

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

**CIV-2015-404-2882  
[2017] NZHC 614**

UNDER the Defamation Act 1992  
BETWEEN COLIN GRAEME CRAIG  
Plaintiff  
AND JACQUELINE STIEKEMA  
Defendant

Hearing: 29 March 2017  
Appearances: Plaintiff in person  
P A McKnight for Defendant  
Judgment: 29 March 2017

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**ORAL JUDGMENT OF ASSOCIATE JUDGE R M BELL**

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***Solicitors:***  
Langford Law (J A Langford), Wellington, for Defendant

***Counsel:***  
P A McKnight & A J Romanos, Wellington, for Defendant

***Copy for:***  
Colin Graeme Craig, Albany, Auckland.

[1] Mr Craig is suing Ms Stiekema in defamation. Mr Craig is not legally represented. At the outset of the proceeding Ms Stiekema did not have legal representation either. Happily she has now instructed counsel. I am grateful for Mr McKnight's participation.

[2] Mr Craig's statement of claim has three causes of action. The first alleges defamatory publication in a Facebook page; the second and third go to publications by Ms Stiekema to a Mr Stringer. In each cause of action Mr Craig seeks general damages of \$50,000 and aggravated damages of \$30,000 so that the total amount of his claim comes to \$240,000. When he began the proceeding in 2015 the jurisdiction of the District Court was limited to \$200,000. Since then, the District Court Act 2016 has come into force and the jurisdiction of the District Court has been increased to \$350,000. Mr Craig has applied to transfer this proceeding to the District Court now that the amount of his claim is within the jurisdiction of that court.

[3] At the same time, Ms Stiekema has given a notice under r 7.16 of the High Court Rules requiring trial by jury. Under the Senior Courts Act 2016, a right to trial by jury is reserved for defamation proceedings, subject to the court's power to order otherwise in certain cases of complexity.<sup>1</sup> Those are cases involving difficult questions of law and ones that involve prolonged examination of documents or require matters of specialist expertise.<sup>2</sup>

[4] This conference was held to give case management directions. The transfer question needs to be decided first before any directions can be given for Ms Stiekema's strike-out application. Clearly, if the case is not to stay in this court it is inappropriate to deal with any strike-out applications here. Forum needs to be decided first.

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<sup>1</sup> Senior Courts Act 2016, s 16.

<sup>2</sup> Senior Courts Act, s 16(4).

[5] At the start of the conference I asked Mr Craig and Mr McKnight whether they were prepared to address me on the transfer question. Both of them were willing to deal with the matter in the conference. I heard submissions from them both.

[6] The provision for transfer from the High Court to the District Court is s 94 of the District Court Act 2016. That is in the same terms as s 46 of the District Courts Act 1947. I am dealing with the matter under s 94(1) because Mr Craig has made a formal application for transfer. I am not dealing with the matter on my own initiative under s 94(2). Because s 46 of the 1947 Act and s 94 of the 2016 Act are in the same terms, case law under the 1947 Act is also relevant to any decisions under s 94 of the 2016 Act.<sup>3</sup> Case law under the 1947 Act has identified these matters as relevant:

- (a) the nature of the case;
- (b) the complexity of the case;
- (c) whether the case is of general or public importance;
- (d) the amount in issue;
- (e) the likely length of hearing; and
- (f) the financial resources of the parties.

[7] In a decision I have given on a transfer application under s 46 of the 1947 Act, I have also taken into account the differences in appeal pathways.<sup>4</sup> A civil appeal from the District Court is to a single judge in the High Court. An appeal from the High Court is to the Court of Appeal, which sits in panels of three.

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<sup>3</sup> *Moodie v Lane* HC Auckland, CP 1484/87, 18 September 1990; *Tapp v Elders Real Estate* HC Whangarei CP70/90, 15 October 1990.

<sup>4</sup> *Human Resources Institute of New Zealand v Elephant Training & HR Ltd* [2015] NZHC 2739 at [10] and [27].

[8] There is no presumption either way as to the initial choice of forum. In this case there is no presumption against Mr Craig for having filed in this court because the amount of his claim was outside the jurisdiction of the District Court.

[9] Defamation proceedings may be suitable for hearing in the District Court. I refer to my decision in *Human Resources Institute of New Zealand v Elephant Training and HR Ltd.*<sup>5</sup> The point made in that decision was that New Zealand does not follow the English practice of reserving defamation proceedings for the High Court.<sup>6</sup> The enactment of the District Court Act 2016, which preserves the District Court's civil jurisdiction and increases it for claims up to \$350,000 without excluding defamation claims, may be seen as confirmation of that.

[10] Defamation proceedings in the District Court are not uncommon. The District Court is well-suited to defamation claims where the amounts in issue are relatively modest and where the extent of publication is not broad.

[11] As a defamation proceeding, this one does not appear to be particularly complex, although a number of issues are raised. Ms Stiekema's strike-out application raises the *Jameel* principle.<sup>7</sup> It attacks the meanings claimed by Mr Craig and also alleges that the pleaded meanings are not serious enough to be defamatory. There are indications that further defences such as truth, qualified privilege and honest opinion will be pleaded. But those are all fairly standard issues in a defamation proceeding.

[12] Mr Craig said that there will be efficiency and cost saving in running the case in the District Court. Mr McKnight did not accept that. He submitted that time and costs were likely to be more or less even, whether the claim is heard in the District Court or the High Court. If this case were a judge alone case in this court, I would agree with that. But a complicating factor is that Ms Stiekema has given a jury notice and in this court this case will be heard before a jury. My initial impression is that there is nothing in this case which could lead a Judge to bar a jury trial under s 16 of the Senior Courts Act 2016. The case is likely to

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<sup>5</sup> Above, n 4.

<sup>6</sup> At [20].

<sup>7</sup> *Jameel v Dow Jones & Co Inc* [2005] EWCA Civ 75, [2005] QB 946.

require longer hearing time in this court with a jury. There is likely to be greater delay in a trial being allocated than for a judge alone hearing.

[13] That leads me to the key issue on the transfer application - the mode of trial. Mode of trial can be a relevant factor in deciding transfer applications. The District Court Rules provide for different modes of trial: a short trial, a simplified trial and a full trial. Under the Senior Courts Act there are the options of a judge alone trial and jury trial. As that Act allows either party in a defamation proceeding to elect trial by jury, I have to decide whether a transfer should prevent that election. That requires a case-specific consideration. In a defamation proceeding involving two causes of action with very limited publication and a third cause of action involving publication on Facebook, where the damages claimed are within the jurisdiction of the District Court, should the matter be heard by a jury? There are no civil jury trials in the District Court. The amounts in issue there are not so great that the resources of a jury should be applied to decide cases. If this case were to stay in the High Court, members of the public would be required to take time which might extend over more than a week, possibly two or three weeks, considering carefully the allegations made by Mr Craig and the defences raised by Ms Stiekema. While it is understandable that jury trials may be in order for defamation proceedings where the damages claimed are more than \$350,000, I regard it as disproportionate to require a jury to make findings of fact and fix damages in a defamation proceeding where the claim is within the jurisdiction of the District Court.

[14] On that basis, I am satisfied that the case ought more properly to be heard in the District Court. I order a transfer of the proceeding to the District Court. That means that it will not be necessary for me to give directions on Ms Stiekema's strike-out application. A District Court Judge will deal with that instead.

[15] There is no order for costs, as Mr Craig does not have legal representation.

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**Associate Judge R M Bell**