

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CIV-2015-404-002882  
[2017] NZDC 19431**

BETWEEN

COLIN GRAHAM CRAIG  
Plaintiff

AND

JACQUELINE STIEKEMA  
Defendant

Decision: 1 September 2017  
(On the papers)

---

**DECISION OF JUDGE G M HARRISON AS TO COSTS**

---

[1] In my decision of 31 July 2017 I struck out Mr Craig's proceedings, claiming he was defamed by Ms Stiekema, by application of the *Jameel* decision. I reserved the question of costs on which the parties have been unable to agree and I have now received memoranda.

[2] This proceeding was transferred to this Court from the High Court by direction of Bell AJ on 29 March 2017. Normally I would not fix costs incurred in the High Court, that being a function for the discretion of a High Court Judge.

[3] It is implicit, however, in the order transferring proceedings to this Court that costs of the proceeding may be fixed in this Court even though some of them might have been incurred in the High Court. I therefore assess costs payable for the entire proceeding.

[4] Ms Stiekema seeks costs under various categories. It is convenient to deal firstly with her application for indemnity costs. These can only be awarded pursuant to r 14.6(4) District Court Rules 2014 and in particular, where a party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding. The other criteria of that sub rule are not relevant.

[5] I do not accept that Mr Craig's claim falls within any of those categories.

[6] My decision was essentially that his claim did not disclose a serious tort that would justify it proceeding to trial.

[7] The application of the *Jameel* principle proceeds upon the basis that the plaintiff's claim discloses a valid cause of action, but that ultimately there is insufficient justification for the claim to incur the expense of a trial and the judicial time that must necessarily be devoted to it. That does not meet any of the criteria of R14.6(4).

[8] Ms Stiekema then seeks increased costs. It is now trite law that if increased costs are to be awarded any increase must be assessed according to the scales of costs provided by Schedules 4 and 5 to the Rules.

[9] The grounds on which a party may be ordered to pay increased costs are set out in r 14.6(3). It provides:

The Court may order a party to pay increased costs if -

- (a) The nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or
- (b) The party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by –  
...
  - (iii) Failing, without reasonable justification, to admit facts, evidence, or documents or accept the legal arguments; or ...
  - (v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under r 14.10 or some other offer to settle or dispose of the proceeding.

[10] The parties have variously acted in person, or through counsel in this matter.

[11] Ms Stiekema instructed counsel in December 2016.

[12] On 20 December 2016 Mr Peter McKnight, counsel for Ms Stiekema, wrote to Mr Craig saying inter alia:

I write at this early stage, before further costs are incurred, to invite you to consider filing a discontinuance in relation to this proceeding. If that was to be the case, no costs would be sought by Ms Stiekema.

[13] Mr Craig responded to that offer and said inter alia as follows:

A Calderbank offer has already been made to Ms Stiekema. This went directly to her as we were not at that time advised that you had been appointed. If you need a copy of that provided please let me know.

If the offer I have made is declined we will continue to trial. ...

[14] The “Calderbank” offer Mr Craig referred to was made by his solicitors to Ms Stiekema on 20 December 2016. The offer was in the following terms:

- 3.1 You will immediately provide Mr Craig with copies of all your correspondence with Mr Stringer relating to matters at issue in the claim (that is, any and all correspondence between you and Mr Stringer from June 2015 to date, including Facebook and email communications);
- 3.2 You will immediately provide Mr Craig with a written apology and retraction in the form set out in the schedule to this letter;
- 3.3 You will pay to Mr Craig the sum of \$20,000 within 14 days of agreeing a settlement, on account of his claim to damages, interest and legal costs.

[15] That offer was not accepted by Ms Stiekema which led to the subsequent procedural steps, transfer of the proceeding to this Court, and the application to strike out.

[16] Because of the success of the strike out application, in my view it was reasonable for Mr Craig to accept the offer in Mr McKnight’s email of 20 December to discontinue the proceeding. Although on the face of it at that time Mr Craig was still acting in person in respect of the litigation, he had engaged solicitors to make the offer set out above to Ms Stiekema. There was clearly then the opportunity available to him of discussing that offer with solicitors and deciding upon the advisability of proceeding with the claim.

[17] I infer from the request from Mr Craig’s solicitors that Ms Stiekema disclose all correspondence she had had with Mr Stringer that there was an ulterior motive in

that request, in that there was ongoing litigation between Mr Craig and Mr Stringer at that time, although separate from this proceeding.

[18] I am of the view, therefore, that the failure of Mr Craig to accept the offer of a discontinuance without any issue as to costs contributed unnecessarily to the costs then incurred by Ms Stiekema.

[19] Therefore I am of the view that an uplift is appropriate which in my discretion I assess at 50 percent.

[20] Scale costs payable in respect of this proceeding are set out in schedule 1 to the memorandum of Mr Marcetic of 24 August 2017. The memorandum of Mr Romanos of 14 August 2017 annexes, as document 2, a schedule but the daily rate he claims is at the old rate of \$1,550, whereas the rate calculated by Mr Marcetic is at the correct rate of \$1,780 per day, which was effective as from 1 July 2015.

[21] The calculation completed by Mr Marcetic is on a 2B basis and takes account of matters attracting costs in the High Court and then in this Court.

[22] Mr Romanos sought costs for filing a statement of defence in the High Court, but I note that it was an amended statement of defence, and was not a defence filed in respect of an amended statement of claim filed by or on behalf of Mr Craig.

[23] The filing of an amended pleading does not qualify for an allowance of costs.

[24] I therefore approve the calculation of Mr Marcetic at \$11,186. Applying an uplift of 50 percent to that figure results in an amount of \$16,779. To that are added disbursements of \$830, which I do not understand to be challenged, for a total of \$17,609.

[25] Judgment is accordingly entered for that amount.

G M Harrison  
District Court Judge