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[redacted]

IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY

CP143/99

BETWEEN	RICHARD CHARLES TAINUI MANNING Plaintiff
AND	TV3 NETWORK SERVICES LTD Defendant

Hearing: 8th July 2002

Appearances: C.A. McVeigh Q.C., for Plaintiff
J.G. Miles Q.C., and T.J.G. Allan for Defendant

Judgment: 25th July 2002

RESERVED JUDGMENT OF JOHN HANSEN J

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[1] This was a review of a decision of the Master, dated 25th February, 2002. The Master struck out various portions of the then statement of defence, and allowed re-pleading.

[2] Although a review, the Court is now faced with a substantially different pleading than that confronting the Master, and the matter must be addressed afresh.

[3] These proceedings have been on foot for some time, and there have been a number of interlocutory applications. On a previous review of the Master, heard by a full bench (Panckhurst and William Young JJ) the background was set out by William Young J at paragraphs 8 to 16 of that decision:

> "[8] On 18 July 1999, the defendant, ("TV3"), produced a 20/20 programme which dealt with, generally, the felling of native timber on land held by Maori owners under the South Island Landless Natives Act

("SILNA") – land which is exempt from legislative restrictions on the harvesting of native timber. The first half of the programme referred, generally, to the clear felling of native timber on SILNA land. Except by way of background, this part of the programme is of no significance in the present context.

[9] The second part of the programme focused on land owned by what is known as the "PNR Trust" in the Catlins. This part of the programme was introduced by Amanda Miller, one of the two presenters, in this way:-

> So the race against time to clear fell continued. This was after all, legal plunder of our natural landscape. But tonight we can also reveal for the first time the unlawful logging of Silna lands. It's been happening in South Otago in an area called the Catlins. Forty percent of the South Island's virgin forest is here, but in this pristine paradise of the South, it's shades of the wild west. We're talking tree rustling down here. We had a tip off about a particular Silna block. There's no clear felling here, this is selective logging territory. We have been told Rimu as old as 500 years is being logged without the Maori landowners' consent. We're on a bulldozer track just off the main road in the Catlins. We've been told that up to a couple of weeks ago they were taking native timber out of this area. Well in spite of the messy road there's no obvious signs, but there is this track that may have been used to take out timber.
>
> We're here at the end of the track, at the top of a very old tree and up here a stump and something the loggers have left behind [a chainsaw blade sitting on a tree stump].
>
> Our search revealed more tracks off the road leading to more stumps. We were on a 400 acre block of Silna land belonging to 74 people called the PNR Trust. We don't know who made the tracks off the road or who stole the trees. What we do know is the road was built by the owner of a neighbouring Silna block. That man is Christchurch Fisheries Businessman Richard Manning and a trustee in various Silna blocks. He gained consent to build this supposed informal track last year from some PNR Trust members and the Maori Land Court. Permission was granted on the basis that the track would be for access only, not for commercial purposes.

[10] While this was being said, the programme showed footage of a track or road which had been driven into the bush. This road was built by the plaintiff, Mr Richard Manning.

[11] The programme then showed footage of an inspection of the general area by representatives of the PNR Trust, Donald Warnes and his brother Ritchie Warnes and a Ms Stephanie Blair, a local eco-tourism operator. Referring to an earlier inspection by those people of the area the presenter said:-

> To their horror they found wide tracks cast away from the road. Some that travelled more than 80 metres off the track and it was obvious what the tracks were for.

[12] Donald Warnes was then filmed observing of a tree stump that it was a metre in diameter. The presenter then went on:-

> Donald and Ritchie had the tools with them to accurately record just what was missing from where and it wasn't looking good. The worst was to come.
>
> They were surrounded by stumps of stolen Rimu. At $1,000 per cubic metre and some of the perhaps as old as 500 years. In one area alone, 10 trees gone.

Mr Warnes said:-

> I wouldn't like to estimate the monetary value on it, but I would assume it would be well into the tens of thousands of dollars.

[13] The programme then showed the reaction of the PNR Trust chairperson, Mrs Trudy Warnes, to footage of the visit. The presenter observed:-

> The 70 year old wanted to see for herself the extent of the damage.

Mrs Warnes was, when shown the extent of the damage, upset.

[14] The presenter then went on:-

> We asked Richard Manning, the man who put in the tracks who caused this damage. He wouldn't be interviewed on camera but said he was unaware of this devastation. He also said that he'd had disagreements with Trudy Warnes before, and if she was accusing him then she would have to take him to Court. Trudy Warnes and her Trust are right now considering their options because of the loss of their trees.

The programme then cut back to Trudy Warnes who said:-

> When I think back of the times that I've had to spend, the hours that I've had to put in since 1986, it makes me sad to see all the destruction in that short period of time.

[15] Most of the rest of what was said in the programme is of no particular moment, in the present context, save that the programme concluded with another presenter, Karen Pickersgill, saying:-

> Late on Friday afternoon the PNR Trustees lodged an injunction in the Maori Land Court in Wellington to try and prevent illegal logging of their land.

Defamatory meanings as alleged by Mr Manning

[16] Mr Manning alleges that the programme conveys four defamatory meanings:-

(a) That the plaintiff had stolen the rimu trees which were portrayed and described by the defendant in the above portion of the programme as having been stolen from PNR Trust land; or

(b) That the plaintiff was personally responsible for the theft of the rimu trees which were portrayed and described by the defendant in the above portion of the programme as having been stolen from PNR Trust land; or

(c) That the plaintiff had orchestrated the theft of the rimu trees which were portrayed and described by the defendant in the above portion of the programme as having been stolen from PNR Trust land; or

(d) That the plaintiff was somehow involved in the theft of the rimu trees which were portrayed and described by the defendant in the above portion of the programme as having been stolen from PNR Trust land.

[4] In the second amended statement of defence, to the second amended statement of claim, dated 2nd July 2002, the relevant portions are pleaded as follows:

"9. If the meanings are as alleged by the plaintiff (which is denied) then the plaintiff has suffered no or less damage by reason of the publication by the defendant as alleged and the defendant hereby gives notice that at the trial of these proceedings the defendant will adduce evidence as follows:

Particulars

(a) The defendant relies on the particulars set out in paragraph 8.

(b) The plaintiff acted dishonestly or in a way that would be reasonably regarded as being unethical or dishonourable as follows:

(i) On our (sic) about 26 May 1998 the Maori Land Court heard an application by the plaintiff granting the plaintiff an easement across the land described as Tautuku XIII Section 5 allowing the plaintiff a right of way across the said land to enable the plaintiff access to land described as Tautuku XIII Section 6B.

(ii) The plaintiff indicated to the Court that his purpose for seeking easement was to enable the owners of Tautuku XIII Section 6B to have access to the Waipati river. The plaintiff is a part owner or beneficial owner of the land described as Section 6B.

(iii) During the hearing of the application the plaintiff indicated an alternative to an easement would be an

order allowing access rights to Section 6B using an informal track across Tautuku XIII Section 5.

(iv) As a result of a favourable indication by the Court, between 16 May 1998 and 1 October 1998 the plaintiff made a further application for access across Tautuku XIII Section 6B.

(v) On 1 October 1998 the Court made the following orders:

(a) Amending the Trust Order currently in force in respect of Tautuku XIII Section 5 by adding a further specific power, namely:

'To permit the owners of Toutuku XIII 6B to pass and repass, for non commercial purposes, along the informal track across Tautuki XIII Section 5 for the purposes of access entry to Waipati Estuary.'

(b) Amending the Trust Order currently in force in respect of Tautuki XIII Section 6B by the addition of the following specific power:

'To permit the owners of Tautuku XIII Section 5 to pass and repass for non commercial purposes, along the informal track across Tautuku XIII Section 6B for the purposes of access entry to Waipati Estuary.'

(vi) At the initial application of 26 May 1998 and the subsequent hearing on 1 October 1998 the plaintiff misled the Court in that:

(a) He failed to disclose that he intended to bulldoze a substantial road through Tautuku XIII Section 5 to Section 6B at another location and to use the said road for commercial logging in contravention of the constituting Trust Order of Section 5 and/or the Court orders.

(b) He failed to disclose that he intended to carry out substantial damage to the native bush and the land in the way in which he constructed the road.

(c) He failed to disclose his intention of stealing rimu or other commercially loggable trees in Section 5 and/or failing to account to the owners for the value of the said trees.

(d) He failed to advise the Court of the multiplicity of his interests namely:

(i) As a Trustee of Tautuku XIII Section 6B;

(ii) As a director and or shareholder of Silna Holdings Ltd (a company which intended to log both Tuatuku XIII Section 6B and 5) which he intended would benefit from the application;

(iii) As a director and or shareholder of Woodtech Holdings Ltd (a company which intended to supervise and manage the logging of both Tautuku XIII Sections 6B and 5) which he intended would benefit from the application;

(iv) As an agent on behalf of three of five trustees of Tautuku XIII Section 5 in making between 1 and 3 application to the Maori Land Court for a variation of the constituting trust order;

(v) An the principal of Trade Management Services (purporting to offer management expertise in relation to logging of Section 6B and 5) whom he intended would benefit from the application.

(c) When seeking the consent of the trustees of Tautuku XIII Section 5 ('the trustees') to the access across their land the plaintiff misled the trustees into consenting to his application by dishonestly withholding his intentions to:-

(i) Bulldoze a substantial road through Tautuku XIII Section 5 at another location to be used for commercial purposes.

(ii) Cause substantial and incalculable damage to Tautuku XIII Section 5 by unlawfully cutting down or destroying or damaging native bush and trees on the said land.

(iii) Steal rimu and any other commercially loggable timber from Section 5 and/or not to account to the owners for the value of any such trees taken.

(d) The plaintiff duly carried out the intended actions referred to above and such actions resulted in, inter alia:-

(i) At least four rimu stolen from Section 5.

(ii) Substantial removal and damage to a large number of trees as a result of the road and other tracks constructed by the plaintiff.

(iii) A substantial road being illegally constructed through Section 5.

(e) The plaintiff or his agents with the plaintiff's knowledge and consent deliberately misled the District Court and the Regional Council.

(i) By stating they intended to form a road utilising the existing use provision of the Resource Management Act on the basis that they would be upgrading the existing track through Section 5 to Section 6,being the Fletcher's track.

(ii) The plaintiff or his agents with his knowledge intended to construct a new and substantial road through Tautuku XIII Section 5 to Section 6B:"

[5] As now pleaded, two matters arose in argument before me.

[6] The first was if the defence of truth failed could the defendant rely on evidence adduced in support of that defence in mitigation. The second was whether s.30 was as limited as the Master found.

EVIDENCE OF TRUTH AS MITIGATION

[7] On behalf of the defendant, Mr Miles submitted that the Master was wrong to strike out paragraph 9(a). He submitted a defendant, in a defamation action, was entitled to rely on any evidence adduced in support of the unsuccessful plea of justification in mitigation of damages.

[8] His starting point was the decision of ***Pamplin v Express Newspapers (No)2*** [1988] 1 All ER 282, per Neill LJ at page 287 (line F):

> ".....There may be many cases, however, where a defendant who puts forward a defence of justification will be unable to prove sufficient facts to establish the defence at common law and will also be unable to bring himself within the statutory extension of the defence contained in s 5 of the 1952 Act. Nevertheless, the defendant may be able to rely on such facts as he has proved to reduce the damages, perhaps almost to vanishing point. Thus a defence of partial justification, though it may not prevent the plaintiff from succeeding on the issue of liability, may be of great importance on the issue of damages."

[9] Further, in the same case, at page 288 (line G):

> ".....in my view the judge fell into error. It seems to me with respect that in this passage the judge made at least two mistakes in that (a) he failed to keep in mind the distinction between the reduction in damages which might flow from partial justification and the reduction which might flow from the fact that the plaintiff might already have a blemished reputation and (b) as a result, he invited the jury to take into account all the matters raised as part of the defence of justification as evidence directed to his reputation."

[10] A similar approach was adopted by Oliver and Purchas LJJ (see pages 291 and 296).

[11] Mr Miles referred to reference to ***Pamplin*** in ***Television New Zealand Ltd v Prebble*** [1993] 3 NZLR 513, and ***Television New Zealand Limited v Keith*** [1994] 2 NZLR 84. In each of those cases ***Pamplin*** is mentioned without comment or criticism. In the first case it was before the Defamation Act came into effect. In the second case, it is mentioned in a different context.

[12] Of more moment is the other case cited by Mr Miles, ***Television New Zealand v Quinn*** [1996] 3 NZLR 24. At p.70 McGechan J stated:

> "I accept evidence primarily directed to supporting a defence of justification, which does not succeed may – if believed – be used generally in mitigation of damages. It is common sense. It is supported by *Pamplin v Express Newspapers Ltd (No.2)* [1988] 1 All ER 282. Moreover, it is almost an inevitability. If the defamatory statement is that the plaintiff is a 'constant liar' and justification proves no more than an occasional lie, that blemish may degrade general reputation, and reduce damages, to some extent."

[13] However, Mr McVeigh, on behalf of the plaintiff, submitted that ***Pamplin*** does not represent the law of New Zealand, and referred to the ***Laws of NewZealand*** "Defamation" paragraph 214, and ***Todd Law of Torts in New Zealand*** page 835 – 7. He said ***Pamplin*** is not mentioned in either text. Mr McVeigh further submitted that the statement of McGechan J in ***Quinn*** is no more than obiter. However, in reply, Mr Miles referred to ***Todd*** at page 836, footnote 240, which reads:

> ""240.....The defendant can also rely on mitigation on any evidence which is properly before the jury, including evidence of specific acts of misconduct adduced in support of an unsuccessful plea of truth: *Pamplin v Express Newspapers Ltd* [1988] 1 WLR 116 (CA); *Boddie v Sievwright* (1934) GLR 258 at 264 (CA)."

[14] Quite clearly, at paragraph 40 of the decision under review, the Master determined that if the defence of truth did not succeed there would be no proper basis for the defendant to raise the issue again.

[15] Mr McVeigh made the further point that even if it is proper to rely on evidence adduced to support a defence of truth as mitigation if the defence failed, it can hardly come within the terms of s.30. That section must refer to misconduct other than that at the centre of the proceedings.

[16] I accept the defendant's submission, and concur in the passages cited above from the judgment of McGechan J and ***Todd***. The example given by McGechan J makes the point. It would be illogical if the evidence relied on by a defendant to establish truth falls just short of that mark, but nonetheless degrades the general reputation of the plaintiff, could not be relied on by the jury in mitigation. It ought to be a matter the jury can take into account in assessing damages.

[17] Mr McVeigh complained that this was a matter for the Judge in summing up. That may be so, but it does not seem to me objectionable that the defendant puts it plainly in issue as a general pleading. I accept there is force in Mr McVeigh's submission that it does not fall within s.30, and that more properly it should be pleaded separately, but, there can be no complaint that it is so that the plaintiff is clearly on notice.

AMBIT OF S.30

[18] In relation to the balance of the re-pleaded paragraph 9, by reference to the Master's decision, Mr Miles submitted that the Master was correct in holding "section 30 is intended to be more permissive than" permitting a defendant to prove in mitigation other instances of dishonesty in the same sense of the imputation. Otherwise, said Mr Miles, it would be simply re-running the defence of justification as mitigation. He said, based on the ***Pamplin*** principle, that was already allowed.

[19] However, he submitted that the Master was wrong in limiting the s.30 defence in the way he did. The Master said the aspect of the defendant's character that is put in issue in these pleadings is his honesty. As he noted at paragraph 37, the sting of the defamation is that he is a thief, which is a subset of dishonesty. The Master accepted that if the plaintiff was not a thief, but had a general reputation for dishonesty, that is something a reasonable jury could properly take into account as diminishing the damages they would otherwise have awarded.

[20] However, Mr Miles submitted that the defendant should not be limited to the plaintiff's dishonesty. He said it was necessary to place the matter in context, and when that is done, he said the relevant aspect for s.30 purposes of the plaintiff's reputation is as a logging contractor. The context would, therefore, include his ethics as a logging contractor, his honesty as a logging contractor, and whether or not, as a logging contractor, he misleads or dupes people with whom he deals in his capacity as a logging contractor. He submitted it is wider than just dishonesty.

[21] To comprehend the extent to which s.30 was intended to be more permissive, Mr Miles submitted it was important to understand the criticism of the existing common law principles. To this end, he cited the following passage from ***Carter-Ruck on Libel & Slander*** (4 Ed.) p.174:

> "It is plain that considerable hardship would be done if evidence of rumours were to be admitted in mitigation, particularly as the rumours might have been started by the publication of the libel itself, and it is equally plain that it would be unjust to permit a defendant to unearth some discreditable incident which took place long before the publication of the libel and which has since been lived down in order to show that the plaintiff does not deserve the reputation which he in fact has, but is it just that a person's reputation should be looked at in sectors with the result, for example, that a man with a bad reputation for honesty can recover substantial damages for a statement imputing immorality? Is it just that such a person should recover the same amount of damages as a person whose reputation is unsullied in every respect'...Probably the way out of the difficulty is to permit the defendant, upon prior notice of his intention so to do, to give evidence of particular acts of misconduct relevant to the matter and time. The Joint Committee of Justice and the International Press Institute recommended that evidence of specific known past conduct of the plaintiff which is connected in time or substance with the statements of which the plaintiff complains should be admissible in evidence and mitigation...."

[22] He said s.30 was intended to ameliorate those problems, and it is important to note it does not refer to the aspect to which the "defamation" relates, but says in the "aspect to which the proceedings" relate". It was his submission that the proceedings consisted of the whole of the article or programme which is complained of, the context of the article, and the context of the plaintiff's connection to the article in time and substance.

[23] He cited at length from a recent decision of the English Court of Appeal ***Burstein v Times Newspapers Limited*** [2001] 1 WLR 579., a case dealing with the admissibility of evidence relevant to the contextual background in which the statement came to be .made.

[24] Mr Miles cited at length from the decision of May LJ, and in particular a passage at 592 that reads:

> ".....But it is clear, I think, that the exclusion of evidence of particular facts and circumstances tending to show the disposition of the plaintiff would not extend to exclude particular facts directly relevant to the context in which a defamatory publication came to be made."
>
> Also at page.585:
>
> "He quoted at length from the judgment of Neill LJ in *Pamplin v Express Newspapers Ltd (Note)* [1988] 1 WLR 116, 119D in which Neill LJ said that, in considering what evidence can be used in mitigation of damages it is necessary to draw a distinction between evidence which is put forward to show that the plaintiff is a man of bad reputation and evidence which is already before the court on some other issue. Neill LJ set out a number of general rules for evidence which relates solely to the plaintiff's bad reputation. The first of these was that it must be evidence of the plaintiff's general reputation and may not relate to specific acts of misconduct, and that the evidence must also relate to the relevant area or sector of the plaintiff's reputation. Having referred to other rules, Neill LJ said that a defendant is also entitled to rely on any other evidence which is properly before the court and jury, including evidence which has been primarily directed to, for example, a plea of justification or fair comment."

[25] Mr Miles said the decision is consistent with the permissive nature of s.30 and that it was proper that this section extends more widely than the Master found. He submitted s.30 allows what is set out in the second passage above.

[26] However, Mr McVeigh argued that the Master was perfectly correct when he held that the "aspect of the defendant's character that is in issue is his honesty". He

said the Master had reviewed all relevant authorities, and disagreed with the plaintiff's submission that the aspects of the plaintiff's character were limited to his reputation as a thief. Likewise he rejected the defendant's submission that it was as wide as the plaintiff's reputation as a logging contractor.

[27] He submitted that the sub-paragraph 9(b) that uses the words "or in a way that would be reasonably regarded as being unethical or dishonourable" continues the pattern of the defendant throughout these proceedings of attempting to widen the scope of the pleadings. He pointed out initially that the defendant wished to point to theft by destruction, as well as theft by taking, and now having been ruled against in that regard they attempt to broaden s.30 in mitigation matters.

[28] Mr McVeigh referred to the defendant's wish to lead evidence of the plaintiff's failure to disclose information to the Maori Land Court, and in particular, referred to paragraph 43, where the Master dealt with this as follows:

> "[43] As the aspect of the Plaintiff's character that is in issue is in relation to his honesty or otherwise the pleading at paragraphs (b), (c), (d) and (e) at present is insufficient. If the Defendant wishes to lead evidence of the Plaintiff's failure to disclose information to the Maori Land Court as evidence of his dishonesty then specific particulars of in what way it is said the Plaintiff had an obligation to provide the information to the Court and so acted dishonestly in not providing the information to the Court are required.

[29] He said it is clear that the defendant has not complied with this, and, again, seeks to widen the ambit of dishonesty.

[30] Mr McVeigh further complained that the defendant had ignored paragraph 54 of the Master's decision, where he said:

> "It would only be reasonable to reduce the damages if the plaintiff's reputation was generally bad in the relevant aspect".....(and that)..... "for it to be generally bad, it must be known by the public, or at least the relevant section of the public."

[31] In support of this submission in the Master's ruling, Mr McVeigh referred to ***TVNZ & Another v James Ah Koy*** (CA64/01, 26.11.01), where at paragraph 44 the Court of Appeal stated:

> "The second [way of providing a generally bad reputation] introduced by s.30, is to prove specific instances of misconduct which, if shown to be generally known, will found an available inference that the plaintiff has a generally bad reputation in the relevant aspect."

[32] The plaintiff's position was that any particulars sought to be proved in litigation must be restricted to allegations of dishonesty, and that the defendant should be prevented from, yet again, attempting to widen the scope of these proceedings.

[33] As both the full Court and the Master have stated previously, the imputation contained in the programme considered as a whole is a theft by logging, or taking away, which is now to be found in paragraph 8 of the second amended statement of defence. As the Master noted the sting is the allegation of theft, which is a subset of dishonesty. I agree with the Master's conclusion that the "aspect to which the proceedings relate" is the allegation of dishonesty. Mr Miles sought to persuade me that in the context of these proceedings, and the programme as a whole, this would encompass "unethical or dishonourable" behaviour. I do not accept that submission. Actions may well be unethical or dishonourable, but not dishonest. It is the dishonesty that is the "aspect of the proceedings" for present purposes. I do not see "unethical" or "dishonourable" behaviour as contextual as Mr Miles suggested.

[34] That is not to say that a defendant cannot advance matters of general bad reputation in mitigation. This can be seen by reference to the full passage in ***TVNZ v Ah Koy*** cited in part by Mr McVeigh. The full passage reads:

> "[44] There are now, in the light of s30, two ways of proving a generally bad reputation. The first, as was the position before 1992, is by calling witnesses to speak of the plaintiff's generally bad reputation: see Lord Denning in *Plato Films* at 1140. The second, introduced by s30, is to prove specific instances of misconduct which, if shown to be generally known, will found an available inference that the plaintiff has a generally bad reputation in the relevant aspect. None of this provides or even suggests any foundation for permitting in mitigation of damages evidence of other publications from which the jury is asked to draw an inference of generally bad reputation, whether in the aspect to which the proceedings relate or otherwise. Such other publications do not amount to evidence from a witness speaking of the plaintiff's bad reputation, nor do they provide admissible evidence of specific instances of misconduct."

[35] From that it is my view that there are two courses of action that are both open to a defendant. Firstly, it can call witnesses to speak of the plaintiff's generally bad reputation. Secondly, it can refer to specific instances of misconduct. These must be generally known. This can then be used to found an inference of a generally bad reputation in the relevant aspect. The latter being limited, as mentioned above. It may be that the matters pleaded in paragraph 9 (b) (c), (d) and (e) while not complying with s.30 would be admissible in terms of the ***Burstein***. That case states that the admissibility of contextual evidence is heavily affected by questions of procedural fairness. The admissibility is, in my view, a matter for the trial Judge.

[36] It follows, therefore, that s.30 matters must be limited to allegations of dishonesty. What is presently alleged in paragraph 9(b) are matters said to be misleading of the Maori Land Court, the District Council and the Regional Council. The pleading, in its present form, does not make it clear in what aspect the misleading actions of the plaintiff are said to be dishonest. As the Master recognised in paragraph 43 cited above, it would be necessary for the defendant to give particulars of the obligation to provide information to the Court, the trustees, or the relevant councils, and that he acted dishonestly in not providing the information, as required.

[37] It follows, in my view, that the words in 9(b) after "dishonestly" to "dishonourable" should be struck out.

[38] As to the balance of 9(b) they will need to be re-pleaded to give effect to the comments of the Master in paragraph [43], and also [54].

[39] It follows that 9(b)(i) to (vi) must be struck out.

[40] 9(c) requires particulars of in what way it was dishonest of the plaintiff to withhold information relating to his intentions from the trustees. Again, that seems to me to require particulars of his obligation to the trustees. The same applies to 9(e).

[41] 9(d)(ii) and (iii) in their present form do not demonstrate the requisite particulars of dishonesty.

[42] Given the extensive flaws to paragraph 9, it is my view that the whole of paragraph 9(b) (c) (d) and (e) should be struck out, but with leave to file an amended pleading within 21 days encompassing the Master's judgment, which I have upheld.

[43] There was one final matter relating to paragraph 8 that was raising by Mr McVeigh, and that is the reference in paragraph 8(b) and (c) to "unlawfully removed". Mr McVeigh still maintained this was an ambiguous pleading, and Mr Miles accepted in reply that the term "stolen" should properly be pleaded, although he felt it was clear in any event from the pleadings. That concession can be included in the amended pleading I have ordered.

[44] Memoranda as to costs are to be filed within 10 days of the handing down of this judgment.

J. W. Hansen J.

Signed at: 1.18 ~~am~~/pm on: 25th July 2002.

Solicitors:
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