IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

CIV-2011-419-000463
[2012] NZHC 2104

BETWEEN	JOHN KENNETH SLAVICH Plaintiff
AND	DAVID BRIAN COLLINS, CAMERON LESLIE MANDER, CHERYL RAEWYN GWYN, MATTHEW SIMON RUSSELL PALMER First Defendants
AND	CHRISTOPHER FRANCIS FINLAYSON Second Defendant
AND	REGISTRAR OF WELLINGTON DISTRICT COURT Third Defendant

Hearing: On the papers

Appearances: Plaintiff in person
D N Soper for Defendants

Judgment: 17 August 2012

RESERVED COSTS JUDGMENT OF PRIESTLEY J

This judgment was delivered by me on Friday 17 August at 4.30 pm pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date:……

Counsel:
D N Soper, Crown Law, Wellington 6140. Email: david.soper@crownlaw.govt.nz

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Introduction

[1] On 1 May 2012 I released a judgment which struck out the plaintiff's proceedings against all defendants.[1]

[2] I reserved the issue of costs and commented as follows:

> [29] Mr Soper indicated that, in the event of his application succeeding, the defendants would be seeking indemnity costs. Certainly the defendants are entitled to costs.
>
> [30] Whether the plaintiff is worth pursuing for costs will be for the defendants to decide. I note that Andrews J awarded 2B costs against the plaintiff in her July 2011 strike out judgment. I am unaware whether those costs have been paid or enforced.
>
> [31] If the defendants wish to seek costs they should file a short memorandum stipulating the amounts claimed and reasons therefore (if more than 2B costs are sought) within 15 working days of the release of this judgment. The plaintiff is to file any written reply (dealing solely with the costs issue) ten working days thereafter.

[3] The defendants have sought indemnity costs and there has been an exchange of memoranda. These documents were filed at the start of and during the two month period of my sabbatical leave. Since my return from leave last month I have had heavy judicial commitments and have been unable to consider the matter until now.

The issue

[4] The defendants seek indemnity costs or, in the alternative, 2B costs. The plaintiff resists costs. The simple issue is whether costs should be awarded against the plaintiff and, if so, at what level.

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[1] *Slavich v Collins & Ors* HC Hamilton CIV-2011-419000463, 1 May 2012.

Discussion

[5] As indicated in my 1 May 2012 judgment my preliminary view was that the defendants, as successful parties, were entitled to costs.

[6] Mr Soper's memorandum seeks indemnity costs (inclusive of disbursements and GST) of $25,421.89 pursuant to Rule 14.6(4) of the High Court Rules. That provision provides:

> (4) The court may order a party to pay indemnity costs if—
>
> (a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or
>
> (b) the party has ignored or disobeyed an order or direction of the court or breached an undertaking given to the court or another party; or
>
> (c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or
>
> (d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to it; or
>
> (e) the party claiming costs is entitled to indemnity costs under a contract or deed; or
>
> (f) some other reason exists which justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

[7] In particular Mr Soper relies on Rule 14.6(4)(a). He submits that the plaintiff's claim was improperly and unnecessarily commenced and pursued and was, in essence, a collateral attack on final decisions of the Courts. Mr Soper is correct in this assertion. In my judgment which struck out the plaintiff's statement of claim I concluded:

> [22] I am thus satisfied that, in terms of r 15.1(1)(a) no reasonably arguable cause of action is disclosed. Furthermore, focusing on r 15.1(1)(d), I am firmly of the view that this proceeding is an abuse of process. The plaintiff has advanced a beguiling argument that he is not mounting a collateral attack on his 2006 conviction. Rather he is submitting that he is trying to expose and sanction improper conduct on the part of the Hamilton Crown Solicitor and senior Crown Law officers. This reconstruction of the criminal process in which the plaintiff was involved is regrettably a

> distortion and, for the reasons set out in this judgment, is an edifice based on foundation stones which have been rejected by appellate courts. The law and public policy do not permit those matters to be revisited.

[8] Mr Soper's memorandum sets out the plaintiff's litigation history. He submits the current proceeding was "but one example of numerous proceedings the plaintiff has commenced seeking to challenge his 2006 convictions despite his concerns already having been heard and found to have no merit". Mr Soper submits that the public (the defendants being represented by Crown Law) should not have to bear the cost of vexation proceedings which are clearly baseless.

[9] In the alternative the defendants seek scale 2B costs of $14,329.10 (inclusive of disbursements and GST).

[10] I have perused the schedule of 2B costs calculations attached to Mr Soper's memorandum. They are correctly calculated. The disbursements (common to each of the alternative claims) are reasonable. They include air travel and accommodation expenses which I consider to be reasonable in the circumstances. Mr Soper had to travel from Wellington, it being inappropriate that the defendants be represented by the Crown Solicitor in Hamilton who, in related litigation, was one of the plaintiff's targets.

[11] The plaintiff's memorandum asserts, so far as the third defendant is concerned (the Wellington District Court Registrar), that he was at all times acting under the instructions of a Wellington District Court Judge. He would have reviewed the various informations the plaintiff had filed in that Court. Therefore, the plaintiff asserts, the Registrar "cannot have instructed his counsel to seek costs, nor can he be awarded costs because the plaintiff held the reasonable belief that he could rely on a District Court Judge's assessment as being correct".

[12] The plaintiff refers to "new evidence" and to the fact that a portion of a transcript was missing from evidence. The plaintiff asserts (as he did in submissions in this proceeding) that there was no collateral attack by him on court decisions. He then asserts that his claim "was justified to protect the third defendant from the criminal inspired abuse of process".

[13] Turning to the first and second defendants the plaintiff accepts it would be appropriate to award costs in their favour were it not for "the undisputable fact that the third defendant, under the guidance of the judicial officer, did not, and does not, agree with the first and second defendants". The plaintiff further submits that counsel for the first and second defendants was not professionally independent. He says his claim against the first and second defendants was justified.

[14] The plaintiff's submissions are respectfully and temperately cast. But running through them remains the theme that the various proceedings he has launched were justified and there is an undisputable central core to his claims which is unassailable.

[15] Lay litigants are not immune from costs awards.[2] The starting point must be that costs follow the event, as I indicated in [29] of my 1 May 2012 judgment. 2B costs were awarded against the plaintiff previously in respect of another successful strike out application determined by Andrews J.[3]

[16] The defendants are clearly entitled to costs. No reason has been advanced by the plaintiff as to why costs should not follow the event.

[17] On the question of whether the defendants are entitled to 2B costs or indemnity costs I accept that Crown Law has incurred considerable and unnecessary expense. Had the plaintiff's sought competent legal advice, or been able to reflect objectively on his situation, his proceeding would probably never have been filed. But I see little point in awarding indemnity costs. Despite the fact that the plaintiff fits neatly inside the ambit of Rule 14.6(a), I retain a discretion.

[18] Were I to award indemnity costs, thus making an example of the plaintiff, this would undoubtedly have the effect of inflaming his unfounded sense of grievance. I observe too that the Solicitor-General has been on the receiving end of most if not all of the plaintiff's related proceedings. This proceeding was to some extent predictable and could have been cut off at the pass had steps been taken to have the

[2] *Aplin v Lagan* (1993) 10 FRNZ 562 at 576; *Belling v Belling*(1996) 9 PRNZ 296. Both are cases before the current costs regime which is designed to bring some certainty in the costs area.
[3] HC Hamilton CIV-2010-419-975, 1149, 1502,1682, 256, 369, 533 & 112, 14 July 2011.

plaintiff declared a vexatious litigant. In short, the costs to the public, to which Mr Soper fairly points, had a controlling remedy available.

Result

[19] In the circumstances, I consider the normal 2B costs award is appropriate. The plaintiff is thus ordered to pay the sum of $14,329.10, inclusive of disbursements and GST to the defendants.

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Priestley J