

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

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

**CIV-2013-404-5218
[2019] NZHC 1203**

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
No appearance by or on behalf of the defendants

Judgment: 29 May 2019

**JUDGMENT OF PAUL DAVISON J
[Re: Costs]**

*This judgment was delivered by me on 29 May 2019 at 5:00 pm
Pursuant to r 11.5 of the High Court Rules*

Registrar/Deputy Registrar

Solicitors:
Bytalus Legal, Auckland

Introduction

[1] By memorandum dated 23 November 2018, Mr Blomfield (the plaintiff), seeks an award of costs against Mr Slater and Social Media Consultants Limited (collectively “the defendants”), in relation to several interlocutory matters. The plaintiff was successful in relation to each interlocutory matter, and the defendants appealed those decisions.

[2] By judgment dated 15 February 2019, I declined to determine the costs on the interlocutory matters at that time. I said that “a special reason exists for not fixing costs as between the parties ... because the outcome of the appeal on those interlocutory matters may reverse any decision I was to make regarding costs.”¹

[3] The defendants having since abandoned their appeals, the plaintiff again applies for an award of costs on those interlocutory matters.

Background

[4] Following two results judgments on 27 September and 16 October 2018,² on 26 October 2018, I released a judgment detailing my reasons for ruling in favour of the plaintiff on several interlocutory matters.³ 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 statement of defence;
- (c) the defendants’ application for leave to file a fifth amended statement of defence;
- (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

¹ *Blomfield v Slater* [2018] NZHC 171 at [8].

² *Blomfield v Slater* [2018] NZHC 2538; and *Blomfield v Slater* [2018] NZHC 2679.

³ *Blomfield v Slater* [2018] NZHC 2781.

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

[5] In the two results judgments, I ordered that the costs on the interlocutory applications were reserved. I directed that the trial was to proceed as scheduled on Tuesday 23 October 2018.

[6] The defendants subsequently filed an appeal against those decisions in the Court of Appeal. The trial was thereafter adjourned.

[7] On 27 February 2019, the first defendant filed an application to be adjudicated bankrupt with the Official Assignee. Pursuant to s 47(1) of the Insolvency Act 2006, the first defendant was automatically adjudicated bankrupt.

[8] On behalf of the first defendant, the Official Assignee thereafter abandoned the first defendant's appeal on 14 March 2019, by notice filed in the Court of Appeal.

[9] The Court of Appeal, on the same day, deemed the second defendant's appeal to be abandoned.

Decision

[10] There are no longer any special reasons as to why costs on the interlocutory applications should not be fixed.⁴

[11] The plaintiff seeks costs of \$73,590.00 on a mixed 3A/3B basis in relation to those interlocutory matters, with two exceptions. Those exceptions are:

- (a) 3C costs with a 50 per cent uplift are sought in relation to the wasted preparation for trial following the adjournment to enable the defendants to pursue an appeal; and
- (b) 3C costs are sought for the preparation of a synopsis on the admissibility of the defendants' evidence.

⁴ High Court Rules 2016, r 14.8(1).

[12] The plaintiff filed a schedule of those costs, a copy of which is annexed to this judgment. The plaintiff also seeks disbursements totalling \$10,160.29, for flights, taxis, accommodation and food, printing for filing and service, computer equipment for Court, and Court fees.

[13] The plaintiff filed his original memorandum seeking costs on 23 November 2018. The plaintiff filed his second memorandum seeking costs to be fixed following the defendants both abandoning their appeals on 25 March 2019.

[14] The defendants have not filed a memorandum in reply to the plaintiff's costs memorandum. Accordingly, I must determine the costs sought by the plaintiff, in the absence of a memorandum from the defendants challenging the quantum of costs sought by the plaintiff.

[15] In a Minute of 18 May 2018, Lang J left the categorisation of these proceedings for the preparation for trial and the trial itself, to the trial judge.

[16] The plaintiff says that these proceedings are Category 3.

[17] I agree with the plaintiff that the proceedings should appropriately be categorised as Category 3. The legal issues concerning the pleading of the defences of truth and honest opinion were complex and fell within a specialist area of law. That much is clear from the length and complexity of the interlocutory hearings that took place before me in September and October 2018, and the length of the reasons judgment that followed.

[18] As to the costs in relation to the steps the plaintiff seeks to recover from the defendants on a 3A or 3B basis, I am satisfied that those are costs that they are entitled to.

[19] In support of the plaintiff's claim for 3C costs with a 50 per cent uplift in relation to the plaintiff's wasted preparation for trial, the plaintiff says that this was originally scheduled to be a four-week hearing. The defendants were seeking to canvass a large number of factual matters, including determining the truth of almost

100 alleged defamatory imputations; were intending to rely on over 300 documents; and were planning on calling between 24 and 31 witnesses. The plaintiff says that 3C costs with a 50 per cent uplift amounts to less than half of the time and expenditure actually incurred by the plaintiff.

[20] The plaintiff says that his costs in relation to preparation for the trial were affected and increased as a result of the defendants' breaches of the time table directions.

[21] The trial was originally due to start on 8 October 2018, and the defendants' evidence was originally to be filed by 13 August 2018. Two briefs were filed on 21 September 2018, following an unless order made by Wylie J in a Minute issued on 13 September 2018. A notice under r 9.7(6) of the High Court Rules 2016 was also filed by the defendants to the effect that they intended to call 27 witnesses who had not provided briefs of evidence. That notice did not contain the necessary information required by r 9.7(6). The defendants also did not finalise their list of documents to be included in the common bundle until 6 October 2018, two days before the trial was due to commence.

[22] The plaintiff's counsel says that he urgently assembled a team of five lawyers, who worked extensive hours in an effort to try and preserve the trial fixture. In addition to responding to the defendants' interlocutory applications, they assembled an electronic casebook ready for a delayed start of the trial scheduled for 23 October 2018. They also prepared reply evidence, submissions and cross examination materials.

[23] However, this is an application for costs in relation to the interlocutory matters dealt with in my decisions of 27 September, 16 October and 26 October 2018. Accordingly, the costs to be awarded at this stage are limited to those interlocutory applications. As the substantive proceeding still awaits determination, any costs the plaintiffs wasted in respect of preparing for trial, should be dealt with when the Court determines costs in relation to that part of the proceeding.

[24] I consider that the synopsis filed by the plaintiff, on 8 October 2018, challenging the admissibility of the evidence proposed to be adduced by the defendants falls within band C, as a comparatively large amount of time for that particular step is reasonable. The defendants were planning on relying on a large body of evidence covering many different issues, and I determined that almost all of it was inadmissible. The task of carefully inspecting all that evidence and identifying the parts that were, for one or more reasons, inadmissible was undoubtedly an exacting and demanding task, that would have necessarily involved a considerable amount of time.

[25] For those reasons, I have decided to allow the plaintiff to recover the full amount of costs it seeks on a mixed 3A/3B/3C basis, except for the amount claimed for wasted preparation for trial.

[26] Having considered the disbursements the plaintiff also seeks, I have decided to allow the full amount of \$10,160.29.

Result

[27] The plaintiff is entitled to costs and disbursements of \$59,000.29 as set out in the annexed schedule.

Paul Davison J

Schedule

Date	Step	Description	Category	Rate	Allocation	Time	Amount
5/09/18	11	Memorandum seeking conference on the late interlocutory application and lack of evidence	3	\$3,300	A	0.2	\$660.00
7/09/18	11	Memorandum on the late interlocutory application and lack of evidence	3	\$3,300	A	0.2	\$660.00
18/09/18	11	Memorandum on the late filing of draft amended pleadings	3	\$3,300	A	0.2	\$660.00
19/09/18	23	Notice of opposition	3	\$3,300	B	0.6	\$1,980.00
24/09/18	24	Synopsis on leave to amend and security for	3	\$3,300	B	1.5	\$4,950.00
26/09/15	26	Hearing on leave to amend and security	3	\$3,300	N/A	1	\$3,300.00
	33	Wasted preparation for trial	3	\$3,300	C+50%	7.5	\$24,750.00
4/10/18	11	Memorandum for judicial teleconference	3	\$3,300	A	0.2	\$660.00
5/10/18	11	Memorandum identifying admissibility challenges	3	\$3,300	A	0.2	\$660.00
8/10/18	24	Synopsis on admissibility and accomanied marked-up versions of the defendants evidence and HCR 9.7(6) notice.	3	\$3,300	C	3	\$9,900.00
8/10/18	26	Hearing on admissibility	3	\$3,300	N/A	1	\$3,300.00
9/10/18	27	Second counsel for hearing on admissibility	3	\$3,300	N/A	0.5	\$1,650.00
10/10/18	24	Synopsis on second leave to amend application	3	\$3,300	B	1.5	\$4,950.00
10-12/10/18	26	Hearing on leave to amend	3	\$3,300	N/A	3	\$9,900.00
10-12/10/18	27	Second counsel for hearing leave to amend	3	\$3,300	N/A	1.5	\$4,950.00
17/10/18	11	Memorandum on preparation for trial	3	\$3,300	A	0.2	\$660.00
Total fees recovery for steps covered by the application							\$73,590.00
Disbursements							
		Flights					\$1,693.00
		Taxis					\$177.80
		Accommodation and food					\$3,138.33
		Printing only for filing or service					\$419.58
		Computer equipment for court					\$1,421.58
		Court fees					\$3,310.00
Total disbursements							\$10,160.29
TOTAL							\$83,750.29