IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2013-404-5218
[2018] NZHC 171

BETWEEN	MATTHEW JOHN BLOMFIELD Plaintiff
AND	CAMERON JOHN SLATER First Defendant
AND	SOCIAL MEDIA CONSULTANTS LIMITED Second Defendant

Hearing:	On the papers
Appearances:	F E Geiringer for Plaintiff First Defendant in person
Judgment:	15 February 2019

JUDGMENT OF PAUL DAVISON J
[Re costs and application by plaintiff for lifting of suppression of judgment]

This judgment was delivered by me on 15 February 2019 at 2:15 pm
Pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors:
Bytalus Legal, Auckland

[1] This judgment deals with applications made by the plaintiff Mr Blomfield, seeking: costs on the determined interlocutory applications; a direction on the payment of Court fees in relation to the hearing of those interlocutory applications; and requesting the Court to review the issue of suppression of my judgment detailing the reasons for determining those interlocutory applications.

Background

[1] Following two results judgments on 27 September and 16 October 2018, on 26 October 2018, I released a judgment detailing my reasons for ruling in favour of the plaintiff on several interlocutory matters, The interlocutory matters dealt with in those judgments were:

(a) The defendants' application for security for costs;

(b) The defendants' application for leave to file a fourth amended affirmative statement of claim;

(c) The defendants' application for leave to file a fifth amended statement of claim;

(d) The defendants' application for an adjournment of the trial for a day to enable counsel to prepare the fifth amended statement of defence; and

(e) The plaintiff's application regarding the admissibility of evidence proposed to be adduced by the defendants.

[2] In the two results judgments, I ordered that the costs on the interlocutory applications was reserved.[1]

[3] I also made an interim order prohibiting publication of the reasons judgment and any part of the proceeding in news media or on the internet or other publicly available database until final disposition of the trial.

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1 *Blomfield v Slater* [2018] NZHC 2538 at [11] and *Blomfield v Slater* [2018] NZHC 2679 at [10].

Filing of memoranda

[4] Counsel for the plaintiff filed a memorandum on 23 November 2018 seeking orders as to costs and the lifting of suppression.

[5] As of the date of this judgment, almost three months later, the defendants have not filed any response. As the time for filing a response has well passed, I will proceed to determine these applications.

Application for costs and the direction as to Court fees

[6] The plaintiff seeks an order for costs. The plaintiff says that it was appropriate for the issue of costs on the interlocutory applications to be reserved in the context of an impending trial as the issue of costs on the substantive matter was soon to be heard and determined. However, now that the trial has been adjourned pending appeal against my determination of the interlocutory matters, the plaintiff says that such a justification no longer exists and the costs should be determined.

[7] I accept that unless there are special reasons to the contrary, ordinarily costs on an opposed interlocutory application are to be fixed when the application is determined.[2] In a case such as the present, where the interlocutory applications were all heard and determined either just prior to the commencement of trial, or at the commencement of the time set down for the trial, it is prudent that the costs on those applications be left for determination once the substantive proceeding has concluded. As noted here by the plaintiff, this is so that all the issues between the parties concerning costs can be dealt with at the same time and in a single judgment. Moreover where, as has happened here, the trial is adjourned, it is appropriate for the costs to be determined between the parties, so that the party entitled to an award of costs may recover the costs they are entitled to without undue delay.

[8] However where as here, the trial has been adjourned pending the determination of an appeal against my ruling on those interlocutory matters, I consider that a special reason exists for not fixing costs as between the parties. That is because the outcome

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2 High Court Rules 2016, r 14.8(1).

of the appeal on those interlocutory matters may reverse any decision I was to make regarding costs.

[9] Therefore, with full appreciation of the delay and expense the plaintiff has been put to by what were 11th hour interlocutory applications brought by the defendants, I decline to grant costs at this stage on the outcome of those applications.

[10] As regards the payment of Court fees, as matters presently stand, the Registry is seeking the payment of $14,400, being the remaining cost of the five-day hearing conducted for the interlocutory matters (after discounting the $1,600 already paid by the plaintiff as a scheduling fee, which covers a half day of hearing).

[11] The plaintiff contends that as four of the days were entirely spent hearing arguments on the interlocutory applications brought by the defendants, $12,800 should be payable and recovered directly from the defendants by the registry, being the hearing fee for four days in the High Court.

[12] I agree. As Mr Blomfield will have incurred significant legal costs in successfully arguing against the interlocutory applications brought by the defendants, but which I am declining to presently award him costs for, I see no reason why he should be put to the expense of meeting Court fees which were incurred for the hearing of the defendants' interlocutory applications.

[13] As the plaintiff accepts however, the remaining $1,600 should be payable by him as one day was spent arguing his application regarding the admissibility of evidence. Such an amount is prospectively recoverable as a disbursement, depending on the outcome in the Court of Appeal.

Suppression

[14] The reasons decision, released on 26 October 2018, (and the results judgment released on 16 October 2018) was subject to an interim suppression order on the Court's own motion following the defendants' filing an appeal so that an application,

by either of the parties, seeking suppression pending the hearing of the appeal would not be rendered nugatory.

[15] On 21 November 2018, I issued a Minute in response to an application by the New Zealand Herald to search, inspect and copy documents on the Court file for this proceeding. I declined that application on the basis that while the appeal remains pending it is in the interests of justice that the judgment and any relating documents be suppressed.

[16] At the time, the plaintiff did not oppose the application brought by the New Zealand Herald, but nor did he file any submissions in support of it. Subsequently counsel for the plaintiff has filed a memorandum expressing the plaintiff's opposition to continuation of the interim suppression, and asking the Court to review the suppression issue with the benefit of submissions.

[17] The starting point is the principle of open justice and the right of the media to report on decisions of court as reflected in s 14 of the New Zealand Bill of Rights Act 1990.[3] The principle in favour of open justice should only be departed from in circumstances where the interests of justice so require, and only to the extent necessary to serve those interests.

[18] The Court may make an order for suppression to protect confidential information, such as trade secrets or commercially sensitive information, the value of which would be diminished were it to become publicly known. However, the Court would be most unlikely to suppress proceedings where, from the perspective of one party, the publicity associated with those proceedings might be embarrassing or unwelcome. To justify a suppression order on the basis of confidentiality, an applicant must show specific adverse consequences which require making an exception to the principle of open justice, and that standard is a high one.[4]

[19] A suppression order may also be justified and required where the fair trial rights of the defendant are adversely affected and threatened by the publication of the

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3 See *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2].
4 See *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [13].

proceedings. The plaintiff submits that here there is no threat to the fair trial rights of the defendants by the publication of the proceedings.

[20] Here there is no concern that the reasons judgment contains any confidential information of the defendants, nor any information that would be likely to adversely affect the defendants' fair trial interests if released for publication. While it is likely that publication of the results judgment may be unwelcome and somewhat embarrassing for the defendants, those consequence arise from the manner in which they themselves, particularly the first defendant, have conducted these proceedings during the past six-and-a-half years.

[21] The matter is to be heard by a judge alone, so there is no threat of improperly prejudicing a jury against the defendants for their conduct in the lead up to hearing. Any judge hearing the matter will have access to my reasons decision of 26 October 2018, with no risk of their assessment of issues in the proceeding being influenced by the content of my judgment.

[22] I also accept that there is no likelihood of a witness seeing the reasons for my decision and having their evidence on any issue affected or influenced as a consequence..

[23] Accordingly I find that the reasons judgment delivered on 26 October 2018, should no longer be subject to continuation of the suppression order.

Results

[24] I decline to determine the costs on the interlocutory applications brought by the defendants at this time.

[25] I direct that the Registrar recover $12,800 of the balance owing for Court fees from the defendants. The remaining $1,600 (unless it has already been paid by the time of this judgment) is to be recovered from the plaintiff.

[26] The suppression order, prohibiting publication of the reasons judgment of 26 October 2018 and any part of the proceeding until the final disposition of the trial, is lifted effective forthwith.

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Paul Davison J