

NOTE: DISTRICT COURT ORDER IN [2018] NZDC 15368 PROHIBITING PUBLICATION OF NAME, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF VICTIMS REMAINS IN FORCE.

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 78/2024
[2024] NZSC 167**

BETWEEN DERMOT GREGORY NOTTINGHAM
Applicant

AND ELIZABETH MAY CURRIE
First Respondent

JOHN DOE AND/OR JANE DOE
Second Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: Applicant in person
D M Connor and K M Muller for First Respondent

Judgment: 5 December 2024

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B The applicant must pay costs of \$2,500 to the first respondent.**
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REASONS

Introduction

[1] Mr Nottingham has filed an application for leave to appeal the decision of the Court of Appeal refusing to grant him an extension of time to file his case on appeal

under s 43(2) of the Court of Appeal (Civil) Rules 2005.¹ The extension of time related to Mr Nottingham's appeal to the Court of Appeal from a decision of the High Court in which, among other matters, his application to strike out a statement of claim on the basis of a time bar was declined.²

Background

[2] The background is set out in some detail in the Court of Appeal judgment.³ We need only note the following.

[3] The High Court judgment which Mr Nottingham was appealing to the Court of Appeal related to defamation proceedings. The proceedings were brought in the High Court in 2016 by Ms Currie and two co-plaintiffs in respect of publications on a website, *Lauda Finem*.⁴ The plaintiffs sought only declarations and costs, not damages. The identity of the publishers was uncertain. Mr Nottingham was identified as a person who might have an interest in the proceeding as he was believed to have an involvement in the website. Although he denied any involvement, Mr Nottingham was successful in his application to be joined to the proceeding as second defendant.

[4] Since then, Mr Nottingham took various steps in the proceedings, as a result of which matters have become protracted. His first statement of defence was filed on 10 December 2021.⁵ Ms Currie subsequently applied to strike out Mr Nottingham's statement of defence, debar him from defending the proceeding and list the claims for formal proof. Mr Nottingham applied, amongst other matters, to strike out Ms Currie's amended statement of claim.

[5] Ms Currie's applications were granted by the High Court. Mr Nottingham was unsuccessful. It was from the judgment of the High Court on these matters that Mr Nottingham appealed to the Court of Appeal. Mr Nottingham did not seek a stay

¹ *Nottingham v Currie* [2024] NZCA 269 (Katz, Mander and Osborne JJ) [CA judgment].

² *Currie v Doe* [2022] NZHC 1547 (Hinton J) [HC judgment].

³ CA judgment, above n 1, at [2]–[8].

⁴ The co-plaintiffs have since discontinued the proceedings, so Ms Currie is the sole plaintiff: at [1], n 1.

⁵ HC judgment, above n 2, at [8].

of enforcement of the High Court judgment so he has now been removed from the defamation proceedings.

[6] The appeal to the Court of Appeal was deemed abandoned under s 43 of the Court of Appeal (Civil) Rules after delays in filing the case on appeal.⁶ As we have said, the Court of Appeal dismissed Mr Nottingham's application for an extension of time.

The proposed appeal

[7] Mr Nottingham challenges the Court of Appeal's assessment that his appeal to that Court was in the clearly hopeless category. He says his arguments that the Limitation Act 2010 applies to bar the defamation claim are seriously arguable and that this Court recognised as much in its earlier judgment relating to these proceedings.⁷ He submits that his argument about the multiple publication rule is in the same category.

[8] Mr Nottingham says the litigation is plainly out of time and that there is authority for the proposition that s 9 of the Limitation Act, which states the Act may apply "by analogy to a claim in equity to which no defence prescribed by [the] Act applies", applies to the declarations sought in the defamation proceedings.⁸

[9] In opposing leave, the first respondent acknowledges that, in theory, the interaction between the limitation provisions relied on by Mr Nottingham and the defamation claim may give rise to a matter of general or public importance. But, the first respondent says "it would be wasteful and wrong" to allow the matter to proceed to this Court, "particularly having regard to the fifth publication discovered in 2020" which is included in the amended statement of claim of 14 December 2020.⁹

⁶ The Court of Appeal recorded that it appeared Mr Nottingham saw the delay, and explanation for the delay, as linked to issues concerning security for costs: CA judgment, above n 1, at [12].

⁷ *Nottingham v Maltese Cat Ltd* [2020] NZSC 36 (O'Regan and Ellen France JJ).

⁸ Citing *Driver v Radio New Zealand Ltd* [2019] NZHC 3275, [2020] 3 NZLR 76.

⁹ The first respondent also refers to what she says is an abuse of court processes, including the failure to pay awards of costs made against Mr Nottingham.

Assessment

[10] The proposed appeal would have this Court reprise arguments made in the Court of Appeal. The Court of Appeal applied the settled criteria in this Court's decision in *Almond v Read* in dismissing the application.¹⁰ The proposed appeal is directed to the application of those settled criteria to the specific facts of this case. No question of general or public importance arises.¹¹

[11] In terms of the factors discussed in *Almond v Read*, the Court of Appeal considered the six-month period of delay was unexplained; that Mr Nottingham's conduct included a lack of communication and cooperation with the Registrar although, despite being self-represented, Mr Nottingham is an experienced litigant; he had not conducted the appeal diligently, there was resultant prejudice to the first respondent from these delays; and the proposed appeal did not raise any reasonably arguable ground.

[12] Nothing raised by Mr Nottingham gives rise to the appearance of any error in the Court of Appeal's assessment of what the interests of justice required here.¹² In terms of the assessment of the strength of the appeal by the Court of Appeal, this Court in *Nottingham v Maltese Cat Ltd* noted Mr Nottingham's argument was that, because Ms Currie's claim included a claim for costs, it is a money claim and so time-barred if brought outside of the two-year limitation period.¹³ The Court noted Mr Nottingham also contended s 9 of the Limitation Act applies by analogy to a claim in equity in the circumstances set out in that section.

[13] In declining leave to appeal in that case, although acknowledging the argument based on s 9 was one the Supreme Court may wish to consider at some point, the Court said that this was not the appropriate case to address the question. The Court emphasised various factors including the fact the argument that provision for a costs award is a money claim for limitation purposes "has insufficient prospects of success

¹⁰ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801.

¹¹ Senior Courts Act 2016, s 74(2)(a).

¹² *Almond v Read*, above n 10, at [38].

¹³ See Limitation Act 2010, ss 11, 12 and 15; and see Defamation Act 1992, s 24.

to justify a further appeal”.¹⁴ The Court also said that a ruling on the effect of the Limitation Act provisions relied on:¹⁵

... would not, in any event, dispose of the case. That is because there would be a further question about the application of the multiple publication rule. That question would be whether, on the basis of the multiple publication rule, limitation is relevant at all where publication was via a website.

[14] Against that background, nothing raised by Mr Nottingham in the present application calls into question the Court of Appeal’s analysis of the strengths of the proposed appeal. No miscarriage of justice as that term is used in civil proceedings accordingly arises.¹⁶

Result

[15] The application for leave to appeal is dismissed.

[16] The applicant must pay costs of \$2,500 to the first respondent.

Solicitors:
DB Law, Auckland for First Respondent

¹⁴ *Nottingham v Maltese Cat Ltd*, above n 7, at [9].

¹⁵ At [9]; thus distinguishing the present case from *Driver*, above n 8.

¹⁶ *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].