

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

**CIV-2014-404-001733  
[2014] NZHC 3192**

BETWEEN

EQUITY TRUST INTERNATIONAL  
LIMITED  
First Plaintiff

LILIYA SOBOLEVA  
Second Plaintiff

EVGENY ORLOV  
Third Plaintiff

EQUITY LAW CHAMBERS  
Fourth Plaintiff

AND

TRANSPARENCY NEW ZEALAND  
LIMITED  
First Defendant

GRACE HADEN  
Second Defendant

Hearing: 9 December 2014

Counsel: M Locke and J Leenoh for Plaintiffs  
Second Defendant in person

Judgment: 12 December 2014

---

**JUDGMENT OF ASHER J**

---

*This judgment was delivered by me on Friday, 12 December 2014 at 3pm  
pursuant to r 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

Solicitors: Stewart & Associates  
Copy to: Second Defendant

## **Introduction**

[1] This is an application to strike out a defamation proceeding brought by the defendants. Because this is a strike out application I do not propose setting out the background in detail. It is sufficient to say that the plaintiffs and defendants had a professional and business relationship which broke down and became acrimonious.

[2] The plaintiffs allege that Ms Haden and Transparency New Zealand Ltd, which she controls, caused to be published or published on Transparency's website three articles which are said to have been defamatory.

[3] The first was entitled "International fraud connection with Equity Law". The article asserted that a Mr Erik Vanagels controlled various companies registered to him. It goes on to say that the second plaintiff, Ms Liliya Soboleva, is the wife of the third plaintiff, Mr Evgeny Orlov, and that Ms Soboleva held some 1,500 companies that are referred to as "Orlov companies". Photographs are shown of Ms Soboleva and Mr Orlov.

[4] The second article refers to Equity Trust International Ltd, the first plaintiff, and Ms Soboleva. There was some discussion in the article about various matters including the "Orlov[']s ventures" and a statement about the cost of setting up a company in New Zealand and "... would you want to pay through the nose to set up a company which is associated with the Russian MAFIA".

[5] The third article, which is headed "New Zealand a soft touch with fraudsters and money launderers", asserts that "Boozy Latvian 'billionaire' is smokescreen for fraud" and that the company he fronts is Equity Trust International Ltd, a company operated by Ms Soboleva, the wife of Mr Orlov of Equity Law. There are then references to people setting up "dodgy companies", "dodgy directors" and "inappropriate" use of charitable funds.

[6] It is said at paragraph 21 of the statement of claim referring to the article:

In their natural and ordinary meaning, the said words were meant and were understood to mean that the Plaintiffs were jointly and severally intentionally involved in illegal or unlawful business and/or money

laundering and/or fraud and/or tax evasion and/or were connected with The Russian Mafia and/or organised crime.

[7] At paragraph 22 further detailed “innuendos” are pleaded. I will not set them out, but they include an assertion that:

The publication of the Second and Third Plaintiffs photographs on a website dedicated to corruption and crime under the caption of fraud connection with Equity Law carried the innuendo that the Plaintiffs were deliberately connected to fraud.

### **The application**

[8] The application on behalf of the two defendants was presented by Ms Haden herself. She filed a written submission. She criticised the actions of the solicitor who has signed the notice of proceeding as solicitor for the plaintiffs, observing that she is a relatively newly admitted solicitor and not a partner. She complains about the actions of the solicitors on the record shown for the plaintiffs. She makes various negative comments about Mr Orlov’s personality and actions. She says that there have been many mistakes made in the conduct of the proceedings and gives details. She refers to complaints she has made about Mr Orlov and submits that there is nothing original in the claim as allegations are made against Mr Orlov with “regular monotony”. She states that the statement of claim is unsupported by evidence. She asserts that the proceedings are vexatious and more a personal attack on her, and motivated by “maliciousness”.

[9] Ms Haden asserts that Mr Orlov had been invited to amend the posts on her website if he wished and had not done so. She asserts that the proceedings are an abuse of process as they have been brought with the ulterior purpose of attacking her personally.

### **Assessment**

[10] Rule 15.1(1) of the High Court Rules provides:

#### **15.1 Dismissing or staying all or part of proceeding**

(1) The court may strike out all or part of a pleading if it—

- (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of the process of the court.

[11] I do not propose reiterating the principles that apply to striking out applications, which are now well settled. A striking out application proceeds on the assumption that the facts pleaded in the statement of claim are true. It is well settled that before a Court may strike out a proceeding the causes of action must be so clearly untenable that the Court is certain that they cannot possibly succeed.

[12] The pleading is not, in my view, so untenable that it cannot possibly succeed. It is certainly arguable that the articles, in particular the extracts I have referred to, implicate all of the plaintiffs in a fraudulent scheme involving the Mafia and money laundering. I do not express any view on whether it will be proven that this was the meaning. That will be a matter for the trial. However, the “clearly untenable” test is missed by a considerable margin. A Court could hold that articles are defamatory, and it could be that a damages award would follow.

[13] Ms Haden’s other submissions relate to matters that do not go to the core issue of whether a reasonable cause of action is disclosed. The proceeding cannot be said to be frivolous or vexatious. It cannot be said that allegations of defamatory statements that a person is working with or for the Russian Mafia and with money launderers and is involved with companies set up for an illegal purpose, are of no importance, and cannot have serious consequences for the persons who are the subject of them.

[14] Equally, while there are some pleading errors and there have been other irregularities, there is no action on the part of the plaintiffs that comes close to indicating an abuse of the process of the Court. A solicitor may sign a notice of proceeding, and there is no requirement that the solicitor has a particular level of seniority.<sup>1</sup> There is no evidence showing that the Court processes are being

---

<sup>1</sup> High Court Rules, r 5.23(1)(a).

exploited for an improper purpose. The fact that the plaintiffs want to stop the publications and obtain damages is not an improper purpose, and if it is part of a wider dispute, it is a common situation in defamation proceedings and not a ground for strike out.

[15] There are no special damages set out in the statement of claim. However, under ss 4 and 5 of the Defamation Act 1992 this is not necessary.

[16] There are also causes of action of malicious falsehood and breach of undertaking. These causes of action are not addressed in any particular way in Ms Haden's submissions and I can see no basis for striking them out.

[17] Thus, no strike out grounds being made out, the application must be dismissed.

### **Costs**

[18] There are two pleading errors where there is reference to incorrect numbered paragraph numbers. Also a barrister's name has been incorrectly shown as counsel, when that barrister was not in fact briefed as counsel in the case. Importantly the proceedings got off to a bad start when an associate of Ms Haden's, a Rochelle Butt, was it seems wrongly joined to the proceedings as third defendant. The proceeding against her has been discontinued.

[19] It is also to be noted that the proceedings were served before they were filed, although I note that the proceedings were then re-served.

[20] These errors, in particular the reference to the wrong barrister and the inclusion of a wrong defendant, are not trivial, and I accept that sorting them out will have put the defendants to some extra effort and time. Usually costs would follow the event where an application of this type fails. However, in this case I propose discounting the scale costs by one-half on account of these errors.

[21] I am not asked to certify for second counsel, and as this has not been a complex or difficult hearing I will not do so.

**Directions**

[22] Given that I am dismissing this application, it is appropriate that the proceedings be progressed.

[23] I direct that a statement of defence be filed within 20 working days.

[24] I direct that this is to be treated as an ordinary proceeding and allocated a case management conference in the usual way.

**Result**

[25] The application to strike out the statement of claim is dismissed.

[26] The plaintiffs are entitled to costs from the defendant, which I set as one-half of the 2B scale for one counsel. The plaintiffs are entitled to their full disbursements.

.....

**Asher J**