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IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

C.P. NO. 366-SW00

BETWEEN CHINESE HERALD LIMITED & ORS

Plaintiffs

A N D NEW TIMES MADIA LIMITED & ORS

Defendants

C.P. NO. 324-SD01

BETWEEN NEW TIMES MADIA LIMITED & ORS

Plaintiffs

A N D CHINESE HERALD LIMITED & ORS

Defendants

C.P. NO. 328-SD01

BETWEEN WANG BINGZHANG

Plaintiff

A N D CHINESE HERALD LIMITED & ORS

Defendants

Hearing: 12 June 2002

Counsel: D Neutze for Plaintiffs  
R Hooker for Defendants  
J Lal for Fifth Defendant

Judgment: 17 June 2002

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JUDGMENT OF MASTER ANNE GAMBRILL

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Solicitors:  
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Vallant Hooker & Partners, PO Box 47088, Ponsonby  
J Lal, PO Box 109059, Newmarket

[1] These three files all have the genesis in the relationship between two newspapers and proprietors and people involved in the same although not all people were present when the first dispute between the parties occurred.

[2] CP366-SW00 has been before this Court for over two years and has progressed very slowly. A part of the problem, however, is that counsel, Mr Yeh has died and new counsel will need to be appointed. The understanding of the interests of the parties, the translation of the Mandarin has all been relevant matters. The first proceeding is relatively on track to be set down for trial. The only outstanding interlocutory being a matter relating to further particulars. Counsel for the plaintiff in that proceeding has summarised accurately the issues between the parties and the summary of the grounds for not making consolidation orders. If counsel are to succeed under r 382 they must bring themselves within the periphery of the rules.

[3] The plaintiff in CP366-SW00 opposed the application by the defendants on both CP324-SD01 and 328-SD01 and they are supported in their opposition by the fifth defendant on CP366/00, Mr Kwok, represented by Mr Lal.

#### **Grounds for not making the Consolidation Orders**

[4] All three proceedings do have parties in common, listing the differences merely highlights the considerable confusion that would plague the consolidation of these proceedings. For example, the plaintiffs in the present proceeding CP366-SW00 are the defendants to CP324-SD01 and CP328-SD01.

[5] Wijian Chen and Weiming Chen are the second and third defendants respectively in CP366-SW00. They are also the third and fourth plaintiffs in CP328-SD01 and the second and third plaintiffs in CP324-SD01.

[6] Weizheng Liu is the fourth defendant in CP366-SW00 and the fourth plaintiffs in CP324-SD01. He is not a party in CP328-SD01. There are also a number of parties who only appear in one of the proceedings: These are:

[a] New Times Media Limited, which is the first defendant in CP366-SW00. This company is currently in receivership and the proceeding against it has been stayed;

[b] New Times Media Ltd which is the first plaintiff in CP324-SD01;

[c] Davy Wai Keung Kwok who is the fifth defendant in CP366-SW01;

[d] Wang Bingzhang who is the first plaintiff in CP328-SD01;

[e] Pan Qing who is the second plaintiff in CP328-SD01;

[f] Yang Guang who is the fifth plaintiff in CP328-SD01

[g] Chen Eryou who is the fifth plaintiff in CP324-SD01.

[7] The result of consolidating the proceedings can be summarised as follows:

[a] Five parties are common to all proceedings, however all of these parties would be plaintiffs and defendants at the same time;

[b] One party is common to two proceedings in which he would be both a plaintiff and a defendant;

[c] Seven parties are involved with only one of the proceedings as either a plaintiff or a defendant.

[8] This summary illustrates the confusion, unwieldiness and inconvenience of the proposed consolidation.

[9] The applicant who acts for the plaintiff in CP324-SD01 and CP328-SD01 who is the principle defendant on CP366-SW00 seeks the consolidation and says that the translations are available, there are common facts, there is a common heritage and common position of culture and identity between the principle parties. Whilst in my view it may be appropriate there be sequential trials where there can be cross

reading of the evidence, it is important to note that Mr Kwok, the fifth defendant in the first proceeding, is only a party to that proceeding and maintains he should not be brought into the rest of the proceedings for defamation. Defamatory conduct is alleged to occur on different and separate occasions and needs to be assessed against the tests as to whether the conduct was defamatory.

[10] Whilst I accept counsel for the applicant's concern that there should not be duplication and there should be best use of Court time, I am also apprehensive because his clients, the plaintiffs in CP324-SD01 and CP328-SD01 and the defendant in CP366-SW00 want a jury trial. Mr Kwok as the fifth defendant on CP366-SW00 and Mr Smith for the plaintiffs in CP366-SW00 both oppose jury trials. This matter will have to be determined once the matters are ready to be set down for hearing.

[11] I also differentiate between the time the proceedings have been before the Court and the state of the proceedings. Whilst it is regrettable they were not all brought to one Master in the first instance, it is now possible to see that they are overseen by one Master. The articles in CP324-SD01 and 328-SD01 are translated by the same translator but the defendant, who is the plaintiff in CP366-SW00 has yet to accept the pleadings as being accurately pleaded and both of these proceedings are either subjects of or will become immediately subjects of strike out applications or applications for summary judgment.

[12] CP328-SD01 the strike out application is on file. There has been no security for costs made available by the American plaintiff and these matters will have to be addressed in the next conference. The point however is that CP324-SD01 and CP328-SD01 are procedurally far behind the plaintiffs' proceedings as Mr Smith pointed out, and the relief sought in every instance is quantifiably different depending on the gravity of the defamatory conflict. He points out further that the possibility of conflicting findings or inconsistent decisions on common questions of fact and law are unlikely because of the nature of the pleadings made by the plaintiffs in each case. He indicated to the Court and Mr Lal supported his indication that counsel would accept an order in the terms of *Call Plus v Telecom NZ Ltd* (2000) 15 PRNZ 14 where the Court ordered a limited concurrent hearing on two

proceedings and the evidence in each proceeding to be admissible in both proceedings. There would be no opposition to orders in this form ultimately but the material is not known as to what the evidence will be and I think it is critical that the decision as to a jury be made before any issue of consolidation or directions for trial can be made. In view of the current Court costs I have indicated I will not strike out the application for consolidation but stay it until after the proceedings are set down for trial when the matter can be re-visited by the Judge or Master who is dealing with the setting down arrangements. On the present readings of the file I think it is unlikely an application for consolidation could succeed and that at the very best it should be one Judge to hear the whole three cases if the CP324-SD01 and CP328-SD01 get up and are running. Primarily the plaintiff in CP366-SW00 is entitled to set this matter down for trial once the matter of further particulars is addressed and if these are still disputed, arrangements should be made at the next conference for the hearing of this issue. Likewise, if there are strike out and summary judgment applications on CP324-SD01 and CP328-SD01 these should be dealt with.

[13] At this stage I believe the costs on the consolidation application and the hearing should be reserved. The hearing took an hour and a quarter. I believe the case of *Call Plus v Telecom NZ Ltd* (supra) gives an indication of the appropriate course to be followed subject however to the plaintiffs in CP324-SD01 and CP328-SD01 moving expeditiously.

[14] The matter is adjourned to a conference at 11.45am on 18 June 2002. Before the conference counsel are to address with their respective clients the costs involved in setting these matters down for trial and the daily cost of hearing fees and the ability of the clients to meet the same.

Delivered at 4 am/pm on 17<sup>th</sup> June 2002



MASTER ANNE GAMBRILL