IN THE DISTRICT COURT
AT TAUPO

I TE KŌTI-Ā-ROHE
KI TAUPŌ-NUI-A-TIA

CIV-2022-069-000021
[2023] NZDC 9589

BETWEEN	ERIKA WHITTOME Plaintiff
AND	TAUPŌ TENNIS CLUB First Defendant
AND	TENNIS NEW ZEALAND Second Defendant
AND	SPORT NEW ZEALAND Third Defendant

Hearing:	8 December 2022
Appearances:	Plaintiff appears in Person L Foley for the First Defendant B Webster for the Second Defendant O Lund for the Third Defendant
Judgment: (On the papers)	19 May 2023

JUDGMENT OF JUDGE G C HOLLISTER-JONES
[As to costs]

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[1] In my judgment of 21 February 2023, striking out the plaintiff's fifth amended statement of claim against the first, second and third defendants, I have noted that the defendants were entitled to costs and invited the filing of memoranda in respect of costs. I referred to the warning Judge Spear gave to Ms Whittome on 13 July 2022 in respect of costs.[1]

[1] [2023] NZDC 928 at [68].

[2] Judge Spear, at the first case management conference on 13 July 2022 in respect of costs, stated:

> [5] I record now that both Tennis New Zealand and Sport New Zealand, through their counsel, made an open offer to the plaintiff that if she was to discontinue her proceedings against them and agree to them being struck out of this proceeding today then they would not seek costs. Ms Whittome, the plaintiff, has considered those offers and has declined to accept them.
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> [6] I have spent some time explaining to Ms Whittome that if she is unsuccessful in her claim then she is likely to be found liable for a substantial quantity of the successful parties' costs which are likely to be quite significant. Be that as it may, Ms Whittome has confirmed her resolve to maintain her claim against all three defendants.
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> …
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> [10] In conclusion, I just mention again for the benefit of Ms Whittome, and to ensure that she is under no misunderstanding, that she is exposing herself significantly to an order for costs if she is unsuccessful in respect of any of these claims. I have indicated to her that such an order for costs in that event will likely run into the tens of thousands of dollars.

First defendant

[3] The memorandum of counsel for the first defendant attached a letter sent to Ms Whittome following the case management conference. In it, the first defendant offered to not seek costs against Ms Whittome if she withdrew her claim by 22 July 2022.

[4] The first defendant seeks costs on a 2B basis in the sum of $9,836.50 plus disbursements (filing fee) of $250. Counsel for the first defendant submits that the first defendant's costs greatly escalated after July 2022. Further, responding to the plaintiff's claims has been time consuming and difficult because of the multiple iterations of the statement of claim and the difficulties in discerning what causes of action arose from them. The first defendant seeks an uplift of 50 to 60 per cent from scale costs.

Second defendant

[5] The second defendant seeks scale costs in the sum of $7,926.50 plus disbursements of $325. The second defendant seeks a 50 per cent uplift on scale costs

because Ms Whittome contributed unnecessarily to the time or expense of the proceeding by refusing to accept the offer of settlement made at the case management conference.

[6] Counsel for the second defendant also submits that they were required to review and consider iterations of the statement of claim, many of which remained unintelligible in part and, ultimately, Ms Whittome's claims were found to be meritless.

Third defendant

[7] The third defendant seeks scale costs in the sum of $8,690.50 together with disbursements of $325. They too seek a 50 per cent uplift for costs. Counsel for the third defendant submits increased costs are justified because the Ms Whittome's claim was bound to fail in all respects because it lacked any merit and was improperly brought in the District Court, which did not have jurisdiction to order the relief and remedies sought.

[8] Counsel for the third defendant also submits that Ms Whittome had multiple opportunities to withdraw her claim with no issue as to costs and has failed to do so. Her failure to accept multiple reasonable settlement offers was unreasonable and has contributed unnecessarily to the time and expense of matters.

Plaintiff's response

[9] The plaintiff has appealed the judgment of this Court to the High Court and submits that any decision of the District Court regarding costs should be stayed pending the outcome of the appeal to the High Court.

[10] In respect of the July 2022 offers of the defendants not to seek costs against her if she withdrew her claims, Ms Whittome states that she considered that but because the first defendant would not revoke the trespass notice against her, she rejected it. Ms Whittome did not attach any correspondence to the first defendant supporting this proposition. Ms Whittome also states that she applied for mediation

provided by Sport New Zealand, but that was declined by the first defendant as the civil proeedings were already in progress.

[11] Ms Whittome's submissions in response to costs reiterate the worthiness of her claim. The most relevant parts of her submission in respect of costs are:

- The strike-out and now the imposition of costs is an attempt to prevent the matter being heard and is a denial of justice.
- Her claim is a matter of immense public interest so no order of costs should be made.
- Costs have been deliberately inflated to keep her from having access to justice and to keep her continuing what is far from a vexatious or litigious manner.
- Costs are being weaponised by the defendants to prevent her from having justice.
- The defendants should share their own costs because they have been complicit in their breaches of the law.
- The defendants have unclean hands and should not be rewarded with an order for costs.

Discussion

[12] I see no base to make an order staying costs pending the outcome of Ms Whittome's appeal to the High Court. The general principle is that costs should follow the event and as I noted in my judgment, the defendants are entitled to costs.

[13] I award each of the defendants scale costs and disbursements as sought. There is a minor adjustment to the sum sought by the first defendant. The first defendant seeks 0.4 hours for the costs application. I can find no reference to this as an item in the Schedule. The second and third defendants have sought 0.2 hours for sealing. The

first defendant is entitled to this as well. Accordingly, the first defendant is entitled to 4.95 days costs on a 2B basis.

[14] The defendants are entitled to costs above scale. I found that the plaintiff's claims against the second and the third defendants were ill-defined and that it was extremely difficult to discern from the fifth amended statement of claim how those parties were liable for the actions of the Taupō Tennis Club in requiring a vaccine pass for entry into its toilets or for terminating Ms Whittome's membership of the club.

[15] I am satisfied that the plaintiff's claim against the second and third defendants was without any factual or legal merit. The plaintiff's opposition for their application for striking out also lacked merit.

[16] Furthermore, the plaintiff's continuation of her claim against all defendants after the most reasonable settlement offers in July 2022 was without justification.

[17] Following the first case management conference, the plaintiff filed the following:

26 July 2022	Amended statement of claim.
12 September 2022	Response to Tennis New Zealand application to strike out claim.
12 September 2022	Response to Taupō Tennis interlocutory application to strike out claim.
16 November 2022	Plaintiff's response to Mark Reddate's 11 August 2022 affidavit.
5 December 2022	Plaintiff's response to Taupō Tennis Club's submissions to strike out.
6 December 2022	Plaintiff's list of documents relied on.
6 December 2022	Amended statement of claim.

[18] None of these documents made straightforward reading. They contained mixed allegations of fact and law. Responding to them was a time consuming and costly exercise for the defendants.

[19] The clear warning as to costs that was provided to Ms Whittome by Judge Spear did not deter her. She continued to prosecute her claim by the filing of voluminous material. Ultimately, I decided that her claim should be struck out.

[20] The first defendant is entitled to a 33 per cent uplift on scale costs. The reasons for this are the plaintiff's actions after July 2022, both in continuing her claim after the offer and her meritless opposition to the first defendant's strike out application.

[21] The second and third defendants are entitled to a 50 per cent uplift on scale costs. The reason for the difference between the defendants is the lack of any merit whatsoever in the plaintiff's claims against the second and third defendants. Those parties had no connection to Ms Whittome's dispute with the Taupō Tennis Club regarding her access to the club's toilets and should not have been joined as defendants.

[22] As I noted in my judgment, the plaintiff's claims in this Court were misconceived. This is not a case in which there was a genuine public interest for the plaintiff's claims to be aired in this Court.

[23] Accordingly, I see no basis to decline to award costs because of public interest considerations. Furthermore, I do not accept that the defendants' applications for costs are a deliberate stifling mechanism.

Conclusion

[24] The first defendant is entitled to costs as follows:

Scale costs	$ 9,454.00
33 per cent uplift	$ 3,119.98
Total cost:	**$12,573.98**
Disbursements	$250

[25] The second defendant is entitled to costs as follows:

Scale costs	$ 7,926.50
50 per cent uplift	$ 3,963.00
Total cost:	**$11,889.50**
Disbursements	$325

[26] The third defendant is entitled to costs as follows:

Scale costs	$ 8,690.50
50 per cent uplift	$ 4,354.25
Total cost:	**$13,044.75**
Disbursements	$325

Judge GC Hollister-Jones
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 19/05/2023