

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

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

**CIV-2013-404-5218
[2018] NZHC 1099**

BETWEEN MATTHEW JOHN BLOMFIELD
 Plaintiff

AND CAMERON JOHN SLATER
 Defendant

Hearing: 14 and 15 May 2018

Appearances: F Geiringer for Plaintiff
 Defendant in person

Judgment: 18 May 2018

**JUDGMENT OF LANG J
[on application by plaintiff for summary judgment and/or strike out]**

*This judgment was delivered by me on 18 May 2018 at 3.30 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date.....

[1] In this proceeding Mr Blomfield sues Mr Slater in defamation. At issue in the proceeding are 13 blogs published by Mr Slater on the website commonly known as Whaleoil.¹ The trial of the proceeding is scheduled to commence on 8 October 2018. Six weeks have been allocated for the trial.

[2] Mr Slater is defending the claims on several bases. First, he will argue that, taken in context, the blogs were not defamatory of Mr Blomfield. Secondly, he will rely on the affirmative defences of truth and honest opinion.

[3] Mr Blomfield now applies for summary judgment as to liability in relation to each of the impugned publications. In the alternative, he seeks an order that the defence to each be struck out on the basis that it has been improperly pleaded and / or discloses no tenable defence.

The application for summary judgment

Relevant principles

[4] The principles that apply to an application for summary judgment have been clearly established through decisions of the Court of Appeal such as *Pemberton v Chappell*, *Grant v NZMC Ltd*, *Westpac Banking Corporation v MM Kembla New Zealand Ltd* and *Krukziener v Hanover Finance Ltd*.²

[5] I therefore propose to apply the following general principles, which apply to all applications for summary judgment:

- (a) Mr Blomfield must satisfy the Court that Mr Slater has no arguable defence to the claims brought against him. The issue is whether there is a real question to be tried.
- (b) It is generally not possible to determine disputed issues of fact based on affidavit evidence alone, particularly when issues of credibility

¹ Whale Oil Beef Hooked <www.whaleoil.co.nz>.

² *Pemberton v Chappell* [1987] 1 NZLR 1 (CA); *Grant v NZMC Ltd* [1989] 1 NZLR 8 (CA); *Westpac Banking Corporation v MM Kembla New Zealand Ltd* [2001] 2 NZLR 298 (CA) and *Krukziener v Hanover Finance Ltd* [2008] NZCA 187 [2010], NZAR 307 at [26].

arise. Issues of law, even though they may be complex, can, however, be determined in an application for summary judgment.

- (c) Although the Court should adopt a robust approach, nevertheless summary judgment may be inappropriate where the ultimate determination turns on a judgment that can only properly be reached after a full hearing of all the evidence.

The publications

[6] Each of the blogs was published between 3 May and 6 June 2012. They occurred after Mr Slater came into possession of a hard drive containing emails sent to or by Mr Blomfield. Other material was also stored on the hard drive, including photographs of Mr Blomfield's family.

[7] There is no dispute for present purposes that Mr Slater caused the blogs to be published on the Whaleoil website notwithstanding the fact that the website is apparently operated by the second defendant, Social Media Consultants Limited. There can also be no dispute that the blogs related to Mr Blomfield because he was named in each. Each of the blogs also contains material that is arguably defamatory of Mr Blomfield. The issue for present purposes is whether Mr Blomfield has established that Mr Slater has no arguable defence to his claims.

[8] The case is complicated by the fact that Mr Blomfield does not rely solely on the blogs that Mr Slater posted on the Whaleoil website. He also relies on allegedly defamatory comments that other persons posted on the website in response to the blogs. Many of these contain disparaging comments about Mr Blomfield. Mr Blomfield contends that Mr Slater and Social Media Consultants are also liable in defamation in relation to these posts because they allowed them to be published on the Whaleoil website.

[9] I now consider the application for summary judgment as it relates to individual publications. Mr Geiringer frankly acknowledged on Mr Blomfield's behalf that the application was stronger in relation to some publications than it was in relation to others. I do not deal with the publications in chronological order because they are

conveniently considered as groups in accordance with outcome. The first group comprises the first, fourth and eighth publications.

Group One – the first, fourth and eighth publications

The first publication – 3 May 2012

[10] The first blog set the scene for those that followed and was in the following terms:³

Who really ripped off Kidscan?

By Whaleoil on May 3, 2012

Regular readers will recall that Hell Pizza got into a spot of bother in respect to an alleged charity called KidsCan. I blogged about it at the time based on media stories.

What I am about to reveal is the real story behind the scam at KidsCan and the involvement of Matt Blomfield in collusion with Stu “McMillions” McMullin to throw another director under the bus for the whole sorry issue.

I am starting the story that I will break over coming days with an exploration of the truth behind the story, a truth that so far hasn’t been reported. I will also explain using emails and documents exactly why the truth never came out.

With all of these posts, I will post extracts from emails, but also the complete email trail to show true context. This has never been done by the media, and I will explain why in a separate post in coming days.

The real story begins with an email confirming arrangement made between Warren Powell (Otis) and KidsCan and Warren Powell’s reply.

[11] In common with the blogs that followed, the introductory remarks were followed by a series of emails presumably downloaded from Mr Blomfield’s hard drive. These were interspersed with further commentary by Mr Slater. The emails relate to a charitable event at which Hell Pizza appears to have agreed to provide sponsorship in the form of cash and/or product. Mr Warren Powell, a director of Hell Pizza, is one of the writers and recipients of emails set out in the blog. The donation from Hell Pizza was initially to be up to a value of \$5,000 but by the end of the email chain this sum was increased to \$10,000. In return the sponsor was to receive television coverage at the event.

³ Underlined passages denote hyperlinks to the source referred to in the link.

[12] Mr Blomfield alleges this publication contains no fewer than 20 different and in some cases overlapping defamatory meanings. These include imputations that he has acted dishonestly, unprofessionally and/or in a greedy and manipulative manner. He also alleges that any reader of the publication would conclude he has participated in a conspiracy to defraud a charity for children and was party to a conspiracy to blame a director of Hell Pizza for a scam that he and others had organised. He relies in particular, on the use of the words “rip off” and “scam” within the publication.

[13] Reading the publication as a whole, however, I have concluded that summary judgment is not justified because it is arguable that an ordinary person reading the publication would not take the meanings from it for which Mr Blomfield contends. In other words, the publication is arguably not defamatory of Mr Blomfield.

The fourth publication – 8 May 2012

[14] I reach the same conclusion in relation to the fourth blog, which reads as follows:

Ghostwriting for Repeaters 101

By Whaleoil on May 8, 2012

Ok so I've had a weekend Duck Shooting, unfortunately there weren't many ducks, which meant I had a great deal of time to think about Matt Blomfield while I was freezing my tits off in the maimai.

So... There are heaps of bad news stories about Hell Pizza, and about how Warren Powell is this mad, evil, narcissistic demagogue controlling and manipulating everyone... it makes for good copy and that is exactly what Matt Blomfield did... copy, loads of internal emails to tame and lazy journalists... like Maria Slade at the Herald on Sunday.

She emails Matt two days before a story appears saying.

Maria Slade ...

to Matt

Hi Matt, have written a story for Sunday, so hope I don't see it anywhere tomorrow!

Cheers, M

Maria Slade
Business Editor
Herald on Sunday

...

What Maria was telling Matt is that she has written a story ... based on the information that Matt Blomfield sent her. What is galling about this is that the information that Matt Blomfield sent Maria Slade was confidential court documents including the summary of defence. Maria Slade had a scoop, nicely packaged and fed to her by a Hell insider so that the story could be painted about a dysfunctional company.

Two days later as promised to Matt Blomfield Maria Slade's article appears in the Herald on Sunday.

Why did Matt Blomfield do this?

Slamdunk
by

This isn't the only story Matt Blomfield has shopped to tame media contacts, tune in for the next installment and another lazy media hack will be named as a dupe of Matt Blomfield.

[15] As will be evident, the gist of this blog is that Mr Blomfield was responsible for passing confidential information, presumably about Hell Pizza, to a journalist from the *Herald on Sunday* newspaper. He is also said to have passed confidential information to other contacts within the news media.

[16] In particulars provided in support of defences of truth and honest opinion in relation to this publication, Mr Slater alleges that between 2008 and 2010 Mr Blomfield was in regular contact with journalists from three national newspapers. He also alleges Mr Blomfield provided confidential information concerning the Hell Pizza chain to journalists, including a draft statement of defence before it had been filed in Court. Mr Blomfield responds by deposing that he was employed by Hell Pizza as a public relations practitioner. He also says the owners of Hell Pizza expressly approved any information he provided to the news media.

[17] I do not consider summary judgment is available in relation to this publication because a defence based on truth may be available. More importantly, the publication is arguably not defamatory of Mr Blomfield.

The eighth publication – 16 May 2012

[18] I reach the same conclusion, and for the same reason, in relation to this publication. This relates to the liquidation of a company called The Storm Group Ltd, and is in the following terms:

BLOMFIELD FILES: THE PERFECT STORM

By Whaleoil on May 16, 2012

This is the start of a series of posts about the Storm Group and Matt Blomfield, Dan Blomfield and their theft of assets.

The emails below are just a taste and will lead into several more posts including the recovery of assets from information provided to the liquidator by me.

John Price is handling the liquidation of Storm Group and has been having some trouble with Matt Blomfield and his brother Dan Blomfield over missing assets.

Price is after the assets of Storm Group including a digger and a truck that Goughs has a financial interest in. There is also mention of a boat. We will get to that later.

The digger and truck were not recovered at this time. Matt Blomfield reported them stolen to the Police at the time.

Blomfield Files: Storm Group Emails

[19] This publication is clearly a prelude for what is to follow, and in particular the ninth publication that Mr Slater posted the following day. I deal with that publication later in the judgment.⁴ The eighth publication clearly hints that Mr Blomfield is associated with missing assets but standing alone I consider it is arguably not defamatory of Mr Blomfield.

Group Two – the third, sixth, seventh, tenth, eleventh and thirteenth publications

The third publication – 4 May 2012

[20] This publication was posted under the heading “Operation Kite”. It contains an allegation that Mr Blomfield and his lawyers conspired to steal a cheque belonging to a company called Infrastructure NZ Ltd. The blog stated that Mr Blomfield needed funds to pay his bank because his business empire was collapsing. In December 2008 he used private investigators to steal the cheque from a post office box. He then attempted to launder the cheque but was “caught by his vigilant bank”. The bank reversed the cheque but not before Mr Blomfield had removed the funds from the account into which it had been deposited. The bank then successfully pursued Mr Blomfield for the resulting debt. The blog contains a link to a judgment of the

⁴ At [44]-[52].

District Court at North Shore dated 30 March 2010 in a case between ASB Bank Ltd as plaintiff and Mr Blomfield as defendant. The material before the Court contains only the first page of the judgment so it is not at this stage possible to ascertain the result of the judgment.

[21] Mr Blomfield acknowledges the factual narrative contained in the publication. In his affidavit he contends, however, that it occurred within context of a dispute with his business partner. I infer that Mr Blomfield and his business partner were the shareholders of Infrastructure NZ Ltd. Mr Blomfield says he learned his partner had been removing large sums of money from the company without his knowledge. After taking legal advice, Mr Blomfield decided to rectify the situation by withdrawing funds from the company in the same way. He then arranged for a cheque payable to the company to be intercepted and banked to his own account. His partner learned of this and persuaded the bank to reverse the cheque. This has led to a court battle that is still ongoing. Mr Blomfield does not refer to the District Court judgment that is referred to in the publication.

[22] I consider Mr Blomfield's evidence on this point arguably supports Mr Slater's defence based on truth. It suggests Mr Blomfield converted the company's funds to his own use. For that reason summary judgment is not available in relation to this publication.

The sixth and seventh publications – 15 May 2012

[23] These are headed "The Compromise" and "The Compromise Ctd", and relate to a compromise that Mr Blomfield sought to enter into with his creditors in early 2010.⁵ The sixth publication read as follows:

THE BLOMFIELD FILES: THE COMPROMISE

By Whaleoil on May 15, 2012

Matt Blomfield's house of cards was close to collapse, and his last ditch attempt to escape the reality of his nefarious business dealings was by taking a tact which is known as a "Compromise".

Matt Blomfield had to deal with a substantial number of creditors to evade personal bankruptcy. On the recommendation of Mike Alexander, Matt

⁵ Presumably a composition under Part 5 of the Insolvency Act 2006.

Blomfield engaged a company called Time Capital and a couple of fellows Tom Wilson & Steve Wilkins, or Wilkie as friends like Matt Blomfield like to call him. Matt and Time Capital are introduced in February 2010, by Mike Alexander of Knight Coldicutt as a proposed creditors trustee.

Time Capital are a little hesitant.

Blomfield Files – Time Capital 17 Feb2010

[24] Mr Slater posted the seventh publication later the same day:

BLOMFIELD FILES: THE COMPROMISE, CTD

By Whaleoil on May 15, 2012

This morning I blogged about Matt Blomfield's dodgy arrangements in organising his creditors compromise.

As a recap Matt Blomfield paid \$10,000 to Time Capital prior to them being appointed, or in fact Mike Alexander appearing to introduce the two of them in an email of 18 February.

Time Capital then set about consulting extensively with both Mike Alexander and Matt Blomfield about the Creditors Compromise and finally a document is issued that states that Time Capital were independently appointed despite the fact that Matt Blomfield paid them \$10,000 and was introduced to them by Mike Alexander, who is looking more compromised day by day. Remember Matt Blomfield also say he will pay more.

In this email trail below we can see that this whole arrangement was organised by Mike Alexander as a favour for a "client" ... who was "in funds". Just a few months later Matt Blomfield went under and all his companies for more than \$3.5 million. But not before Mike Alexander provided a glowing reference to Stuart Alexander Limited.

Tom Wilson says he would like to help despite the later email saying it wouldn't work out ... perhaps the initial \$10,000 deposit helped change his mind.

Blomfield Files: The Compromise Intro

[25] Mr Blomfield alleges these blogs and other material posted in response contain numerous defamatory comments. In summary, however, he contends they suggest he dishonestly paid the proposed trustee the sum of \$10,000. The dishonesty lay in the fact that he knew the trustee would not act independently and that this would be to Mr Blomfield's advantage, presumably because the trustee would overlook wrongdoing on Mr Blomfield's part. The payment therefore amounted to a bribe.

[26] Mr Blomfield supports his application for summary judgment by deposing that there was nothing unusual or untoward about the payment or the appointment of

Mr Wilson as trustee. He says he asked his lawyer, Mr Alexander, to nominate a suitable trustee to administer the proposed composition with creditors and Mr Alexander nominated Mr Wilson of Time Capital. He says he met with Mr Wilson and agreed to pay the fee Mr Wilson proposed to charge for acting as trustee. He says this was an arms length transaction, and there was no conflict of interest on the part of Mr Wilson.

[27] I accept that the publication arguably contains the defamatory meanings Mr Blomfield alleges. I also consider, however, that the defences of truth and honest opinion may potentially be available. Whether or not the latter is available will depend on the evidence relating to the circumstances in which Mr Blomfield agreed to make the payment to Mr Wilson. That issue therefore requires a factual assessment that can only be made following trial.

The tenth publication – 18 May 2012

[28] I reach the same conclusion, but for a different reason, in relation to the tenth publication. This was posted under the heading “A conversation with the police”. It describes a telephone call Mr Slater said he had received from a police officer, Constable Martin Guest, earlier that day. The subject of the conversation was a complaint Mr Blomfield had laid with the police regarding a burglary of his address. Mr Blomfield had told the police Mr Slater was in receipt of some of the property stolen during the burglary. It transpired the burglary in question had actually occurred at Mr Warren Powell’s address. This prompted Mr Slater to state in the blog that Mr Blomfield had lied and once again been found out. The blog went on to say that the constable had telephoned back later in the day to advise Mr Slater the police regarded the incident as a civil matter and would not be taking any further action. During this conversation Mr Slater says the constable told him he should not agree to meet with Mr Blomfield. Mr Slater said he did not find this advice strange considering Mr Blomfield’s previous record of violence and intimidation.

[29] Mr Blomfield deposes that he has spoken with the constable and the constable did not want to swear an affidavit in support of the application for summary judgment. The constable’s discussion with Mr Blomfield was therefore hearsay and

Mr Blomfield's version of it is not admissible for present purposes. It remains open to either Mr Blomfield or Mr Slater to subpoena the constable to give evidence at trial regarding the substance of his discussions with Mr Slater on 18 May 2012. If it accords with the description given in the publication, the defence of truth may be available.

[30] Several of the comments made in the blog are clearly defamatory in that they accuse Mr Blomfield of being a liar and a person with a record of violence and intimidation. I consider, however, that the defence of truth is likely to be available in relation to this publication if Mr Slater can establish that the publication accurately records his conversation with the police officer. He can give evidence to that effect and he can also call the officer to support his version of the conversations. The constable was obviously not prepared to provide Mr Blomfield with an affidavit for the purposes of the application for summary judgment. He is, however, a compellable witness and either party can call him to give evidence at trial.

[31] For that reason I consider this issue is best left for trial when the truth or otherwise of the publication can be established with a degree of reliability.

The eleventh publication – 31 May 2012

[32] This publication bears the heading "Where is the Vengeance Money?" It relates to sponsorship funds that were apparently paid to a company called Vengeance by a company called Hoyts. The blog begins:

BLOMFIELD FILES: WHERE IS THE VENGEANCE MONEY?

By Whaleoil on May 31, 2012

Earlier today I busted the myth that Hoyts remain as the largest debtor of Vengeance Limited. In case you are still in doubt, this post will outline where the money went and to whom ... and prove once and for all that Garry Cecil Whimp is acting only on behalf of Matthew John Blomfield and not the creditors.

Here is a Statement of Account from Vengeance to Hoyts that shows that the amounts invoiced have been paid by Hoyts.

So where did all the Hoyts money go?

Well it didn't go to Megan Denize from the Marketing Team. She is still on the creditors list.

It didnt go to Trinity Media Group. They are still on the creditors list.

It didn't go to Shane McKillen from VNC Cocktails/XXX Motorsport.

...

[33] The blog then sets out two emails from third parties to Mr Blomfield, the first of which queries where the money from Hoyts has gone. The second seeks payment of an outstanding debt. There is then an email dated 9 July 2009 from Mr Blomfield to a person employed by Vengeance. This is in the following terms:

Yuta

Please pay the attached so that I can pay APN tomorrow. Basically that's the profit from Hoyts gone ... but it does take APN with it

Matt

[34] The publication clearly implies that Mr Blomfield applied funds received from Hoyts to a purpose other than that for which it was intended. The email set out above also confirms Mr Blomfield asked for funds received from Hoyts to be used to pay a debt owing to APN, a news media company. It is entirely unclear from the publication, however, as to exactly what occurred.

[35] The particulars provided by Mr Slater in support of his defences based on truth and honest opinion only serve to confuse matters further. These allege that in July 2009, whilst he was bankrupt, Mr Blomfield was managing the operations and finances of Vengeance. They say that Vengeance received approximately \$160,000 as part of a sponsorship arrangement between Hoyts cinemas and XXX Motorsports. The particulars go on to allege that, instead of paying the funds to XXX Motorsport, Mr Blomfield used them to pay an outstanding debt owing by Cinderella NZ Ltd (Cinderella), a company in which Mr Blomfield held a financial interest. They also say Vengeance did not pay other creditors or businesses to whom it owed money.

[36] Mr Blomfield does not provide any clarity in the affidavit he has filed in support of the application for summary judgment. He says that Trinity Media Group was not a creditor in the Vengeance liquidation and that VNC Cocktails/XXX Motorsport never had an arrangement for sponsorship with Vengeance. He says that Mr Iguchi, the person to whom he sent the email on 9 July 2009, was responsible for

the day-to-day management of Vengeance. He also says that no money from Vengeance was used to pay Cinderella's debts. He does not, however, provide any explanation for the email set out above.

[37] The end result is that on the evidence presently available it is not possible to say exactly what occurred in relation to the sponsorship moneys received from Hoyts. Given the email that Mr Blomfield sent to Mr Iguchi on 9 July 2009, however, it is possible to infer that Mr Blomfield was responsible for at least part of the money from Hoyts being used to pay APN. Whether or not Mr Slater can establish a defence based on truth is therefore likely to depend on whether Mr Blomfield was entitled to request the funds be used to pay APN. That is an issue Mr Slater is entitled to explore at trial. For that reason the claim in relation to this publication must proceed to trial.

The 13th and final publication – 6 June 2012

[38] This publication purports to be an update of the so-called Blomfield files but contains no narrative or commentary. Rather, it comprises a series of links to blogs that have already appeared on the Whaleoil website. These include the twelve other publications that are the subject of this proceeding. To that extent it has no added value for present purposes.

Group three – the second, fifth, ninth and twelfth publications

The second publication – 3 May 2012

[39] This publication is headed "Knowing Me, Knowing You – Matt Blomfield". It comprises two pages of narrative interspersed with two emails ostensibly written by Mr Blomfield and downloaded from his hard drive. It contains obviously defamatory statements such as "Matt is a psychopath", "He loves extortion" and "He is a pathological liar".⁶ The statement about Mr Blomfield being a psychopath is linked to a police form indicating Mr Blomfield received diversion on 8 April 2008 on a charge of common assault.

⁶ The blog also states that Mr Blomfield "loves the notoriety" but for present purposes I consider that statement to be arguably not defamatory.

[40] Mr Slater has provided particulars in support of defences of truth and honest opinion in relation to the assertions that Mr Blomfield is violent, that he enjoys telling lies and has no regard to others. Mr Slater relies on seven separate incidents in which he alleges Mr Blomfield threatened other people for various reasons.⁷ He advances three particulars, some of which are light on detail, to support Mr Blomfield's alleged tendency to tell lies. He has provided two particulars, neither of which is more than a bare assertion, to support the allegation that Mr Blomfield is a psychopath.

[41] In his affidavit Mr Blomfield deposes he has never been diagnosed as a psychopath and he provides an explanation for the charge of assault. He says he has no other convictions and is not a pathological liar. These assertions are obviously Mr Blomfield's own beliefs about himself and as such can be given limited weight in an application for summary judgment.

[42] Despite the relatively extreme nature of Mr Slater's assertions, and the sketchy particulars provided in support of the defences of truth and honest opinion, I am not prepared to enter summary judgment in respect of this publication. Sufficient particulars have been provided to enable Mr Slater to advance the defences at trial. He will obviously need to re-formulate his particulars so that they provide sufficient detail to enable Mr Blomfield to respond to them.

The fifth publication – 14 May 2012

[43] This publication was headed "Blomfield Files: Free to a Good Home" and reads as follows:

I have now copied all of the Blomfield Files onto a portable drive. It is just over 1Tb of juicy dirt.

Andrew Krukziener, Bruce Sheppard, Matt Blomfield, Mike Alexander, Bruce Johnson, Garry Whimp, Trevor Perry, Yuta Iguchi, Tania Iguchi/McRae, Rebecca Anderson/Blatchford/Blomfield, Roger Bowden, Stuart Gloyn, Paul "Weeman" Hinton, Glen Collins, Stu McMullin, Callum Davies, plus a famous All Black ... are just some of the names of those who have aided and abetted Matt Blomfield's trail of destruction through business circles nationally.

⁷ The particulars also refer to threats Mr Blomfield allegedly made to a liquidator in July 2012. This alleged incident post-dates the publication and could not be used to support a defence based on truth.

Drugs, fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception, hydraulic-ing.. it's all there.

This complete archive of his dodgy dealings, cover-ups and lies is available to any reputable journalist who calls. First in first served.

Probably not a good idea for Bevan Hurley, Hazel Philips, Sarah McDonald or any media flunky that bought Matt's bullshit to call.

I have taken the liberty of excluding the large amount of illegal movies and home made porn that he had collected. (yuk)

[44] This is arguably the most serious of the publications because of the extreme and wide-ranging allegations that Mr Slater makes in it. It also extends to a claim that Mr Blomfield has been in possession of "home made porn", an assertion that Mr Blomfield believes relates to photographs taken of his young children and his wife when she was giving birth.

[45] The only particulars Mr Slater has provided to support defences of truth or honest opinion in relation to this publication are as follows:

- (a) The plaintiff has been responsible for several businesses which have failed, causing significant economic harm to others.
- (b) The plaintiff's hard drive stored a significant amount of illegal pirated movies.
- (c) The plaintiff's hard drive stored a significant amount of pornography that appeared to have been created by the plaintiff.

[46] These are manifestly inadequate to support the defences Mr Slater relies upon. In particular, they provide no basis for a defence to the allegation that Mr Blomfield has been involved in drugs and has committed perjury. The same may be said in relation to the statement that Mr Blomfield has been guilty of corruption, bullying and extortion. It therefore appears likely that Mr Slater has no arguable defence to Mr Blomfield's claim in relation to this publication.

The ninth publication – 17 May 2012

[47] This publication is headed "The Perfect Storm, Ctd", and is obviously the sequel to the eighth publication which was posted on the previous day. This

publication goes into greater detail about the missing assets referred to in the earlier publication.

[48] The blog begins by referring to the previous publication, stating that it related to a missing digger and truck belonging to the Storm Group Ltd. It also said Mr Blomfield and his brother had “essentially blamed Carl Storm for the missing digger, playing possum with the liquidator”. The blog goes on to say that Mr Slater had received a telephone call from the liquidator on 16 May 2012 to say he had recovered the truck and the digger using information supplied by Mr Slater. They had been found in Whakatane in the possession of a person who had swapped them for a boat. The blog said the truck and digger had last been seen in the possession of Mr Blomfield, who had called a recovery agent two years earlier to say they had been located. They then disappeared a short time later. The publication concludes:

I am not sure what the actual legal situation for Matt Blomfield is with this or what possible crimes have been committed. Conversion is certainly one that springs to mind, as is filing a false police complaint.

The digger and the truck issue is just the tip of the iceberg with the Storm Group.

Here is a plan orchestrated by Mike Alexander of [KC] whereby it is outlined how the assets of The Storm Group and related entities were going to be dispersed to ... evade creditors post Carl Storm's bankruptcy and how Matt Blomfield was to benefit from these machinations.

[49] In his affidavit Mr Blomfield says he has never been a director or shareholder of the Storm Group Ltd, although his brother worked for that company for a short period as a digger driver. He says the publication is a complete fabrication and that he is aware the digger and truck were re-possessed in Whakatane some two years prior to the posting of the publication.

[50] Mr Blomfield's assertions are supported by the evidence of Ms Sandra Ellis, a director of a security company that undertakes repossession work. Ms Ellis has sworn an affidavit confirming that her company repossessed the digger and the truck on 14 December 2010 in Whakatane. She says the repossession occurred on the instructions of a finance company that held a charge over the assets. She also says the truck and digger were subsequently delivered to an equipment dealer in Manukau on the instructions of the finance company. She says her company did not receive

instructions from the liquidator, and that she has never met and does not know Mr Slater. She also confirms he did not provide any information leading to the recovery of the items.

[51] Mr Slater has not responded to the evidence adduced by Mr Blomfield regarding this issue.

[52] The overall tenor of the publication is clearly defamatory because it accuses Mr Blomfield of stealing assets belonging to the company and then selling them to a third party. It also suggests that Mr Blomfield has been responsible for other similar acts in relation to the assets of the Storm Group.

[53] As Mr Geiringer points out, it is not for the Court to invent defences when the defendant does not put them forward. For that reason I would ordinarily have been prepared to enter summary judgment against Mr Slater on this aspect of Mr Blomfield's claim. The position may also have been different if Mr Blomfield had sought summary judgment at an early stage and not waited six years to do so.

[54] I consider, however, that this would be likely to create significant practical difficulties that may be to Mr Blomfield's ultimate detriment. First, the entry of summary judgment as to liability would create a right of appeal that I have no doubt Mr Slater would seek to exercise. This would require the Court of Appeal to examine two findings as to liability in isolation from the balance. More importantly, there is no guarantee that any appeal could be heard prior to the commencement of the trial. If the appeal remains unresolved by that date it will not be possible to fix damages at trial in the event that Mr Slater is found liable in defamation in relation to any of the remaining publications. Damages will need to be assessed on a global basis, particularly given Mr Blomfield's stance that the publications amounted to a carefully planned and orchestrated attack on him by Mr Slater.

[55] For these reasons I propose to exercise my discretion against the entry of summary judgment in relation to this publication. I see no unfair prejudice to Mr Blomfield in taking that step. His evidence in relation to this aspect of his claim has already been prepared. The only prejudice he could suffer is that Mr Slater may

adduce evidence from the liquidator at trial to confirm the telephone discussion took place as described by Mr Slater in the publication. In that event Mr Slater would be entitled to advance a defence based on truth and possibly honest opinion. Mr Blomfield could not argue that this would be unfair.

The twelfth publication – 6 June 2012

[56] This publication is headed “It’s a Kind of Mattjik” and features a video clip of Mr Blomfield sparring in a boxing ring. The narrative is as follows:

IT’S A KIND OF MATTJIK

By Whaleoil on June 6, 2012

One of the more amusing things that I have found on the copy of Matt Blomfield’s hard drive (able to be published) was this video of Matt “training” ... actually blowing his arse out in the boxing ring.

Featuring in this video is also Joe Mansell, one of Matts’ business partners in Cinderella. I will tell the story about how Matthew John Blomfield rorted \$172,914.23 out of Cinderella via factoring company Scottish Pacific, also how Matt went to make Joe Mansell the fall-boy for his fraudulent practises by way of making a fabricated a fraud [sic] complaint that resulted in Joe Mansell being declared bankrupt.

Anyway, back to Matt’s boxing prowess – Matt could barely complete one round, and I’ve plenty more rounds to come for him.

[57] This publication is arguably defamatory because it suggests Mr Blomfield defrauded his company Cinderella of the sum of \$172,914.23 using a factoring company called Scottish Pacific. Mr Blomfield is then said to have diverted the blame to Mr Mansell by making a false complaint that he was responsible for the fraud on Cinderella. This resulted in Mr Mansell being declared bankrupt.

[58] Mr Slater advances defences based on truth and honest opinion in relation to this publication based on the following particulars:

Particulars

- (a) In 2007, the plaintiff was a director of Cinderella NZ Ltd (“Cinderella”) and had control of Cinderella’s finances.
- (b) Cinderella assigned a debt of \$172,914.23 owed by its client, TPF Limited (“debt”) to factoring company, Scottish Pacific Debtor Finance (“Scottish Pacific”).

- (c) On 5 October 2007 Cinderella received the sum of \$172,914.23 from TPF Limited, but did not pay this money to Scottish Pacific.
- (d) On 4 June 2008 Cinderella went into liquidation.
- (e) After Cinderella went into liquidation, the plaintiff made baseless accusations of dishonesty against Joseph Mansfield, a co-director of Cinderella, to the Police and the Official Assignee.
- (f) The plaintiff settled the debt with Scottish Pacific for \$190,000 and sought to recover \$95,000 from Joseph Mansfield.
- (g) As a consequence of the plaintiff's actions against him, Joseph Mansfield entered into voluntary liquidation.

[59] In response, Mr Blomfield deposes that Cinderella, of which he was a director, owed a factoring company called Scottish Pacific the sum of \$172,914.23. Mr Blomfield settled that debt with the assistance of his lawyer, Mr Bruce Johnson. Mr Blomfield then pursued his co-guarantor, Mr Mansell, seeking payment from Mr Mansell of a contribution to the settlement sum. I infer that this led to Mr Mansell's bankruptcy. Mr Blomfield denies there was any fabricated fraud complaint against Mr Mansell, or that he made Mr Mansell the "fall-boy" for any fraudulent practices by Mr Blomfield.

[60] Mr Blomfield's version of events is supported by an affidavit sworn by Mr Johnson in support of the application for summary judgment. Mr Johnson confirms that he assisted Mr Blomfield to settle the debt owing to Scottish Pacific using assets he controlled in another company. Mr Johnson's firm then sought contribution from Mr Blomfield's co-guarantor, Mr Mansell.

[61] Mr Slater has not responded to this evidence so for present purposes must be taken to have no answer to it. He would therefore appear to have no arguable defence to the claim relating to this publication. As in the case of the ninth publication, however, I propose to exercise my discretion against the entry of summary judgment and for the same reasons.

Conclusion

[62] The application for summary judgment cannot succeed in relation to eleven of the publications. Mr Slater has not advanced an arguable defence to the other two

publications but I have exercised my discretion not to enter summary judgment on those claims at this stage.

The application to strike out

Relevant principles

[63] There is no dispute regarding the principles to be applied in the present context. They are to be found in the decisions of the Court of Appeal and Supreme Court in *Attorney-General v Prince*⁸ and *Couch v Attorney-General*.⁹

[64] In short, the Court is required to proceed on the basis that the plaintiff can prove the pleaded facts. The Court will only strike out a proceeding when the cause of action is so clearly untenable that it cannot succeed or is “so certainly or clearly bad” that it should not be permitted to proceed.¹⁰

[65] Although the jurisdiction to strike out a proceeding is to be exercised sparingly, the Court may exercise the power under both r 15.1(1)(d) of the High Court Rules 2016 and its inherent jurisdiction.¹¹

[66] The Court should be slow to strike out claims in areas of the law that are developing.¹² It should also obviously exercise caution where the facts upon which the plaintiff’s claim is based need to be determined at trial.

The argument

[67] Mr Geiringer advances the strike out argument on two bases. First, he submits that the existing statement of defence wrongly advances the defences of truth and honest opinion in tandem when they need to be pleaded and particularised separately. Secondly, he submits that such particulars as have been provided fail to fairly inform Mr Blomfield of the precise nature of the allegations he will be required to meet.

⁸ *Attorney-General v Prince* [1998] 1 NZLR 262 (CA).

⁹ *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725.

¹⁰ *Couch v Attorney-General*, above n 9, at [33].

¹¹ *Bradbury v Judicial Conduct Commissioner* [2014] NZCA 441, [2015] NZAR 1 at [100]-[105].

¹² *Couch v Attorney-General*, above n 9, at [33].

[68] Mr Geiringer acknowledges that the courts will rarely strike a pleading out when it can be re-pleaded to the required standard. He points out, however, that this proceeding has now been on foot for more than six years and the trial is due to begin in a few months. He submits Mr Slater has had ample opportunity to place his statement of defence in order and should not be given another chance. He contends the time has now come for the statement of defence to be struck out in its entirety.

The defences have been advanced in tandem

[69] Section 40 of the Defamation Act 1992 provides:

40 Truth and honest opinion to be pleaded separately

In any proceedings for defamation, where the defendant intends to rely on a defence of truth and on a defence of honest opinion, the defendant shall plead each of those defences separately.

[70] Mr Geiringer contends the manner in which Mr Slater has pleaded his defences of truth and honest opinion contravene s 40 because they are effectively “rolled up” together. He points out that before legislation prohibited this from being done, the common law treated a so-called rolled up plea as constituting a defence of honest opinion and not truth.¹³

[71] An example of the manner in which Mr Slater has pleaded his defences is as follows:

10. The defendants admit paragraph 10; and say further that the publication does not convey nor is it capable of conveying the alleged meaning.
 - a. Furthermore, the statement is true, or not materially different from the truth.
 - b. Or, in the alternative; the words expressed are an honest opinion.
- ...

¹³ *Sutherland v Stopes* [1925] AC 47 (HL); *Gooch v NZ Financial Times (No 2)* [1933] NZLR 257 (SC).

[72] Although a pleading of this nature ostensibly advances the defences of truth and honest opinion on a separate and alternative basis, Mr Geiringer submits this is not the case when the particulars Mr Slater has provided are examined.

[73] The particulars of the two affirmative defences in relation to each publication are set out in a schedule at the end of the statement of defence. The particulars Mr Slater has provided in relation to the third publication provide a convenient means of explaining the approach he has taken:

Schedule 3: “Operation Kite”

3. The defendant refers to the story in Schedule 3 to the ASOC and says that to the extent that the statements in paragraphs 13, 23 and 26 of the ASOC have or are capable of having the meanings alleged by the plaintiff, the statements are true in substance and in fact and/or consist of an expression of honest opinion.

Particulars

- (a) In December 2008, the plaintiff was a co-director of Infrastructure NZ Limited (“Infrastructure NZ”).
- (b) In December 2008 the plaintiff hired a private investigation firm to intercept a cheque from Waitakere City Council (“WCC”) to Infrastructure NZ of approximately \$100,000 (“the cheque”) without the knowledge of his co-director, who also owned 50% of the shares of Infrastructure NZ.
- (c) The plaintiff endorsed the cheque to himself without the authorisation of the Company, or its other director.
- (d) The plaintiff banked the cheque with the ASB Bank (“ASB”).
- (e) The ASB later reversed the cheque, and sought to recover the monies from the plaintiff.
- (f) The North Shore District Court awarded summary judgment to the ASB in March 2010.
- (g) At all material times, the plaintiff knew or ought to have known that he had no legal entitlement to the cheque or to its proceeds.

[74] Mr Geiringer says Mr Slater was made aware of this issue in 2012 and counsel then acting for him amended the statement of defence so that the defences were pleaded separately. The issue arose again in November 2017 when Mr Blomfield’s solicitors sought further and better particulars from Mr Slater. Mr Geiringer submits

Mr Slater should not be given a further opportunity at this late stage to re-plead his case given the fact that he has ignored earlier warnings.

[75] I take Mr Geiringer's point, but I note that Mr Slater was represented by counsel in 2012 and that is not the case now. I am prepared to accept that as a lay litigant, and even as an experienced lay litigant, Mr Slater may not have been aware of the pleading requirements in relation to this issue. For that reason I am prepared to give him a final opportunity to re-plead his defences separately.

[76] Mr Slater needs to be aware, however, that the defences comprise different elements. For that reason the same particulars may not support both defences. In order to establish the defence of truth, for example, it is necessary for the defendant to set out the facts and circumstances relied upon to prove either that the pleaded imputations are true or substantially true, or that the publication as a whole is substantially true.¹⁴

[77] A pleading of this nature will permit Mr Blomfield to understand the facts Mr Slater is relying upon and to counter them if he believes them to be incorrect. Mr Slater is not restricted to relying on the facts set out in the publication. He is also entitled to rely on other facts and circumstances that are capable of proving the facts in the publication that he says are true. This is so even though the other facts and circumstances may not have existed at the time of the publication.¹⁵ Mr Slater may therefore plead facts that have come into existence after the date of the publication.

[78] The defence of honest opinion requires the defendant to establish that, reading the publication as a whole, such imputations as the fact finder has found to exist were conveyed by the publication as expressions of opinion rather than statements of fact.¹⁶ It is for the Judge in the first instance to determine whether the imputations are capable of being opinion rather than fact.¹⁷ Importantly, the facts in the publication must have existed at the time of the publication and must either have been alleged or referred to

¹⁴ *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [38]-[40]; *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [89].

¹⁵ *Simunovich Fisheries Ltd v Television New Zealand Ltd* [2008] NZCA 350 at [125].

¹⁶ *Television New Zealand Ltd v Haines*, above n 14, at [90].

¹⁷ *Television New Zealand Ltd v Haines*, above n 14, at [90].

in the publication. Alternatively, they must have been generally known at the time.¹⁸ The defendant may not go outside these parameters in establishing the defence of honest opinion. Furthermore, the defendant may not call evidence at trial that is outside the ambit of the permitted particulars. For that reason the particulars “serve to focus and confine the evidence which may be given in support of defences of truth and honest opinion”.¹⁹

[79] Mr Slater needs to re-plead his statement of defence and particulars bearing in mind these principles. He also needs to be aware that he will not be permitted to call evidence at trial if it falls outside the pleadings in their final form.

The publications are incapable of amounting to expressions of opinion

[80] As I have already observed, it is for the Judge in the first instance to determine whether, reading the publication as a whole and assuming the pleaded imputations can be proved, the publication is capable of being an expression of opinion rather than a statement of fact.

[81] Mr Geiringer invites me to consider this issue now to avoid wasting time at trial dealing with a defence that is not available given the wording used in the publications. I agree that this would have advantages. I consider, however, that the assessment should properly be made once the pleadings are in their final form. One reason for this is that an order for strike out at this stage gives rise to appeal rights that could jeopardise the trial date. Given the age of this proceeding that would be highly unfortunate.

[82] Furthermore, and as I have already observed, the defence must be based on the facts referred to in the publication together with other facts that were generally known at the time of the publication. There is no ability, as there is in a defence based on truth, to rely on facts that come into existence after the publication. These factors significantly restrict the scope of the evidence that Mr Slater may adduce to establish the defence. I therefore do not consider there is much scope in the present case for

¹⁸ *Simunovich Fisheries Ltd v Television New Zealand Ltd*, above n 15, at [124].

¹⁹ *APN New Zealand Ltd v Simunovich Fisheries Ltd*, above n 14, at [1].

Mr Slater to call a significant body of additional evidence in relation to the defence of honest opinion.

[83] I therefore consider the issue should properly be considered at trial. It will be for the trial Judge to ensure Mr Slater does not call evidence beyond the scope of that permitted to establish the defence.

Result

[84] The application to strike out the defence is dismissed.

Costs

[85] Mr Slater is representing himself and is therefore not entitled to an award of costs, even though in technical terms he has been the successful party because the applications for strike out and summary judgment have been dismissed. As will be obvious, however, I have found that as matters currently stand Mr Slater appears to have no arguable defence to the claims based on two of the publications. He has also been granted an indulgence in relation to the filing of an amended statement of defence. For those reasons I would not have made an award of costs in his favour even if he had been represented by counsel.

Lang J

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