



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

25 October 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

Craig v Slater [2018] NZHC 2712

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

Background to the proceedings

This defamation proceeding was brought by Mr Colin Craig, an Auckland accountant and former leader of the Conservative Party of New Zealand, against Mr Cameron Slater and Social Media Consultants Limited (SMCL), the company which owns an internet blog site known as “Whale Oil Beef Hooked” (Whaleoil).

The proceeding had its origins in the well-rehearsed events leading up to, and following, Mr Craig’s resignation as the Party’s leader in June 2015, including the abrupt resignation of Mr Craig’s press secretary, Ms Rachel MacGregor, two days before the 2014 general election, and the breakdown in the relationship between Mr Craig and members of the Party’s board and other supporters.

The claimant, Colin Craig, laid 15 separate defamation claims in relation to statements made by Mr Slater either on his blogsite or in other media. Mr Slater made two counterclaims. The matter was heard by judge-alone over 17 days in May – June 2017, with final submissions not received until September 2018.

In brief, Mr Craig alleged that Mr Slater and Whaleoil caused him serious reputational damage by publishing untrue statements based on information leaked to him by a friend of Ms MacGregor, Mr Jordan Williams, and a Conservative Party board member, Mr John Stringer, about Mr Craig and the Party’s internal problems; electoral funding and the Party’s finances; and a rumoured sexual harassment claim by Ms MacGregor.

Mr Craig sought declarations under s 24 of the Defamation Act 1992 that the defendants are liable to him in defamation. He also claimed general, aggravated and punitive damages of unspecified amounts and costs.

Mr Slater counterclaimed, saying he was himself defamed in a booklet entitled *Dirty Politics and Hidden Agendas* which Mr Craig published, allegedly in defence of the attacks he claims Mr Slater and others made upon him, following his resignation in 2015. The booklet was circulated to more than 1.6 million New Zealand homes. Mr Slater claims that the contents of the booklet defamed him by implying, among other things, that he developed or coordinated the strategy to defame and spread lies about Mr Craig and published material on his blog knowing it not to be true.

Mr Slater claimed general damages of \$8,117,010 on a proposed basis of \$5.00 for each of the 1,623,402 New Zealand homes to which the booklet was delivered.

The legal issues

Under the provisions of the Defamation Act 1992 the court is required to make a series of factual and legal assessments to determine first, whether the words complained of in each instance are in fact capable of bearing the defamatory meaning alleged by the complainant, and, if so, whether the person who made the statement has a defence in law.

Truth is a complete defence to an action in defamation, so if, after an assessment of the facts, the court is satisfied that, on the balance of probabilities, the statement complained of is true, or not materially different from the truth, the defamation action will not succeed.

The law recognises that in some circumstances, even if the facts do not support the statement's meaning, the importance of freedom of expression means other defences should be available including where the statement is found to be an expression of honest opinion or where the nature of the information communicated, and how it is communicated, attracts "qualified privilege". This defence, which had its origins in *Lange v Atkinson*, is often pleaded in defence of political reportage and commentary. The intent or motivation of the publisher is relevant in establishing whether the defence is available.

Recently the Court of Appeal established a new defence of "responsible communication on a matter of public interest". This new defence, established in *Durie v Gardiner*, is applied to this case, in place of the defendants' reliance on the *Lange v Atkinson* qualified privilege originally pleaded.

The new defence is available to any communicator, including unregulated bloggers. Whether it is available depends, first, on whether the subject is a matter of public interest and, second, on whether the communicator has acted responsibly in publishing the material. Whether the communication was responsible is assessed by the court in light of all of the relevant circumstances, including what steps were taken to verify the information and whether the publisher genuinely considered the source of information on which the untrue statements were based was reliable.

The Court held that there is no principled reason for holding that the law should impose on a blogger or commentator like Mr Slater a different standard for the responsible communication of facts from that which is applied to a national newspaper, radio station or television channel.

With respect to the alleged defamations of Mr Slater by Mr Craig, the Defamation Act provides for a defence of qualified privilege where the statements were made in the context of a reply to an attack on one's reputation – unless it can be shown the author was predominantly motivated by ill will towards the claimant, or otherwise taking improper advantage of the occasion of publication.

The result and orders

Mr Craig failed on his principal causes of action against Mr Slater. He did so because the Court found, for reasons set out in full in the judgment, that Mr Craig had been guilty of moderately serious sexual harassment of Ms MacGregor; that he had made a substantial financial settlement with her on confidential terms in exchange for the withdrawal of her claims to the Human Rights Tribunal; and that he had deliberately misled the Conservative Party board about those matters.

The court found other statements and assertions were untrue statements. However, the court held that Mr Slater could rely on the defence of “responsible communication on a matter of public interest” with respect to all but two of these untrue statements and imputations.

This new defence was available to Mr Slater despite his personal animosity towards Mr Craig, because the Court found he was principally motivated to release into the public arena information which he believed to be reliable and which would inform public discussion on a matter of undoubted public interest.

The Court found that to hold that Mr Slater was deprived of the defence of responsible communication on a matter of public interest, merely because of his views about Mr Craig, would be to tilt the balance between freedom of expression on a matter of public interest and protection of reputation too far in favour of the latter. Such a finding would have an unduly chilling effect on political discourse of the kind which the public interest defence is designed to recognise.

However, the Court found Mr Slater had no defence for the untrue statements that Mr Craig:

- (i) had placed Ms Rachel MacGregor under financial pressure to sleep with him; and
- (ii) sexually harassed at least one victim other than Ms MacGregor.

While this meant Cameron Slater and Social Media Consultants Limited were liable to Colin Craig in defamation for these two statements, the Court ruled he was not entitled to an award of damages because the reputational damage which Mr Craig suffered throughout the events traversed at length in the judgment resulted almost entirely from his own actions.

Mr Slater’s counterclaims

The Court dismissed Mr Slater’s counterclaims against Mr Craig. It found that while many of the assertions Mr Craig had made about Mr Slater in his booklet *Dirty Politics and Hidden Agendas*, were untrue – including the assertion that Mr Slater made up allegations and was a liar – Mr Craig was entitled to the defence of qualified privilege in reply to an attack on him by Mr Slater.

On that basis, Mr Slater’s counterclaim in defamation was dismissed.

Sexual harassment

The judgment contains a discussion about the meaning of “sexual harassment” outside the statutory context of claims under the Human Rights Act 1993 and the Employment Relations Act 2000. In its ordinary and natural meaning, sexual harassment is intentional conduct or language of a sexual nature in a workplace, professional or social setting, that is unwelcome, unwanted or offensive to the person who is

subjected to it at the time it occurs. The Court has held that, where a sexual harassment complaint involves a power imbalance favouring the perpetrator over the complainant, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not. It has also said that a power imbalance should be treated as an aggravating factor in assessing the seriousness of the harassment.¹

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¹ See judgment at [400] – [405]