

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

571

CP 324sd01 (Civ-2001-404-207)

- BETWEEN
- (1) **NEW TIMES MEDIA**
 - (2) **WEIMING CHEN**
 - (3) **WEIJIAN CHEN**
 - (4) **WEIZHENG LIU**
 - (5) **CHEN ERYOU**

Plaintiffs

- AND
- (1) **CHINESE HERALD LTD**
 - (2) **STEPHEN SIK FUN WONG**
 - (3) **STELLA HU**

Defendants

CP 328sd01 (Civ-2001-404-2031)

- BETWEEN
- (1) **BINGZHANG WANG**
 - (2) **QING PAN**
 - (3) **WEIMING CHEN**
 - (4) **WEIJIAN CHEN**
 - (5) **GUANG YANG**

Plaintiffs

- AND
- (1) **CHINESE HERALD LTD**
 - (2) **STEPHEN SIK FUN WONG**
 - (3) **STELLA HU**

Defendants

CP 366sd00 (Civ-2000-404-1568)

- BETWEEN
- (1) **CHINESE HERALD LTD**
 - (2) **STEPHEN SIK FUN WONG**
 - (3) **STELLA HU**

Plaintiffs

- AND
- (1) **NEW TIMES MEDIA**
 - (2) **WEIMING CHEN**
 - (3) **WEIJIAN CHEN**
 - (4) **WEIZHENG LIU**
 - (5) **DAVY WAI KEUNG KWOK**

Defendants

Hearing: 21 May 2003

Counsel: R Smith for defendants in CP 324sd01 and CP 328sd01 and plaintiff in CP366sd00
Weiming Chen, third defendant in CP 366/00, second plaintiff in CP 324/01 and third plaintiff in CP 328/01 (in person)
Weijian Chen, second defendant in CP 366/00, third plaintiff in CP 324/01 and first plaintiff in CP 328/01 (in person)
G Denholm for fifth defendant in CP 366sd00

Judgment: 26 May 2003

[1] New Times Media Limited together with Weiming Chen and Weijian Chen apply for orders that the three proceedings, that is CP 366/00, CP 324/01 and CP 328/01 be consolidated.

[2] Master Gambrill considered a similar application for consolidation in respect of the three proceedings. She delivered a judgment on that application on 17 June 2002. She refused the application for consolidation but rather than strike the application out directed that it be stayed until after the proceedings are set down for trial. She added in paragraph 12 the following observation:

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 CP 324/01 and CP 328/01 get up and are running. Primarily, the plaintiff in CP 366/00 is entitled to set the matter down for trial.

[3] On 28 February 2003, I set down for trial CP 366/00. A fixture of five days has been allocated for the week commencing 30 June 2003. The proceeding is set to be listed in the Judges' callover at 9am on 25 June 2003. I am advised that Mr Smith's clients have served the briefs. The time for the defendants to serve their briefs has not yet arrived.

[4] The defendants in CP 366/00 have experienced difficulty in obtaining representation. I drew Mr Weiming Chen's attention to the fact that whilst he could represent himself, if he wished, he could not represent other parties, including the New Times Media Limited. In particular, I drew to his attention that the company would have to be presented by a lawyer if it wished to take part in the proceedings. That position was confirmed in my minute of 6 December. It, of course, relies upon the Court of Appeal decision in *re GJ Mannix* [1984] 1 NZLR 309. I mention that matter because it is apparent that CP 324/01 and CP 328/01 are nowhere near being ready for hearing.

[5] The application for consolidation relies on r382 of the High Court Rules. Rule 382 provides:

382. When order may be made

Where 2 or more proceedings are pending and it appears to the Court—

- (a) That some common question of law or fact arises in both or all of them;
or
- (b) That the rights to relief claimed therein are in respect of or arise out of—
 - (i) The same event; or
 - (ii) The same transaction; or
 - (iii) The same event and the same transaction; or
 - (iv) The same series of events; or
 - (v) The same series of transactions; or
 - (vi) The same series of events and the same series of transactions;
or
- (c) That for some other reason it is desirable to make an order under this rule,—

the Court may order those proceedings to be consolidated on such terms as it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them.

[7] Although a summary of the matters relevant to the application of r382 to these proceedings has already been carried out by Master Gambrill I will, once again, shortly analyse the position.

[8] The three proceedings do have some common parties. There are, however, a number of parties who only appear in one of the proceedings. Mr Smith listed these in paragraph 5 of his helpful memorandum. They are:

- a) New Times Media Limited, which is the first defendant in CP 366/00. This company is currently in receivership and the proceeding against it has been stayed;
- b) New Times Media Limited which is the first plaintiff in CP 324/01;
- c) Davy Wai Keung Kwok who is the fifth defendant in CP 366/00;
- d) Wang Bingzhang who is the first plaintiff in CP 328/01;

- e) Pan Qing who is the second plaintiff in CP 328/01
- f) Yang Guang who is the fifth plaintiff in CP 328/01/
- g) Chen Eryou who is the fifth plaintiff in CP 342/01.

[9] Mr Smith went on to note that if an order for consolidation of the three proceedings were made it would lead to this position:

- a) Five parties are common to all proceedings. They would, however, be both plaintiff and defendants if the proceedings were heard at the same time;
- b) One party is common to two proceedings. In it he is both plaintiff and a defendant;
- c) Seven parties are involved with only one of the proceedings as either a plaintiff or a defendant.

[10] A matter of concern to the Court is the lack of appearance by a number of the plaintiffs in CP 328/01 and CP 324/01. Indeed, the only plaintiffs who have regularly attended are Mr Weiming Chen and Mr Weijian Chen.

[11] Each of the proceedings alleges that there has been a defamation of the plaintiffs. That is the only common matter going to the core facts, however, of the matters in issue in each of the proceedings. Each cause of action pleaded refers to a separate allegation of defamatory conduct. The result is the Court will need to determine whether the conduct complained of is defamatory and, if so, whether any defence is applicable. The same can be said for the defences to each cause of action.

[12] It will be apparent from that summary that the causes of action are certainly not related to the same event, they are not the same transaction, they are not even connected in the sense that they are the same series of events or transactions. I am aware that the plaintiffs, both Mr Chen, assert that there is some tit-for-tat in the defamatory conduct alleged. I repeat, however, that the particular articles which are the foundation for each claim are quite separate and distinct and must be analysed separately.

[13] The result of the above analysis is that the matters set forth in r382(a) and (b) do not justify the making of an order. In addition, I cannot find any specific reason which might justify the making of an order under r382(c). The current state of readiness for trial of CP 366/00, when compared to the other proceedings, is a very good reason why an order for consolidation should not be made. In addition, of course, I cannot find any specific reason which would suggest the circumstances that were considered by Master Gambrill in her decision of 17 June 2002 have changed.

Conclusions


[14] For the reasons set out above, therefore, I reach the conclusion that an order for consolidation is not justified in this case, pursuant to r382 and accordingly I dismiss the application in respect of each proceeding.

[15] In reaching that conclusion I record that Mr Denholm, who appeared for the fifth defendant in CP 366/00, opposed the order for consolidation. His client, of course, is one of those who is involved in one proceeding only.

Costs

[16] The first, second and third plaintiffs in CP366/00 are entitled to costs on the application for consolidation which I fix at 2B together with disbursements as fixed by the Registrar. Likewise, Mr Kwok is entitled to costs also based on 2B together with disbursements as fixed by the Registrar.

[17] The application for consolidation has been advanced Mr Weiming Chen and Mr Weijjian Chen. For that reason the order for costs is an order against them.



Master J Faire

Delivered at 11.25 am/pm on 26.5 - 2003

Solicitors: Brookfields, PO Box 240, Auckland for defendants in CP 324/01 and CP 328/01 and plaintiffs in CP 366/00
New Times Media, PO Box 68 867, Newton for Mr Weiming Chen and Mr Weijjian Chen, in the three proceedings
Jag Lal, PO Box 109 059, Newmarket for fifth defendant in CP 366/00