

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

**CIV-2015-404-1536  
[2016] NZHC 2628**

BETWEEN                      MARTIN VICTOR LYTTTELTON  
   Plaintiff

AND                              NZME PUBLISHING LIMITED  
   Defendant

Hearing:                      2 November 2016

Appearances:              Plaintiff in person  
   AL Ringwood for Defendant

Judgment:                    2 November 2016

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**JUDGMENT OF TOOGOOD J  
[Consent Orders striking out part of pleading]**

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*This judgment was delivered by me on 2 November 2016 at 3.00 pm  
Pursuant to Rule 11.5 High Court Rules*

*Registrar/Deputy Registrar*

[1] Mr Lyttleton has commenced defamation proceedings against NZME Publishing Limited (“NZME”) alleging that, in 2009 and 2010, NZME published a number of articles that contained defamatory statements about him.

[2] NZME applies to have a number of paragraphs struck out of Mr Lyttleton’s statement of claim dated 29 August 2016, primarily on the basis that they are in the nature of submissions and evidence, and that they are prolix and irrelevant.

### **Background**

[3] Mr Lyttleton is self-represented. He filed his original statement of claim in July 2015 and has since filed three amended statements of claim; two of which were filed following the directions of this Court. The most recent, which is the subject of this proceeding, was filed on 30 August 2016. The document itself is entitled “Plaintiffs Revised Statement of Claim”; I will call it “the revised claim”.

[4] The revised claim is divided into five “parts”; Part C is headed “The Statutory Law and Common Law Applicable to the Plaintiffs Claim”. It comprises paragraphs 11 to 70 of the 90-paragraph document, along with an unnumbered paragraph before paragraph 11.

[5] The material in Part C purports to summarise aspects of New Zealand’s defamation law, and is interspersed with various submissions and some references to evidence. A large portion of the legal material appears to be included in anticipation of defences that Mr Lyttleton believes NZME might raise. Various assertions of law are made, and the Defamation Act 1992 and various cases are cited throughout. The material is separated by headings such as “Publication on the internet is publication for defamation purposes”, “A legal defence of truth” and “Evidence of Ill will and Improper Advantage by NZME”.

### **Application**

[6] Mr Ringwood for NZME submitted that the material in Part C of the revised claim should be struck out because it is in the nature of submissions and evidence,

and also because it is both prolix and irrelevant to the pleading of the cause of action.

[7] In response, Mr Lyttleton has explained that his intention in drafting Part C was to define the legal issues in advance of a jury trial so the defendant can be properly informed of the case it has to meet. He hoped that NZME would respond to the pleadings in Part C to assist the Court in determining the relevant legal issues in advance of the trial.

[8] Mr Lyttleton also suggested that, to the extent NZME considers Part C of his pleading to be irrelevant, it is able to say so in its pleadings. He notes that NZME did so in its earlier statement of defence, where it pleaded:

The defendant is not required to plead paragraphs 11-70 of the statement of claim (being in the nature of submissions).

### **Principles of law**

[9] Rule 15.1 of the High Court Rules gives this Court jurisdiction to 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.

[10] The Court of Appeal summarised the relevant pleading principles in *Commissioner of Inland Revenue v Chesterfield Preschools Ltd*:<sup>1</sup>

[84] The procedural requirements for statements of claim are spelled out in the HCR. For present purposes r 5.17 (distinct matter to be stated separately), r 5.26 (statement of claim to show nature of claim) and r 5.27

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<sup>1</sup> *Commissioner of Inland Revenue v Chesterfield Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679.

(statement of claim to specify relief sought) describe the key principles. In summary they are:

- The pleading must be accurate, clear and intelligible.
- Sufficient particulars must be given to enable the defendant to be fairly informed of the case to be met.
- While adequate particulars are required, the statement of claim must not stray into setting out the evidence relied upon.
- Separate causes of action must be separately stated.
- The pleading should set out all the elements of the cause of action (in this case misfeasance).
- The relief sought must be clearly pleaded in respect of each cause of action and, where there is more than one plaintiff and multiple defendants, the relief sought by each plaintiff against each defendant must be clearly stated.

[11] The Court further noted that :

[87] If a statement of claim has been drafted in compliance with the above requirements, then both the court and the defendant parties should have a clear understanding of what is being alleged and against whom. However, verbose, ill-drafted pleadings may defeat the purpose of a statement of claim to such an extent that it is an abuse of process. This principle is intended, as Odgers suggests, to “prevent the improper use of [the court’s] machinery”. Pleading should not be permitted to be a means of oppressive conduct against opposing parties.

[12] In *Craig v Stringer*, this Court required the defendant to amend pleadings that were in the nature of evidence and submissions.<sup>2</sup>

## **Discussion**

[13] At the beginning of the hearing I explained to Mr Lyttelton that I had read all of the relevant material, including his submissions. I said that I understood his position to be that, while Part C of the revised claim may not conform with the Court’s rules of procedure, he considered the pleading had a legitimate purpose in seeking to engage the defendant in responding to the legal and factual basis for his claim.

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<sup>2</sup> *Craig v Stringer* [2016] NZHC 362.

[14] I said that while I accepted that the purpose was legitimate, and the defendant and its advisers would now have a good understanding of his views, I agreed with Mr Ringwood that it was inappropriate to include the material in Part C in a statement of claim. I explained that the purpose of a statement of claim is to plead the material facts which a plaintiff relies on for his or her cause or causes of action at the date of filing. The identification of legal and factual issues which arise in the proceeding will occur in the course preparation of the case for trial in accordance with the case management procedure. The evidence will be exchanged in advance and submissions on specific legal matters will be called for in due course, either in interlocutory proceedings or in the course of the trial.

[15] I said it was particularly important in a civil case to be tried by a jury that the formal pleadings be kept within the prescribed limits.

[16] Mr Lyttelton responsibly acknowledged the position and said he would consent to an order striking out Part C so that the defendant is not required to plead to it. He agreed with Mr Ringwood, however, that I should record in this short judgment the reasons for the order.

### **Orders**

[17] By consent, I direct Mr Lyttelton to amend his statement of claim by removing the material in Part C, that being paragraphs 11 to 70 and the unnumbered paragraph immediately before paragraph 11.

[18] Costs are reserved for an exchange of memoranda. If the defendant wishes to apply for costs, it shall do so by a memorandum filed and served no later than **Friday, 18 November 2016**. Mr Lyttelton shall have until **Friday, 2 December 2016** to file and serve a memorandum in reply. Costs shall then be determined on the papers unless the Court directs otherwise.

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**Toogood J**