

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

**I TE KŌTI MATUA O AOTEAROA  
TE WHANGANUI-A-TARA ROHE**

**CIV-2019-485-000731  
[2020] NZHC 3253**

BETWEEN                      GARTH BOWKETT PATERSON  
   Plaintiff  
  
AND                                ATTORNEY-GENERAL  
   Defendant

Hearing:                      22 September 2020

Appearances:                G B Paterson (Self-represented Plaintiff) in Person  
   H M Carrad and L Dittrich for Defendant

Judgment:                    9 December 2020

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**JUDGMENT OF EDWARDS J**

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*This judgment was delivered by me on 9 December 2020 at 4.00 pm  
pursuant to r 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

Solicitors:    Crown Law, Wellington

Copy To:      G B Paterson, Australia

[1] An application to bankrupt Mr Paterson was set down for hearing on 5 April 2016. Mr Paterson was served with formal notice of that date and was aware that the hearing could go ahead in his absence.

[2] The daily list for the Wellington High Court published on the Courts of New Zealand website (daily list) showed that there were no scheduled hearings on 5 April 2016.

[3] Mr Paterson did not attend the bankruptcy hearing in person; nor did he arrange for counsel to attend on his behalf. He was subsequently adjudicated bankrupt. Mr Paterson made two attempts to annul the bankruptcy which were unsuccessful at first instance and on appeal.<sup>1</sup>

[4] Mr Paterson now claims that the omission of his bankruptcy hearing on the daily list:

- (a) breached his right to natural justice under s 27(1) of the New Zealand Bill of Rights Act 1990; and
- (b) was a negligent misstatement of fact; and
- (c) breached a duty of care owed to him.

[5] He seeks declarations to the effect that the elements of his pleaded causes of action have been established, as well as damages and costs.

### **The facts in more detail**

[6] In 2015 Mr Paterson and his company, GLW Group Ltd, were ordered to pay costs and disbursements in the sum of \$8,875.24. It is unnecessary to set out the background to this debt in any detail except to say that it was one of several debts on which the creditor's application for liquidation of GLW Group Ltd had been made.

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<sup>1</sup> *Paterson v Lepionka & Company Investments Ltd* [2016] NZHC 1331; *Paterson v Lepionka & Company Investments Ltd* [2018] NZHC 3022; and *Paterson v Lepionka & Company Investments Ltd* [2019] NZCA 548.

[7] On 8 February 2016, Mr Paterson was served with a creditor's application to adjudicate him bankrupt, a supporting affidavit, and a summons. Both the application and the summons were addressed to Mr Paterson and summonsed him to attend a hearing on 5 April 2016 at 10.00 am. The summons explicitly stated that if Mr Paterson did not attend the hearing, the Court would proceed in his absence.

[8] In an affidavit sworn in this proceeding, Mr Paterson says that he had been made aware of the proceedings and the hearing on 5 April 2016, but essentially believed the claim was vexatious and would probably be discontinued at the very last moment.

[9] Mr Paterson spoke to the Deputy Registrar on the afternoon of 4 April 2016. He subsequently emailed the Court either later that evening or in the early hours of 5 April 2016 saying that he would not be appearing at the hearing as he resided in Australia and he needed to be present in that country for a pressing personal matter. He advised that the debt amount had been paid into trust and he expressed some concern that the monies claimed were not in fact due and owing.

[10] Later that evening, Mr Paterson says he became more anxious, thinking that the information in his email might not be sufficient if the hearing did go ahead and so he decided he should have someone represent him in Court on 5 April 2016. At approximately 12.32 am Sydney time (2.32 am NZ time) on the morning of 5 April 2016, he visited the Courts of New Zealand website to check the daily list. When he did so, he saw that there were no scheduled sittings for that day. Mr Paterson says he relied on the daily list and did not attend the hearing or instruct counsel to represent him. He was subsequently adjudicated bankrupt.<sup>2</sup>

[11] Mr Paterson did not appeal the decision, but he applied to annul the adjudication of bankruptcy on two occasions. Both annulment applications were dismissed. The second dismissal was upheld on appeal in a decision of the Court of Appeal dated 12 November 2019.<sup>3</sup>

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<sup>2</sup> *Lepionka & Company Investments Ltd v Paterson* HC Wellington CIV-2015-485-973, 5 April 2016.

<sup>3</sup> *Paterson v Lepionka & Company Investments Ltd* [2019] NZCA 548.

## **Publication of the daily list**

[12] The daily list is a list of Court fixtures in a High Court Registry for the day. It contains information regarding the time for the fixture, the High Court Judge dealing with that fixture, and the courtroom for the hearing.

[13] Auckland High Court Registry staff compile the daily list for each of the Registries. It is then emailed to the website administrator for the Judicial Office for Senior Courts (now known as the Office of the Chief Justice) for publication. The email is sent in the afternoon of the day prior to the date of the list. It is sent in word format and then converted to a PDF document by the website administrator for publication.

[14] The website administrator does not have access to the case management system used by Court Registry staff for management of Court proceedings and cannot verify the accuracy of the information provided by the Registry.

[15] As at 5 April 2016, there was a link on the Courts of New Zealand website to a disclaimer. Clicking on the link revealed the following disclaimer:

This website is still under development and as a result we might change, add or remove information on this website without telling you.

This website provides general information for the public.

We have been careful to make sure that the information is correct but we are not legally liable or responsible if it isn't, or if there is any information missing.

None of the content on this website is a promise from the Government or us. None of it can be thought of as legal advice. You should get such advice from an appropriate professional.

We are not responsible for any website that we link to, or for the content on those sites.

It is important that you remember this disclaimer when looking at anything on this website. All those accessing this website who ignore this disclaimer do so at their own risk.

[16] In addition, there was a statement on the last page of the daily list which provided:

This list is published by the Ministry of Justice on behalf of the High Court of New Zealand.

The Ministry has taken all reasonable measures to ensure the quality and accuracy of the information contained in this list. However it is the responsibility of users of the information contained in this list to ensure compliance with conditions, including suppression, or other legal obligations governing access, release, storage and re-publication.

Details may be subject to change at short notice and is intended as a guide only.

If in doubt you should consult the appropriate Court:

<https://www.courtsofnz.govt.nz/utilities/contact/courts/#high-court>

[17] Occasionally the Auckland High Court Registry sends revised daily lists and the website administrator will replace the published list from earlier in the afternoon.

[18] In this case, the website administrator received the daily list for 5 April 2016 just after 4.00 pm on 4 April 2016. It was converted to a PDF and published at around 4.30 pm that day. An amended daily list was not provided. However, a paper copy of the daily list for the Wellington High Court for that day which was displayed at the Wellington High Court listed the fixtures for that day including the bankruptcy and liquidation list at 10.00 am.

### **In what capacity is the Attorney-General sued?**

[19] In his statement of claim, Mr Paterson pleads that the Attorney-General is sued for the actions of the Ministry of Justice.

[20] The Ministry of Justice is responsible for Courts and Tribunals and providing administrative support to the judicial branch. The respective functions of the judiciary and the Ministry relating to the administration of courts are outlined in a statement of principles published on the Courts of New Zealand website.

[21] Judicial responsibilities include the scheduling of Court fixtures, the assignment of Judges and judicial officers, and the listing of cases and application. Those responsibilities also include the direction and supervision of Registry staff in

relation to the business of the Court and the control and supervision of the use of information technology for the business of the Court.<sup>4</sup>

[22] The Attorney-General says that it is the Auckland High Court Registry, exercising the judicial function, which is responsible for the content of the list, while the Ministry is responsible for its publication. The Attorney-General therefore defends the claim on the basis that the Ministry is sued in respect of the latter function, and the claim is that the Crown is vicariously liable for the acts of the website administrator. I approach the claim on that basis.

### **A breach of natural justice?**

[23] Mr Paterson claims that the publication of the daily list breached his right to natural justice under s 27(1) of the New Zealand Bill of Rights Act 1990. He says that due to the misinformation on the daily list, he believed there was no requirement to attend the Court that day, and no need to appear. On that basis he says that he was denied the opportunity to be represented and heard at the hearing, and the opportunity to contradict the case against him.

[24] As Mr Paterson submits, a right to natural justice includes, as a minimum, the right to notice and the opportunity to be heard.<sup>5</sup> But Mr Paterson's claim falls short when it comes to establishing breach of these rights in this case.

[25] Mr Paterson was afforded the right to notice when he was formally served with the bankruptcy documents containing the date and time of the bankruptcy hearing. That notice afforded him a right to engage counsel to appear on his behalf. He was also afforded an opportunity to be heard at that hearing, and therefore afforded an opportunity to contradict the case against him. Mr Paterson chose not to appear, nor to instruct counsel to appear on his behalf. He was aware that the hearing on 5 April 2016 would proceed in his absence, and that is what occurred.

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<sup>4</sup> "The Statement of Principles" (29 November 2018) <[www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz)>.

<sup>5</sup> See generally: Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015).

[26] It is not correct for Mr Paterson to say that he was notified by the defendant via the daily list that there were no hearings on 5 April 2016. The daily list does not contain formal notice of a hearing. The disclaimer makes that explicit, but it is not necessary for there to be a disclaimer to establish the point. If Mr Paterson chose to rely on the daily list, then he did so at his own risk.

[27] Mr Paterson cannot establish a breach of his right to natural justice and this cause of action is dismissed.

### **A duty of care?**

[28] In Mr Paterson's second cause of action, he alleges that the Ministry of Justice made a misstatement of fact and was negligent in doing so. In the third cause of action, Mr Paterson claims that he has a right to a duty of care with that duty breached "by way of gross negligence by the Ministry of Justice".

[29] The difference between the two causes of action is difficult to discern. Mr Paterson's reliance on the inaccurate publication of the daily list is at the heart of both. That suggests that both causes of action are essentially claims for negligent misstatement despite being pleaded in different terms. Nevertheless, I approach the causes as if they are claims for negligent misstatement and negligence respectively. The first question for both causes is whether the website administrator owed Mr Paterson a duty of care.

[30] An assumption of responsibility, proximity between the parties (sometimes referred to as a "special relationship"), foreseeability of harm, and public policy factors are all ingredients of a duty of care. Reliance is another factor present in negligent misstatement cases. The ultimate question is whether it is fair, just and reasonable to impose a duty of care in a particular case.<sup>6</sup>

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<sup>6</sup> For a summary of the principles relating to negligent misstatement see Stephen Todd and others, *Todd on Torts* (8th ed, Thompson Reuters, Wellington, 2019) at [5.8] and following. See also the summary of principles in *Invercargill City Council v Southland Indoor Leisure Centre Charitable Trust* [2017] NZCA 68, [2017] 2 NZLR 650 at [85]. That formulation was not disturbed on appeal in *Southland Indoor Leisure Centre Charitable Trust v Invercargill City Council* [2017] NZSC 190, [2018] 1 NZLR 278.

[31] None of these elements are present in this case. There are no features which indicate that the website administrator, as publisher of the list, assumed responsibility for any harm suffered by Mr Paterson in relying on it. The daily list is not intended to be formal notification of a hearing date. Its function is to simply inform the public in general of what is going on in the Court and in that way facilitate and promote the principle of open justice.

[32] Communications about fixtures are issued by the Registry directly to the litigants involved. In this case, Mr Paterson received formal notification of the hearing date when he was served with the creditor's application and summons to debtor. He communicated directly with the Registry office about the hearing, including emailing the Registrar with information which he wished to place before the Court. It is not reasonably foreseeable that Mr Paterson would rely on the daily list as formal notification about whether a hearing was proceeding in those circumstances. Reliance on the daily list as formal notification is not reasonable in those circumstances either.

[33] That broader context dispels any suggestion of a proximate relationship between the website administrator and Mr Paterson. It also means that it is not fair, just and reasonable to impose a duty of care on the website administrator. The website administrator's role is not content based. He or she does not have access to the case management system used by the Court Registry staff to compile the daily list, and relies on the accuracy of the information provided to him or her. In that sense, the website administrator is in no better position than Mr Paterson.

[34] The disclaimer clauses are also relevant in determining whether there was a duty of care. Taken in isolation, there may well be arguments about whether the disclaimer on the website, which is accessed only by clicking on a link, constitutes reasonable notice of the disclaimer. But that issue does not arise in relation to the statement at the end of the daily list which confirms that the list is "intended as a guide only". The conclusions regarding a duty of care may be reached irrespective of the disclaimers. But to the extent that they are taken into account, they confirm the lack of proximity between the parties, and the unreasonableness of any reliance placed on the lists as formal notice of a fixture.

[35] To conclude, I am not satisfied that the website administrator, or the Ministry of Justice, owed Mr Paterson a duty of care to ensure the accuracy of the content contained in the daily list. This is fatal to both the second and third causes of action and they are dismissed.

[36] This finding makes it unnecessary to go on and consider the other elements of the cause of action, and whether vicarious liability should be imposed. For completeness, I note that even if a duty of care could be established, and breach was made out, I would have otherwise dismissed Mr Paterson's claims on the grounds that there was no causative link between the omission in the daily list and his bankruptcy adjudication.

### **Result**

[37] Mr Paterson's claim is dismissed. If costs are sought and cannot be agreed, then a memorandum of counsel in support of costs may be filed 10 working days after receipt of this judgment, with a memorandum in opposition filed five working days thereafter. Memoranda shall not exceed five pages in length.

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Edwards J