proceeding "in a different garb"); and *Little v New Zealand Law Society* [2023] NZHC 1880.

19 *Collier v Butterworths of New Zealand Ltd*, above n 13.

20 At 586.

(b) a breach of trust amounting to a breach of fiduciary duty (in other words, being accompanied with disloyalty, conflict of interest, or non-disclosure of material information); and

(c) the claimant suffered loss arising out of a transaction or circumstance that the breach was material to.

[24] Counsel accepted that Susan and Jason owed reciprocal fiduciary obligations to each other as executors and beneficiaries of the Estate. However, Mr Stringer contended that Jason's claims that Susan breached trust, amounting to a breach of fiduciary duty, are without foundation. Counsel submitted that Susan's affidavit of 9 April 2025, filed in the previous proceedings removing Susan and Jason as executors, responds to Jason's allegations that she breached her fiduciary duties.

[25] Mr Stringer submitted that it is unclear how Susan's alleged breaches of fiduciary duties have caused any loss to Jason personally that can be remedied by way of equitable compensation or damages. Jason's claims centre on Susan's actions in administering Christopher Applegate's Estate. However, the administration of the Estate is now in the hands of Matthew Applegate and an independent executor, and good progress is being made in dealing with the issues co-operatively and sensibly.

[26] Further, to the extent that Jason seeks relief for "an order for compensation to the Estate", he has not sought leave to bring a derivative action on behalf of the estate as beneficiary, and the special circumstances required to bring such an action (such as the executor being unable or unwilling to act or the existence of a conflict of interest) do not exist.[21] In short, Mr Stringer contended that it is appropriate to leave the matter in the hands of the new executor of the Estate.

[21] Counsel referred to *Lock v Weatherston* [2020] NZHC 2246 at [15]–[16].

Discussion

Is Jason estopped from bringing his claim?

[27] It is well settled that a decision of a court can generally only be challenged by an appeal to a superior court.[22] The doctrine of res judicata comprises cause of action estoppel and issue estoppel, which prevent a party from seeking a second determination of causes of action and issues already determined by the courts in litigation between the same parties. A third kind of estoppel is set out by Sir James Wigram VC in *Henderson v Henderson* as follows:[23]

> … where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time.

[28] The principle in *Henderson v Henderson* has accordingly been described as distinct from res judicata, and is concerned not with "the strict doctrines of issue or cause of action estoppel", nor with:[24]

> … cases where a court has decided the matter, but rather cases where the court has not decided the matter. But these various defences are all designed to serve the same purpose: to bring finality to litigation and avoid the oppression of subjecting a defendant unnecessarily to successive actions.

[29] Lord Bingham has since observed that:[25]

> … *Henderson v Henderson* abuse of process, as now understood, although separate and distinct from cause of action estoppel and issue estoppel, has much in common with them. The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed

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22 *Lai v Chamberlains* [2006] NZSC 70, [2007] 2 NZLR 7 at [58].

23 *Henderson v Henderson*, above n 14, at 114–115.

24 *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1 (HL) at 58–59 citing *Manson v Vooght* [1999] BPIR 376 at 387.

25 *Johnson v Gore Wood & Co (a firm)*, above n 24, at 498–499 as cited *in Commissioner of Inland Revenue v Bhanabhai* [2007] 2 NZLR 478 (CA) at [60]; and *Beattie v Premier Events Group Ltd*, above n 14, at [44].

> in the same matter. This public interest is reinforced by the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.

[30] The Court of Appeal has referred to *Brisbane City Council v Attorney-General for Queensland*, where the Privy Council emphasised that the rule in *Henderson v Henderson* is based on abuse of process and should only be applied when the facts are such as to amount to an abuse; otherwise, there is a danger that a plaintiff will be prevented from advancing "a genuine subject of litigation".[26]

[31] Elias CJ referred to the observations of Lord Bingham and Lord Millett:[27]

> Lord Bingham considered that what constitutes abuse is a "broad, merits-based judgment", incapable of capture in hard and fast rules of determination and not limited to further litigation between the same parties or their privies. Lord Millett in the same case thought it "primarily an ancillary and salutary principle" which prevents res judicata and issue estoppel being "deliberately or inadvertently circumvented".

[32] Applying those principles here, I am unable to accept Mr Stringer's submission that Jason is estopped from bringing his claim. As is expressly recorded in the earlier proceedings removing Susan and Jason as executors and trustees, I focused solely "on the primary issue of the removal and appointment of executors and trustees."[28] A

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[26] *Beattie v Premier Events Group Ltd*, above n 14, at [46] citing *Brisbane City Council v Attorney-General for Queensland* [1979] AC 411 (PC) at 425.

[27] *Lai v Chamberlains*, above n 22, at [62] (footnotes omitted) citing *Johnson v Gore Wood & Co (a firm)*, above n 24, at 31.

[28] Executor removal judgment, above n 2, at [6].

finding of misconduct on behalf of Susan was not strictly necessary for her removal.[29] Rather, the decision was narrowly confined, and did not consider in any depth the present allegations of breaches of executor's duties now brought by Jason:[30]

> [37] There is a high degree of hostility between Susan and Jason. The allegations against one another are evidence of that. Moreover, from my review of the evidence, this hostility appears mutual. *Importantly, for the purposes of this decision, it is not necessary to establish misconduct on the part of Jason or Susan for that matter*. Rather, I must consider the suitability, practicality and efficiency of Jason remaining as an executor and trustee with a focus on the welfare and interests of the beneficiaries.

[33] While, as Mr Stringer submitted, many of the matters now referred to by Jason were canvassed as part of the relevant factual background to Susan's removal as executor, that Jason's present claim is concerned with the same factual matrix as the earlier proceeding does not, in the circumstances, engage the principle in *Henderson v Henderson* or estop him from bringing his present claim.[31]

Is Jason's claim an abuse of process?

[34] In *Moevao v Department of Labour*, Richardson J held that the concern under this ground is with conduct on the part of a litigant in relation to the case "which unchecked would strike at the public confidence in the Court's processes and so diminish the Court's ability to fulfil its function as a Court of law".[32] The abuse of process ground includes proceedings that:[33]

(a) deceive the Court, are fictitious or a mere sham;

(b) use the process of the Court in an unfair or dishonest way, or for some ulterior or improper purpose or in an improper way;

(c) are manifestly groundless, without foundation or serve no useful purpose; and

(d) are vexatious or oppressive.

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29 At [13].
30 At [37] (emphasis added).
31 See, for example, *Beattie v Premier Events Group Ltd*, above n 14.
32 *Moevao v Department of Labour*, above n 17, at 482.
33 *PricewaterhouseCoopers v Walker* [2017] NZSC 151, [2018] 1 NZLR 735 at [56].

[35] Mr Stringer relied on *Collier*, where Master Venning (as he then was) struck out a claim on the basis that properly analysed, it in substance amounted to the same claim as had earlier been struck out because it was time barred. The Judge found that the claim therefore amounted to an abuse of process.[34] However, as outlined above, I do not consider that Jason's present claim can be said to have been previously adjudicated.[35] In summary, I am not satisfied that Jason's claim should be struck out on this basis.

Does Jason's claim disclose a reasonably arguable cause of action?

[36] On the facts as pleaded, I am unable to accept the submission that Jason's claims are so untenable that they should be struck out as disclosing no reasonably arguable cause of action. Susan has not submitted with any particularity the ways she considers that Jason's claims as pleaded are untenable. Rather, she asserts that Jason cannot establish that there was a breach of trust amounting to a breach of fiduciary duty, and that Jason cannot establish how Susan's alleged breaches resulted in loss that can be remedied by way of equitable compensation or damages.

[37] However, the various claims appear to be at least tenable on the facts as pleaded. Jason pleaded that Susan wrongfully received and withheld estate funds for two years, caused delays and disruptions to the administration of the estate, and acted in financial self-interest. Susan in her statement of defence denied each of those allegations.[36] However, whether each of the claims is made out is ultimately a factual dispute. There is no clear documentary evidence before the Court which points either way in respect of those matters. Although Mr Stringer relied on Susan's affidavit of 9 April 2025, in which she denied, among other things, that she had obstructed the administration of the estate, those statements alone provide an insufficient basis to strike out Jason's claims.

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34 *Collier v Butterworths of New Zealand Ltd*, above n 13, at 586.

35 Counsel also referred to *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 (HL) at 541, where Lord Diplock observed: "The abuse of process which the instant case exemplifies is the initiation of proceedings in a court of justice for the purpose of mounting a collateral attack upon a final decision against the intending plaintiff which has been made by another court of competent jurisdiction in previous proceedings in which the intending plaintiff had a full opportunity of contesting the decision in the court by which it was made."

36 I note that Jason opposed the late filing of Susan's statement of defence in the defamation proceedings. I grant leave below at [74]–[75] for Susan to file her statement of defence out of time.

[38] Jason also pleaded that Susan breached her duties as executor by intentionally withholding Estate information. Non-disclosure or intentional withholding of Estate information, such as the burglary reports and information about works on an Estate property may also be capable of supporting a claim.[37] The viability of those claims ultimately comes down to factual disputes incapable of resolution in the strike out jurisdiction. Moreover, the losses pleaded by Jason, including erosion of the residuary estate through delays in its proper administration, are at least tenable.

[39] I also cannot accept Mr Stringer's submission that Jason requires leave to claim relief of compensation to the Estate as a derivative action. Counsel referred to *Lock v Weatherston*, which dealt with a non-beneficiary's standing to sue an executor.[38] Here, Jason is a beneficiary of the Estate bringing proceedings against Susan in her capacity as executor.[39] The courts have imposed liability on trustees including imposing an obligation to put the trust estate in the same position as if the breach of trust had not been committed.[40]

[40] For completeness, I record Jason's submission that Susan's attempt to strike out the proceeding itself amounts to an abuse of process. I am unable to accept that submission. While I have not found that the proceeding should be struck out, Susan choosing to raise the matter with the Court was an appropriate course of action and does not, without more, amount to any abuse of process.

[41] In short, while Jason's allegations may ultimately fail, I accept that his pleadings provide a sufficient basis to enable the Court to examine his claims and for the proceedings to continue to hearing. Whether they withstand further interlocutory processes including further and better particulars, security for costs and even interrogatories, remains to be seen. All of that said, Jason, who is unrepresented,

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37 *Low v Bouverie* [1891] 3 Ch 82; *Kemp v Burn* (1863) 4 Giff 348; and Trusts Act 2019, ss 49–55.

38 *Lock v Weatherston*, above n 21, at [15]. Further, the Court expressly stated that leave to bring a derivate claim is not required: at [16].

39 Lindsay Breach *Nevill's Law of Trusts, Willis and Administration* (14th ed, LexisNexis, Wellington, 2023) at [22.8.2]: "Whenever a personal representative does that which they ought not to do, then that person can be made liable, if loss follows, either to the trust estate or to some person who was entitled to look to the trust estate for satisfaction of their claim, whether it be a debt or a legacy or other benefit." (Footnote omitted).

40 Chris Kelly and others *Garrow and Kelly Law of Trusts and Trustees* (8th ed, LexisNexis, Wellington, 2022) at [27.51].

should also be aware of the risk of failure in a costs context. Put another way, if he fails in his claims and the Court ultimately holds that his arguments were without foundation, Jason risks not only an award of costs, but also increased costs, and in rare circumstances, indemnity costs — all of which may be deducted from any remaining estate entitlement he may have. I therefore strongly urge Jason to seek legal advice before advancing his claims further so that at least he will be properly informed as to the relative merits of his claims, the prospects of success and the risks involved.

Application for summary judgment: executor's duties proceedings

[42] Jason applied for summary judgment in respect of the executor's duties proceedings per r 12.2 of the High Court Rules.[41] Under r 12.4, Jason was required to make an application for summary judgment at the time his statement of claim was served on the defendant, or later with the leave of the Court.[42] Jason filed his statement of claim on 5 November 2025, and did not file an application for summary judgment until 5 January 2026. It does not appear that Jason has sought leave to make an application for summary judgment late,[43] nor does it appear that he has attempted to commence new proceedings and discontinue the earlier proceedings.[44] Jason must therefore seek leave to apply for summary judgment, if he considers that course appropriate.[45] If leave is granted, the application for summary judgment must be set down for a hearing. Contrary to Jason's submissions, his application for summary judgment may not be dealt with on the papers.[46]

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41 Notably, the relief sought differs from that specified in Jason's statement of claim. Jason sought "an account and inquiry regarding 'Yacht refund', and assessment of damages and/or equitable compensation following disclosure of estate records, including the Anderson Law estate file"; damages and/or equitable compensation; "Interest to be awarded pursuant to the Judicature Act and Court discretion"; and costs.

42 High Court Rules 2016, r 12.4(2) (as of 5 November 2025).

43 Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at [HGR12.4.01] citing *Stephens v Barron* [2014] NZCA 82, (2014) 21 PRNZ 734.

44 While it is permissible for a plaintiff to commence proceedings by the ordinary procedure and to later issue summary judgment proceedings for the same claim, it will be an abuse of the process of the Court if the plaintiff does not discontinue the earlier proceedings: see *McGechan on Procedure,* above n 43, at [HGR12.4.01] citing *Cowley v Shortland Publications Ltd* (1991) 5 PRNZ 76 (HC).

45 *Stephens v Barron*, above n 43.

46 High Court Rules, r 7.36. Under r 7.37 no hearing is required if the respondent to an application for summary judgment has provided their consent or notified that they do not oppose the application. No such consent has been provided by Susan.

Defamation proceeding

[43] Jason's claim in defamation relates primarily to accusations allegedly made by Susan that Jason burglarised the Property from the late Mr Applegate's Estate, in which Susan was granted a life interest. Jason alleged that:

(a) Susan filed a fabricated burglary report to police repeatedly naming Jason as the perpetrator, in relation to an alleged burglary of the Property on or about 26 January 2023;

(b) Susan provided full details to Anderson Law, the Estate's solicitors, and neighbours and other beneficiaries, repeatedly naming Jason as the perpetrator in relation to the alleged burglary on or about 26 January 2023;

(c) Susan actively concealed details of the burglary from co-executors, in breach of executor's duties;

(d) Anderson Law failed to disclose this relevant information to co-executors;

(e) due to unequal treatment afforded to executors, the Estate's solicitors were changed from Anderson Law to Fenton McFadden;

(f) Susan filed a second fabricated burglary report to police naming Jason as the perpetrator, in relation to another alleged burglary of the Property on or about 17 August 2023;

(g) Susan also shared details with Fenton McFadden, the estate's solicitors, and neighbours;

(h) Susan later retracted the second burglary claim;

(i) the burglary report of January 2023 was finally disclosed in January 2025, following an extremely costly legal battle.

[44] Jason in his statement of claim also described "events leading to the proceedings" including that:

(a) Susan issued trespass notices against Jason and Wayne Applegate from the Property, without justification.

(b) The estate solicitors were changed from Anderson Law to Fenton McFadden "due to unequal treatment afforded to all executors."

(c) Susan filed legal documents to the Court containing errors, including in her statement of claim and sworn affidavits.

[45] Jason sought an order for damages for reputational harm and mental distress, and to vindicate his name with police, estate solicitors, counsel, and all beneficiaries. Jason also sought orders for punitive damages under s 28 of the Defamation Act 1992, and costs and such other orders under the Act or the inherent jurisdiction of the Court.

Susan's submissions on strike out

[46] Counsel outlined that actionable defamation requires the plaintiff to establish that a defamatory statement has been made, the statement was about the plaintiff, the statement has been published by the defendant, and the defendant cannot avail herself of any defences.[47] Mr Stringer submitted that the elements of defamation are not made out, and that regardless, Susan has a defence of qualified privilege.[48] Counsel argued that qualified privilege is a complete answer to any publication of the accusations to Susan's lawyers or the Police. There is no evidence of republication. Rather, any republication is at Jason's own fault.

[47] In Susan's statement of defence, she elaborated further that she had trespassed Jason from the Property and admitted that she had reported two break-ins on 26 January 2023 and 17 August 2023.[49] However, no report was filed in respect of the

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47 See Ursula Cheer "Defamation" in Stephen Todd (ed) *Todd on Torts* (9th ed, Thomson Reuters, Wellington, 2023) at [15.2].

48 See, for example, *Cabral v Beacon Printing & Publishing Company Ltd* [2013] NZHC 2684.

49 I note that Jason opposed the late filing of Susan's statement of defence in the defamation proceeding. I grant leave below at [74]–[75] for Susan to file her statement of defence out of time.

August incident. Susan denied fabricating the first break-in. She admitted that the break-in was reported to Police and Anderson Law, but denied that it was reported to any other person or organisation.

[48] Susan outlined that she had a duty to report the suspected burglaries to police, and the Police had a corresponding legitimate interest in receiving the statements. Susan also deposed that she had a duty to report the suspected burglaries to the lawyers for the Estate, and the lawyers for the Estate had a corresponding legitimate interest in receiving the statements. Susan also asserted that the reports of burglary were made without malice or ill will to Jason.

Jason's submissions in reply

[49] On 19 January 2026, Jason filed a memorandum responding to Susan's statement of defence. Jason submitted that if any occasion of qualified privilege did arise, such privilege is defeated by actual malice. Jason argued that evidence of actual malice included: repetition of allegations of serious criminal conduct; inconsistent and shifting accounts of dates and circumstances; escalation of allegations over time; the late retraction of the second burglary allegation; and hostility arising from disputes concerning the administration of the estate, including the mischaracterisation of the reasons for changing estate solicitors.

[50] Jason also made submissions about the circumstances leading to a change in estate solicitors. He argued that the change was the result of unequal treatment between executors, including a failure of Anderson Law to disclose to Jason serious allegations made against him, and the absence of impartiality in communications relating to the administration of the estate.

Discussion

Are the elements of defamation made out?

[51] A statement is defamatory if it causes a reasonable person reading or hearing it to think worse of the person concerned in a more than minor way.[50] A plaintiff need

[50] *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218 at [75].

not allege or prove special damage.[51] The amount of any damage is ultimately a matter for the fact finder.[52]

[52] Jason in his statement of claim did not elaborate on what the defamatory meanings of the alleged fabricated police reports were. He later outlined in an affidavit in support of application for default judgment of 5 January 2026 that the statements made by Susan had the following defamatory meaning:

> 23. The statements published by the defendant (to law firms, neighbours, and police) conveyed to ordinary and reasonable recipients that:
>
> - I am a **burglar**,
> - I unlawfully entered the estate property, and
> - I attempted to access sensitive information
>
> 24. These meanings are defamatory as they lower me in the estimation of right-thinking members of society and expose me to suspicion and hostility.

[53] I also note that in subsequent submissions and applications Jason made reference to allegations made by Susan that he had attempted to access the deceased's personal computer.

[54] Relevantly, s 37 of the Defamation Act provides:

> **37 Particulars of defamatory meaning**
>
> (1) In any proceedings for defamation, the plaintiff shall give particulars specifying every statement that the plaintiff alleges to be defamatory and untrue in the matter that is the subject of the proceedings.
>
> (2) Where the plaintiff alleges that the matter that is the subject of the proceedings is defamatory in its natural and ordinary meaning, the plaintiff shall give particulars of every meaning that the plaintiff alleges the matter bears, unless that meaning is evident from the matter itself.
>
> (3) Where the plaintiff alleges that the matter that is the subject of the proceedings was used in a defamatory sense other than its natural and ordinary meaning, the plaintiff shall give particulars specifying—

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51 Defamation Act 1992, s 4.
52 *Opai v Culpan* [2017] NZHC 1036, [2017] NZAR 1142 at [58].

(a) the persons or class of persons to whom the defamatory meaning is alleged to be known; and

(b) the other facts and circumstances on which the plaintiff relies in support of the plaintiff's allegations.

[55] The High Court in *Dorbu v Cooke* referred to the observation of the learned authors of *Laws of New Zealand: Defamation* that:[53]

> The actual words complained of, and not merely their substance, must be set out verbatim in the statement of claim.

[56] The Court of Appeal has held that in defamation proceedings, pleadings assume even more critical importance than pleadings generally.[54] By pleading a meaning, the plaintiff sets a threshold which it must meet if its claim is to succeed:[55]

> If the meaning which is alleged, or something not materially dissimilar, is not established, then the plaintiff loses its case. It is only when that meaning is established that the defendant needs to respond to it, but not to some other issue which might have been complained about but has not been the subject of complaint.

[57] Accordingly, the Court is confined to consider the defamatory meanings as set out in the statement of claim filed by the plaintiff, and Jason is unable to alter or elaborate on those meanings through other documents that have been filed. While Jason does not identify expressly in his statement of claim every meaning that he alleges the matter bears, I am satisfied that the meaning of the statement that Jason burglarised the Property is sufficiently evident from the matter itself to meet the requirements in s 37(2).

[58] Mr Stringer submitted that the elements of defamation are not made out. However, it is not apparent what deficiency in Jason's pleading Susan complains of. I am satisfied, in respect of the alleged statements to Police and to the Estate solicitors, that Jason has pleaded the essential elements of a cause of action in defamation. It

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53 *Dorbu v Cooke* HC Auckland CIV-2008-404-5222, 30 April 2009 at [28].

54 *Low Volume Vehicle Technical Association Inc v Brett* [2019] NZCA 67, [2019] 2 NZLR 808 at [61]–[62]; *Fourth Estate Holdings (2012) Ltd v Joyce* [2020] NZCA 479; [2021] 2 NZLR 758 at [61]–[65]; *Broadcasting Corporation of New Zealand v Crush* [1988] 2 NZLR 234 (CA) at 239–240; and *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [54]–[55] as cited in *Young v Xiao* [2025] NZHC 3697 at [58].

55 *Television New Zealand Ltd v Haines*, above n 54, at [62].

will ultimately be for the fact finder to determine whether the alleged statements were made, and whether they were defamatory.

[59] Mr Stringer also contended that it is unclear how the alleged defamation caused any loss to Jason personally that can be remedied by way of equitable compensation or damages. However, there is a rebuttable presumption that publication of a defamatory statement will have resulted in damage to reputation.[56] I am not satisfied that Susan has established that her statement caused less than minor harm to Jason's reputation such that Jason's claim is clearly not tenable.[57] Accordingly, I do not consider it would be appropriate to strike out Jason's claim on that basis.

[60] As to alleged disclosures to neighbours and other beneficiaries by Susan, at present, I am not satisfied that Jason has provided sufficient particulars. There is no specification in his pleading of who the recipients of the statements were, when the statements were made, or their specific contents. Accordingly, at present, they do not disclose a reasonably arguable cause of action.

[61] In the circumstances, I am content that a degree of latitude should be granted to Jason as a litigant in person,[58] and that he should be allowed to amend this aspect of his statement of claim. Under High Court Rules, rr 5.21(4) I am able to order that a more explicit pleading be filed and served to enable the defendant to be fairly informed of the case to be met.[59] This aspect of Jason's pleading is stayed until such an amended statement of claim is filed.[60] I also encourage Jason to specify with more particularity the defamatory words he complains of, as recorded in the Police reports and Estate solicitor file notes annexed to his affidavit. As I observed regarding the executor's duties proceeding, however, I encourage Jason to seek legal advice regarding his prospect of success in bringing his claim, and so that he understands his potential liability for costs should his claim be unsuccessful.

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56 *CPA Australia Ltd v New Zealand Institute of Chartered Accountants* [2015] NZHC 1854 at [104]–[120]; and *Sellman v Slater*, above n 50, at [62]–[69]

57 *Sellman v Slater*, above n 50, at [68]–[69].

58 *McGechan on Procedure*, above n 43, at [HR5.26.04A].

59 At [HR5.26.04].

60 High Court Rules, r 15.1(3).

[62] Jason also referred to various other matters in his statement of claim, including that Susan concealed details of the burglary from co-executors, in breach of her executor's duties, and that the estate lawyers were changed "due to unequal treatment afforded to executors". Those matters are immaterial to Jason's claim in defamation, and are more appropriately addressed, if at all, in the executor's duties proceedings. I am therefore satisfied that those aspects of his statement of claim should be struck out.

The defence of qualified privilege

[63] Susan argued that the defence of qualified privilege provides a complete answer to Jason's claim. Qualified privilege is a common law defence preserved by s 16 of the Defamation Act. It protects statements made on privileged occasions, that is, occasions:[61]

> where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it.

[64] Whether an occasion is privileged is a question of law for the Judge to determine.[62] The circumstances that constitute a privileged occasion cannot be exhaustively catalogued.[63] Instead, the Judge will examine the nature of the statement, the maker and receiver of the statement, and the circumstances surrounding the making of the statement.[64] Disclosure made of wrongful conduct to persons who have a proper interest, such as the Police, have been found to be covered by qualified privilege.[65] Similar communications to parents or business associates have also been found to be encompassed by the defence.[66]

[65] Accordingly, Susan's statements made to Police about alleged burglaries at the Property likely fall under the defence of qualified privilege. The defence might also be available in respect of disclosures to Estate solicitors. However, it is not

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61 *Adam v Ward* [1917] AC 309 (HL) at 334 per Lord Atkinson.
62 *Lange v Atkinson* [2000] 3 NZLR 385 (CA) at [25].
63 *London Assoc for Protection of Trade v Greenlands Ltd* [1916] 2 AC 15 (HL) at 22.
64 *Lange v Atkinson*, above n 62, at [23].
65 *Bowles v Armstrong* (1912) 32 NZLR 409 (CA); *Tipene v Apperley* HC Wellington A161/75, 16 October 1980.
66 Cheer, above n 47, at [15.11] citing *Bull v Allan* (1913) 33 NZLR 380 (SC); *Cutbush v Grove* (1901) 21 NZLR 67 (SC); *Collerton v Maclean* [1962] NZLR 1045 (SC); *Ware v Johnson* [2014] NZHC 892.

immediately clear that the defence would apply to disclosures Susan allegedly made to neighbours or to other beneficiaries, although I have not received any submissions on the point.

[66] Section 19 of the Defamation Act sets out that the defence of qualified privilege can be overcome if the plaintiff proves that the statement in question was "predominantly motivated by ill will towards the plaintiff" or otherwise involved the taking of "improper advantage of the occasion of publication".[67]

[67] As I recorded in the previous proceedings:[68]

> [32] Susan also made a complaint to the Police accusing Jason of committing a burglary at the Property in January 2023. The Police report dated February 2023 states the Police "very much doubt there has been a burglary at this address". Susan has since sought to resile from this allegation despite also making it to the Estate's solicitors and, allegedly, the neighbours…

[68] Accordingly, on the material before me, I am unable to conclude that the defence of qualified privilege provides a complete answer to Jason's claim such that they disclose no reasonably arguable cause of action.

[69] For completeness, I also note that for similar reasons as outlined above at [27]–-[35] regarding the executor's duties proceedings, I do not consider Jason is estopped from bringing the claim by virtue of the previous proceedings.

Application for judgment by default: defamation proceedings

[70] Jason sought judgement by default in respect of the defamation proceedings under r 15.8 of the High Court Rules.[69] However, r 15.8 applies to recovery of land

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67 Defamation Act, s 19.

68 Executor removal judgment, above n 2.

69 For completeness, I note that while unclear, it does not appear that Jason intended to also apply for default judgment in respect of the executor's duties CIV-2025-470-202 proceeding. Although Jason noted in his affidavit and memoranda dated 5 January 2026 that Susan "remains in default of defence" regarding those proceedings, he continued to refer to his application for summary judgment, rather than requesting a formal proof hearing as occurred in respect of the defamation proceedings. Although use of the term "formal proof" is not strictly necessary if the party was, in substance, seeking for the claim to be set down for formal proof, as discussed in *Dunstan v Genesis Energy Ltd* [2024] NZHC 2051, I consider because Jason expressly applied for default judgment in the defamation CIV-2025-470-201 proceeding, it is unnecessary to address default judgment in respect of the executor's duties CIV-2025-470-202 proceeding.

or chattels, for which a claim in defamation is not. Rather, r 15.9 of the High Court Rules is applicable. Under that rule, where the defendant has not filed a statement of defence within the timeframe required by the notice of proceeding, the proceeding must be listed for formal proof,[70] and no statement of defence may be filed without leave of a Judge.[71]

[71] The notice of proceedings specified that Susan must file a statement of defence within 25 working days of being served. Susan was served with the notice of proceedings and statement of claim on 19 November 2025. Therefore, the deadline for filing and serving a statement of defence was 24 December 2025. Susan failed to file a statement of defence by that deadline. Jason filed an application for default judgment on 5 January 2026. He sought that the proceeding be set down for a formal proof hearing.[72]

[72] Susan filed a statement of defence dated 14 January 2026. Because the holiday period from 25 December to 15 January is excluded from the definition of "working day", the statement of defence was effectively filed one day late.[73] However, a party is not required to file a statement of defence in circumstances where the Court is assessing whether to strike out the proceeding.[74] I consider that while Susan had not formally applied for strike out, because the question of strike out had been raised, and submissions had been received on the point, that a statement of defence was not required to be filed.

[73] In any event, if I am wrong, I am satisfied that Susan is able to file her statement of defence out of time. The proceeding was not listed for a formal proof hearing prior to Susan filing her statement of defence. The wording of r 15.9(3) is clear that the prohibition on a statement of defence being filed only applies after a proceeding is

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70 High Court Rules, r 15.9(2).

71 Rule 15.9(3).

72 Jason sought different damages to those listed in his statement of claim: general damages; aggravated damages (particularly due to actual malice, as supported by affidavit evidence); special damages (if any); and costs on a 2B basis.

73 High Court Rules, r 1.3 definition of "working day". Mr Stringer, for Susan, submitted that the period for filing a statement of defence expired on 15 January 2026, rather than on 24 December 2025. I cannot accept that submission. 20 working days, properly calculated as commencing from the day after service, means the period expired at the end of 24 December 2025.

74 *Simpson v Whakatane District Court (No 2)* [2006] NZAR 247 (HC); and *Guthrie v Williams* [2025] NZHC 1827.

listed for a formal proof hearing. However, I note that r 15.9(2) makes clear that if no statement of defence is filed within the required number of working days, and the plaintiff seeks judgment by default, as occurred here, the proceeding *must* be listed for formal proof. Therefore, whether leave would be required in the circumstances appears unresolved.[75]

[74] Even so, I am satisfied that leave should be granted for Susan to file her statement of defence out of time.[76] The three considerations relevant to a decision as to whether to grant leave to defend out of time are: whether the defendant has a substantial ground of defence; whether the delay is reasonably explained; and whether the plaintiff will suffer irreparable injury if judgment is set aside (or in this instance if leave to defend is belatedly granted).[77]

[75] Each of these considerations are met here. As outlined above at [63]–[68], while I am unable to conclude that the defence of qualified privilege provides a complete answer to Jason's claim in defamation, I consider that Susan has a substantial ground of defence for the purpose of leave to defend out of time. The delay in filing her statement of defence is also reasonably explained, given the history of the proceedings, a lack of clarity in the claims Jason sought to bring, and the evolving nature of his claims and the relief sought. I also consider that the delay is unlikely to have resulted in Jason incurring additional expense. I am satisfied that Jason has not demonstrated that he will suffer irreparable injury if leave to defend the proceedings is granted.

[76] In short, I do not consider that Jason's application for default judgment is able to proceed while the question of strike-out is extant, and irrespective, leave would be

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75 See *Siemer v Auckland High Court (No 3)* [2013] NZHC 3540 at [15]; *Dunstan v Genesis Energy Ltd*, above n 69, at [10]; and *Rushton v Guthrie* [2024] NZHC 1230 at [18]. Where an application for formal proof has been made prior to a statement of defence being filed, but where no formal proof hearing has been listed, the approach appears unresolved. Given the absence of discretion to list a matter for formal proof when requested by a plaintiff under High Court Rules, r 15.9(2), arguably a delay in the Court doing so should not circumvent the requirement in r 15.9(3) that leave should be required. However, the observations of the Court in *Siemer* suggest that ordinarily it will be expedient for the Court to have before it a statement of defence.

76 High Court Rules, r 15.9(3).

77 *Neumayer v Kapiti Coast District Council* [2014] NZHC 417 at [8] citing *Russell v Cox* [1983] NZLR 654 (CA) at 659; and *Shoye Venture Ltd v Wilson* [2013] NZHC 2339 at [10]–[13].

granted for Susan to file her statement of defence late. Therefore, Jason's application for default judgment cannot succeed.

Application for summary judgment: defamation proceedings

[77] On 19 January 2026, Jason applied for summary judgment in the defamation proceedings. As in the executor's duties proceedings, discussed above at [42], under r 12.4, Jason requires leave to apply for summary judgment following service.[78] Jason must therefore seek leave to apply for summary judgment.[79] If leave is granted, the application for summary judgment must be set down for a hearing.[80]

Application to strike out parts of statement of defence: defamation proceedings

[78] On 19 January 2026, Jason filed an application to strike out parts of Susan's statement of defence in the defamation proceedings under r 15.1. In particular, Jason applied to strike out paragraphs 10–13 of Susan's statement of defence, which related to the defence of qualified privilege, and also to strike out any reliance on affidavits filed in other proceedings "as if pleaded in full".

[79] Jason submitted that Susan did not in respect of the defence of qualified privilege identify: the precise occasion relied upon; the scope of any duty or interest; or why publication to multiple recipients was necessary. Moreover, Jason argued that Susan did not plead facts capable of defeating the Plaintiff's pleaded malice. Accordingly, the privilege defence is untenable and should be struck out. I cannot accept that submission. As is evident from the forgoing discussion of strike out of Jason's claim, the application of the defence of qualified privilege is highly contested and not amenable to summary determination. Accordingly, this aspect of the statement of defence should not be struck out.

[80] Jason also submitted that Susan's reliance in her submissions on affidavits filed in other proceedings "as if pleaded in full" is improper, and that: "Any privilege

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78 High Court Rules, r 12.4(2) (as of 31 October 2025).

79 *Stephens v Barron*, above n 43.

80 High Court Rules, r 7.36. Under r 7.37 no hearing is required if the respondent to an application for summary judgment has provided their consent or notified that they do not oppose the application. No such consent has been provided by Susan.

attaching to affidavits in judicial proceedings does not extend to republication to third parties." It is not apparent on what legal basis that submission is made, and so I decline to strike out this aspect of Susan's statement of defence on that basis.

Applications for order for non-party disclosure

[81] Jason made a without notice interlocutory application for non-party production of documents from Anderson Law in the executor's duties proceedings on 18 December 2025, and a without notice urgent application in the defamation proceedings on 12 February 2026. Jason sought an order that Anderson Law produce the complete solicitor's file relating to the estate of Christopher Applegate. Jason applied for production to be made to the plaintiff only, and not disclosed to any other party unless the plaintiff elects to rely on a document in the proceedings, or disclosure is directed by a further order of the Court.

[82] Notice is required to be given for an application under High Court Rules, r 8.21 to the non-party from whom documents are sought, as well as to every other party who has filed an address for service.[81] As the application was made without notice, I cannot take the matter further. Accordingly, Jason should make an on-notice application, providing notice to Anderson Law and Susan if he still wishes to pursue the application.

Decision

[83] CIV-2025-470-202, the executor's duties proceeding, remains extant. Jason must seek leave to apply for summary judgment in those proceedings within 30 days from the date of this decision.

[84] CIV-2025-470-201, the defamation proceeding, is stayed. Jason is ordered to amend his statement of claim to provide a more explicit pleading, in accordance with the directions above at [60]–[61] within 30 days from the date of this decision.

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[81] Rule 8.21(3). See also *Deliu v Auckland Standards Committee 1* [2015] NZHC 2199 at [29].

[85] The aspects of Jason's statement of claim in the defamation proceeding that concern the alleged concealment of details of the alleged burglary from co-executors, breaches of executor's duties, and changing of Estate solicitors, are struck out.

[86] Jason's application for default judgment in the defamation proceeding is declined. Jason must seek leave to apply for summary judgment in the defamation proceeding within 30 days from the date of this decision. Jason's application to strike out parts of Susan's statement of defence in the defamation proceeding is declined.

[87] Jason's applications for non-party disclosure must be made on notice.

[88] My preliminary inclination is to let costs lie where they fall, taking account of the overall circumstances. That said, if the parties are unable to agree on costs Jason may file submissions on costs within 10 working days. Susan may file submissions in reply 10 working days after that. Submissions are not to exceed three pages (excluding any attachments). I expect any dispute about costs can be settled on the papers, however counsel may address this in their submissions if they wish.

Harvey J