IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CP 143/99

BETWEEN **RICHARD CHARLES TAINUI MANNING**

Plaintiff

00/2393

AND **TV3 NETWORK SERVICES LIMITED**

Defendant

Date of Hearing: 21 August 2000

Counsel: C A McVeigh QC for Plaintiff
TJG Allan for Defendant

ORAL DECISION OF MASTER VENNING
On Plaintiff's Request For Particulars And Order Under R280
And On Interrogatories

Solicitors:
Corcoran French, Christchurch for Plaintiff
(Counsel – C McVeigh, QC, Christchurch)
Grove Darlow & Partners, Christchurch for Defendant
Cc:
Chisholm J

APPLICATIONS

[1] There are a number of interlocutory matters before the Court this afternoon. The Defendant seeks an order that the Plaintiff answer interrogatories. Although that application has only recently (on 18 August) been filed it is filed in support of a notice that was issued to the Plaintiff on 3 July this year.

[2] In response to the notice to answer interrogatories the Plaintiff made application pursuant to r280 for an order that the Plaintiff not be required to answer the interrogatories delivered by the Defendant, and at the same time serviced a notice requiring further and better particulars of the Defendant's defence, particularly the defence of truth.

[3] The matter was reviewed at a telephone conference on 13 July when the applications were allocated today's date for hearing. I note that I recorded at that time that although the Plaintiff had only issued a notice requiring particulars of defence, the matter would be dealt with today on the basis of that request and the Defendant's response without requiring a formal application by the Plaintiff.

COMPETING APPROACHES

[4] Although matters of principle are involved in the applications the parties respective positions can be summarised as follows.

[5] For the Plaintiff Mr McVeigh submitted that the Defendant ought to be required to supply full particulars of the defence of truth before the Plaintiff was required to respond to the Defendant's interrogatories. For the Defendant Mr Allan submitted that while the Defendant would supply, and indeed intended to file a more detailed statement of defence, it would be more expeditious to do so following the answer to the interrogatories sought of the Plaintiff. He submitted that there was no reason in principle in this case to delay the Plaintiff's response to the Defendant's interrogatories and that the Plaintiff ought to be directed to answer the interrogatories sought at this time, particularly when, as analysed by him, although the interrogatories run to some 99 questions they fall into approximately three or four general categories and are largely relevant to documents which both parties are well aware of.

BACKGROUND

[6] This case has already been the subject of a decision on an interlocutory matter relating to pleading. The factual background to the case is set out in the decision on the Defendant's application for further particulars of the Plaintiff's claim that was delivered on 4 February this year. It is unnecessary for me to recite the full background which is summarised in that decision. For present purposes it is sufficient to identify the relevant pleading including the defence of truth contained in the statement of defence to the amended statement of claim.

[7] In the amended statement of claim the Plaintiff maintains the allegation that as a result of the programme run by the Defendant he is defamed by certain meanings that can be taken from the programme, namely that he had stolen timber belonging to the PNR Trust; or that he was personally responsible for the theft of timber belonging to the PNR Trust; or that he had orchestrated the theft of timber belonging to the PNR Trust; or that he was somehow involved in the theft of timber belonging to the PNR Trust.

[8] The Defendant pleads at paragraph 8 of the defence:

> "8. If it be held that the [above] imputations in paragraph 5 of the claim in the context in which they were published arise, the publication taken as a whole was in substance true or [not sic] materially different from the truth.
>
> **Particulars**
>
> (a) The plaintiff (or agents acting on his behalf) has contravened the terms of an order of the Maori Land Court varying the trust order in respect of Tautuku XIII, section 5 dated 1 October 1998 ('the Order') in that the plaintiff (or agents acting on his behalf) has
>
> (i) Unlawfully cut down and or removed trees from Tautuku XIII, section 5;
> (ii) Re-located the track;
> (iii) Caused damage to trees and the environment by the unlawful construction of a road through Tautuku XIII section 5;
> (iv) Constructed a road to be used for commercial purposes
>
> (b) In applying for an order varying the Trust order prior to 1 October 1998 the plaintiff failed to advise the Maori Land Court of the multiplicity of his interests in obtaining the variation to the Trust order.

(c) The plaintiff has cut down or removed trees without the consent of all trustees.

(d) If certain of the trustees purported to give approval to cut down and remove any trees (which the plaintiff has no knowledge of and therefore defines) then he failed to account to the trustees for the value of those trees."

[9] In addition to that positive defence of truth the Defendant also pleads that the words complained of by the Plaintiff are not capable of bearing the meaning the Plaintiff alleges and further that any award of damages ought to be mitigated by reason of the Plaintiff's misconduct.

PARTICULARS FIRST

[10] While I can understand Mr Allan's submission that it would be desirable for all matters to be dealt with today if at all possible, particularly where, as here, the Plaintiff has only sought further and better particulars following the delivery of the interrogatory, nevertheless I am satisfied that the appropriate process in this case is for the Defendant to first supply the further particulars of the positive defence of truth and for the Plaintiff's answer to the interrogatories to follow thereafter. I am led to that conclusion for the following reasons.

[11] Rules 130 and 185 of the High Court Rules make it clear that the obligations of a defendant in the statement of claim are to supply sufficient particulars of the defence to enable the Plaintiff and the Court to be fully appraised of the substance of the defence: *'McGechan'* HR 130.18. As a matter of principle I accept Mr McVeigh's submission that, speaking generally, pleadings ought to be completed and fully particularised before matters such as discovery and interrogatories are dealt with. It may well be that that position is a fortiori where, as here, the case involves allegations of defamation and in particular positive defences such as truth.

[12] There are, of course, exceptions to that general rule that pleadings ought to be completed first before discovery and interrogatories. Generally, however, those exceptions are limited to situations where the information is in the hands of one party and must be obtained through discovery or interrogatories before the particulars can be completed. As I understood it as the submissions developed, Mr Allan suggested that that was the case only in relation to one particular, that relating to the relocation

of the track referred to at paragraph 8(a)(ii). However, for the Defendant to plead that the Plaintiff has relocated the track would have required the Defendant when filing the statement of defence to the amended claim to at least have had a view of where the track was initially and where it was said the Plaintiff had relocated the track to. For my part I am unable to see at the present why further particulars of that relocation of the track cannot be given or should await further answers to the interrogatories that the Defendant wishes to deliver.

[13] It is helpful to refer to the further support of the general principle to the specific authorities in the defamation cases referred to by Mr McVeigh. In *Zierenberg v Labouchere* [1893] 2 QB 183 Lord Esher MR stated:

> "I now come to the contention that the defendant ought not to be made to answer [the request for particulars] now, but should be allowed discovery by way of interrogatories and inspection before being called on to do so. ... Here the justification, for want of sufficient particulars, is not a well-pleaded defence, and till there is such a defence there can be no right to discovery, in the absence both of the relationship of which I have spoken and of any special circumstances. The pleading by the defendant of his justification, which consists of his general plea and his particulars, is not yet a well-pleaded defence, and until there is such a defence the defendant has no right to discovery." P188

[14] In *Yorkshire Provident Life Assurance Co v Gilbert & Rivington* [1895] 2 QB 148 Lindley LJ noted the importance of particulars in a libel case where proper particulars restrict the matters at issue between the parties.

[15] The matter was succinctly put by Farwell LJ in *Arnold & Butler v Bottomley* [1908] 2 KB 151:

> "A defendant in a libel action who pleads justification must state in his defence or particulars the facts on which he relies to prove such justification, and he can obtain discovery only in respect of such facts so stated: *Yorkshire Provident Life Assurance Co v Gilbert* [1895] 2 QB 148" P156

[16] In the present case the particulars sought are of the positive defence of truth alleged by the Defendant. I understood that Mr Allan acknowledged that some of the particulars sought would be immediately available whereas others would only be generally available.

[17] Shortly put, this case involves an allegation by the Plaintiff that the Defendant's programme suggests that the Plaintiff has been guilty of theft of trees in

one way or another. I understood from Mr Allan's submissions that the Defendant is not able to precisely identify the number and species of trees in issue for example. If that is the case then obviously general answers in terms of numbers and species would be sufficient. For example, in answer to the Plaintiff's request for further particulars of what trees have been cut down or removed by the Plaintiff from Tautuku XIII, section 5 as follows:

"(i) The number of such trees.
(ii) The species of such trees.
(iii) The location of such trees."

It would be sufficient for the Defendant to give a range – in other words "a dozen trees" or "between 50 and 100 trees" or something of that kind with as much precision as possible so that the Court and the Plaintiff are aware of just what is in issue. Equally, with species the Defendant ought to be able to identify the general species of trees it is alleged were cut down and removed. Again I would expect that particulars of location would be sufficient if the answer was "in the region of the northwestern boundary of the block" or something of that nature. They are particulars of pleading, not interrogatories.

[18] On that basis the Plaintiff's request for particulars would be satisfied. Although Mr Allan addressed the issue of the interrogatories in some detail, I am satisfied that the appropriate way to progress the matter today is as suggested by Mr McVeigh, namely to deal with the issue of particulars and the statement of defence and then fix a time for the Plaintiff to respond to the Defendant's interrogatories. In responding to those interrogatories the Plaintiff may still properly take objection to certain of the interrogatories, particularly if as flagged by Mr McVeigh the Plaintiff's advice is that the interrogatories are irrelevant on the basis that that aspect of the defence of truth is to be the subject of a strike out application.

ORDERS

[19] Dealing with the applications and matters formally before the Court this afternoon therefore the formal orders of the Court are:

(a) The Defendant is to supply answers to the Plaintiff's request for particulars within 28 days of today.

(b) The Plaintiff does not have to answer the interrogatories delivered by the Defendant until the Defendant has answered the request for particulars.

(c) However, there will be a further order that 28 days after delivery of the answer to particulars by the Defendant the Plaintiff is to answer the interrogatories already delivered by the Defendant on the basis outlined above, namely that if the Plaintiff takes objection to any interrogatories on the grounds they are irrelevant for the reason that the Plaintiff is to move to strike out the defence of truth raised by the Defendant then such application to strike out is to be filed at the same time as the Plaintiff answers the Defendant's interrogatories.

[20] The intention is that if there is to be any further argument concerning the interrogatories and/or a strike out application of parts of the defence of truth those matters will be dealt with at the one time so that this case may be progressed towards a substantive hearing.

COSTS

[21] That leaves the issue of costs. The matter in relation to interrogatories has been put to one side and has not been dealt with on its merits as yet. I reserve costs on the Defendant's request for an order the Plaintiff answer interrogatories. However, the Plaintiff has effectively succeeded in obtaining an order from the Court that the Defendant answer the Plaintiff's request for further and better particulars and under R280. There will be an order for costs in the Plaintiff's favour on the matter dealt with this afternoon on a 2B basis for one interlocutory application and for today's hearing.

MASTER VENNING