

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKĀURAU ROHE**

**CIV-2016-044-001215  
[2018] NZHC 2747**

IN THE MATTER OF      the Defamation Act 1992

BETWEEN                MATTHEW JOHN BLOMFIELD  
                                 Plaintiff

AND                        THE OWNER AND/OR  
                                 ADMINISTRATOR OF  
                                 WWW.LAUDAFINEM.COM  
                                 Unknown Defendant

Hearing:                17 October 2018

Appearances:        M J Blomfield (Self-represented Plaintiff) in Person

Judgment:            24 October 2018

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**JUDGMENT OF EDWARDS J  
[Application for Contempt]**

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This judgment was delivered by Justice Edwards  
on 24 October 2018 at 10.30 am, pursuant to  
r 11.5 of the High Court Rules

Registrar/Deputy Registrar  
Date:

To:      M J Blomfield, Auckland

[1] On 12 October 2016, Woodhouse J made orders prohibiting publication of any information or material relating to Mr Blomfield on the www.laudafinem.com website (“.com website”) or elsewhere. He also required existing material on the website to be removed. The orders were subsequently amended on 24 October 2016 to include another website, www.laudafinem.org (“.org website”), and social media accounts.

[2] Mr Blomfield submits that the orders have been breached, and he applies for a finding of contempt of court. Furthermore, Mr Blomfield contends that there is now sufficient evidence before the Court to be satisfied that Mr Dermot Nottingham is responsible for the breach.

[3] Accordingly, Mr Blomfield asks this Court to impose a short term of imprisonment on Mr Nottingham for contempt of court. In the alternative, if this Court is not satisfied that Mr Nottingham is the previously unidentified defendant, then Mr Blomfield seeks an order of contempt to be made with the sentencing to follow if and when his or her identity is established.

### **The law of civil contempt**

[4] A knowing breach of a court order may constitute a contempt of court, punishable under the Court’s inherent jurisdiction.<sup>1</sup> To establish a civil contempt, an applicant must prove each of the following elements beyond reasonable doubt:<sup>2</sup>

- (a) The terms of the order in question were clear, unambiguous, and binding on the defendant.
- (b) The defendant had knowledge, or proper notice, of the terms of the order, typically as a result of personal service of the order upon him or her.<sup>3</sup>

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<sup>1</sup> *Siemer v Solicitor-General* [2013] NZSC 68, [2013] 3 NZLR 441 at [1].

<sup>2</sup> See *Zhang v King David Investments Ltd (in liq)* [2016] NZHC 308 at [39]; *Solicitor-General v Krieger* [2014] NZHC 172 at [24]–[26]; *Mike Pero (New Zealand) Ltd v Krishna* [2018] NZHC 40 at [40]–[41]; *Burmester v Burmester* [2018] NZHC 2352 at [12]; *Horowhenua 11 (Lake) Part Reservation Trust v Taueki* [2017] NZHC 4, [2017] NZAR 221 at [3]; *Official Assignee v Mathiesen* [2018] NZHC 843, [2018] NZAR 623 at [14]; *Law Commission Reforming the Law of Contempt of Court: A Modern Statute* (NZLC R140, 2017) at [5.69].

<sup>3</sup> *Solicitor-General v Krieger* [2014] NZHC 172 at [24].

- (c) The defendant acted in breach of the terms of the order.
- (d) The defendant's conduct was deliberate in the sense that he or she deliberately or wilfully acted in a manner that breached the order. Deliberate conduct can be contempt notwithstanding a lack of intent to breach.<sup>4</sup>

### **Is there a contempt of court?**

[5] Mr Blomfield has filed two affidavits in support of his application which together comprise six large bundles of documents. Copies of the offending articles comprise the bulk of the documents filed. In oral submissions, Mr Blomfield took me to several of those articles which he submitted prove that the defendant was both aware of the orders and deliberately breached them.

[6] That evidence, and those articles, evidence a breach of the orders made by Woodhouse J. The original orders prohibited the posting of material on the .com website "or elsewhere". When the .com website was closed down, the material was republished on the .org website. The amended orders required the removal of material from the .org website. Articles referring to Mr Blomfield remain on the .org website, in breach of the court orders.

[7] There is also strong evidence that the breach of the orders was made knowingly, that is, with knowledge of the orders prohibiting publication and requiring removal of the offending articles. At least one of the articles refers to the fact that they were first published on the .com website. Several of them make reference to the orders made by Woodhouse J, and one includes a picture of Woodhouse J with commentary suggesting that there was a lack of jurisdiction to make the orders. This is powerful evidence that there has very likely been a deliberate flouting of court orders.

[8] But "very likely" is insufficient to make a finding of contempt. Contempt requires proof beyond reasonable doubt that the breach was deliberate. Mr Blomfield

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<sup>4</sup> *Burmester v Burmester* [2018] NZHC 2352 at [12(d)]; citing *Carpet Barn-Hamilton-Ltd v Jobe* [2017] NZHC 2920 at [13]. See also *Siemer v Stiassny* [2007] NZCA 117, [2008] 1 NZLR 150 at [10].

faces real difficulties in meeting that threshold in a case involving an unidentified defendant. Although the proceeding has been served on the owner of the .com website, he or she has not identified him or herself. There is accordingly no evidence from him or her as to the circumstances in which the breach of the orders occurred. The importance of the circumstances in which the breach occurred was explained by Lang J in *McAllister v Solicitor-General*:<sup>5</sup>

[47] In other cases, however, the physical acts giving rise to the alleged contempt may not comprise the whole of the relevant factual matrix. A finding of contempt may depend, for example, upon the judge's conclusion as to why a person has acted in a particular way. In such a case, the judge will need to ensure that the person is given an adequate opportunity to provide an explanation for his or her actions. This may include giving the person an opportunity to provide the judge with further relevant evidence before a final decision regarding the issue of contempt is made.

[9] Furthermore, a finding of contempt in the absence of an identified defendant would not serve any immediate purpose. An order punishing a contempt of court is intended to operate coercively so as to enforce compliance with court orders.<sup>6</sup> That key purpose would be left unfulfilled by a declaration of contempt without an identified defendant to whom it may attach. If a defendant is identified at a later point in time, then the application for contempt may be pursued against that person with the finding of contempt and the appropriate punishment for that contempt (including a term of imprisonment if necessary) made at the same time.

[10] I consider these hurdles preclude a finding of contempt at this stage with a penalty hearing to be convened later. The preferable course is for the finding of contempt, and the penalty hearing, to be addressed at the same time once the defendant has been identified.

### **Should Mr Nottingham be held in contempt?**

[11] Mr Blomfield says there is sufficient information before the Court to enable Mr Nottingham to be identified as the previously unidentified defendant. He relies on

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<sup>5</sup> *McAllister v Solicitor-General* [2013] NZHC 2217, [2013] 3 NZLR 708.

<sup>6</sup> *Grant v Bhana* [2016] NZHC 2755 at [3].

Mr Nottingham's recent conviction and sentence in the District Court for breaches of non-publication orders, and five charges of criminal harassment to support that claim.<sup>7</sup>

[12] The breaches of non-publication orders at issue in that case related to suppression orders made by Winkelmann J in relation to the identities of defendants in a criminal proceeding. The offending articles were published on the .com website. A police investigation followed which established a link between Mr Nottingham and the offending articles published on that website. That investigation led to five other complainants identified in laudafinem articles who had previously complained about harassment by Mr Nottingham and the laudafinem website. Mr Nottingham was convicted of the charges following a jury trial. He was sentenced to 12 months' home detention and community work of 100 hours.

[13] This evidence shows a very strong link between Mr Nottingham and the laudafinem websites. Mr Nottingham's conduct in the criminal proceedings is also broadly consistent with the conduct in this case. Mr Blomfield submitted from the bar that the laudafinem websites became inactive following Mr Nottingham's sentence to home detention which included a condition prohibiting him from using the internet. That adds further substance to Mr Blomfield's belief that Mr Nottingham is behind the breach of the Court orders.

[14] But there is a procedural hurdle to making Mr Nottingham liable for the contempt at this stage in the proceeding. Mr Nottingham has not been formally joined to the proceeding as a defendant. He has not been personally served with the application for contempt. He has not had an opportunity to contest a finding of contempt or make submissions on the appropriate penalty. Notice of the application is the minimum first step before a finding of contempt may be made against Mr Nottingham.<sup>8</sup>

[15] Mr Blomfield has found himself in a difficult position with orders in his favour which cannot be enforced until the defendant is identified. If Mr Blomfield is now confident that he has sufficient evidence that Mr Nottingham is responsible for the

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<sup>7</sup> See *R v Nottingham* [2018] NZDC 15373.

<sup>8</sup> See *McAllister v Solicitor-General* [2013] NZHC 2217, [2013] 3 NZLR 708 at [44]–[45].

contempt, then the proper course is to join him as a defendant to the proceeding and pursue the application for contempt against Mr Nottingham directly.

**Result**

[16] In the absence of an identified defendant as a party to this proceeding, I decline the application for contempt.

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Edwards J