In the Court of Appeal of New Zealand [CA461/2014]

BETWEEN [Redacted]
Appellant

AND **DISTRICT COURT AT AUCKLAND**
1st respondent

AND [Redacted]
2nd respondent

NOTICE OF APPEAL AND APPLICATION FOR LEAVE TO BRING CIVIL APPEAL

Dated 19 August 2014

This document is filed by the Appellant in person.

The Appellant's address for service is [Redacted]. Documents for service on the Appellant may be emailed to the Appellant at [Redacted]

In relation to the judicial review CIV 2012-404-6851, the appeals CIV 2013-404-2702 and CIV 2013-404-3172.

To the Registrar of the Court of Appeal of New Zealand

1. I, [Redacted] the Applicant/Appellant in the proceedings identified above, give notice that I am:

    (a) Appealing, under s 11 of the Judicature Amendment Act 1972, to the Court against the judgment **[2014] NZHC 1767** given on 29 July 2014 in the High Court at Auckland insofar it applies to CIV 2012-404-6851 (a judicial review of the harassment proceeding); and

    (b) Applying, under s 36 of the Harassment Act 1997, for leave to appeal to the Court against the same judgment insofar it applies to CIV 2013-404-2702 (an appeal of a restraining order); and

    (c) Appealing, under s 66 of the Judicature Act 1908, to the Court against the same judgment insofar it applies to CIV 2013-404-2702 (an appeal of an interlocutory application) and CIV 2013-404-3172 (an appeal of a costs order). Alternatively, if leave to appeal is required in either of the two cases, I am applying for such leave.

2. The decisions previously given in the harassment proceeding CIV 2012-004-1034 in the District Court at Auckland on matters relevant to the judgment of the High Court I am appealing and seeking leave to appeal are as follows:

    (a) DIRECTIONS OF JUDGE L I HINTON dated 6 November 2012.

    (b) DIRECTIONS OF JUDGE PA CUNNINGHAM dated 12 November 2012, coupled with the directions/minute of the same Judge given on the same day and reduced in writing in a letter dated 21 November 2012 by a Deputy Registrar.

    (c) ORAL DECISION OF JUDGE PA CUNNINGHAM [ON ORAL APPLICATION BY RESPONDENT TO STAY THE PROCEEDING] dated 14 March 2013.

(d) ORAL JUDGMENT OF JUDGE M-E SHARP [On pre-trial application] dated 9 May 2013.

(e) ORAL JUDGMENT OF JUDGE M-E SHARP [On application for Restraining Order] dated 9 May 2013.

(f) JUDGMENT OF JUDGE M-E SHARP [On costs] dated 14 June 2013.

Appeal of the judicial review

3. The appeal mentioned in para 1(a) above applies to:

   (a) The denial to grant relief in the judicial review; and

   (b) Any findings made by the High Court to the effect that any of the District Court's decisions in question were correct. While it appears to me that no such findings were made[1], I include the corresponding ground of appeal (para 9 below) out of abundance of caution.

   The specific grounds of my appeal are as follows.

4. The High Court erred in failing to make findings on the allegations of apparent bias and/or to remit the matter back to the District Court if the allegations were proved. As it was observed by the High Court of Australia in *Concrete Pty Ltd v Parramatta Design and Developments Pty Ltd* [2006] HCA 55 at 117:

> Allegations of this nature [of apprehended bias] are serious. If made, the party making them is obliged to seek relief reflecting their seriousness. We agree generally with Callinan J's observations about the procedure followed in this case. An intermediate appellate court dealing with allegations of apprehended bias, coupled with other discrete grounds of appeal must deal with the issue of bias first. It must do this because, logically, it comes first. Actual or apprehended bias strike at the validity and acceptability of the trial and its outcome. It is for that reason that such questions should be dealt with before other, substantive, issues are decided. It should put the party making such an allegation to an election on the basis that if the allegation of apprehended bias is made out, a retrial will be ordered irrespective of possible findings on other issues. Even if a judge is found to be correct, this does not assuage the impression that there was an apprehension of bias.

[1] For example, "It was hardly likely that the District Court would preclude Ms M's opposition to the strike-out application when the error was not her personal fault" at [164] does not appear to me as a formal finding on the correctness of the District Court's decision.

> Furthermore, if, as here, an intermediate appellate court finds the allegation made out, but grants no relief because it otherwise finds in favour of the party making the allegation, a defect in the administration of justice has been found to have occurred which, in the absence of any successful appeal on the point, will remain unremedied. Inevitably, this adversely affects public confidence in the administration of justice.

5. Both the High Court and the District Court erred in failing to take into account the existence of a domestic relationship between the parties or the lack thereof, which was fundamental to the jurisdiction to make a restraining order. Both Courts failed to take into account that the 2nd respondent alleged, and I admitted, the existence of a domestic relationship, which makes the Harassment Act 1997 inapplicable per s 9(4).

6. In relation to the defence of lawful purpose that I pleaded in the harassment proceeding, and which was *fundamental* to my case[2], both the High Court and the District Court erred in:

   (a) Failing to take into account, and/or misapprehending, and/or failing to give sufficient reasons for rejection of, and/or failing to take into account relevant considerations in relation to[3], the defence of lawful purpose *as it was pleaded by me*. For that matter, both Courts failed to even articulate my lawful purpose in their judgments, which I put forward as follows[4]:

   > The Appellant's attempts to contact the Respondent had the reasonable and lawful purpose of making the Respondent aware of the Appellant's claims in an effort to resolve the dispute between the parties privately, which was (or at least ought to be) in everyone's interest. It is a public policy that parties should be encouraged to settle their disputes without litigation.

   Both Courts failed to take into account the evidence I adduced in support of my submissions, *inter alia*[5]:

   > All my attempts to contact [Redacted] [the 2nd respondent] after the incident were made with the only lawful purpose of recovering the

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[2] I did not dispute that some of my acts did fall under the criteria of s 16(1)(a) of the Act.
[3] *Inter alia*, the evidence of that I was kept "in the dark" by the 2nd respondent who failed to respond to *any* of my attempts to contact her, and that I did not know and had no way to know whether the 2nd respondent was even *aware* of my attempts to contact her.
[4] Para 9 of APPLICANT/APPELLANT'S SYNOPSIS OF ARGUMENT FOR HEARING ON 27 AUGUST 2013 (APPEALS) dated 22 August 2013.
[5] Para 13-14 of AFFIDAVIT OF [Redacted] CIV 2012-004-1034 dated 11 June 2012.

> damages described in paragraphs [sic] above. [sic] The recovery of damages was problematic for me because (a) I did not know [Redacted]'s real name or contact details; (b) the damages were caused by, and I had to deal with, a paranoid person; (c) I did not want to jeopardize [Redacted]'s and my own privacy; and (d) I hoped to settle the matter privately to everyone's satisfaction; I did not want to escalate the conflict (for example, by taking an immediate legal action) in order to prevent further damages to me.

(b) Failing to articulate and apply a proper legal test that would determine the lawfulness of my pleaded purpose. The High Court erred in failing to determine the issue despite that I properly put it to the Court[6]. The High Court erred in failing to have regard to *Hayes v Willoughby* [2013] UKSC 17, where five Lords considered two standards, of rationality and of reasonableness, applicable to ascertaining a lawful purpose in the context of a harassment proceeding, and where Lord Reed observed that –

> [The purpose] for which a course of conduct is pursued is [sic] ordinarily ascertained by reference to the intention of the person who pursues it.

(c) Ascertaining my lawful purpose by reference to the merits of my civil claim, and/or to the feelings of the 2nd respondent, and otherwise not by reference to my intentions. The High Court erred in finding that since my communications were "threatening and unpleasant", and that I had "no reason to think that Ms M would welcome" my emails, my behaviour "flew in the face of reason". My ultimate lawful purpose has *never* been to please the 2nd respondent and I *never* thought that she would welcome my emails. The High Court erred in its interpretation of s 17 of the Harassment Act[7]. The finding of the High Court effectively renders s 17 nugatory, and proves that the High Court's approach to my defence was entirely wrong. Indeed, if the alleged acts of the respondent in a harassment proceeding were "pleasant and

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[6] *Inter alia*, para 79 of APPLICANT/APPELLANT'S SUPPLEMENTARY SYNOPSIS OF ARGUMENT: KEY POINTS dated 25 November 2013.

[7] The literal meaning of s 17 is that an act of harassment (as defined in ss 3 and 4), which is done for a lawful purpose, cannot be relied upon to establish harassment for the purposes of s 16(1)(a).

welcomed", they would not fit the criteria of s 16(1)(a) in the first place (i.e., the acts would not fit the definition of harassment), and the defence under s 17 would never be needed.

(d) Failing to determine the issue of admissibility of the affidavits filed by the 2nd respondent, despite that I properly put that issue before the Court[8]. The voluminous inadmissible material contained in the affidavits produced on the District Court the impression that the 2nd respondent was similar to "vulnerable victims of sexual assault" and I, by analogy, was similar to a sexual assailant[9].

(e) Misapprehending my submissions, which is evident from the both Courts stating that I purportedly "accepted" or "not challenged" the schedule of specified acts prepared by counsel and attached to the judgment of the District Court[10]. Both Courts failed to take into account that I expressly challenged the schedule in my submissions and affidavits, where I expressly denied any and all acts other that those I expressly admitted.

7. The High Court erred in failing to take into account that notwithstanding that the issues mentioned in para 6(d) and 6(e) above do not affect most of the primary facts accepted by the High Court as harassment in para [111]-[114] of the judgment[11], they do affect the issue of lawful purpose. For example, the *entirely baseless* finding of the High Court that the 2nd respondent needed the "assistance of other persons" to induce me to leave the club, as well as other numerous findings based on hearsay allegations which I denied[12], no doubt contributed to the High Court's

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[8] *Inter alia*, the affidavits were full of hearsay statements and statements of opinion for which grounds were not given, such as the false (as admitted later by the 2nd respondent) allegation to the effect that I attempted to track the 2nd respondent with the gifted phone made or tampered with by [Redacted]

[9] Para [25] of ORAL DECISION OF JUDGE PA CUNNINGHAM [ON ORAL APPLICATION BY RESPONDENT TO STAY THE PROCEEDING] dated 14 March 2013.

[10] The High Court judgment mentions the acts that I purportedly accepted in *inter alia* para [8], [17]-[19], [83], [86], [89]. I not only did not accept the primary facts specified in those paragraphs, but expressly challenged them in my submissions and evidence.

[11] In the sense that I admitted most of the primary facts mentioned in those paragraphs.

[12] n 10, above.

adverse findings on the reasonableness of my conduct and ultimately on my lawful purpose.

8. The High Court erred in failing to take into account my pleadings, submissions and evidence as to abuse of process on the part of the 2nd respondent, *inter alia* that –

    (a) The 2nd respondent is funded in the litigation by a non-party.

    (b) The litigation funding amounted to impermissible assignment of a personal cause of action.

    (c) The litigation funding affected, or had the tendency to affect, the administration of justice.

    (d) The 2nd respondent was actively misleading me as to the sources of her funding.

    (e) The failure of the 2nd respondent to give me notice that a third-party litigation funder is involved prevented me from making adequate submissions on costs and deprived me of an opportunity to apply for a stay of the harassment proceeding on the grounds of abuse of process related to unlawful maintenance.

9. Insofar the High Court as a *reviewing* court made findings to the effect that any of the decisions of the District Court were *correct*, the High Court erred in such findings, as the duty of the High Court was to determine the lawfulness of the decision making process, not the correctness of the decisions *per se*.

10. For all the foregoing reasons, the High Court erred in finding that the judicial review was moot. As a consequence, the High Court erred in failing to make findings on the merits of the judicial review.

11. The judgment that I seek from the Court of Appeal is:

    (a) An order reversing the finding of mootness of my judicial review and referring the matter back to the High Court, or alternatively, to a differently constituted District Court.

(b) An order that my costs and the usual disbursements in this Court, the High Court, and, if applicable, the District Court be paid by the respondents.

Appeal of the restraining order

12. The appeal mentioned in para 1(b) above applies to the decision of the High Court to effectively make a restraining order for the period of one year. The specific grounds of my appeal are the same as mentioned in para 4-9 above, as far as they are applicable to the appeal, with the necessary modifications.

13. I contend that the Court of Appeal should allow the appeal of the judicial review rather than consider the merits of the restraining order, as the Court of Appeal would effectively be the first court actually considering the issues I mentioned hereinabove. The Court of Appeal would therefore be deprived of the benefit of hearing the reasoning of lower courts. Notwithstanding that, I seek leave to appeal out of abundance of caution.

14. The Court of Appeal should grant me leave to appeal because:

    (a) This is a test case in relation to the matters of general or public importance mentioned in para 4, 6 and 8 above.

    (b) The appeal involves the issue of fundamental public importance; namely, the principle that justice should both be done and be seen to be done.

    (c) The matter is of substantial private importance to me as it affects my reputation.

15. The judgment that I seek from the Court of Appeal, if leave is granted, is:

    (a) An order declining the making of a restraining order, or otherwise setting aside the restraining orders made by the High Court and the District Court.

    (b) In the alternative to the order sough in the previous paragraph, an order permanently staying the application for a restraining order on the grounds of abuse of process.

(c) An order that my costs and the usual disbursements in this Court, the High Court and the District Court be paid by the respondents.

Appeal of the interlocutory decision as to mode of evidence

16. It appears that the High Court declined my appeal of the District Court's decision as to mode of evidence, mentioned in para 1(c) above, on the ground of mootness. However, if the matter is referred back to the District Court, that ground would not apply anymore and my appeal therefore should be allowed.

17. Insofar leave to appeal is required, the Court of Appeal should grant me leave to appeal on the grounds mentioned in para 14 above.

18. The judgment that I seek from the Court of Appeal is:

    (a) An order referring the matter back to the High Court, or alternatively, an order setting aside ORAL JUDGMENT OF JUDGE M-E SHARP [On pre-trial application] dated 9 May 2013.

    (b) An order that my costs and the usual disbursements in this Court, the High Court and, if applicable, the District Court be paid by the respondents.

Appeal of the costs in the District Court

19. The appeal of costs in the District Court mentioned in para 1(c) above applies to the decision of the High Court to grant scale costs to the 2nd respondent. The specific grounds for my appeal are as follows.

20. I repeat the grounds mentioned in para 4 and 8 above, as far as they are applicable to the appeal, with the necessary modifications.

21. The High Court erred in failing to take into account, and/or failing to give sufficient reasons for the rejection of, my pleadings, submissions and evidence related to the misconduct of the 2nd respondent in the District Court[13].

22. The High Court erred in failing to take into account the indemnity principle.

[13] *Inter alia*, delays, complete failures to serve material documents on me, and so on.

23. Insofar leave to appeal is required, the Court of Appeal should grant me leave to appeal on the grounds mentioned in para 14 above.

24. The judgment that I seek from the Court of Appeal is:

    (a) An order denying costs to the 2nd respondent in the District Court in any event.

    (b) An order that my costs and the usual disbursements in this Court, the High Court and, if applicable, the District Court be paid by the respondents.

Other matters

25. As my appeals and applications for leave to appeal relate to the same judgment of the High Court, I respectfully request the Court of Appeal to accept those in this single document which is accompanied with the filing fee of $1,100. In case if this Court finds that I should have filed separate documents with separate filing fees, I respectfully request the Court to grant me reasonable time extension to rectify the deficiencies.

26. I am not legally aided.

[Redacted]

Dated this 19th day of August 2014

Appellant

My address for service is [Redacted]
[Redacted] Documents for service may be emailed to me at
[Redacted]