

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

**CIV 2001-404-2027  
CP 324-01**

**BETWEEN**

(1) NEW TIMES MEDIA  
(2) W CHEN  
(3) W CHEN  
(4) W LIU  
(5) E CHEN  
Plaintiffs

**AND**

(1) CHINESE HERALD LTD  
(2) SSF WONG AKA SSF HUANG  
(3) S HU AKA HX FANG  
Defendants

**CIV 2001-404-2031  
CP 328sd01**

**BETWEEN**

(1) WANG BINGZHANG  
(2) Q PAN  
(3) W CHEN  
(4) W CHEN  
(5) G YANG  
Plaintiffs

**AND**

(1) Chinese Herald Ltd  
(2) SSF WONG aka SSF Huang  
(3) S HU aka HX Fang  
Defendants

Hearing: 24 June 2004

Appearances: D Watt for plaintiffs in both proceedings  
S S Wong in Person  
S Hu in Person

Judgment: 24 June 2004 at 11.45 am

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**(ORAL) JUDGMENT OF ASSOCIATE JUDGE LANG**  
**[re: Various applications filed by the defendants in both proceedings]**

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*Solicitors:*  
*David Watt & Co, PO Box 7109, Auckland*  
*S Wong, PO Box 588, Greenmount, Auckland*

[1] There are before me today several applications filed on behalf of the defendants. I propose to deal with each of these in turn.

**1. Application by defendants in CP328/01 for order striking out claim by first plaintiff**

[2] This application has been brought on the basis that Mr Watt does not have proper authority to represent Wang Bingzhang.

[3] It is common ground that Dr Wang is at present imprisoned in Mainland China. Mr Watt confirms he has never been able to obtain instructions directly from Dr Wang, and that he relies on a letter of authority given by Dr Wang in favour of Chen Weijian.

[4] That document is in Chinese and purports to provide the second plaintiff Pan Qing and the fourth plaintiff Chen Weijian with "full power in the indictment against the Chinese Herald for its defamation". Mr Wong takes issue with the accuracy of the translation of the power of attorney. He says that the Chinese Herald newspaper is not in fact mentioned in the power of attorney and accordingly he contends that it is defective.

[5] As I indicated during the hearing, I take the view that Mr Watts' representation of the first plaintiff is very much a matter between himself and Dr Wang. Ultimately, Mr Watt takes the risk of representing a plaintiff in respect of whom he does not hold complete instructions. Mr Watt appreciates the care he must take to obtain proper instructions and he advises me that he is currently satisfied that he does have full authority to act on behalf of Dr Wang.

[6] For this reason the application cannot succeed and must be dismissed.

**2. Application by defendants in CP328/01 for order striking out claims by the second to fifth plaintiffs**

[7] This application is advanced on the ground that the second to fifth plaintiffs are not named in the alleged defamatory article. The defendants contend that the article is not couched in terms that would lead a reasonable person (even of Chinese extraction), to conclude that the second to fifth plaintiffs were the persons referred to in the article.

[8] In my view the defendants' argument is well founded. The relevant parts of the statement of claim are in the following terms:

11. The defamatory statements contained in the 23 November 2000 publication are:

(a) *A shocking Inside News – The groups and individuals in the overseas [Chinese] pro-democracy movement [“the Movement”] reared by the Taiwanese Government.*

(b) *In the same vein, it is impossible that the Movement could obtain an annual cheque of US\$2.58 million from the pro-independent Taiwanese Government for free.*

(c) *It is remembered that in a [certain] year, once Kuomintang [the “KMT”] based on evidence through reliable informant knew that WANG Bingzhang, the chairperson of the ‘China Democratic Union’ [the “Union”], habitually ‘betrayed the hand that feeds him’; his misconduct; his secret embezzlement of huge amount of money that was allocated by Taipei [Taiwanese Government]; his setting up of his own account; his breach of trust; and his concealment of information of members of the Union who remained in Mainland China.*

(d) *The writer extrapolates, that the DPP, following closely behind the heel of the KMT, sooner or later will choose an opportune time to strike. It will establish a twinning organisation to replace this overseas headquarter of the China Democracy Party [the*

*“CDP”]. Which is considered to have ‘betrayed the hand that feeds him, corrupt and an embezzler.*

[9] The statement of claim contends that these passages mean, or were meant to mean, that all plaintiffs were:

- (1) Controlled by and are puppets of the Taiwanese Government
- (2) Are not independent from the Taiwanese Government;
- (3) Are bribed by the Taiwanese Government;
- (4) Are animals reared by the Taiwanese Government;
- (5) Cannot be trusted;
- (6) Are embezzlers; and,
- (7) Are corrupt;
- (8) Are immoral.

[10] In my view these allegations cannot succeed. The first two paragraphs cited in para [6] above make it clear that the article was referring to groups and individuals in the overseas Chinese pro-democracy movement generally. There is no suggestion that the article was directed towards individuals or groups in New Zealand or, in particular, the committee to which the second plaintiffs belong. It is clear that the allegations relate to the pro-democracy movement globally and not to any specified individuals.

[11] The matters contained in paragraph (c) above are obviously defamatory of Dr Wang. The paragraph does not go further, however, and allege that members of the committee of the China Democratic Union were also involved in the misconduct and dishonest activities attributed to Dr Wang.

[12] When viewed overall, I do not consider that the passages which form the basis of the claim brought by the second to fifth plaintiffs in CP 328/01 could properly be said to be defamatory of them. For this reason I am satisfied that the claims, so far as they are brought by the second to fifth plaintiffs, must be struck out

on the basis that they disclose no cause of action that can be relied upon by those plaintiffs.

**3. Application by Stella Hu for an order striking out the claims against her or, alternatively, for summary judgment in her favour**

[13] These applications are brought on the basis that Ms Hu contends that she did not commence her employment with the Chinese Herald newspaper until a date after the date upon which the allegedly defamatory article was published. In support of this argument, Mr Wong has produced in evidence copies of wage reconciliation statements forwarded to the Inland Revenue Department in September 2000, December 2001 and January and February 2002. Ms Hu submits that these disclose that Stella Hu was not on the payroll of Chinese Herald Ltd in September 2000 or December 2001. The allegedly defamatory article was published on 23 November 2000.

[14] Ms Hu submits that the payroll records demonstrate that she was employed by Chinese Herald Ltd for the first time in January 2002.

[15] The records produced by Mr Wong support these submissions. However, they may not tell the whole story. The complete wage records of Chinese Herald Ltd would need to be examined in order to ascertain whether or not Ms Hu's submission is correct.

[16] Mr Wong has confirmed that there will be no difficulty in allowing Mr Watt access to those records so that he can satisfy himself that Ms Hu did not in fact commence employment until the date alleged by her and Mr Wong.

[17] That may not be the end of the matter either. Ms Hu has already given evidence in another case brought by the defendants against the plaintiffs. That has resulted in a judgment of Paterson J which is currently the subject of an appeal to the Court of Appeal. I have not have the opportunity to read either the evidence or the judgment in that proceedings, and I consider that I should not determine Ms Hu's applications until such time as I have had the opportunity to do that. Ms Hu's

evidence in the earlier proceeding may well be relevant to the determination of her present applications.

[18] It is entirely possible that, even if Ms Hu was not actually employed by Chinese Herald Ltd at the relevant time, nevertheless she was closely associated with Mr Wong and with the newspaper generally at that time. This may be sufficient to make her liable as a defendant in the proceeding, notwithstanding the fact that she was not actually employed by the newspaper.

[19] For this reason I propose to defer the determination of these applications until Mr Watt has had the opportunity to complete his inspection of the Chinese Herald's wage records and until such time as I have been able to read the evidence and judgment in the other proceedings.

**4. Application by defendants in CP324/01 for orders striking out claim by New Times Media Ltd**

[20] This application is brought on the ground that in the other proceeding the evidence revealed that the newspaper was published at the relevant time by New Times Media Ltd and not New Times Herald Ltd. As I advised Mr Wong during the hearing, this would not be sufficient to allow me to strike out the claim by New Times Media Ltd. If at trial it transpires that the proceeding ought to have been brought in the name of New Times Media Ltd, the plaintiff will either have to obtain leave to substitute the correct plaintiff or it will fail in its action. In the alternative, the proceeding may be amended prior to trial so as to include New Times Media Ltd as the first plaintiff, rather than New Times Herald Ltd. At present, however, grounds do not exist for me to strike out the claim by the first plaintiff in CP324/01.

**5. Application for order requiring the first plaintiff in CP328/01 (Wang Bingzhang) to provide security for the costs of the defendants**

[21] Given that Dr Wang is currently resident in a Chinese prison, jurisdiction obviously exists for the Court to make an order requiring him to provide security for the defendants' costs. At present, however, Mr Wong is representing himself, as is

Ms Hu. Chinese Herald Ltd remains effectively unrepresented because Mr Wong is unable to represent it in this Court.

[22] Mr Wong has confirmed, however, that he is actively seeking representation for both himself and the company. On that basis, I propose to defer consideration of this application until such time as the issue of representation has become clearer.

[23] It is therefore adjourned on a part-heard basis.

**6. Application by defendants in CP324/01 for leave to file counterclaims against the plaintiffs**

[24] In this application the defendants seek leave to file counterclaims against the plaintiffs for defamatory articles allegedly published by the New Times Weekly in 2000. These are said to defame all three defendants.

[25] It is somewhat novel to have a counterclaim being brought in a claim for defamation. Until I see the form of the counterclaim, however, I am not in a position to deal with this application properly. The defendants will therefore need to file a draft counterclaim and also an affidavit exhibiting the articles in question, so that the application can be considered on a proper basis. This application is therefore adjourned on a part-heard basis also.

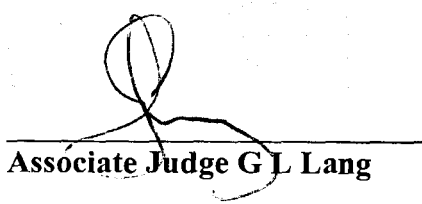
**Timetable**

- (a) Mr Watt is to complete inspection of the wage records held by Chinese Herald Ltd within 21 days, ie by 15 July 2004.
- (b) Any application for further and better discovery by any party is to be filed and served by the same date.
- (c) The draft counterclaim and affidavit exhibiting these articles giving rise to that counterclaim are to be filed and served by 15 July 2004 also.

## **Next event**

[26] A further conference, which is to be a face to face conference, will be held on Wednesday 4 August 2004, commencing at 10.45 am (30 minutes allocated). The purpose of that conference will be to review the position so far as Stella Hu is concerned, and to make such further directions as may be necessary to advance this proceeding towards the trial.

[27] I record that Stella Hu is excused from the next conference. Mr Watt confirms that he has no objection to Mr Wong continuing to represent her interests in relation to the applications that affect her at this stage.



**Associate Judge G L Lang**