IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2016-404-1312
[2019] NZHC 1666

BETWEEN	JOHN DOUGLAS SELLMAN First Plaintiff
	BOYD ANTHONY SWINBURN Second Plaintiff
	SHANE KAWENATA FREDERICK BRADBROOK Third Plaintiff
AND	CAMERON JOHN SLATER First Defendant

Cont'd …/2

Teleconference: 3 July 2019

Appearances: J P Cundy for the Plaintiffs
B P Henry for the first defendant
E J Grove for the second and third defendants
J W S Baigent and W Akel for the fourth and fifth defendants

Judgment: 17 July 2019

JUDGMENT NO 8 OF PALMER J

This judgment is delivered by me on 17 July 2019 at 12 noon pursuant to r 11.5 of the High Court Rules.

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Registrar / Deputy Registrar

Counsel/Solicitors:
Lee Salmon Long, Auckland
B P Henry, Barrister, Auckland
Shanahans Law Ltd, New Lynn, Auckland
Chris Patterson Barrister Ltd, Auckland
Andrew Walter Graham & Co, Auckland
William Akel, Barrister, Auckland
Simpson Grierson, Auckland

CARRICK DOUGLAS MONTROSE GRAHAM
Second Defendant

FACILITATE COMMUNICATIONS LIMITED
Third Defendant

KATHERINE RICH
Fourth Defendant

NEW ZEALAND FOOD AND GROCERY COUNCIL INC
Fifth Defendant

Summary

[1] In this proceeding, three medical professionals sue Mr Cameron Slater, and other defendants, for defamation. In an interlocutory judgment of 23 November 2018, I ordered Mr Slater to provide further particular discovery and to attend court to be orally examined. Since then, Mr Henry, for Mr Slater, has: applied for a temporary stay on the basis Mr Slater's medical condition prevented him giving instructions; foreshadowed an intention to apply for appointment of a litigation guardian; advised of Mr Slater's bankruptcy; and advised that he has instructions to oppose new applications but that Mr Slater no longer defends the substantive proceeding.

[2] The plaintiffs have applied for orders that Mr Slater comply with the court orders for discovery and oral examination or be held in contempt of court. Mr Henry now submits, on Mr Slater's instructions, that Mr Slater is no longer a party to the proceeding or able to engage a solicitor, because he is bankrupt, and he seeks a formal hearing on that issue. Mr Henry also says there are medical reports from February 2019 confirming Mr Slater is unable to give evidence in court.

[3] On 20 March 2019, I ordered this proceeding to continue against Mr Slater despite his bankruptcy, under a wide discretion in s 76(2) of the Insolvency Act 2006 (the Act). I consider an implicit term of that order is that Mr Slater must comply with the orders made against him in the proceeding, which was one of the reasons why the plaintiffs sought continuation of the proceeding. If that was not sufficiently implicit, I now make it explicit under that discretion and/or under the inherent jurisdiction of the High Court to supervise proceedings before it. That means Mr Slater must comply with the court orders irrespective of Mr Henry's argument about the effect of his bankruptcy. Further argument is not required. Mr Slater must comply with the orders personally if the Official Assignee cannot do so through the exercise of the Assignee's powers over Mr Slater's property. If Mr Slater is able to give instructions, and wishes to oppose the plaintiffs' application to be heard on 26 July 2019, he needs to file a notice of opposition, and any supporting affidavits including any medical evidence. If he is not able to give instructions I will consider appointing a litigation guardian for him.

What has happened in this proceeding?

[4] I would not ordinarily set out the context of a decision such as this one in so much detail, but it may be useful if the issue determined in this judgment is considered on appeal, as Mr Henry has intimated might be sought.

The proceeding

[5] This proceeding was commenced three years ago, in mid-2016. The plaintiffs are three medical professionals, Dr Doug Sellman, Dr Boyd Swinburn and Mr Shane Bradbrook. They sue Mr Slater who they allege defamed them in a series of blog posts on his Whale Oil website. They also sue Mr Carrick Graham and his company Facilitate Communications Ltd (FCL) for defaming them in comments on the posts. And they sue Mrs Katherine Rich and the New Zealand Food and Grocery Council Ltd (NZFGC) for allegedly procuring Mr Slater, Mr Graham and FCL to publish the substance and sting of the alleged defamation. I am case-managing the proceeding to trial.

Interlocutory judgments

[6] On 2 October 2017, I decided a number of interlocutory applications brought by the defendants to strike out the proceeding or specific aspects of it.[1] I struck out 21 pleaded meanings of defamatory statements but did not strike out the proceeding. On 23 November 2018, I decided a number of further interlocutory applications.[2] Relevantly, I granted the plaintiffs' applications for:[3]

(a) Mr Slater to provide further particular discovery to the plaintiffs and other defendants, because there were grounds for believing he had not discovered relevant documents. He was ordered to provide discovery, within 15 working days, by 14 December 2018, of:

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1 *Sellman v Slater* [2017] NZHC 2392, [2018] 2 NZLR 218.
2 *Sellman v Slater (No 6)* [2018] NZHC 3057.
3 At [1](b), [66](b) and [1](e), [66](e).

(i) documents passing between him and Mr Graham and FCL and between him and third parties including any of NZFGC's members, relating to:

(1) any of the plaintiffs or Te Reo Mārama;

(2) publication of the blog posts, comments or other material on Whale Oil that are the subject of this proceeding and/or that concern the plaintiffs;

(3) the services provided by Mr Slater, Social Media Consultants Ltd, Mr Graham or FCL (including invoices for the services) including in relation to the alcohol, food and beverage or tobacco industries, which relate to the subjects of the blog posts or comments that are the subject of this proceeding;

(ii) documents and data that are or have been in Mr Slater's control, concerning numbers of downloads of each blog post, details of user comments and any requests under the Official Information Act 1982 or Privacy Act 1993 and responses; and

(b) Mr Slater and Mr Graham will attend court to be orally examined for up to one day because I considered they had made insufficient answers to interrogatories, particularly about whether blog posts were posted on the Whale Oil website for reward. That was to be on a date determined by the Registrar after 15 working days of 23 November 2018. The Registrar set the date to be 4 February 2019.

Mr Slater's application for a stay

[7] On 14 December 2018, the last day by which Mr Slater's discovery was due, his counsel Mr Henry applied for a temporary stay of the proceeding on the basis of

Mr Slater's medical condition.[4] He also applied for suppression of Mr Slater's medical details, of which he provided evidence, which I granted. Mr Henry told me he had been unable to get instructions from Mr Slater due to his lack of concentration. He stated his intention to have Mr Slater's condition completely assessed at the end of January 2019. The plaintiffs opposed the stay, on the basis of their own expert medical opinion evidence. I stated that, without testing the medical evidence more, I was "not prepared to disregard the advice of the two doctors who have examined Mr Slater in favour of the opinion of another doctor who has read his discharge notes".[5] I did not stay the proceeding but lengthened the deadlines for Mr Slater so they occurred at least three months after his medical event. I ordered him to provide the discovery by 18 February 2019. I asked the Registry to reschedule the oral examination to after 25 February 2019. I required Mr Slater to file and serve a memorandum by 30 January 2019, regarding any reason why the proceeding should not proceed as now scheduled.

Foreshadowed application for a litigation guardian for Mr Slater

[8] On 15 February 2019, Mr Henry advised that Mr Slater had been examined by doctors and referred to a specialist but an appointment could not be obtained until 30 March 2019.[6] He said he had instructions to apply for appointment of a litigation guardian for Mr Slater. The plaintiffs did not object to an adjournment. I made timetabling orders for the application for a litigation guardian, and for Mr Slater's application for a stay if he wished to pursue it. I also required the discovery ordered in the judgment of 23 November 2018 to be given by 15 April 2019 and the oral examination to be scheduled by the Registry after 29 April 2019. It was scheduled for 1 May 2019.

Mr Slater's application for bankruptcy

[9] On 25 February 2019 Mr Henry, and his junior Ms Singh, sought leave to withdraw because they no longer had instructions.[7] Mr Henry advised me Mr Slater was no longer capable of working, has extensive legal fees outstanding and had voluntarily applied to be adjudicated bankrupt. He advised a specialist had given oral

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4 Minute No 11 of Palmer J, 18 December 2018.
5 At [10].
6 Minute No 12 of Palmer J, 15 February 2019 at [1].
7 Minute No 13 of Palmer J, 26 February 2019, at [2].

advice on Mr Slater's medical condition and his family had determined he had to be isolated from stress. Mr Henry also advised it was no longer proposed to apply for appointment of a litigation guardian but, rather the proceeding would be halted under s 76 of the Act.

[10] I stated in my minute of 26 February 2019 that leave to withdraw would be conditional on a promised memorandum on costs being filed. Given the uncertainty about representation, I also asked Mr Henry whether he would be prepared to act as counsel assisting the court to complete the memorandum on costs and to advise the Court if Mr Slater's application for bankruptcy was successful. Mr Henry accepted the appointment and subsequently advised Mr Slater was adjudicated bankrupt on 27 February 2019. Accordingly, under s 76 of the Act, the proceeding against Mr Slater was automatically "halted", by operation of law, as a consequence of his bankruptcy.

[11] In a joint memorandum of 14 March 2019 with counsel for the Official Assignee, the plaintiffs sought leave to continue the proceeding against Mr Slater under s 76(2) of the Act. That section empowers the court, "on the application by any creditor or other person interested in the bankruptcy", to "allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the court thinks appropriate". The plaintiffs' reasons were: to vindicate their reputations; to determine Mr Slater's liability so any judgment sums can be proved in Mr Slater's bankruptcy; Mr Slater had extant discovery obligations in the proceeding; it was necessary for Mr Slater to remain a party so he could be subject to the oral examination order and cross-examination at trial; and the proceeding would continue against the other defendants in any event.

[12] The Official Assignee was not able to assess the amount of Mr Slater's liability to the plaintiffs, did not object to the proceeding being continued against Mr Slater, did not seek for any conditions to be imposed and did not seek to be made a party.[8] In a further memorandum of 18 March 2019, Counsel for the plaintiffs sought a timetable leading up to hearing of an application for appointment of a litigation guardian for Mr Slater.

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[8] Minute No 14 of Palmer J, 20 March 2019, at [5].

[13] At a teleconference on 19 March 2019:

(a) Mr Henry submitted the plaintiffs were entitled to apply for default judgment but submitted what was being proposed was an abuse of process. He also raised the question of his status again.

(b) The other defendants made no submissions on the question of continuation of the proceedings against Mr Slater.

(c) Mr Henry's understanding was that Mr Slater was withdrawing from the proceeding, in which case the plaintiffs could seek judgment and prove the amount of damage by formal proof.[9] Mr Henry told me he had received medical reports he had been instructed to sit on for the moment, but which could be relied upon if further applications were made against Mr Slater.

[14] In Minute No 14 of 20 March 2019:

(a) I clarified I had not yet given him or Ms Singh leave to withdraw. I stated Mr Henry's indication that he had medical reports but had been instructed to sit on them at the present time and use them in response to applications, suggested he was still acting in that capacity.[10] I indicated I was prepared to grant leave to withdraw pending only progressing issues around appointment of a litigation guardian.

(b) I observed the plaintiffs' claim was not clearly unsustainable, it was more suitably determined by action than by lodging proof of debt in the bankruptcy and it was inappropriate for the Official Assignee to determine whether a claim by the plaintiffs against Mr Slater should be admitted or rejected.[11] Accordingly, I allowed "the proceeding to continue against Mr Slater, under s 76(2) of the Act".

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9 At [9].
10 At [3].
11 At [7].

(c) I indicated I was not clear about why Mr Slater was taking no steps in the proceeding:[12] whether it was because he was incapacitated and not able to give instructions (in which case a litigation guardian should be appointed); or if it was because he was not incapacitated but simply did not wish to take any steps. I considered I needed to know whether Mr Slater was incapacitated or not and Mr Henry's previous advice to the court suggested he might be. I gave leave to the parties to file further submissions.

[15] In his memorandum of 26 March 2019, Mr Henry confirmed he still had "a measure of instruction" from Mr Slater, in relation to any new applications to compel Mr Slater to be involved in any proceedings that endanger his health, but not in relation to the substantive proceedings, in respect of which instructions had been withdrawn.[13] He submitted Mr Slater had no ability to fund a defence of the proceeding and he had decided he would no longer participate in defending them when he applied for bankruptcy. He advised that Mr Slater had instructed he would not be seeking to appoint a litigation guardian and would not participate further in the proceeding on health grounds. He submitted the plaintiffs could not compel Mr Slater to engage in the process further but may obtain judgment against him and look to other rules of court to pursue examination of Mr Slater, in response to which Mr Slater would object on medical grounds. Mr Cundy, for the plaintiffs, submitted Mr Henry's memorandum suggested Mr Slater was incapacitated and required a litigation guardian.[14] He submitted Mr Slater should be required to comply with the discovery order and attend court for the oral examination.

[16] In Minute No 15 of 2 April 2019, I did not consider there was any medical evidence on the basis of which I could be satisfied Mr Slater was then incapacitated so that I could appoint a litigation guardian for him.[15] I noted Mr Slater appeared to intend not to comply with the discovery and oral examination orders, made in the 23 November 2018 judgment, and that he had sought to avoid complying with them from 14 December 2018 by successively applying for a stay on medical grounds, indicating

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12 At [10].
13 Minute No 15 of Palmer J, 2 April 2019, at [3].
14 At [4].
15 At [6].

he would apply for appointment of a litigation guardian, withdrawing instructions from counsel, indicating he would take no steps and applying for bankruptcy. I indicated the ball in the Court was with the plaintiffs to consider what applications they wished to make.[16] I also terminated Mr Henry's appointment as counsel assisting the court.[17]

The application to compel compliance or be sanctioned for contempt

[17] At a teleconference of 17 April 2019, Mr Cundy advised the plaintiffs intended to apply for orders compelling Mr Slater to provide discovery and attend the oral examination and sought timetabling orders to a hearing.[18] Mr Henry submitted that was an abuse of process. I made the timetabling orders, leading to a half-day hearing of the application on 26 July 2019.

[18] On 6 May 2019, the plaintiffs filed and served their application for orders that Mr Slater comply with the order for particular discovery within 10 working days and attend Court to be orally examined for up to one day at a date to be scheduled. If he fails to comply with either order, the plaintiffs seek orders he will be in contempt of Court, with appropriate sanctions to be imposed under s 165 of the Senior Courts Act 2016. They also seek costs. The plaintiffs filed a supporting affidavit.

[19] On 20 May 2019, Ms Singh signed a memorandum for Mr Henry and herself as "Counsel assisting the Court" though the memorandum was entitled "on behalf of Cameron Slater (bankrupt)". She submitted that Mr Slater's bankruptcy affects his legal status "in that the bankrupt's property [as defined in s 3 of the Act] vests in the Official Assignee under s 7(a) of the Act". She submitted I granted leave to the plaintiffs to proceed under s 76(2) on the basis it is not appropriate for the Official Assignee to assess proof of debt against Mr Slater and the plaintiffs need to formally prove their claims. She submitted, because Mr Slater is now bankrupt, "the proceeding is now against Mr Slater's (bankrupt) estate, (in the hands of the Official Assignee)", and "can no longer continue against Mr Slater in personam (i.e. against Mr Slater bankrupt) because all his interests vests (sic) in the Official Assignee under section

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16 At [7].
17 At [9].
18 Minute No 16 of Palmer J, 17 April 2019, at [2].

7(a) of the Act".[19] She submitted the plaintiffs are entitled to obtain a default judgment and prove damage to reputation (if any) and that is the only appropriate remedy available to them. She submitted the plaintiffs' path is inefficient, unnecessary and costly and circumvents the mechanism in the Act to enforce costs against Mr Slater and this litigation.

[20] On 24 May 2019, Mr Henry filed a "Further Memorandum of Counsel on behalf of Cameron Slater (bankrupt)". He submitted Mr Slater "is no longer a party to this proceeding as all his interests have vested in the Official Assignee" and "Mr Slater's bankrupt estate is now the First Defendant to this proceeding".[20] He submitted, if any party wants evidential assistance from Mr Slater they will be required to issue a subpoena. He also submitted Mr Slater was still recovering from a serious medical event on 30 October 2018, he was examined by a specialist on 13 February 2019 and 20 February 2019 and medical reports confirmed Mr Henry's view that Mr Slater is unable to participate in cross-examination, give evidence in Court and respond to a subpoena. Mr Henry advised, if Mr Slater is subpoenaed, he would only provide the medical report on a "counsel eyes' only" basis due to its sensitive content. Mr Henry stated he had instructions from Mr Slater's family because, as a bankrupt, he is not capable of directly engaging a solicitor, but he has no instructions from Mr Slater's bankrupt estate. He sought leave to withdraw because of that.

[21] On 11 June 2019, Mr Cundy sought a further teleconference before the 26 July 2019 hearing in light of these memoranda and Mr Slater not filing any notice of opposition to the plaintiffs' application. Mr Cundy submitted Mr Slater remains a party, on the basis of my decision under s 76(2) of the Act, and if he wishes to oppose the application Mr Slater will need to file a notice of opposition and any medical evidence. He submits it is incorrect a bankrupt person cannot give instructions to a solicitor and Mr Henry cannot purport to act on instructions from non-parties. He submits the ongoing delays in this proceeding have largely been due to positions taken by Mr Slater. He proposed a timetable for the filing and service of a notice of opposition and any affidavits, including on Mr Slater's medical condition.

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19 Memorandum of Counsel, 20 May 2019, at [7].
20 Memorandum of Counsel, 24 May 2019, at [3].

[22] On 19 June 2019, Mr Henry filed a further memorandum stating no party is instructing him, no person is taking responsibility for his fees, he has no professional responsibility for the plaintiffs' issues, he is attending Court and filing responses out of courtesy to the Court and he renews his application for leave to withdraw.

[23] I held a further teleconference on 3 July 2019. Counsel reiterate their positions as above. In addition:

(a) Mr Cundy submits that if Mr Slater is incapacitated to the extent he is unable to give instructions, a litigation guardian should be appointed but noted that seemed unlikely as Mr Henry has previously stated he had instructions for some purposes. Mr Cundy submits the distinction between Mr Slater as a person and Mr Slater's bankrupt estate is not known to the law and the reason why leave was granted to continue the proceeding was specifically because Mr Slater had further steps to take in the proceeding and the plaintiffs were seeking to vindicate their reputation. He also submits that medical evidence relevant to the application should be advanced before the hearing on 26 July 2019.

(b) Mr Henry clarifies he is making his submissions on behalf of Mr Slater personally, on the basis of Mr Slater's instructions. He seeks leave to withdraw from acting for the first defendant because the first defendant is Mr Slater's bankrupt estate, on behalf of which he is not instructed. He confirms, if I do not accept his position, he would want the opportunity to respond to the application on behalf of Mr Slater in person. He seeks his status as counsel assisting the court be reinstated. And he seeks that I set down a formal hearing, in person, for an hour and a half, of his point about the legal status of a bankrupt.

(c) Mr Grove, for Mr Graham and FCL, seeks to be excused from any formal argument of the effects of Mr Slater's bankruptcy. Ms Baigent reserves the position of Ms Rich and the NZFGC.

Orders

[24] On 23 November 2018, Mr Slater was ordered to provide further discovery by 14 December 2018 and to attend the High Court to be orally examined at a date subsequently set as 4 February 2019. Since then, in summary:

(a) On 14 December 2018, Mr Henry applied for a temporary stay of proceedings because Mr Slater's medical condition prevented him getting instructions from Mr Slater and medical assessment was required. I lengthened the deadlines on Mr Slater.

(b) On 15 February 2019, Mr Henry advised he had instructions to apply for appointment of a litigation guardian for Mr Slater on the basis of a medical appointment that was not available until 30 March 2019. I further lengthened the deadlines on Mr Slater.

(c) On 26 February 2019, Mr Henry advised Mr Slater no longer proposed to apply for appointment of a litigation guardian but was not capable of working and had applied for bankruptcy which would halt the proceeding against him. I allowed the proceeding to continue against Mr Slater and sought clarity about whether Mr Slater was incapacitated.

(d) On 26 March 2019, Mr Henry advised he had "a measure of instruction" from Mr Slater in relation to any new applications but not in relation to the substantive proceedings, which Mr Slater would not defend and in which he would not participate on medical grounds.

(e) On 20 and 24 May 2019, Ms Singh submitted the proceeding is now against Mr Slater's bankrupt estate, rather than Mr Slater in personam. Mr Henry submits, for that reason, Mr Slater is no longer a party to the proceeding or able to engage a solicitor. Mr Henry also says he has medical reports from February 2019 confirming Mr Slater is unable to be cross-examined or give evidence in Court or respond to a subpoena.

(f) On 3 July 2019, Mr Henry advised he was acting on the instructions of Mr Slater, personally.

The effect of Mr Slater's bankruptcy

[25] I regard Mr Henry's submission about the different legal personalities of a bankrupt and a bankrupt estate as a nice academic issue. Relevantly:

(a) Under ss 7 and 101 of the Act, bankruptcy affects the legal status of a person and has important consequences. That includes the bankrupt's property vesting in the Official Assignee, the bankrupt's rights in the property being extinguished and the bankrupt's powers over, or in respect of, any property vesting in the Assignee.

(b) Rule 4.49 of the High Court Rules 2016 (the Rules) provides a proceeding does not end on bankruptcy of a party if the cause of action continues. Rule 4.50 requires a court to order that a successor to the interest of a bankrupt be made a party, or served with notice of it, on terms the court thinks just, "in circumstances where the complete settlement of all the questions involved in the proceeding is necessary".

(c) The United Kingdom Supreme Court has recently observed:

(i) a cardinal feature of personal insolvency is that the effect of bankruptcy on existing liabilities is procedural, not substantive;[21]

(ii) a trustee in bankruptcy (equivalent to the role of our Official Assignee) is personally a party to legal proceedings the trustee has adopted because the bankrupt's assets vest in the trustee personally and, except for a limited class of purely personal actions, a bankrupt claimant has no further interest in the

[21] *In re Lehman Brothers International (Europe) (in administration) (No 4)* [2017] UKSC 38, [2018] AC 465 at [197].

defence of legal proceedings, or the cause of action asserted in the proceedings.[22]

[26] On the basis of what I have heard so far, I would be inclined to doubt that bankruptcy alters the legal personality of the bankrupt. Rather, I would expect the Official Assignee is empowered to exercise the bankrupt's rights and powers in a legal proceeding which are related to the bankrupt's property interests. I would expect a bankrupt continues to be personally responsible for the discharge of duties in legal proceedings which are purely personal in nature and unrelated to any property interest of the bankrupt.[23]

[27] No doubt further argument would elucidate this issue. But I do not need to hear further argument because I do not consider I need decide it. The issue here is whether Mr Slater's bankruptcy necessarily negates the need to comply with the Court's orders to date. Irrespective of the default legal effect created by Mr Slater's bankruptcy, I consider it need not and that it does not.

[28] Section 76(2) of the Act provides that "on the application by any creditor or other person interested in the bankruptcy, the court may allow proceedings that had already begun before the date of adjudication to continue on the terms and conditions that the court thinks appropriate". That is, if anything, wider than the court's discretion in the predecessor section which was characterised by the High Court as wide.[24]

[29] Under the discretion, on 20 March 2019, I ordered this proceeding to continue against Mr Slater. I consider it is an implicit term of that order that Mr Slater must comply with orders made against him in the proceeding, which was one of the reasons why the plaintiffs sought its continuation against him. If that was not sufficiently implicit, I now make it explicit under that discretion and/or under the inherent jurisdiction of the High Court to supervise proceedings before it. That means Mr Slater must comply with the court orders irrespective of Mr Henry's argument about the effect of his bankruptcy. Given that, I do not consider the court and the parties

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22 *Gabriel v BPE Solicitors* [2015] UKSC 39, [2015] AC 1663 at [9].

23 Cf *Tamihere v Commissioner of Inland Revenue* [2017] NZHC 2949 at [15], citing *Heath v Tang* [1993] 1 WLR 1421 (CA) at 1424 and *Mawhinney v Environment Court* [2015] NZHC 1663.

24 *de Alwis v Luvit Foods International Ltd* (2007) 3 NZCCLR 1015 (HC) at [4].

need to incur yet further delays from, and the expense of, argument about that issue. Further argument is not required.

[30] Mr Slater must comply with the orders personally if the Official Assignee cannot do so through the exercise of the Assignee's powers. The order to be examined orally must be complied with by Mr Slater personally, subject to what I say below about his medical condition. If the Official Assignee has possession of, and control over, Mr Slater's documents sufficient to discharge Mr Slater's obligations under the discovery order then I request the Official Assignee to arrange compliance with that order. Otherwise, Mr Slater will need to comply with that obligation personally too.

[31] If required to facilitate compliance with the Court's orders, I would consider exercising the discretion in r 4.50 to order that a successor to Mr Slater's interest in the proceeding be made a party on specified terms, or to order Mr Slater make third party discovery under the Rules or to make any other orders required under the Court's inherent jurisdiction to supervise the conduct of legal proceedings before it. The Official Assignee is welcome to make suitable recommendations about those options.

[32] It would be helpful if the Official Assignee can file a memorandum with the Court about these matters, and serve it on the parties, by **1 pm Wednesday 24 July 2019**. I will be hearing the plaintiffs' application to compel compliance or sanction for contempt at 10 am on Friday 26 July 2019.

Mr Slater's medical condition

[33] In terms of Mr Slater's medical condition, I identify three possibilities:

(a) either Mr Slater is incapacitated and not able to give instructions, in which case a litigation guardian must be appointed for him under r 4.30 of the High Court Rules 2016; or

(b) Mr Slater is able to give instructions but is not medically able to provide discovery and/or be orally examined, in which case medical evidence of that must be provided and tested if required in response to the

plaintiffs' current application to compel compliance or sanction for contempt; or

(c) Mr Slater is able to give instructions, is able to provide discovery and be orally examined but does not want to do so, in which case he must face the consequences of the plaintiffs' current application.

[34] I assume that possibility (a) is not the case, because Mr Henry has most recently said he has instructions from Mr Slater. If, now or at some future point, Mr Henry were to tell me Mr Slater is incapacitated and not able to give instructions, then I would want to see an affidavit explaining the basis of such a statement and its consistency with the various statements made to me to date and I would consider appointing a litigation guardian under r 4.35 of the Rules.

[35] If possibility (b) or (c) is the case, Mr Slater will need to file a notice of opposition to the plaintiffs' application to compel compliance or sanction for contempt, with any supporting affidavits, by **1 pm Monday 22 July 2019**, if he wishes to oppose the application**.** The plaintiffs must file a synopsis of their submissions, and any affidavits in reply by **1 pm Wednesday 24 July 2019.** Mr Slater must file his synopsis of submissions by **1 pm Thursday 25 July 2019**.

Mr Slater's representation

[36] Mr Henry clarified to me on 3 July 2019 that he was making submissions on behalf of Mr Slater personally, on the basis of Mr Slater's instructions. He had previously advised he had instructions to oppose applications to require Mr Slater's participation in the proceeding. I assume his previously expressed request for leave to withdraw as Mr Slater's counsel does not apply to the plaintiffs' application to compel compliance or sanction for contempt, to be heard on 26 July 2019. If it does apply to that, I decline to grant leave to withdraw. Neither do I appoint him as counsel assisting the Court. Mr Slater's legal representation appears to be important to resolution of this issue.

Palmer J