

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

CIV 2005-404-1808

BETWEEN FERRIER HODGSON
First Plaintiff

AND MICHAEL PETER STIASSNY
Second Plaintiff

AND VINCENT ROSS SIEMER
First Defendant

AND PARAGON SERVICES LIMITED
Second Defendant

AND OGGI ADVERTISING LIMITED
Third Defendant

Hearing: 20 July 2005

Appearances: M Flynn for plaintiffs
C Henry and D Beston for first and second defendants

Judgment: 21 July 2005

**JUDGMENT OF ELLEN FRANCE J
(Interlocutory application)**

Introduction

[1] This decision deals with an application by the plaintiffs to file two further affidavits.

[2] The application is made in the context of a committal hearing which is to take place on 26 July 2005.

[3] The background is set out in the judgment of Keane J delivered on 14 July 2005 in these proceedings and I do not repeat that. Very briefly, the plaintiffs say the defendants are in breach of Court orders. In particular, the breaches identified are maintaining the website www.stiassny.org with defamatory material; distributing stickers and signs reproducing information on a billboard which was the subject of the original injunction; and posting letters containing material in breach of the Court order and drawing attention to material on the website.

Application for leave to file affidavits

[4] Leave is sought to file two further affidavits. One from Alan Garrett and one from Douglas Mitchell. Leave is necessary because the time for filing affidavits has passed.

[5] The affidavit of Mr Garrett would put in evidence a letter dated 20 June 2005 on Paragon Oil Systems Ltd letterhead to all accountants. The plaintiffs point out that Paragon Oil is a company closely associated with the second defendant. In the letter, B J Kancharla of Forensic Investigations says they are assisting the first defendant in putting together a possible criminal case against the second plaintiff and includes reference to the website www.stiassny.org.

[6] The plaintiffs say this letter is evidence of ongoing contempt and so should be before the Court. They argue Mr Garrett did not get this letter until after 22 June, the last date for filing affidavits.

[7] The affidavit of Mr Mitchell would put in evidence correspondence between the solicitors for the parties and includes a letter from Forensic Investigations to all accountants dated 27 May 2005. The affidavit also annexes an email from solicitors for the plaintiffs, McElroys, to a Mr Tunney who is said to be the owner of the website www.stiassny.org.

[8] The importance of that letter the plaintiffs say was that McElroys, the solicitors for the plaintiffs, had immediately sought to bring to the defendants' solicitors notice of this letter from Forensic Investigations which they say had "all

the hallmarks” of being in breach of the order, and was closely connected with the actions of the defendants. In response to that letter, solicitors for the defendants, Dennis Gates, had sent an immediate response. That letter gave an assurance that Mr Siemer was not a party to the activity complained of and had no control over the entities’ actions, namely those of Forensic Investigations.

[9] The plaintiffs say that the receipt of the subsequent letter on Paragon Oil Systems letterhead seems inconsistent with the denials by the defendants’ solicitors of their client having any involvement in the correspondence. The plaintiffs submit it is necessary to bring this earlier correspondence to the Court’s attention.

[10] The plaintiffs also say that the purpose of Mr Mitchell deposing to the fact that an email had been sent to Mr Tunney on that date was that to date no response had been received from him. That no response had been received from him is of some significance in connection with earlier affidavit evidence filed by the plaintiffs that investigations had been unable to locate any details of Mr Tunney.

[11] The defendants oppose the application. They make two key submissions.

[12] First, there is nothing in either affidavit of significance or critical difference to material previously placed before the Court.

[13] Second, this application is part of a sequence of events which indicates a disregard for the rights of the defendants.

Discussion

[14] Leave is declined. I accept the submissions for the defendants that this material is not so compelling as to warrant a departure from the timetable. It is more in the nature of a further illustration of the matters already before the Court. This material may, however, be relevant to penalty. My decision not to grant leave does not prevent the plaintiffs from seeking to place this material before the Judge if a finding of contempt is made.

[15] It is also relevant that the timetable was abridged at the plaintiffs' request and against the opposition of the defendants. If leave was granted now, the defendants would have to be given time to respond and there would be insufficient time for that between now and the hearing. Mr Siemer is overseas at present and does not return to New Zealand until just prior to the hearing. There was no requirement for him to deal with these affidavits prior to leaving New Zealand given they were late and leave was necessary.

Ellen France J

Delivery time in accordance with Rule 540(4): 3:45pm, 21 July 2005

Solicitors/Counsel:

McElroys, PO Box 835, Auckland
J Miles QC, PO Box 4338, Auckland
D Gates, PO Box 222, Whangaparaoa
C Henry, PO Box 616, Orewa
D Beston, PO Box 5222, Wellesley Street, Auckland