IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2020-485-000757
[2021] NZHC 2524

BETWEEN	SERGEY GRISHIN Applicant
AND	JOHN BOWIE Proposed Defendant/Respondent

Judgment: 24 September 2021

JUDGMENT OF GENDALL J
(Determined on the papers)

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[1] On 27 May 2021 I gave a judgment in this matter granting the applicant Mr Grishin's application for pre-commencement discovery against the proposed defendant and respondent Mr Bowie. Orders were made in favour of Mr Grishin and costs were awarded to him on the application and a substituted service application on a category 2B basis together with disbursements as approved by the Registrar.

[2] Mr Bowie has now filed a memorandum in this Court dated 15 September 2021 which effectively comprises an application pursuant to r 14.8(2) of the High Court Rules seeking the order for costs noted above be altered, varied or discharged and that instead costs on this interlocutory matter should be reserved until any substantive proceeding is disposed of.

[3] In response to this memorandum, counsel for Mr Grishin has filed a memorandum dated 23 September 2021 opposing, first, any reversal, discharge or variation of the costs order and, secondly, any suggestion that instead costs on the interlocutory application should have been reserved.

[4] Rule 14.8 of the High Court Rules provides:

> **14.8 Costs on interlocutory applications**
>
> (1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,—
>
> (a) must be fixed in accordance with these rules when the application is determined; and
>
> (b) become payable when they are fixed.
>
> (2) Despite subclause (1), the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.
>
> (3) This rule does not apply to an application for summary judgment.

[5] The rationale for this rule is outlined at *McGechan on Procedure*[1] at para HR14.8.04:

> The rule reflects the fact that the merits of particular applications and those of the substantive proceeding are different matters: *Chapman v Badon Ltd* [2010] NZCA 613…This is the position even in relation to interim property distribution and maintenance orders in the family law context…
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> Further, the rule recognises that the costs of an interlocutory application are best fixed contemporaneously by the judge or associate judge who decides it. Where, for special reasons, costs are reserved, it may be wise to fix their quantum…At the least it is appropriate that the Court record the hearing time involved and perhaps stipulate the appropriate time band (under r 14.5).

[6] As to the question whether any "special reasons to the contrary" might exist before delaying the fixing of costs on an interlocutory application, McGechan on Procedure states at HR14.8.03:

> In *Craig v Social Media Consultants Ltd* [2017] NZHC 1613 at [20], the Court found that it was a special reason warranting the reservation of costs that there needed to be an evaluation of the merits of the plaintiff's claim in order to evaluate whether a reduction of costs under r 14.7(b)–(c) was appropriate.
>
> …

[7] And, regarding the grounds advanced by Mr Bowie in support of his current application, initially he contended that important arguments arise here pursuant to s 68

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1 *McGechan on Procedure* (online ed).

of the Evidence Act 2006 regarding confidentiality of sources and issues of media freedom and privacy. I disagree however – this is not the case here. Mr Grishin's application before me was simply one determining who was involved in a chain of publication of the articles in issue which were said to defame Mr Grishin. This included identifying who went under assumed names of "LawFuel Editors" and "LA Correspondent". As I see it, this had nothing to do with protection of sources as commonly understood.

[8] So far as costs for the substituted service application were concerned, as I understand the position, Mr Bowie was asked to provide the information requested in Mr Grishin's application and it was only when, in correspondence with Mr Grishin's lawyers, he refused, that the application became necessary.

[9] Finally, addressing the costs I awarded, standard Schedule 2B scale costs which were awarded for one counsel without certification for second counsel. The amounts concerned, as I see it, are in order.

[10] Broadly speaking, I am satisfied that Mr Bowie himself could have avoided those costs here if he had voluntarily provided the information (subsequently ordered against him) when he was requested to do so.

[11] There is nothing he has put before the Court to suggest the original costs order was one that should not have been made and that necessitates, therefore, the reversal, discharge or varying of that order pursuant to r 14.8(2) of the High Court Rules. This is a case, as I see it, where costs needed to be fixed in accordance with the High Court Rules when Mr Grishin's interlocutory application was determined. No special reasons of any kind have been put before me to displace this rule that costs follow the event. Here it was appropriate costs were fixed when the application was determined. Those costs then become payable once fixed in terms of r 14.8(1).

[12] As I see it, there is nothing of substance in Mr Bowie's application before me. It entirely lacks merit and is dismissed. My costs order remains and is payable.

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Gendall J

Solicitors:
Simpson Grierson, Auckland

Copies to:
William Akel, Barrister, Auckland
John Bowie – Proposed Defendant/Respondent