IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV 2004-404-0005152

UNDER	the Defamation Act 1992
BETWEEN	RICHARD JOHN HUBBARD Plaintiff
AND	FOURTH ESTATE HOLDINGS LIMITED Defendant

Hearing: 3 June 2005

Appearances: J G Miles QC/D McLellan for Defendant/Applicant
G Illingworth QC/C Baird for Plaintiff/Respondent

Judgment: 13 June 2005

JUDGMENT OF VENNING J
On Particulars of ill will and/or improper advantage

Solicitors: Martelli McKegg Wells & Cormack, PO Box 5745, Auckland (A Steele)
Jones Fee, PO Box 1801, Auckland
Copy to: G M Illingworth QC, PO Box 7205, Auckland
J Miles QC, PO Box 4338, Auckland
C J R Baird, PO Box 5444, Wellesley Street, Auckland

Introduction

[1] The plaintiff sues the defendant in defamation. The defendant has raised a number of positive defences including honest opinion and qualified privilege.

[2] The plaintiff challenges the defendant's reliance on honest opinion and qualified privilege. On 15 March 2005 he issued a notice in reply to the positive defences including a reply and particulars pursuant to s 41 of the Defamation Act 1992 (the Act).

[3] The defendant made application to strike out the reply on the grounds that it did not comply with established principles of pleading in defamation. In response the plaintiff filed an amended notice on 11 May 2005. The defendant considers the plaintiff's amended notice is still defective and seeks to have a number of particulars referred to in it struck out.

[4] The general background to the current proceedings is set out in an earlier judgment of this Court dated 16 February 2005, particularly at paras [1] to [8]. It is unnecessary to repeat that background in this decision.

Replies, particulars and pleadings generally

[5] The High Court Rules provide for replies to positive defences: rr 169, 170. In Part IV the Act provides for various procedural provisions including the requirement for the plaintiff to serve a notice in reply to a defence of honest opinion: s 39 and, if the plaintiff intends to allege the defendant was predominantly motivated by ill-will or otherwise took improper advantage of the occasion of publication, in reply to a defence of qualified privilege: s 41.

[6] I accept Mr Illingworth's submission that there is no reason in principle or practice why, where more than one reply is required or where the plaintiff wishes to

make a reply on a number of issues, the reply should not be combined in the one document.

[7] Both r 169 and the sections in the Act provide for the replies to be filed and served within specific periods of time. It is accepted that the plaintiff's reply in this case was outside the time required by the rules and the Act. However, subject to a point I will address shortly about s 39, the defendant did not pursue that point in submission. The defendant's challenge to the plaintiff's reply document was directed at the substance of the particulars in the reply.

Strike-out principles

[8] The application is made in reliance inter alia upon r 186, particularly r 186 (b). The application is directed at striking out parts of the reply rather than the entire reply. Mr Illingworth referred to the well established authorities on strike-out: *Attorney-General v Prince & Gardner* [1998] 1 NZLR 262; *Attorney-General v McVeagh* [1995] 1 NZLR 558. While I accept the general principle that the strike-out jurisdiction is to be exercised sparingly, that is more directly relevant where the matter at issue is the strike out of the entire proceeding rather than where the application is limited to aspects of the pleading, particularly where there is an opportunity to replead.

The place of particulars in pleading

> The function of particulars is to carry into operation the over-riding principle that the litigation between the parties, and particularly the trial, should be conducted fairly, openly, without surprises and, incidentally, to reduce costs. Their function has been stated inter alia:
>
> (a) To inform the other party of the nature of the case he has to meet, as distinguished from the mode in which the case will be proved;
>
> (b) To prevent the other party from being taken by surprise;
>
> (c) To enable the other party to know with what evidence he ought to be prepared;
>
> (d) To limit and define the issues.

> A certain amount of detail is necessary in order to ensure clearness. What particulars need to be stated depend on the facts of each case.

per Barker J, *Re Securitibank Limited (No. 25)* (High Court, Auckland, A355/81, 10 October 1983, Barker J). More recently the Court of Appeal have restated the importance of pleadings generally in *Price Waterhouse v Fortex Group Limited* (CA179/98, 30 November 1998):

> It has become fashionable in some quarters to regard the pleadings as being of little importance. … Any such view is misguided. Pleadings which are properly drawn and particularised are, in a case of any complexity, if not in all cases, an essential road map for the Court and the parties. They are the documents against which the briefs of evidence are or should be prepared. They are the documents which establish parameters of the case, not the briefs of evidence.

And later:

> … a pleading must, in the individual circumstances of the case, state the issue and inform the opposite party of the case to be met. As so often is the case in procedural matters, in the end a common-sense and balanced judgment based on experience as to how cases are prepared and trials work is required. It is not an area for mechanical approaches or pedantry.

A reply is a pleading: r 3.

Honest opinion

[9] The article sued on was contained in the defendant's publication of September 17, 2004. The article was attributed to Jock Anderson and Coran Lill, employees of the defendant.

[10] In his amended notice in reply the plaintiff pleads:

> 2.2. In circumstances where the defendant was not the author of the material in question the defence of honest opinion can apply only in respect of an opinion honestly held at the relevant time by an identifiable person or persons. The defendant was not the author of the material in question and the defendant has failed to identify any person or persons said to have held the alleged opinions at the relevant time.
>
> 2.3. The plaintiff therefore objects to the defendant's pleading and requires particulars of any person or persons said to have held the

> alleged opinions. Unless and until the defendant provides particulars the plaintiff is unable to file and serve notice under s 39 of the Defamation Act 1992.

[11] The plaintiff's pleading at 2.2 and 2.3 is not a pleading in reply as such, as contemplated by r 169 or s 39 of the Act. It is effectively submission by the plaintiff's advisers on a matter of interpretation of s 10.

[12] For practical reasons, however, the defendant does not seek to strike out those aspects of the notice.

[13] The issue is the interpretation to be given to s 10 of the Act. The section reads:

> **10 Opinion must be genuine**
>
> (1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.
>
> (2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,—
>
> > (a) Where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that—
> >
> > > (i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant; and
> > >
> > > (ii) The defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion:
> >
> > (b) Where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that—
> >
> > > (i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant; and

> (ii) The defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion. …

[14] Mr Illingworth submitted that the plaintiff could not issue a notice under s 39 until it knew from the defendant which specific disjunctive limb of s 10 the defendant purported to rely on, namely whether the defendant was seeking to rely on the opinion being its qua author own (i.e. s 10 (1) of the Act) or that of its employees or agents (s 10 (2)(a)(i)-(ii)).

[15] During the course of submissions Mr Miles confirmed that the defendant relies on s 10 (1) of the Act rather than s 10 (2). He submitted the plaintiff was now out of time to serve a notice under s 39. The defendant's pleading is that it has adopted the opinion as its own, qua author. At para 6 of the amended statement of defence the defendant pleads:

> 6. If it is held that the words complained of in para 3.1 and described in the statement of claim as the defamatory meanings all the meanings set out in 3.1 and that the words and such meanings were defamatory of the plaintiff (all of which is denied) to the extent that the words were statements of fact, they were true and to the extent that they were statements of opinion they were the defendant's honest opinion …
>
> (emphasis added)

[16] Mr Illingworth then submitted that on the face of it, it was not possible for the defendant to rely on s 10 (1) and that it must bring itself within s 10 (2) as:

> A publisher that is a limited company can only discharge the duty to act reasonably through its servants or agents."

Austin v Mirror Newspapers Limited (1985) 3 NSWLR 354 at p 363.

[17] In the *Law of Torts in New Zealand* 3rd ed, Todd, General Editor, at p 852 the learned author of the section on defamation notes the potential difficulties with the application of s 10:

> There may also be difficulties in a media organisation proving that it believed its journalist generally held the opinion expressed. A media organisation, normally being a corporation or non human entity, cannot itself 'believe' anything. Whose belief is to be attributed to the organisation for

> this purpose? "Belief" is, moreover, a subjective matter which is never easy to prove. Finally, s 10(2) is less than clear on one point. As drafted, it provides that if either of the stated conditions is not made out, the defence "shall fail". This surely cannot mean that if an opinion expressed in a newspaper purports to be the newspaper's own, as in the case of an editorial, the defence of honest opinion must necessarily fail. In such a case, presumably the newspaper company would itself be treated as the "author" of the opinion and would succeed if it could show that the opinion was genuinely held by the person whose state of mind could be attributed to the company for this purpose.
>
> (emphasis added)

[18] I would adopt that analysis and take it one step further. As I read s 10 it contemplates three situations where the defendant is a media publisher:

- First, where the media publisher adopts as its own the opinion in the article. In such case the defendant must prove the opinion was genuinely held by the person whose state of mind can be attributed to the defendant for this purpose (s 10 (1)).

- Second, where the defendant is not the author but where the author was an employee or agent of the defendant media publisher. In such a case the defendant must prove that the opinion did not purport to be the defendant's opinion and that the defendant believed it was the genuine opinion of the author. An example might be where the newspaper has a guest columnist. The column may be qualified by a statement that the opinions of the contributor are not necessarily the opinions of the newspaper. The focus in such a case would then be on the second requirement, namely the genuineness or otherwise of the opinion of that author (s 10 (2)(a)).

- Finally, where the author of the matter containing the opinion was not an employee or agent of the defendant media publisher. In such case the defendant must prove that the opinion did not purport to be its opinion or that of any employee or agent and the defendant had no reason or cause to believe the opinion was not the genuine opinion of the author. An example might be a letter to the editor (s 10 (2)(b)).

[19] Read literally as submitted by Mr Illingworth a corporate media publisher could never rely on s 10 (1) as it could never be the author of the matter containing

the opinion. Any article or opinion of a journalist or editor employed by the paper would on his argument have to be considered under s 10 (2) so that a newspaper publisher could only ever rely on the defence of honest opinion if it could prove that the opinion did not purport to be the media publisher's opinion even though, as in this case, it featured on the front page of the newspaper or in an editorial. I do not consider the section should be interpreted that way. It would effectively deprive a media publisher of the use of s 10 (1) and the media publisher would always have to prove the article or editorial (contained within its publication) was not its opinion. That can not be the case.

[20] In summary, in the present case the defendant has adopted the opinion as its own qua author. In my judgment the defendant is able to seek to rely on s 10 (1). The defendant must of course establish that the opinion expressed was genuinely held by the persons whose state of mind are attributed to it for this purpose. That must primarily be Jock Anderson and Coran Lill in this case.

[21] If the plaintiff wished to challenge the honest opinion defence then it should have given notice under s 39. It is now out of time to do so. Mr Miles objected to leave now being granted under s 39 (2) as he submitted the defendant would be prejudiced. Mr Miles was however unable to expressly identify any particular prejudice. Amendments are going to be required to the notice in reply on other issues in any event. I am unable to see that there can be any possible prejudice apart perhaps from the issue of costs which can be addressed separately. I am going to grant leave to the plaintiff to give notice under s 39.

Particulars under s 41 – preliminary matter

[22] Mr Miles first submitted that the plaintiff's notice was defective in that it did not plead particulars of the person or persons through whom the plaintiff intends to fix the defendant company with the necessary ill will. That is somewhat at odds with the plaintiff's position that it has adopted the article as its own opinion as noted above, and its general pleading at para 7 on the issue of qualified privilege. While a defendant corporation cannot have a mental state as such, in this case given the defendant's pleading it is apparent that the defendant relied upon its journalists,

Mr Anderson and Ms Lill to produce an article free of ill will and otherwise than for an improper purpose. On the facts of this case, there is no substance in the point, which I accept was more an observation by Mr Miles than anything else.

Ill-will or improper advantage

[23] The defence of qualified privilege will be defeated if the plaintiff proves that in publishing the matter in question the defendant was predominantly motivated by ill-will towards the plaintiff or otherwise took improper advantage of the occasion of publication: s 19. The onus is on the plaintiff to prove these matters. Where the plaintiff intends to rely on particular facts or circumstances in support of the allegation of ill-will or improper advantage the notice shall also include particulars specifying those facts and circumstances: s 41 (2). The concepts of ill will and improper advantage are different in nature but the facts or circumstances relied on to support both may overlap or may be the same. In the present case the plaintiff has made a distinction between circumstances he relies on to establish ill-will solely and the circumstances which it is said disclose improper advantage as well as ill will.

[24] There was a suggestion in the decision of the Court of Appeal in *Lange v Atkinson* [2000] 3 NZLR 385 at para [39] that the concept of "improper advantage" used in s 19 may be potentially wider than the traditional concept of "improper purpose". In the same decision the Court of Appeal qualified the re-statement of malice by Lord Diplock in *Horrocks v Low* [1975] AC 135 pp 149 -150 by suggesting that Lord Diplock's statement that carelessness, impulsiveness or irrationality are not equated to indifference must be read in context.

> Thus while carelessness will not of itself be sufficient to negate the defence, its existence may well support an assertion by the plaintiff of a lack of belief or recklessness. In this way the concept of reasonable or responsible conduct on the part of a defendant in the particular circumstances becomes a legitimate consideration.
>
> (para 44)

[25] However, the Court of Appeal confirmed that the improper advantage must be of a misuse of the occasion of qualified privilege which would require recklessness at least. As the Court observed:

> The idea of taking improper advantage is appropriately applied to those who are reckless and thereby do not exhibit the necessary responsibility when purporting to act under the cloak of qualified privilege.
>
> (para 39)

Application of the principles

[26] Against that general background I turn to the particulars in issue.

[27] Particular 3.2.1 reads:

> 3.2.1: The publication of the words complained of in the amended statement of claim comprised part of a strenuous public attack by the defendant on the character and reputation of the plaintiff ("the character attack").
>
> 3.2.2 The character attack was timed to coincide with the commencement of voting in the 2004 Auckland mayoral election ("the election").
>
> 3.2.3 The plaintiff was a candidate in the election.

[28] Mr Miles objected to the above particulars on the basis that character attack per se cannot defeat qualified privilege nor is it enough to defeat the privilege to allege the article was a public attack. It is essentially no more than repetition that the article was defamatory. The obligation is to provide particulars.

> It is not sufficient merely to plead that the defendant acted maliciously. Generalised or formulaic statements will not be permitted. The claimant must allege specific facts from which it is alleged the inference is to be drawn.
>
> Gatley on Libel and Slander at para 28.5

[29] The particular 3.2.1 falls into the trap of simply restating the pleading that the article published by the defendant contained defamatory remarks that affected the plaintiff's character.

[30] The significance of the particulars at 3.2.1 to 3.2.3 from the plaintiff's point of view is, as I apprehend it, the plaintiff says the article was intended to damage the plaintiff's chances in the mayoral campaign and that in publishing it the defendant was motivated by ill will or otherwise took improper advantage of the occasion of

qualified privilege to damage the plaintiff. The general particulars that could be relevant would be that:

- Voting commenced in the 2004 Auckland mayoral election on [date]

- The plaintiff and one other candidate Mr Banks were the leading candidates in the election;

- The defendant published the article at a time it was calculated or intended to damage the plaintiff's chances in the election.

[31] Whether or not a jury would draw such an inference from those circumstances is a question of fact for them.

[32] Particular 3.2.1 is struck out but the essence of what the plaintiff seeks to achieve at paras 3.2.2 and 3.2.3 could be re-pleaded.

[33] Para 3.2.4 pleads:

> The character attack included the following news media articles ("the articles"):
>
> (a) The articles that contained the words complained of in the amended statement of claim;
>
> (b) Other articles concerning the plaintiff (published at the same time and in the same news media as the words complained of in the amended statement of claim) namely:
>
> - An article entitled "The Triple bottom Lie"
> - An article entitled "Hubbard struggles to hold line"
> - An article entitled "Strike loomed at stopwork meeting"
> - An article entitled "Hubbard's $1,000,000 Queenstown sandpit"
> - An article entitled "The dumbed down City of Souls vision"
> - An article entitled "Charismatic churchgoer"
> - An article entitled "The self-styled 'plodder' rose from delivery boy"

[34] The particulars that follow at 3.2.5 to 3.2.9 allege that the defendant represented the articles had been researched and revealed the truth about the defendant; that that was conveyed by way of advertisement; that the articles contained inaccurate and misleading statements concerning the plaintiff, his wife and his company; and the number and nature of the inaccurate or misleading statements give rise to an inference the articles had not been carefully researched but had been prepared without any adequate regard for the truth; and shortly after the publication Hubbard Foods Limited wrote to the defendant asking for a correction to be published in respect of certain specified errors; and that at 3.2.14 the defendant:

> (a) Failed to correct any of the errors contained in the articles;
>
> (b) Failed to publish any of the positive comments made to the journalist concerning the plaintiff;
>
> (c) Failed to tender any apology to the plaintiff;
>
> (d) Publicly continued to maintain that the articles were correct and accurate.

It is submitted for the plaintiff that these are particulars of both improper advantage and ill-will.

[35] Mr Miles accepted the plaintiff could refer to and rely on the articles identified in 3.2.4 to suggest the defamatory article actually complained of in the proceedings was published out of ill will because it could arguably be inferred from the other articles that the defendant bore ill will towards the plaintiff, but that particulars at 3.2.5 to 3.2.8 were in effect no more than saying the other articles (which are not sued on) were sloppy journalism and that as inaccuracy or carelessness cannot be used as a basis from which ill will could be inferred in the preparation of the defamatory article itself then *a fortiori* the accuracy of articles not sued on could not support an allegation of ill will.

[36] Mr Miles also advanced the practical submission that if the particulars at 3.2.5 to 3.2.8 were permitted it would require an examination of the errors allegedly made by the plaintiff in these articles which would lead to a trial within a trial and considerably add to the time required for trial. It would also distract a jury from the principal issue. Mr Illingworth's response to that was a colloquial "so what". He

submitted if the evidence was relevant and those issues were required to be traversed then that was in the nature of the case.

[37] I have to say that the prospect of a trial judge and/or a jury trawling through evidence relating to the 38 errors alleged in the articles (which are not sued upon) is not an attractive one. Nor is it supported by authority.

[38] The focus of this case is on the article published by the defendant that the plaintiff sues on. In terms of qualified privilege the focus is on whether the defendant was motivated by ill will or otherwise took improper advantage of the occasion of publication of that article. Neither of those issues will be advanced by trawling through mistakes the plaintiff says have been identified in other articles the defendant wrote about the plaintiff at around the material time. The fact there were such articles is relevant. They are relevant to the issue of ill will and improper advantage particularly whether the plaintiff can establish that the defendant was running a campaign against the plaintiff, and to an extent, his business and family with the intention of damaging the plaintiff and that the campaign was motivated by ill-will or in pursuing it, the defendant took improper advantage of the occasion. That is as far as their relevance extends. The articles are not sued on as defamatory. It is not directly relevant whether they contain the errors alleged. I agree that the particulars at para 3.2.5, 3.2.7, 3.2.8 are not relevant. For similar reasons, the request by Hubbard Foods for a correction as pleaded at 3.2.9 is not relevant. As was noted in *Waterhouse v Station 2GB Pty Limited* [1985] 1 NSWLR at p 58, 68

> A defendant's *refusal* to apologise or retract is by no means clear evidence of the express malice which defeats the defence of qualified privilege: *Loveday v Sun Newspapers Limited* (1938) 59 CLR 503, at 513; *Hawke v Tamworth Newspaper Co Limited* [1983] 1 NSWLR 699 at 711; the mere *failure* to apologise or retract in relation to a publication which is shown to be otherwise lawful is never evidence of such express malice: *Howe v Lees* (1910) 11 CLR 361 at 372, 373. Nor does it add substance to the allegation of the defendant's mere failure to apologise or retract to assert that such failure continued notwithstanding the defendant's knowledge subsequently acquired that the plaintiff was alleging that the matter complained of was false: *Turner v Aitkin* (Hunt J, 19 February 1982, unreported).

[39] Particular 3.2.4 identifies the articles. If reworded the particular at 3.2.6 might be pleaded as an additional particular supporting the improper advantage or ill will by referring to the separate publication of the series of articles concerning the

plaintiff. Apart from those two exceptions, (3.2.4 and 3.2.6 – reworded) the particulars at 3.2.4 to 3.2.9 are struck out.

[40] The defendant does not challenge para 3.2.10 to 3.2.13 inclusive.

[41] Sub-paragraphs 3.2.14 (a), (c) and (d) are directed at the additional articles that are not sued upon and are objectionable on the same basis. The particular at 3.2.14 (b) is essentially a repetition of 3.2.12 and is covered by 3.2.12. It is unnecessary to repeat it at 3.2.14 (b). Particular 3.2.14 is also struck out.

[42] Paragraph 3.3.1 repeats the earlier particulars at para 3.2 as particulars of ill-will. It is a matter of form. With the necessary amendment it can stand.

[43] Paragraph 3.3.2:

> By publishing the words complained of in the amended statement of claim, the defendant accused the plaintiff of a serious act of dishonesty in circumstances where there was no basis for that accusation.

This particular is objectionable. It is conclusionary. In substance the particular is no more than a repetition of the plaintiff's case that there is no basis for the accusation made in the article. It asserts the ultimate facts to be inferred from particulars but does not provide particulars as is required by s 41 (2). It does nothing as a pleading to assist disclosure of the basis for the conclusion. It is struck out.

[44] Para 3.3.3:

> Shortly after their publication, the defendant delivered copies of all the articles ("the copies") to Mr Brian Nicolle.

[45] This particular and following particulars, 3.3.4 to 3.3.8 inclusive allege the defendant gave copies of the articles to Mr Banks' campaign manager Mr Nicolle for further ready distribution. Mr Miles objected to them on the basis that those particulars could not form a basis for inferring the defendant's state of mind at the time of publication. He submitted they were nothing more than allegations of re-publication.

[46] However, subsequent behaviour can, in certain circumstances, be relevant in order to indicate the party's state of mind at the time of publication. The timing of the acts in issue and their connection to the defamation complained of are matters that go to weight rather than admissibility: *Herald and Weekly Times Limited v McGregor* (1928) 41 CLR 254; *Simpson v Robinson* (1848) 12 QB 511. The plaintiff's case is that the particulars are evidence of the ill-will. He points to the delivery of copies of the articles to Mr Banks campaign manager in a form which facilitated their reproduction quickly and accurately, at a time when Mr Nicolle could use the copies to distribute them to electors with the intention that the plaintiff's prospects in the election would be damaged as all facts from which a jury, properly directed, could draw an inference from to support the plaintiff's pleading of ill will. Paragraph 3.3.3 should refer to the date of delivery as it is that aspect that links the actions. Subject to that, I accept that the facts pleaded at 3.3.3 to 3.3.8 are sufficiently related in time and circumstance to the article complained of to be relevant to the defendant's state of mind at publication.

[47] Paragraph 3.3.9 pleads:

> In all the circumstances, it is to be inferred that the defendant published the words complained of in the amended statement of claim recklessly, with the intention of damaging the plaintiff's prospects and promoting the prospects of Mr Banks in the election.

Mr Miles submitted the paragraph was essentially a summary rather than a particular and absent an allegation or particular to the effect that the defendant published the articles recklessly or with the intention of providing them to Mr Banks' campaign manager, there was no basis from which it could be inferred the article was published out of ill will.

[48] The foregoing particulars 3.3.3 to 3.3.8 do provide a basis upon which a properly directed jury could infer that the original article sued on was published out of ill will towards the plaintiff so that the purpose of the publication might be taken by the jury to be directly to damage the plaintiff's prospects in the election rather than for educating the public. The issue is the result sought to be achieved by the plaintiff by the publication. On that basis the particular is unobjectionable as a summary of the preceding particulars.

Conclusion

[49] The plaintiff will need to replead in light of the above directions. Leave is granted to the plaintiff to re-plead, including to file replies under s 39 and s 41. The amended reply notice is to be filed by Friday, 1 July 2005.

Review

[50] The file will be reviewed at a teleconference on 12 July 2005 at 9.00 a.m.

Costs

[51] Costs are reserved to be dealt with by way of memorandum if required.

_____

G J Venning J