**IN THE DISTRICT COURT**
**AT TAURANGA**

**CIV-2017-070-000716**
**[2018] NZDC 689**

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| BETWEEN | RENA LYN HUIA MORGAN<br>Plaintiff |
| AND | NEW ZEALAND POLICE<br>Defendant |

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| Hearing: | 16 January 2018 |
| Appearances: | Plaintiff self-represented<br>R Jenson for the Defendant |
| Judgment: | 18 January 2018 |

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**RESERVED JUDGMENT OF JUDGE P G MABEY QC**
**[on defendant's application to strike out a claim]**

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[1] The plaintiff is self-represented. On 8 August 2017 her home was searched by police. The police were acting under the powers of a search warrant. The plaintiff objected to their entry into the property asserting that they had no such power. She was arrested for obstruction and returned to the Te Puke Police Station.

[2] She sues the police for damages alleging a number of causes of action.

[3] The plaintiff prepared her own statement of claim. In that she wrongly refers to the defendant as "NZ Private Police Limited" a private company incorporated under the Companies Act 1993. It is not known why she would make such a clearly erroneous reference but in other parts of her pleadings she does make reference to the "New Zealand Police" and "Crown". I am treating this action as validly brought against the Crown in the form of the New Zealand Police.

[4] A list of documents to be relied upon was filed when the proceedings commenced but the plaintiff has subsequently filed an additional list. It contains what purport to be:

(a) A non-negotiable Fee Schedule for public/private service of the whanau.

(b) A Bill of Exchange for $1,000,000.

[5] In her submissions in opposition to the defendant's application to strike out the plaintiff referred to her name as intellectual property registered at the time of her birth. I enquired if she was raising a Sovereignty issue in relation to the Court's jurisdiction but Ms Morgan confirmed that she acknowledges the jurisdiction of the Court.

[6] I asked her what was meant by the documents referred to in the additional list. She told me that the various "fees" referred to in the list were in fact damages she could claim for a variety of wrongs. The list is extensive and includes such references as "Agency by estoppel", "Colour of law" and "Grand larceny".

[7] The plaintiff was unable to explain to me what those terms meant saying that she was being mentored by a person whose name she cannot disclose.

[8] When asked as to the nature and purpose of the bill of exchange for $1,000,000 she said that she had been told that at birth all citizens of New Zealand had a Crown fund of at least $1,000,000 upon which they could call at any time.

[9] I explained to the plaintiff that her information concerning the fee schedule and the bill of exchange was wrong and that there was no such fund nor was there such a schedule relating to matters some of which have no validity in New Zealand law and appear to be extracted from other jurisdictions.

[10] It was necessary to make that clear to the plaintiff as I was concerned that she had been given wrong advice and may well be a pawn in the hands of an unknown person seeking to pursue their own misguided ends. I told her that the additional list of documents was irrelevant and would be given no weight.

[11] I note from a police affidavit filed in support of the summary judgment application that at the time the search was being conducted it is said that the plaintiff was in electronic communication with a third party who was advising her the police should be told to leave and that they had no power to be there, notwithstanding the warrant. That is consistent with my views as to the misguided and clearly wrong mentoring that she may be receiving from a person who is afraid to have his or her name disclosed to the Court.

[12] The statement of claim drafted and filed by the plaintiff is, of course, the work of a lay person but I am able to discern from it the pleaded allegations and the causes of action relied upon.

[13] The plaintiff uses extreme terminology when describing the police actions on the day including kidnapping, terrorising, torturing and rape. I make allowance for that given her status as a self-represented litigant and distil from the claim the following:

(a) The police arrived at the plaintiff's address at 9.30am on 8 August 2017.

(b) They had with them a copy of a search warrant issued that day by an issuing officer pursuant to the Search and Surveillance Act 2012.

(c) The plaintiff considered that she was entitled to see the actual original of the warrant and for that reason, and that her name was not mentioned in it, she considered the police had no authority to enter her home. She denied any authority to enter. The police then entered forcefully by crossing the threshold of the house, pushing past the plaintiff such that the body of a police officer (or officers) contacted her. The specific allegation is that they "*forced themselves through my door, their physical bodies and weight against me whilst I calmly and clearly directed them they had no consent to enter the home until I had reason to believe the document was valid and that a crime had been committed with substantiated evidence as to support this*."

(d) The police taunted and threatened the complainant when she objected to their presence.

(e) An officer uplifted her personal wallet from a kitchen bench, against the plaintiff's protest, and removed her driver's licence which she says was "*an intentional violation of my rights*" after which she snatched the licence back.

(f) She denied a request to return the licence and was then handcuffed.

(g) The plaintiff says that she was not told of any alleged crime which led to the handcuffing nor was she given advice of any rights under the Bill of Rights Act.

(h) The plaintiff at the time of the search was eight months pregnant with various children present at the house who were left distraught and visibly traumatised by the search and the police conduct.

(i) After arrest she was taken to the Te Puke Police Station and detained without advice of rights or legal counsel and was continually ridiculed and scoffed at by the police.

(j) She was injured from the "*violence and rape*" and her left wrist was damaged by the handcuffs.

[14] Against those pleaded facts the plaintiff seeks damages for breaches of ss 18, 21, 22, 23(2) and 24(a) of the New Zealand Bill of Rights Act 1990 and alleges assault and battery, wrongful arrest and false imprisonment.

[15] She appears also to be saying that there was an unlawful and unreasonable exercise of a statutory power and refusal by the police to provide identification when asked.

[16] The Crown Solicitor applies to strike out the claim and seeks summary judgment to that effect and, in the alternative, security for costs on the basis that:

(a) The plaintiff has no reasonably arguable cause of action; and

(b) If the proceeding continues she will be unable to pay the costs of the defendant if she is unsuccessful.

[17] In support of the application for summary judgment two affidavits have been filed. They are sworn by two of the officers who attended at the search of the plaintiff's property, both senior detectives.

[18] Both officers confirmed their presence at the search and that a facsimile of the original search warrant was given to the plaintiff who refused entry. When it was explained that the police had the power of entry under the warrant the plaintiff blocked the police who then walked past her into the property. Neither officer recalls any physical contact with the plaintiff.

[19] They say further that:

(a) The plaintiff continued to yell and abuse the police insisting that they leave and was in communication with a third party who was advising the warrant was invalid. The plaintiff was warned that if she obstructed the police conduct of the search she would be arrested and was requested to stop moving about the property.

(b) At one point the officer in charge of the search was informed that a small amount of cannabis and a cannabis bong had been found and the search then continued under s 20 of the Search and Surveillance Act 2012 as a warrantless search for drugs in addition to the items the subject of the search warrant.

(c) In pursuit of the warrantless search a police officer uplifted a wallet from a kitchen bench and opened it and removed a driver's licence to identify the owner of the wallet. The plaintiff snatched the licence from his hand and the warning was repeated that she was liable for arrest for obstruction. The plaintiff refused to return the licence and continued her abuse and was placed under arrest and handcuffed against her resistance.

(d) The plaintiff was taken to a police car and given her rights and then taken to the police station in Te Puke when the handcuffs were removed and a pre-charge warning for obstruction was delivered.

(e) Inquiries reveal that the plaintiff's only means is a Job Seekers benefit.

[20] The notice of opposition to the summary judgment application refers variously to the New Zealand Bill of Rights Act, the Magna Carta and the Declaration of Independence 1835. It makes reference to the lack of a written constitution in this country.

[21] The notice of opposition refers to the "fee schedule" that may be activated at the plaintiff's discretion where there is a *"trespass to my person."*

[22] There is a repeated reference to the lack of "certification" of the copy of the search warrant and that as a result there was no right to enter until such time as "the validation of the warrant was confirmed". There is repeated reference to the lack of advice of rights prior to entry and the right to contact a lawyer because the property was being searched.

[23] There is an allegation of police theft of property with ss 218 and 219 of the Crimes Act 1961 referred to. In addition there is an assertion that there is no crime of obstruction in New Zealand law.

[24] In relation to the police affidavits there is a denial of various matters but in essence the denial comes down an assertion of the plaintiff's view that the police had no right to enter her property on a warrant that was not the original and did not have her name on it.

[25] In making her submissions at the hearing the plaintiff was eloquent and respectful. She was at times particularly emotional when referring to how she was treated by the police. When spoken to by me said that had the police acted with more care and respect for her dignity as a woman, in particular a heavily pregnant woman, she would have no concerns. It was clear to me that she was aggrieved at her perception of how she was treated and that is the basis of the claim.

[26] As I have said, I fear that the plaintiff has become the tool of an undisclosed third party with a separate agenda. That is unfortunate. I consider the plaintiff's submissions to me as sincere evidence of her genuine belief that she was not given the respect she is entitled to.

[27] It is a reality of policing that at times assertive conduct including strong words and actions are necessary for the police to fulfil their tasks. Some members of society understand that but others have a view of the police as the enemy. Others simply want to be dealt with respectfully.

[28] It is understandable that certain members of a community may well form the view that direct and straight forward police conduct may not seem respectful. That

may well apply to a heavily pregnant woman in a home with a number of other children present.

[29] The plaintiff's subjective perceptions are entitled to consideration but I must determine the Crown application for summary judgment according to the principles that apply and which involve the parameters governing applications to strike out proceedings.

[30] In that regard:

(a) Pleaded facts whether or not admitted are assumed to be true. However pleaded allegations which are entirely speculative and without foundation are not entitled to that assumption.

(b) A pleaded cause of action must be clearly untenable and the Court must be certain that it cannot succeed.

(c) The jurisdiction to strike out is the subject to a high threshold and should be used sparingly and only in clear cases. A natural judicial reluctance to terminate a claim (or a defence) short of trial which would only occur in the clearest of cases.

[31] The Crown application for summary judgment which could only succeed if there is no arguable defence invokes the application of the above principles.

[32] Damages for breaches of the New Zealand Bill of Rights Act 1990 can be awarded. Similarly damages for the torts of assault and battery and false imprisonment can be awarded. The issue is whether there is any arguable cause of action for damages or a declaration of breach of the plaintiff's rights.

[33] As noted, the plaintiff's claim asserts breaches of ss 18, 21, 22, 23(2) and 24(a) of the New Zealand Bill of Rights Act 1990.

[34] Section 18 provides for the right of freedom of movement. Specifically s 18(1) provides:

> (1) Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.

[35] I expect the plaintiff's claim is that she was denied freedom of movement within her own house, and when under arrest, freedom of movement in the police vehicle and police station.

[36] There is no breach of this right on any interpretation of the claim. Restriction of movement as a result of the powers executed by the searching police officers under the Search and Surveillance Act 2012 or when persons are under arrest need to be determined on an analysis of those circumstances and not under this section.

[37] Section 21 provides for the right to be free from unreasonable search and seizure. This section is at the heart of the claim.

[38] I am satisfied that there is no arguable claim that the police entry into the plaintiff's property, or the conduct within it, was unreasonable in breach of s 21.

[39] Throughout her pleadings the plaintiff maintains the police had no right to search because the search warrant carried by the police and given to her was not the original nor was it certified. Annexed to the statement of claim is a copy of the very document provided by the police. It is marked as a copy, it is dated and each page is stamped with the details of the issuing officer. In all respects the document provided complies with s 105 of the Search and Surveillance Act 2012 as it is a facsimile of the warrant issued by the issuing officer.

[40] The warrant did provide a valid power of entry and when resisted (as the plaintiff acknowledges she did), justified the use of reasonable force to enter.

[41] On the basis of the plaintiff's own pleadings it could not possibly be said that the police acted unreasonably in the use of force to enter the property. She asserts that they came through the door and there was some form of bodily contact between the police officers and herself consistent with her standing in the way or holding the door so that they needed to push it open.

[42] Furthermore the invocation of the warrantless power of search under the Search and Surveillance Act 2012, upon the finding of drugs, was justified as was the uplifting of the wallet and the taking of the driver's licence to not only determine if there were drugs within the wallet but to identify its owner. There is no arguable cause of action under this section.

[43] Section 22 provides for the right to be free from arbitrary arrest or detention. On the plaintiff's pleadings she asserts wrongful arrest and detention. She asserts also that there is no offence of obstruction.

[44] The Search and Surveillance Act 2012 provides for police powers to search. There is no power to detain and persons are free to leave during a search but active obstruction can be dealt with by arrest. Notwithstanding her denial that there is no offence of obstruction the plaintiff acknowledges that she was arrested and taken to the Te Puke Police Station. The police affidavits maintain that she was obstructive and that was the reason for the arrest. Specifically the evidence is that the failure to return the driver's licence (as she accepts) was the final impetus for the arrest against a background of obstruction both physical and verbal.

[45] On any view of the plaintiff's pleadings there is no arguable case that she was arbitrarily arrested or detained.

[46] Section 23(1) provides for the rights of persons arrested or detained and specifically to be told of the reason for the arrest, and the right to instruct a solicitor without delay.

[47] The plaintiff asserts that she was not given that advice.

[48] My view is that in the overall context of the plaintiff's pleadings and given matters that she concedes there is no realistically arguable basis for breach of s 23.

[49] I note that the statement of claim refers only to s 23(2). I have chosen to deal with s 23(1) as the pleadings do refer to a failure to provide advice as to rights.

[50] Section 23(2) provides:

> (2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.

[51] The plaintiff was released. She was not charged. On her own pleadings there is no breach of this subsection.

[52] Section 24(a) provides that persons charged:

> … be informed promptly and in detail of the nature and cause of the charge.

[53] The assertion of breach in this case is that the plaintiff was arrested and was not told why. The police evidence is that she was arrested for obstruction and was informed of the charge and in addition was given her rights. I am satisfied that in the context of the claim and having regard to all other aspects of it there is no arguable claim for a breach of this particular provision.

[54] The remaining causes of action are in tort alleging assault and battery, wrongful arrest and false imprisonment.

[55] On the plaintiff's case the only possible assaults are the contact upon entering the property and the handcuffing and subsequent treatment after arrest.

[56] I have already addressed the actions of the police in entering the property. The police deny any contact with the plaintiff but assuming her pleaded facts are correct any contact was fully justified in the entry pursuant to the warrant.

[57] Furthermore the handcuffing and subsequent processing by transporting to the police station was justified pursuant to the powers of arrest. Any injury that may have occurred as a result of handcuffing is equally justified and there is nothing in the plaintiff's pleadings that would suggest physical conduct or treatment of her beyond what can be fully justified pursuant to the powers of entry or arrest.

[58] References to kidnapping, terrorising, torturing and rape are emotive and, as I have noted, have no relevance and are entirely unsupported on any interpretation of the plaintiff's pleadings.

[59] There is no arguable case for assault and battery, false imprisonment or wrongful arrest.

[60] Nor is there any possible arguable case for the unreasonable exercise of a statutory power.

[61] On the basis of the above analysis there is no arguable defence to the Crown application for summary judgment which is granted. The plaintiff's claim is struck out but there will be no award of costs.

[62] The plaintiff is clearly impecunious and in my discretion I consider that the appropriate course is to let costs lie where they fall.

P G Mabey QC
District Court Judge