

**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: 26, 27 July and 19, 20 December 2005

Appearances: J G Miles Q.C and M Flynn for plaintiffs  
C S Henry (26 and 27 July); V R Siemer in person with A Kennedy as  
McKenzie Friend (19, 20 December) for first defendant  
No appearance for second and third defendants

Judgment: 16 March 2006

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**JUDGMENT OF POTTER J**

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This judgment was delivered by me on \_\_\_\_\_ at \_\_\_\_\_, pursuant to  
Rule 540(4) of the High Court Rules.

Registrar/Deputy Registrar  
Date

Solicitors: McElroys, P.O. Box 835, Auckland  
D Gates, P.O. Box 222, Whangaparaoa

Copy to: J G Miles Q.C, P.O. Box 4338, Auckland  
V R Siemer, Paragon Oil Systems, P.O. Box 335, Silverdale,  
Auckland

## TABLE OF CONTENTS

<b>Introduction</b>	[1]
<b>Background facts</b>	[4]
<b>Injunctions</b>	[12]
<b>Principles applicable to applications for contempt of Court</b>	[16]
<b>Affidavits</b>	[19]
<b>Rulings in relation to evidence</b>	[22]
<b>The plaintiffs' case</b>	[29]
<b>The evidence</b>	[31]
<i>Maintaining/adding to material on the website</i>	[33]
<i>Sale of the website</i>	[41]
<i>Distributing stickers</i>	[61]
<i>Letters to Auckland Electricity Consumer Trust Trustees</i>	[83]
<i>Letters to Accountants</i>	[91]
<i>Letters to Newspapers</i>	[97]
<i>Updating and continuing operation of the website</i>	[100]
<i>Three defence witnesses</i>	[105]
<b>Discussion and findings on the evidence</b>	[108]
<i>Maintaining/adding to material on the website</i>	[109]
<i>Sale of website</i>	[110]
<i>Distributing stickers</i>	[129]
<i>Letters to Auckland Electricity Consumer Trust Trustees</i>	[134]
<i>Letters to Accountants</i>	[138]
<i>Letters to Newspapers</i>	[141]
<i>Updating and continuing operation of the website</i>	[142]
<i>Summary</i>	[145]
<b>Bill of Rights</b>	[146]
<b>Post-Hearing memoranda</b>	[153]
<b>Conclusions and penalty</b>	[159]
<b>Orders</b>	[170]
<b>Substantive proceeding</b>	[171]

## **Introduction**

[1] By second amended application dated 23 May 2005 the plaintiffs seek orders for committal of the first defendant and associated orders in respect of the first and second defendants upon the grounds that the first defendant is in contempt of Court by acting in breach of orders made by Winkelmann J on 8 April 2005 on an application for interim injunction brought by the plaintiffs against the first defendant as varied by interim injunction granted on 5 May 2005 by Ellen France J.

[2] By notice dated 27 May 2005 the first and second defendants oppose the plaintiffs' application upon the grounds that it is oppressive and an abuse of process and that neither the first nor second defendant has committed any act of contempt of Court.

[3] The second and third defendants were not represented at the hearing. I declined an application for the first defendant, Mr Siemer, to represent the second defendant, Paragon Services Limited, in a judgment dated 19 December 2005. The third defendant Oggi Advertising Limited (which owns the billboard referred to in the injunctions) took no part in this proceeding. References in this judgment to "the defendants" are to the first and second defendants and exclude the third defendant.

## **Background facts**

[4] The second plaintiff, Mr Stiassny, is a partner of Ferrier Hodgson a firm of chartered accountants, who are the first plaintiff.

[5] The first defendant, Mr Siemer, was at the relevant times, the managing director of the second defendant, Paragon Services Limited (previously Paragon Oil Systems Limited) ("Paragon").

[6] Mr Stiassny was appointed receiver of Paragon by the Court on 14 December 2000. When all the shares in Paragon were transferred to Mr Siemer pursuant to a

judgment of the High Court delivered on 18 July 2001, Mr Stiassny was discharged by the Court.

[7] There were differences between the plaintiffs and the defendants about the receivership.

[8] Mr Siemer made a series of complaints between April 2002 and January 2005 about the conduct of the receivership by Mr Stiassny, to the Institute of Chartered Accountants, the New Zealand Shareholders Association, and the Serious Fraud Office. Copies of these complaints were sent to other parties including trustees at the Auckland Electricity Consumer Trust which is a shareholder in Vector Limited of which Mr Stiassny is Chairman of the Board.

[9] Around 8 April 2005 Mr Siemer erected a billboard on the building formerly known as the Farmers Car Park in Hobson Street, Auckland. The billboard related to Mr Stiassny and read:

Michael Stiassny, A True Story [www.stiassny.org](http://www.stiassny.org).

[10] The website referred to, [www.stiassny.org](http://www.stiassny.org), contained a range of material about Mr Stiassny and in particular his role as Court appointed receiver of Paragon.

[11] The plaintiffs commenced proceedings against the defendants alleging that the material on the website was defamatory of Mr Stiassny and also in breach of a confidentiality provision in an agreement dated 9 August 2001 entered into by Ferrier Hodgson with Mr Siemer and Paragon to resolve the differences over the receivership. These proceedings have yet to be heard, and this judgment does not address the issues with which they are concerned.

## **Injunctions**

[12] On 8 April 2005 Winkelmann J in the High Court at Auckland on the application of the plaintiffs made orders granting an ex parte interim injunction against Mr Siemer and Oggi Advertising Limited (“the April injunction”). The terms were:

- (1) The first respondent [Mr Siemer] direct the second respondent [Oggi Advertising] to remove the billboard referring to the applicant situated on the building formerly known as Farmers Car Park, Hobson Street, Auckland;
- (2) The first respondent remove all material from the website [www.stiassny.org](http://www.stiassny.org) in any way relating to the applicant;
- (3) The first respondent be restrained from publicising any information in any way relating to the application pending further order of the Court.
- (4) The second respondent remove the billboard relating to the applicant on the building formerly known as the Farmers Car Park, Hobson Street, Auckland forthwith.

[13] Mr Siemer quickly applied to have the injunction rescinded. The plaintiffs applied to vary the injunction by expanding its scope. Following a hearing on 28 April 2005, Ellen France J in a judgment dated 5 May 2005 rescinded the April injunction and granted in its place an interim injunction in more limited terms to take effect from 12 May 2005 (“the May injunction”). It directed Mr Siemer, Paragon and their servants, contractors or agents not to:

- (1) Publish in any form any information containing allegations of criminal or unethical conduct or as to improper personal enrichment on the part of the plaintiffs in relation to their conduct of the receivership of Paragon Oil Systems Ltd; any claim that the plaintiffs deliberately overcharged Paragon Oil Systems Ltd in the sum of \$10,000; together with information as to the fact of complaints made by Mr Siemer and/or Paragon Oil Systems Ltd to ICANZ or to the Serious Fraud Office; and including any information obtained by Mr Siemer or Paragon Oil Systems Ltd in the course of discovery in any proceedings pending further order of the Court; and
- (2) Not to reinstate the billboard.

[14] On 3 May 2005 the plaintiffs filed an ex parte notice of application for committal claiming breach by the defendants of the orders made by Winkelmann J and undertakings given by the defendants to the Court. An amended notice was filed on 12 May 2005.

[15] On 23 May 2005 the plaintiffs filed a second amended application for committal and associated orders which is the subject of this judgment. They claim contempt of Court by the defendants by breaching the orders of Winkelmann J and

the undertakings given to the Court, and by breaching the orders of Ellen France J. The plaintiffs allege that there have been a series of deliberate actions by the defendants from late April 2005 up to and including December 2005 (when the hearing of the application for committal was concluded), designed to undermine and destroy the purpose of the two interim injunctions.

### **Principles applicable to applications for contempt of Court**

[16] In *Attorney-General v Times Newspapers Limited* [1974] AC 273 at 294, Lord Reid stated that the law of contempt is:

... founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice.

[17] The contempt jurisdiction exists in the public interest as a sanction to ensure that orders of the Court are complied with: *Taylor Bros Ltd v Taylors Group Ltd* [1991] 1 NZLR 91 at 93.

[18] In *Duff v Communicado Ltd* [1996] 2 NZLR 89 at 98-99 Blanchard J stated there were certain things which are common to all applications for contempt:

- a) The onus of proving a contempt is on the plaintiff: *Solicitor-General v Wellington Newspapers Ltd* [1995] 1 NZLR 45 at 47 (FC);
- b) The contempt must be proved beyond reasonable doubt before the criminal sanctions of a fine, sequestration or imprisonment will be imposed: *Solicitor-General v Wellington Newspapers; Witham v Holloway* (1995) 131 ALR 401 (HCA);
- c) But where the plaintiff has proved, on the balance of probabilities, that the defendant has intentionally breached the terms of the injunction an order for payment of the plaintiff's costs on a solicitor

and client basis will be appropriate: *Country Colours Ltd v Resene Paints Ltd* (1992) 6 PRNZ 506 at 508-509.

- d) It is unnecessary to prove an intention to interfere with the administration of justice: *Solicitor-General v Radio Avon Ltd* [1978] 1 NZLR 225, 232-233 (CA); *Solicitor-General v Radio New Zealand Ltd* [1994] 1 NZLR 48 at 55 (FC).

In every case the Court must ask:

- a) Has there been a contempt at all?
- b) If so, is it sufficiently serious to justify any punishment? (*Times Newspapers* at 298; *Solicitor-General v Broadcasting Corporation of New Zealand* [1987] 2 NZLR 100.)

### **Affidavits**

[19] For the plaintiffs, affidavits were filed by Allan Robert Garrett dated 3 May 2005, 10 May 2005, 20 May 2005, 26 May 2005 and 21 June 2005; Neale Jackson dated 20 May 2005; Campbell Rose dated 20 May 2005; Frederick Thompson dated 20 May 2005; Gordon Sharfe dated 26 May 2005; Mark Van Leeuwarden dated 25 May 2005; Sheila Davidson dated 9 June 2005 and Sabrina Vai dated 17 June 2005. (Leave to file two late affidavits was declined by Ellen France J on 21 July 2005).

[20] For the defendants, Mr Siemer's evidence was given in two affidavits dated 10 May 2005 and 15 June 2005. Mr Edmondo Tunney swore an affidavit dated 12 May 2005 and a late affidavit dated 12 December 2005 was presented at the hearing without opposition by the plaintiffs.

[21] Leave was granted to the defendants at the hearing to call evidence from Coralie Van Camp, Ian Andrews and Penny Bright.



## **Rulings in relation to evidence**

[22] The defendants by application dated 7 July 2005, sought leave to cross-examine Messrs Thompson and Rose and Ms Vai. Their application was not opposed by the plaintiffs, in respect of Messrs Thompson and Rose.

[23] The defendants' application to cross-examine Sabrina Vai was opposed and was the subject of a judgment of Keane J dated 14 July 2005 and a minute dated 19 July 2005 following a hearing of the opposed application. Pursuant to that judgment and minute, a ruling was required by the Court at the committal hearing. I declined the defendants' application in a judgment dated 19 July 2005.

[24] The plaintiffs, by application dated 21 June 2005 sought leave to cross-examine Mr Siemer, which was opposed. That application was also heard by Keane J, and pursuant to his judgment of 14 July 2005, called for a ruling by the Court at the committal hearing. I granted the application in a judgment dated 20 December 2005.

[25] The plaintiffs also made application by notice dated 18 July 2005 to cross-examine Mr Tunney. By notice dated 21 July 2005 the defendants opposed that application. The matter was not heard prior to the hearing in December 2005. At the hearing Mr Siemer advised that the defendants did not oppose the plaintiffs' application and would make Mr Tunney available for cross-examination by video-link. However, the plaintiffs did not pursue their application, Mr Miles Q.C. indicating to the Court that the plaintiffs wished to avoid any further delay in concluding the hearing of their application for committal.

[26] On 19 December 2005 when Mr Siemer opened the case for the defence, he made an oral application to cross-examine Mr Garrett. I declined that application in an oral ruling. I referred to r 253 of the High Court Rules and to the minute of Laurenson J dated 11 May 2005 in which he made timetable orders for affidavits to be filed by both parties; also to [12][e] of that minute which granted leave to any party to apply to cross-examine, but required any such application to be made not less than 7 days from service of the affidavit in question. I noted that pursuant to

that order, the defendants filed the application dated 7 July 2005 to cross-examine Messrs Thompson and Rose and Ms Vai, but that no application was made to cross-examine Mr Garrett. Mr Siemer's application was opposed by the plaintiffs. He offered no explanation for the late application, and failed to persuade me that there were special circumstances such that in terms of r 253, it should be granted.

[27] The defendants, through Mr Henry who represented them at the first part of the hearing, objected to parts of the affidavits filed by the plaintiffs, on the grounds that they included evidence that was hearsay, opinion or conclusionary. Most parts in contention were struck from the affidavits with the agreement of counsel for the plaintiffs. A few were the subject of rulings by me. I have accordingly, disregarded any parts deleted from the affidavits, and, where applicable, have received identified extracts as statements of belief rather than fact.

[28] I also record that Mr Siemer's affidavit of 15 June 2005 and his written submissions included much opinion and assertion, some of it intemperate or vituperative. I have been obliged to exclude from my considerations material that does not comprise admissible evidence or which is not properly the subject of submission, as the case may be. Such material does not assist the Court.

### **The plaintiffs' case**

[29] The plaintiffs contend that two of the orders of the April injunction have been breached by the defendants. They are

- a) The first respondent [Mr Siemer] remove all material from the website [www.stiassny.org](http://www.stiassny.org) in any way relating to the applicant [the plaintiffs];
- b) The first respondent [Mr Siemer] be restrained from publicising any information in any way relating to the application pending further order of the Court

(There is no dispute that the billboard was removed from the Farmers Car Park building in Hobson Street pursuant to the orders to that effect).

They are said to have been breached in the following respects:

- (1) Failing to remove all the material from the website;
- (2) Being a party to the reactivation of the website on 3 May 2005;
- (3) Arranging or participating in a “so-called sale” of the website on 26 April 2005 including all the material on it to the Talayna Group in Milan. It is contended by the plaintiffs that the sale was a sham, designed to ensure that the website continued while putting it beyond the reach of the New Zealand Courts.

[30] The plaintiffs further contend that the orders made by the May injunction have been systematically and deliberately subverted and breached by the defendants either directly or as a party, in the following respects:

- a) Reactivating the website on 19 May 2005;
- b) Maintaining the original material on the website and making additions (including the judgment of Ellen France J and an “interview” with Mr Siemer about that judgment).
- c) Distributing stickers around Auckland City entitled “*Michael Stiassny – A True Story* [www.stiassny.org](http://www.stiassny.org)”.
- d) Around 23 May 2005 sending letters to Shale Chambers, Michael Buczkowski and John Collinge, three of the four trustees of the Auckland Energy Consumers Trust referring the trustees to the website and inviting recipients to pass on a card included with the letter.
- e) On 23 May 2005 sending a similar letter to The Independent and National Business Review newspapers.

- f) Distributing letters addressed to “All Accountants” using an organisation described as “Forensic Investigations” regarding a “possible criminal prosecution” to be brought against Mr Stiassny.
- g) Updating and continuing the operation of the website, up to and including the date of hearing in December 2005.

### **The evidence**

[31] The chronological history of the website [www.stiassny.org](http://www.stiassny.org), as it is relevant to the proceeding, is not in dispute and is as follows:

- The website was created on 14 March 2005 with a then expiration date of 14 March 2006. It was registered in the name of Mr Siemer whose address was given as 7142 Kay Court, St Louis, Missouri.
- On 12 April 2005 the website was closed down.
- On 3 May 2005 the website was reactivated.
- On 5 May 2005 the website was closed down.
- On 19 May 2005 the website was reactivated.
- The website remained current at the hearing of the committal application in December 2005.

[32] I now turn to consider the evidence of deponents and witnesses.

### ***Maintaining/adding to material on the website***

[33] Mr Garrett in his affidavit of 3 May 2005 states that since the ex parte interim injunction was made and sealed on 8 April 2005 he had been periodically checking the website [www.stiassny.org](http://www.stiassny.org) to determine whether it was still operative. On the

morning of 3 May 2005 he checked the website and found it was fully operative and included recent updates. A full copy of a printout of the website is annexed to his affidavit. He states that above the word “Welcome” on the first page of the website is the endorsement “Posted 30 April 2005”, and notes that the text under the heading “Welcome” concludes, “Regards, Vince Siemer, MBA”.

[34] Mr Garrett refers to a section in the “Welcome” material which was an addition to the material previously on the website. The “Welcome” article includes the comment:

According to a recent article in the Sunday Star Times Mr Stiassny’s fees in September for Access Brokerage are a gut-wrenching \$660,000 – and counting.

[35] He states that the Sunday Star Times article referred to was published on 17 April 2005, and notes that it is annexed to an affidavit by Mr Siemer filed in the proceeding dated 26 April 2005.

[36] Mr Garrett refers to other respects in which the contents of the website have been changed and updated. One of the changes was the removal from the website of certain documents which had been discovered in another Court proceeding, referred to by Ellen France J in her judgment of 5 May 2005 (at [58]).

[37] In his written closing submissions at paragraph 24, Mr Siemer does not dispute the contents of Mr Garrett’s affidavit except to the extent that it includes conclusions of Mr Garrett. The conclusionary aspects of the affidavit were the subject of objection by Mr Henry on behalf of Mr Siemer and were deleted by agreement of counsel for the plaintiffs. The factual matters to which I have referred, stand.

[38] Mr Neale Jackson in an affidavit sworn 20 May 2005 confirms that on 3 May 2005 he logged on to the website from a computer at his home and sent a message to the website. On 9 May 2005 he received a response from [vsiemer@hotmail.com](mailto:vsiemer@hotmail.com). The message was signed:

Regards, Vince Siemer 29 Clansman Terrace, Gulf Harbour, Auckland.

[39] Mr Siemer's explanation for the reactivating of the website is given in his affidavit sworn 10 May 2005. He says that on receipt of the plaintiffs' ex parte notice of application for committal filed and forwarded by facsimile to his solicitor on 3 May 2005, he learned that the website had been reactivated and was available to the public. He says he contacted Talayna Group in Italy:

... and pointed out to them that publication of the website and its contents as of 3 May 2005 was contrary to the understanding that we had reached when, on 26 April 2005, I had sold them the website and the material which they were displaying on the site.

[40] He states that the basis upon which he entered into the agreement with Talayna Group for sale of the website and the material that they published on it, was that they would not activate the website until after resolution of the ex parte injunction, the hearing of which was then pending. He says that neither he nor the second defendant expected that the new owners would reactivate the site. He says he received an assurance from the new owners that they would promptly deactivate the website but that the sale price in the agreement for sale would be reduced by 2,000 Euros. He records that the website was in fact deactivated by 7 a.m. on 5 May 2005.

#### *Sale of the website*

[41] Mr Garrett's affidavit of 3 May 2005 exhibits a letter from Mr Siemer to Mr Julian Miles Q.C, counsel for the plaintiffs, dated 4 May 2005 together with a copy of an agreement for sale and purchase in relation to the website.

[42] These documents were provided by Mr Siemer in response to a direction from Ellen France J in a minute dated 3 May 2005 (Tuesday) in which she recorded at [6]:

Mr Siemer, through his counsel, has explained that on Friday he sold the website. He does admit he provided the company in Milan to whom he sold the website with the information that is now available on the website. He seeks 72 hours during which period he says he will use his best endeavours to have the website emptied and the situation made so that there is compliance with the Court's order.

The Judge said that she would treat as an undertaking on the part of Mr Siemer his indication that he would use his best endeavours to rectify matters. She then issued the following direction in [8][d]:

I further direct that by midday tomorrow Mr Siemer is to make available by way of discovery sufficient details to the plaintiffs of the new owner of the site and any correspondence including emails or contractual documents that relate to that sale.

[43] The letter of 4 May 2005 to Mr Miles stated:

The sales agreement on the website is attached per Justice France's order. There are no other documents, as all the negotiations occurred over the phone beyond the initial inquiry which came through the website email. I have been unable to find a copy of this but will forward it to you when I find it.

I have spoken to the purchasers of the website and they are willing to delete all information off the website. You should be aware that this request is costing me EURO 2,000 off the purchase price with the further proviso of a total refund to purchaser if the website is censured more than 30 days ...

The information on the website is represented to be deleted by 7 a.m. tomorrow morning.

(Mr Siemer has not forwarded to Mr Miles or anyone a copy of the initial inquiry which, he states in the letter came through the website email).

[44] The agreement/contract of sale is in the Italian language. An English translation obtained by the plaintiffs is exhibited to Mr Garrett's affidavit.

[45] The agreement is dated 26 April 2005 and is expressed to be between Vince Siemer of 7142 Kay Court, St Louis, Missouri, USA as seller and Talayna Group of Via Filippino Lippi 19, 20131 Milano, Italy as the buyer. It purports to be signed by "Gruppo Talayna" as purchaser and Mr Siemer as vendor. The website is identified as [www.stiassny.org](http://www.stiassny.org).

[46] The agreement provides under "Representations":

The sale includes all the modules and information contained on the site currently and in the past to be used by the buyer as he deems fit.

The purchase price is stated to be 6,000 Euros to be paid by the buyer into the cheque account of the seller in the Bank of Milan, Italy ...

[47] The seller agrees to notify Yahoo of the change of ownership and to pay any change of ownership fee. The buyer is to be responsible for Yahoo's monthly fee from the date of transfer of the ownership of the website.

[48] Also attached to Mr Garrett's affidavit is a copy of an email from Clifford Chance in Milan to Russell McVeagh in Auckland stating that their searches have not revealed the names of Gruppo Talayna and Il Compratore Gruppo Talayna in the Italian Companies House register.

[49] Sabrina Vai in her affidavit sworn 17 June 2005, states that she resides in Milan and holds an investigation licence issued by Prefettura di Milano Italy. She says that on 14 May 2005 she was instructed by Warden Consulting Limited of Auckland to visit an address at Via Filippino Lippi 19, 20131 Milan. She was advised that this had been given as the address of an entity named Talayna Group. Her instructions were to make inquiries to verify if the entity and the address existed and if so to make inquiries regarding the sale of a website said to be connected to that company. She was also to make inquiries about an Edmundo Tunney.

[50] She summarises the outcome of her inquiries (being the result of national database checks she carried out as well as physical checks at the address given), that she was unable to find any record or trace of a company, group or organisation with the name Talayna and she was unable to find any record or trace of a person called Edmondo Tunney. She could not trace Mr Tunney at the address of 19 Via Filippino Lippi, despite a visit to the building at that address and other inquiries through the national Telecom telephone register. She states that an inquiry of the caretaker of the building about an organisation with the name Talayna received the response that no company or organisation with such a name was known at the address. (She does not refer to a like inquiry being made of the caretaker for a person by the name of Edmondo Tunney).

[51] Mr Tunney in an affidavit sworn 12 December 2005, which was presented at the hearing, states that 19 Via Filippino Lippi, Milan was his primary residence until August 2005, since when he has made his primary residence in Minneapolis, Minnesota, USA. He claims that he was well known in April 2005 (the date of the



agreement for sale and purchase in respect of the website) to the doorman at that address and that he was identified by name on the intercom and lobby mail boxes of the building. (He makes no reference to that also being the address of Talayna Group).

[52] Mr Tunney states in an affidavit sworn 12 May 2005 that he is a director of the Talayna Group and that on 26 April 2005 he entered into an agreement with Vince Siemer for sale and purchase of the website [www.stiassny.org](http://www.stiassny.org). He says he agreed that “my group” would not activate the website until the hearing of the injunction application then pending which he understood was to take place on 28 April 2005. Further, that the website would be updated to conform with any further Court orders, which was subsequently done on 30 April 2005 by Mr Siemer. He states:

As a result, I was under the mistaken impression that the website could now be activated and that the other material could be published without any problem before the Court.

[53] He further states that on 3 April 2005 (but presumably he means 3 May 2005), Mr Siemer contacted him and advised that the reactivated website was violating the Court’s order and asked that it be deactivated until a decision on the injunction application had been delivered. He states that he agreed to do this on condition that the purchase price for the website be lowered by 2,000 Euros.

[54] In his affidavit of 12 December 2005 Mr Tunney provides background to the sale and purchase of the website. He states that in early 2005 he began discussions with Mr Siemer, whom he had known for ten years, regarding import/export opportunities between New Zealand and Italy. He became familiar with the website which, he says had significance for him in the development of export opportunities to New Zealand because:

- (a) The website was controversial and “controversy sells”. Further that the controversial content had significant public interest within New Zealand;
- (b) He considered Mr Siemer trustworthy;
- (c) The website was averaging 1,000 hits per day in the first few days;

- (d) The responses to the website were “overwhelmingly positive to its message”.

[55] Mr Siemer states in his affidavit of 10 May 2005 that he sold the website and the information on it “which the new owners publicised”, as two discrete items. He claims that he entered into the sale of the website and the information on 26 April 2005, as if he did not do so then, he would have lost the sale opportunity. He states that neither he nor the second defendant knew or expected that the new owners of the website would reactivate the site and publicise information on it before the pending injunction was finalised. When he became aware of the “premature reactivation of the site” he immediately contacted Talayna Group in Italy and pointed out to them that publication of the website and its contents as of 3 May 2005 was contrary to the understanding reached on sale on 26 April 2005. They agreed to deactivate the website on condition that the sale price was reduced by 2,000 Euros. The deactivation occurred at 7 a.m. on 5 May 2005.

[56] He states in his affidavit of 15 June 2005 that on about 1 May 2005 he notified Yahoo of the change of ownership of the website and confirmed that on or about 23 May 2005. He checked and confirmed that the change had been registered on 14 June 2005. He explains the entry of his name under “registrant name” as relating back to his originating the website. On the exhibited registration search, Mr Tunney’s name and email address appear, as does the address of Via Filippino Lippi 19, but it appears that Mr Siemer’s telephone number is retained. There is no reference to Talayna Group in the registration details.

[57] In cross-examination Mr Miles put to Mr Siemer that the attempted sale of the website in late April 2005 was an attempt by him to get around the ruling of the interim injunction. Mr Siemer replied:

That is not true and there is no evidence to support it.

[58] He agreed that it was his signature that appeared on the original Italian copy of the agreement for sale and purchase but said he was unsure whether the purchaser’s signature was that of Mr Tunney. He accepted that he had been unable to provide a copy of the email indicating a wish to purchase the website referred to in his letter of 4 May 2005 addressed to Mr Miles.

[59] There was the following exchange about what Mr Siemer sold to Mr Tunney:

Q. Do you accept when you purported to sell the website to Mr Tunney you sold all the information that was currently on the website and had been on it in the past?

A. No.

Q. What do you say the phrase contained in the agreement means when you say the sale includes all the modules and information contained on the site currently and in the past?

A. Okay, in that context yes but I thought your question was did I sell it with the information on it and the question to that is no.

Q. What do you say you sold?

A. I'm not going to answer that question on the basis that it affects the issues at trial, having stated that the information was, this is an irrelevant question, I refuse to answer the question.

J. The question is not irrelevant Mr Siemer. It is a relevant question, it pertains to paragraph 3 under representations in the agreement/contract for sale. I will ask Mr Miles to put the question again, having ruled that it is a relevant question.

Q. What do you say you sold under the agreement?

A. I sold him separately all rights to the website and independently the rights to the information on it.

Q. Did you think it was a way of perhaps escaping the consequences of possibly breaching the interim injunction?

A. I know one issue was the discovery documents which came to my attention.

Q. That came to your attention after the signing of the agreement?

A. Yes.

Q. So why did you adopt that process?

A. As I said I'm not entirely sure.

Q. My question was by splitting the information on the website from the website itself did you think that might assist in any subsequent defence of proceedings alleging that you were breaching the interim injunction?

A. No it was my firm belief the ex parte injunction would be overturned. I was mindful of the fact it had not yet been.

Q. The hearing for the application to rescind the injunction was I think 28 May, is that your recollection?

A. Yes that is my recollection.

Q. I'm sorry 28 April.

A. Yes.

[60] Mr Siemer declined to answer other questions put to him by Mr Miles about the sale of the website, on a variety of grounds which repetitively included that the question was irrelevant, that there was no case to answer, that he had no legal representation, that his liberty was at risk and that he was not compelled by law to answer the question. This was the nature of the response that he gave to questions as to whether the initial inquiry relating to the purchase of the website came through the website email; whether he was aware that the website was going to be reactivated on 3 or 4 May; whether as a consequence of having to shut the website down he had to refund 2,000 Euros of the purchase price as stated in his letter of 4 May 2005; whether it was part of the transaction with Mr Tunney that if the website had been shut down for more than 30 days he would have had to refund the whole of the purchase price; what in the English translation of the agreement for sale and purchase he disagreed with; whether he received the 6,000 Euros Mr Tunney agreed to pay under the contract; and whether he had agreed with Mr Tunney that the website would not be reactivated until the Court ordered that it could be.

### *Distributing stickers*

[61] Mr Frederick Thompson, in his affidavit dated 20 May 2005, states that on 19 May 2005 he was on reception at McElroys, solicitors for the plaintiffs, and his employer. At approximately 1.25 p.m. a man walked from the lift. Mr Thompson states that he immediately identified the man as Vince Siemer whom he had seen on two prior occasions. The first such occasion was when Mr Siemer came to McElroys to inspect documents. He says that, without invitation, Mr Siemer on that occasion proceeded straight to the room where the documents were housed and began examining the documents. As a result, Mr Thompson had to ask him to leave. The second occasion was when he served the affidavit of Mr Stiassny in support of the ex parte interlocutory application for injunction and associated documents on Mr Siemer at 27 Clansman Terrace, Whangaparoa on 11 April 2005. He states that at

the time of service Mr Siemer acknowledged his identity when he accepted the documents.

[62] Mr Thompson exhibited to his affidavit a copy of a sticker which he believed had been removed from one of the lifts in the building shortly after Mr Siemer left McElroys offices. It was a sticker in the image of the billboard previously erected, including a photograph of Mr Stiassny and the words:

Michael Stiassny - A True Story [www.stiassny.org](http://www.stiassny.org).

[63] Mr Henry for Mr Siemer cross-examined Mr Thompson extensively about his identification of Mr Siemer on 19 May 2005 and about the two previous occasions upon which Mr Thompson said he had met with Mr Siemer. The witness was unshaken in his evidence that it was Mr Siemer who emerged from the lift on 19 May 2005 at about 1.25 p.m. and that this person was the same person he had met as Mr Siemer on the two previous occasions.

[64] He stated in response to a question from Mr Miles in re-examination as to how clear his recollection of Mr Siemer was on the first and second occasions:

Very clear to the point where I do know what he looked like, hence I recognised him when he was on our floor on the 19<sup>th</sup>.

He said he was “very confident” that the man he saw on 19 May 2005 coming out of the lift was Mr Siemer.

[65] Mr Thompson agreed in answer to a question from Mr Henry, that he had not seen Mr Siemer “or this person to whom you refer” put any stickers in the lift.

[66] Mr Campbell Rose gives evidence about certain events on the same day, 19 May 2005. Mr Rose states that on that date he was employed as a solicitor at Russell McVeagh and was in his usual place of work on Level 29 of the Vero Centre, 48 Shortland Street, Auckland. He states that at approximately 1.30 p.m. he was walking through the kitchen on Level 29, through the lift lobby towards the men’s toilets. When he was approximately two metres away from the door to the toilets the

door opened and a man exited the toilets. A woman was waiting outside the men's toilets for the man and they walked together towards the lift lobby.

[67] Mr Rose entered the toilets. A colleague, Mat Wilson, was standing next to the paper towel dispenser. Mat Wilson asked Mr Rose if he knew the man who had just exited the toilets. Mr Rose responded that he did not. Mat Wilson pointed to the paper towel dispenser and to a red sticker stuck on to the paper towel dispenser with a picture of a man's face and white writing. Mr Rose states that the sticker read something along the lines:

Michael Stiassny – the truth

[www.stiassny.org.nz](http://www.stiassny.org.nz)

[68] Mr Rose then exited the men's toilets and walked back through the lift lobby. The man he saw exiting the men's toilets was still waiting for the lift to arrive, but the woman was not with him. The lift arrived and the man walked into it. Mr Rose states that he noticed that the man was holding a sticker in his right hand as he entered the lift – the same as the sticker stuck on the paper towel dispenser in the men's toilets.

[69] Later that afternoon at approximately 2.45 p.m. Mr Rose was asked to prepare and forward to a services assistant employed by Russell McVeagh, an email describing the person he had seen. This was for security purposes. The email, which is exhibited to Mr Rose's affidavit, states:

At around 1.30 p.m. today I was heading for the L 29 mens' toilets when I saw a tall guy (probably six foot tall) with blond hair, wearing white Nike style shoes, jeans and a long sleeved shirt, exiting the toilets. A tall woman (similar height) was waiting outside the toilets for him (she had a bob hair cut, blond, wearing jeans I think) – they went to the lifts together.

The email also summarises the events described in the affidavit.

[70] Mr Rose further states that on the morning of 20 May 2005 he visited the website [www.stiassny.org](http://www.stiassny.org) and selected the "Vince Siemer interview" side bar. He confirms that the man pictured next to the heading "Interview with Vince Siemer", is the man he saw exiting the men's toilets and entering the lift with the sticker in his

hand. A photograph of Mr Siemer taken from the website is exhibited to the affidavit.

[71] In answer to cross-examination by Mr Henry, Mr Rose was adamant that he saw clearly the sticker in the man's hand as he returned from the men's toilet and saw the man waiting for the lift. He stated:

The sticker I saw in the man's hand was red and had white writing on it, it was round, and it was the same size as the sticker I had just seen in the men's toilets. I believed it to be the same or identical at the time and I still do.

He described the sticker as:

... perhaps five to eight centimetres across.

[72] He agreed that the writing on the sticker had to be reasonably small but he disagreed with the proposition put to him by Mr Henry, that it was impossible for him to read the writing on the sticker. He replied:

I disagree. Can I add something, my recollection is that when I saw the man facing the lift in profile the sticker was on a piece of strip of paper, strip of waxy backing paper, and it was not the only sticker on that piece of paper, so if you are suggesting that it was inside his hand covered by his hand it was not, I was able to see as I approached him the sticker on a piece of waxy paper he was holding in his hand.

[73] He agreed that he did not see the sticker being placed on the towel dispenser in the men's toilets and could not say that the man he saw in the lift lobby holding the stickers in his hand, was the person who placed the sticker on the towel dispenser in the men's toilets.

[74] He was closely questioned by Mr Henry about his identification of Mr Siemer and accepted that he had never met Mr Siemer apart from seeing him that day. He was cross-examined about the description in the email he sent on the afternoon of 19 April 2005, and whether it came as a surprise to him on 20 April 2005 to learn that Mr Siemer did not have blond hair. He stated:

... to be quite honest when I saw the photo on the website I knew immediately, as I said in my affidavit, that that was who I had seen and I did

not at that point give any consideration to the statement in my email that the man I had seen had blond hair. So at the time I felt no surprise as such.

[75] In response to a proposition that the photo he received differed materially from the man he had seen the previous day, Mr Rose stated:

I don't agree with that. Again when I saw the photo it was a photo of the man I had seen. I don't know what more I can add.

[76] Pressed further by Mr Henry in cross-examination about his identification from the photograph on the website, of Mr Siemer as the man he saw exiting the men's toilets and entering the lift with the sticker in his hand, he said:

... the moment I saw the photo on the website I immediately knew that was the person I had seen standing outside the lifts.

[77] In answer to re-examination from Mr Miles, he explained that initially when he first saw the man in the lift lobby he was approximately 3-4 metres away from him, and then passed right by him as he walked through the lobby and passed him when he entered the lift. He said he would have been:

... less than a metre as I passed.

Mr Miles asked:

When you saw him in the lift lobby were you close enough – do you or do you not consider you were close enough to make an identification?

The witness replied:

... do you mean of his face if shown a photo – yes absolutely ... firstly because of the proximity I was but most importantly because he was not a Russell McVeagh employee, that was extremely unusual on a legal floor which is not open to public access, to see a non-employee of the firm, so in terms of the face one remembers it catches one's attention.

[78] Mr Rose was also closely questioned about his evidence that the sticker he saw in the toilets included reference to a website [www.stiassny.org.nz](http://www.stiassny.org.nz). He explained:

I know that when I went back into the men's toilet later in the day on 19 May at which point the sticker had not been removed, I saw that it did not have the .nz. But that was my recollection at the time of my walking past



the man in the lifts, so that is why I have stated what I have in paragraph 3 of my affidavit.

[79] He said he had no reason to believe that the sticker he saw on his second visit to the men's toilet was a different sticker from the one he had seen on his prior visit. He said:

... no, because it was in exactly the same position firstly; secondly all I realised on my second visit to the toilets was that there was no .nz whereas I had initially thought after the first visit and at the time I walked through the lift lobby that there was a .nz on the sticker. But I had no reason to believe on my second visit that the sticker I saw then was a different sticker from the one I had seen earlier.

[80] He confirmed that he read the writing on the sticker he saw in the hand of the person by the elevator, that his recollection was that that sticker had “.nz” on it, and that he believed the sticker was the same as the one he had seen on the towel dispenser in the toilet.

[81] Mr Miles put questions to Mr Siemer about the stickers, in cross-examination. Specifically he asked him whether he had seen a sticker similar to that annexed as an exhibit to the affidavit of Mr Garrett sworn 20 May 2005, whether he had ever been in possession of stickers identical to that sticker, whether he arranged to have the stickers printed, whether he accepted that the sticker was identical to the billboard that he had arranged to have erected, whether he was the person who put stickers on the walls of the lift at McElroys, whether he was the person identified by Mr Rose at Russell McVeagh on 19 May 2005, whether he was the person who placed the sticker in the toilets at Russell McVeagh on 19 May 2005, whether he accepted that on 19 May 2005 the website was reactivated, and whether he agreed that it was pointless distributing the stickers if the website had remained shut down. To those questions and similar questions, Mr Siemer consistently declined to answer.

[82] However, in his affidavit dated 15 June 2005 Mr Siemer denies visiting Level 29 of the Vero Centre on 19 May 2005 and says that he does not have blond hair and does not own white Nike style shoes or any white shoes at all. He denies that on 19 May 2005 that he had occasion to exit or enter the lift at McElroys offices.

*Letters to Auckland Electricity Consumer Trust Trustees*

[83] Mr Garrett in his affidavit of 26 May 2005 refers to letters sent to several members of the Auckland Energy Consumers Trust which were made available to Ferrier Hodgson. He exhibits a letter from Mr Gary Sturgess, Executive Officer of the Trust, forwarding to Mr Stiassny at Ferrier Hodgson:

... copy of letters received today addressed to Shale Chambers, Michael Buczkowski and John Collinge.

[84] A copy of the letter to Mr collinge is exhibited. It refers to:

... corporate undertaker Michael Stiassny

and recommends that:

... before he plunders the \$2 BILLION in assets of Vector Energy it would be prudent for you to do some research into his personal background starting with a visit to the website on him.

[85] Attached is a card bearing Mr Stiassny's image and the legend:

Michael Stiassny - A True Story [www.stiassny.org](http://www.stiassny.org).

Printed on the rear of the card is the message:

Be responsible Pass this card on.

[86] Also exhibited to Mr Garrett's affidavit are copies of three envelopes addressed in handwriting to "Mr Michael Buczkowski, AECT, P.O. Box 109626, Auckland 1031", "Mr John Collinge, AECT, P.O. Box 109626, Auckland 1031" and to Mr Shale Chambers, Deputy Chairman, AECT P.O. Box 109626, Auckland 1031". . The envelopes are date stamped 22 May 2005, which is the same date as the letter exhibited.

[87] Mr Garrett states that he referred the envelope copies, to the document examination section of the New Zealand Police together with samples of handwriting of Mr Siemer, both of which are exhibited to his affidavit. (It appears that only the

envelopes addressed to Mr Buczkowski and Mr Collinge were received for examination by Mr Sharfe of the New Zealand Police).

[88] Mr Gordon Sharfe gives evidence that he is a senior document examiner with the New Zealand Police in Wellington and a registered forensic practitioner certified by the Australian and New Zealand Forensic Science Society. He says he received a request from Mr Garrett of Ferrier Hodgson to complete an examination and prepare an opinion on handwriting on envelopes against specimen handwriting and signatures. He received:

- a) A facsimile copy of the two envelopes addressed to Mr Michael Buczkowski and Mr John Collinge. (They were exhibits to his affidavit).
- b) Specimen documents, being handwriting and signature specimens attributed to Mr Vince Siemer (copies were exhibited to his affidavit).

[89] He states his opinion that after carefully examining the documents:

... the address details on the two questioned envelopes had been completed by the author of the specimen handwriting attributed to Vince Siemer.

[90] In his written closing submissions, Mr Siemer states that the defence does not dispute the accuracy of Mr Sharfe's affidavit and that the defence would not dispute that Mr Siemer provided the envelopes addressed to Mr Collinge and Mr Buczkowski. That concession in written submissions contrasts with Mr Siemer's answers to questions in cross-examination regarding the letters addressed to Mr Collinge and Mr Buczkowski. Mr Siemer declined to answer straightforward questions put to him by Mr Miles, as to whether the envelopes were addressed to Mr Collinge and Mr Buczkowski and whether he addressed the envelopes to Mr Collinge and Mr Buczkowski. When asked to comment on Mr Scarfe's evidence that having examined the documents in Mr Siemer's handwriting and examined the addresses on the envelopes, the handwriting on the envelopes is Mr Siemer's handwriting, Mr Siemer again declined to answer the question.

### *Letters to Accountants*

[91] Sheila Davidson swore an affidavit dated 9 June 2005 to which she exhibited an envelope with the name Paragon Oil Systems Limited printed on the top left hand corner. The envelope was addressed to her at 69 Forrest Hill Road, Takapuna. She states that she is unaware as to how the letter came to be posted to her other than that she is an accountant. She exhibits the contents of the envelope and the envelope postmarked 30 May 2005, to her affidavit. The contents comprise a letter dated 27 May 2005 addressed to “All Accountants” under the signature of “Forensic Investigations”. The letter states:

We are assisting Mr Vince Siemer in putting together a possible criminal prosecution case against Michael Stiassny, a chartered accountant affiliated with Ferrier Hodgson ...

Mr Siemer is investigating a pattern of such behaviour that would infer criminal undertakings.

[92] An invitation is issued to those who have had “similar experiences” with Michael Stiassny to contact Forensic Investigations at its postal address or through the website [www.stiassny.org](http://www.stiassny.org).

[93] Also exhibited is an enclosure with the letter, a card featuring Mr Stiassny’s photograph and the words:

Michael Stiassny - A true story [www.stiassny.org](http://www.stiassny.org).

[94] On the back of the card are the words “Be responsible pass this card on”. Ms Davidson describes the card as a “small red business card”.

[95] Mr Siemer declined to answer questions put to him in cross-examination by Mr Miles as to the identity of “Forensic Investigations” and whether “Forensic Investigations” were assisting Mr Siemer in putting together a possible criminal case against Mr Stiassny. When referred to the envelope received by Ms Davidson he declined to state whether Paragon Oil Systems Limited whose name appeared on the envelope, was his company and declined to answer questions about whether Paragon Services Limited, the second defendant, was previously named Paragon Oil Systems Limited, or to confirm that he had sought to represent in person Paragon Services

Limited as second defendant in this proceeding. He would not answer a question as to why the letter of 27 May 2005 from Forensic Investigations was posted out in a Paragon Oil Systems envelope. He declined to answer a question:

Were you behind the campaign of sending those letters to as many accountants as you could locate?

[96] However, in written submissions Mr Siemer was prepared to provide the information that the envelope exhibited to the affidavit was:

An old and obsolete envelope from when Paragon was located in Hamilton and that Paragon shifted its premises to Auckland in 2003 and that the envelopes had not been used in more than two years.

### *Letters to newspapers*

[97] Mr Garrett in his affidavit of 21 June 2005 refers to correspondence sent by Mr Siemer to The Independent Business Weekly and the National Business Review newspapers in the period 23-24 May 2005. He exhibits a letter to Ms Jenni McManus of the Independent Business Weekly dated 23 May 2005 enclosed in an envelope dated 24 May 2005.

[98] Similarly to the letter to certain of the trustees of the Auckland Electricity Consumers Trust it states:

Before he (Mr Stiassny) plunders the 2 BILLIONS in assets of Vector Energy it would be prudent for you – or anyone in the media – to do some research into his personal background, starting with a visit to the website on him.

The business card with Mr Stiassny's image and reference to the website was enclosed.

[99] Also exhibited to Mr Garrett's affidavit is a copy of a page from the National Business Review newspaper dated 27 May 2005 which reproduces a copy of the business card with the image of Mr Stiassny with the reference to the website removed. The item beneath includes the statement:

So as not to get caught up in what will probably be a messy defamation proceeding, we have smudged out the URL of the website referred to on the postcard above, which reporters received by mail this week.

*Updating and continuing the operation of the website*

[100] Mr Garrett describes in his affidavit of 26 May 2005 how he checked the website on 25 and 26 May 2005. He found that the website had been updated on 25 May 2005 to include a new item under the heading “Why Michael Stiassny?” Under the date 25/5/05 in bold print is the statement:

Mr Siemer is currently preparing a criminal prosecution against Michael Stiassny. Anyone having any evidence of question is invited to contact us through the ‘contact us’ tab. All contacts are strictly confidential.

[101] The accompanying article refers to Mr Stiassny in conjunction with the receivership of Paragon, and includes a number of allegations about Mr Stiassny’s conduct including:

- the blatant disregard he has demonstrated for legal accounting and ethical morals.

The article concludes:

With fondest regards, Vince Siemer, MBA Managing Director Paragon Services Limited, Member – Institute of Directors of New Zealand.

[102] Also included on the website was a letter of 20 May 2005 from ICANZ advising that the Professional Conduct Committee has approved a request from Mr Stiassny to put on hold any consideration of Mr Siemer’s complaint until a decision of the High Court has been made in regard to related matters.

[103] On 26 May 2005 the website was found again to have been updated. Under the heading “Formal Complaint to the Institute of Chartered Accountants of New Zealand” is the statement:

Anyone who has any doubts about Michael Stiassny’s guilt as a white collar criminal must ask themselves why Mr Stiassny would move to delay an ICANZ formal complaint against him (letter below) ...

[104] There follows the full text of Mr Siemer's "formal complaint" against Michael Stiassny to the Professional Conduct Committee of ICANZ dated 26 January 2005, which contains specific detailed complaints about Mr Stiassny's actions as receiver of Paragon.

*Three defence witnesses*

[105] Coralie Van Camp described herself as a former trustee of the Auckland Energy Consumer Trust and referred to a disagreement she had with Mr Stiassny as Chair of Vector Limited.

Mr Ian Andrews described himself as semi-retired. He had come into contact with Mr Stiassny who was appointed receiver of a company of which he was a director.

Ms Penny Bright described herself as media spokesperson for the Water Pressure group, a voluntary position. In that capacity she has come into contact with Mr Stiassny as Chairman of the Board of Metro Water. She was critical of representations by the Board as to the quality of water in the company's 2003 annual report and statement of corporate intent.

[106] Mr Miles objected to this evidence on the grounds that it was not relevant. I granted leave for the witnesses to be called upon Mr Siemer's insistence that their evidence had relevance in establishing a pattern of behaviour by Mr Stiassny which was necessary to put in context the matters in issue before the Court. However, I cautioned Mr Siemer that on the sparse information available as to the nature of their proposed evidence, I had difficulty in seeing its relevance and would be obliged to disallow questioning that was not relevant. At several stages during the evidence of these witnesses I was obliged to intervene and direct Mr Siemer that the questions were not relevant to the issues before the Court.

[107] In the event, none of these witnesses gave any evidence that was relevant to the issue of whether Mr Siemer and the second defendant have breached the injunctions of the Court granted on 8 April 2005 and 5 May 2005. Their evidence

related to their own experiences with Mr Stiassny which are completely irrelevant to that issue. Accordingly I do not take their evidence into account.

### **Discussion and findings on the evidence**

[108] I shall consider sequentially the evidence relating to the plaintiffs' alleged breaches of the April injunction and of the March injunction. I refer to the headings under which I summarised the relevant evidence.

#### ***Maintaining/adding to material on the website***

[109] It is clear that contrary to the orders made by Winkelmann J, the material on the website relating to Mr Stiassny was not removed and was in fact supplemented. Although the website was closed down on 12 April, on 3 May 2005 when both Mr Garrett and Mr Jackson logged on, the website was active and included the original material with additions as described by Mr Garrett.

#### ***Sale of website***

[110] Mr Siemer does not dispute this, but he claims he was not responsible because by then he had sold the website and all information on it to Talayna Group and it was they who reactivated the website on 3 May 2005.

[111] The plaintiffs say, not so – the so-called sale to the Talayna Group was a sham. In any event it remained within Mr Siemer's power and control to ensure that the Court orders were not breached as he was bound to do pursuant to both the Court orders and to the undertakings he had given to the Court. He failed to do so and is therefore liable as a party for the breach of the orders.

[112] In considering the evidence which relates to these competing contentions, I propose first to refer to the evidence of Sabrina Vai. Mr Siemer in submissions had much to say about the evidence of Ms Vai, stating in written submissions of Ms Vai's affidavit:



This affidavit and plaintiffs' counsel's claim in this Court that Mr Tunney does not exist is at the core of their contempt application against Mr Siemer and Paragon.

[113] However, the plaintiffs through their counsel did not oppose the late introduction to evidence of Mr Tunney's affidavit of 12 December 2005 which deposes to his existence and his address at Via Filippino Lippi 19. They accepted that Mr Tunney exists and is a long term friend of Mr Siemer.

[114] Ms Vai's affidavit simply attests to her having received instructions to locate and verify the address at Via Filippino Lippi 19 and Talayna Group and Edmundo Tunney at that address. She details her efforts to do so and states that her inquiries did not yield the verification sought.

[115] Mr Tunney states in his affidavit that he lived at that address until August 2005. For present purposes, I shall accept that was so, although Ms Vai's inquiries failed to reveal that information. Given that there is no dispute that Mr Tunney exists and is a long time friend of Mr Siemer and given his evidence, which I accept for present purposes, that until August 2005 his primary address was Via Filippino Lippi 19, Ms Vai's evidence regarding Mr Tunney is of no significance.

[116] However, there is no evidence that throws any light on either the existence or address of the Talayna Group. Indeed, beyond being stated as the buyer in the agreement of sale dated 26 April 2005 there is no evidence through Mr Tunney or otherwise confirming the existence of this entity or its address.

[117] Mr Siemer's evidence is that he sold the website to Talayna/Tunney on 26 April 2005 which is the date of the agreement for sale and purchase. Mr Tunney says he purchased it in May 2005. He says he had the contents of the website "reloaded". That evidence may be consistent with Mr Siemer's explanation that he sold the website, and independently the material on it, but it does not sit easily with the representation in the agreement of sale that the sale includes:

All the modules and information contained on the site currently and in the past ...

[118] It may not be of particular moment, but raises the query why Mr Tunney would need to “reload” content which was already on the site when he purchased it, containing as it did all the original material which had been injuncted together with additional material of an objectionable nature.

[119] Apart from the agreement for sale and purchase dated 26 April 2005 purportedly signed on behalf of the Talayna Group and by Mr Siemer, and the evidence of Mr Tunney and Mr Siemer that they entered into and put into effect the sale of the website by 3 May 2005 when the website was reactivated, there is a surprising absence of evidence and conflicting evidence about the sale, including:

- a) There is no evidence of any negotiations leading up to the sale and there is a conflict in the evidence of Mr Siemer and Mr Tunney as to how the sale came to be negotiated. Mr Siemer said in his letter to Mr Miles of 4 May 2005, that the initial inquiry came through the website email, but he has never produced evidence of that inquiry, this despite the direction of Ellen France J in her minute of 3 May 2005 that all such relevant information be provided to the plaintiffs.

On the other hand Mr Tunney states:

In early 2005, I began discussions with Mr Siemer regarding import/export opportunities between New Zealand and Italia  
...

and that shortly afterwards he “became familiar” with the website that Mr Siemer had just created – [www.stiassny.org](http://www.stiassny.org), which he considered had commercial significance for him, so he bought the website from Mr Siemer in May 2005. Clearly Mr Tunney would not have been the potential purchaser who made the initial inquiry through the website email, according to Mr Siemer.

- b) Mr Siemer gives as his reason for entering into this sale agreement on 26 April 2005, when the website was deactivated:

... if I did not do so then, I would have lost the sale opportunity.

He does not specify to what “sale opportunity” he refers but the sale was to Talayna Group/Tunney. It is difficult to accept that this opportunity would have been lost when Mr Tunney was a longstanding friend, negotiations (according to him) had proceeded since early 2005, and the broad purpose for which Mr Tunney says he was interested in purchasing the website was for the development of export opportunities. Certainly Mr Tunney gives no indication in his affidavits that time was of the essence.

- c) The sale was transacted, according to the date on the agreement for sale, on 26 April 2005 which was after Mr Siemer had been forced to close the website pursuant to the April injunction and in accordance with his undertakings to the Court. It was apparently completed in time for the website to be reactivated on 3 May 2005 which was between the date of the hearing before Ellen France J of the defendants’ application for rescission of the prior injunction, and the issue of her judgment on 5 May 2005 which put in place the amended interim injunction. There is nothing in the evidence of Mr Siemer and Mr Tunney to suggest that the timing was critical other than in relation to the Court orders which Mr Siemer was facing in relation to the website.
- d) There is no evidence of payment of the purchase price whether at the stated price of 6,000 Euro, or the reduced price of 4,000 Euro which Mr Siemer says followed his request to the purchasers to delete all information off the website. Since the agreement for sale provides for the price to be transferred through Mr Siemer’s account in the Bank of Milan, it might be expected that there was readily available evidence of payment having been made, if indeed it was.
- e) There is no evidence that Mr Tunney, an entity by the name of Talayna Group or indeed anyone other than Mr Siemer, has contributed material to the website whether before or after the purported sale to Talayna Group/Tunney. Indeed there is clear

evidence that after the purported sale Mr Siemer has continued to provide material to the website, for example the publication of the judgment of Ellen France J dated 5 May 2005 and the “interview” with Vince Siemer which accompanies it.

- f) Although the agreement provides for the seller promptly to notify Yahoo of the change of ownership and to pay any charge, when this was done sometime prior to 15 June 2005, (Mr Siemer exhibits a report dated 14 June 2005) Mr Siemer’s telephone number is retained, as is the ID number for both the administrator and the registrant.

[120] A further troubling factor is the inherent unlikelihood of Mr Tunney wishing to acquire this particular website in the context of developing export opportunities from Italy to New Zealand. This website was devoted to publicising material about one man, Mr Stiassny, who practises as a chartered accountant with a focus on liquidation and receivership work. The “significance” which Mr Tunney states the website had for him – controversy/Mr Siemer trustworthy/one thousand hits per day/positive responses – does not suggest relevance, let alone significance, for developing export opportunities to New Zealand. Given the limited relevance, let alone significance of the website for the business Mr Tunney claims he wished to develop, it is surprising that he was prepared to pay for it 6,000 Euro.

[121] All these factors when considered together give rise to a very strong inference that the sale of the website to Talayna Group/Tunney was not a genuine sale but was indeed, as the plaintiffs have submitted, a sham. It would follow that Mr Tunney was merely a front for Mr Siemer and Paragon and that the so-called sale was designed to ensure that the website continued, directed and manipulated by Mr Siemer while ostensibly its ownership went outside the jurisdiction of this Court and the injunctions made in relation to the website.

[122] I reach the conclusion that it is at least more probable than not that the sale of the website by Mr Siemer to Talayna Group/Tunney was a sham. I stop short of being satisfied beyond reasonable doubt that that was so, because Mr Tunney has sworn on oath in his affidavits that he purchased the website from Mr Siemer. I have

not had the opportunity to hear Mr Tunney give evidence and to see him respond to cross-examination and thus to assess his credibility and his reliability as a witness. Therefore, despite the circumstantial evidence that raises a strong inference against the truth of his evidence as to the purchase of the website from Mr Siemer, I cannot be satisfied beyond reasonable doubt. My finding is therefore that on the balance of probabilities, the sale and purchase of the website between Mr Siemer and Talayna Group/Tunney was a sham.

[123] However, I am satisfied beyond reasonable doubt that even if the sale was genuine, Mr Siemer was nevertheless a party to breaching the injunction. By deliberately placing Mr Tunney in a position to breach the Court orders by reactivating the website on 3 March 2005 (if that is in fact what occurred), Mr Siemer actively aided and abetted or willingly acquiesced in breach of the Court orders.

[124] A person who knows that an injunction has been granted and aids and abets or willingly acquiesces in the commission of a breach of it, will himself be in contempt: *Seaward v Paterson* [1897] 1 Ch 545 at 557.

[125] I consider it extremely unlikely that Mr Siemer would have been unaware of Mr Tunney's steps to reactivate the website on 3 May 2005 given their close relationship, the proximity of the sale to the reactivation, and the fact that both were aware of the sensitive nature of the material on the website (both gave evidence in their affidavits of the removal of material that was discovered in other litigation as directed by the Court). But even if Mr Siemer had been unaware of Mr Tunney's intention to reactivate the website on 3 May 2005, it was within Mr Siemer's power and control to ensure that the injunction was not breached either by ensuring compliance by Mr Tunney or by immediately cancelling the agreement to prevent continuing breach.

[126] In his letter of 4 May 2005 to Mr Miles, Mr Siemer states:

You should be aware (of the) proviso of a total refund to purchaser if the website is censured more than 30 days.

[127] Mr Siemer could have cancelled the agreement and refunded the purchase price, and thus ensured the retention of the control necessary to ensure there was no breach of the Court orders. (I note that he has achieved the “repurchase” of the website following the hearing of the committal application).

[128] I am therefore satisfied beyond reasonable doubt that as a party to the breach, Mr Siemer was in contempt of the April injunction when the website was reactivated on 3 May 2005, containing as it did all the original material which had been enjoined together with additional material of an objectionable nature.

### *Distributing stickers*

[129] The website was reactivated on 19 May 2005 containing all the original material including the judgment of Ellen France J and an “interview” with Mr Siemer commenting on the judgment.

[130] The evidence of Mr Thompson and Mr Rose is that on that very same day Mr Siemer was seen distributing stickers which included the message, “Michael Stiassny – A True Story [www.stiassny.org](http://www.stiassny.org)” (or, in the case of Mr Rose, very similar wording) in the vicinity of the offices of McElroys (Tower Centre) and Russell McVeagh (Vero Building). The message replicates that on the billboard that the April injunction required to be dismantled. In the same way as that billboard the stickers invited members of the public to go to the website and thus to access the material which had been enjoined. It can be no coincidence that Mr Siemer was distributing those stickers on the very day the website was reactivated. There would have been no point in his distributing the stickers if the website to which the stickers referred was inactive. It follows that he must have been responsible for or at least known of the reactivation of the website on that day.

[131] Mr Siemer made extensive submissions concerning the evidence of Mr Thompson and Mr Rose, suggesting that their evidence of identification could not be relied upon and that further neither had witnessed the person they identified as Mr Siemer as committing any act that could constitute contempt. He suggested that it would require “a leap of faith” for the Court to make findings based on their

evidence. I disagree. Having seen and heard both Mr Thompson and Mr Rose give evidence and listened carefully to their responses to the extensive cross-examination of them by Mr Henry, I am satisfied that both were truthful and reliable witnesses and that their evidence of the identification of Mr Siemer in the two respective locations on 19 May 2005 can be safely accepted.

[132] Furthermore, their evidence as to the appearance of the stickers in the places they described, near the respective firms' offices coincidentally with the presence of Mr Siemer, gives rise to a fair and reasonable inference that it was he who placed the stickers where they were found.

[133] I am satisfied beyond reasonable doubt that Mr Siemer distributed these stickers on 19 May 2005 in breach of the May injunction.

***Letters to Auckland Electricity Consumer Trust Trustees***

[134] Mr Siemer does not dispute Mr Sharfe's evidence that he addressed the envelopes, nor that he sent the envelopes to Mr Collinge and Mr Buczkowski. In the light of Mr Sharfe's undoubted expertise and his unqualified opinion as to the author of the handwriting on those envelopes, it is hard to see what other stance Mr Siemer could have taken.

[135] Mr Siemer's submissions on this aspect seem to suggest some sort of deception by Mr Garrett – in sending only two of the three envelopes for examination by Mr Sharfe and for being the person who claims to know of the contents of the envelopes. However, when asked in cross-examination by Mr Miles about these envelopes, Mr Siemer declined to answer the questions put to him. Neither in his affidavits filed in the proceeding, the second of which well post-dated Mr Garrett's affidavit in which he deposed to these matters, nor in answer to cross-examination did Mr Siemer provide any evidence which contradicted or contested Mr Garrett's evidence in any way. The late attack on Mr Garrett in written submissions is unsupported by any evidence and lacks credit and merit. I reject it.

[136] It is clear from the evidence that Mr Siemer himself sent these letters to Mr Buczkowski and Mr Collinge (the handwriting on the envelope to Mr Chambers was not submitted for examination and I do not take that item into account). The letter they contained refers the recipients back to the website which includes the material that gave rise to the injunctions in the first place and in addition includes allegations of at least unethical conduct in relation to Mr Stiassny.

[137] I am satisfied beyond reasonable doubt that these communications which were clearly in breach of the May injunction were written and distributed by Mr Siemer or at his direction.

### ***Letters to Accountants***

[138] The letter addressed to “All Accountants” exhibited to the affidavit of Ms Sheila Davidson clearly links “Forensic Investigations” the signatory, with Mr Siemer in stating:

We are assisting Mr Vince Siemer in putting together a possible criminal prosecution case against Michael Stiassny ...

Mr Siemer is investigating a pattern of such behaviour that would infer criminal undertakings ...

It states that :

Extensive evidence has been gathered ...

of specified matters which allege at least unethical conduct on the part of Mr Stiassny. Again the business card is included, with the reference back to the website which was current as at 30 May 2005 when this letter was sent.

[139] Mr Siemer’s explanation in submissions that the envelopes were obsolete envelopes of Paragon does not take the matter anywhere, particularly when he declined to answer questions put to him in cross-examination about whether he had any links with Paragon. The letter itself links the source to Mr Siemer, albeit that the author purports to be “Forensic Investigations”. The envelope which contained the letter identifies with Paragon, Mr Siemer’s company, serves only to confirm the link.



[140] This communication is clearly in breach of the May injunction containing as it does allegations of unethical and possible criminal conduct. I am satisfied that there is proof beyond reasonable doubt that Mr Siemer has acted in breach of the injunction in publishing this information.

*Letters to newspapers*

[141] It is apparent from the evidence of the letter dated 23 May 2005 by Mr Siemer to The Independent and the reference in the National Business Review on 27 May 2005 to the “postcard which reporters received this week”, that Mr Siemer was extending his campaign of publicity against Mr Stiassny to the news media. Again these communications refer the newspapers back to the website containing the offensive material, the subject of the injunctions, and accordingly are a clear breach of the May injunction. I am satisfied beyond reasonable doubt.

*Updating and continuing the operation of the website*

[142] The publications on the website on 25 and 26 May 2005 are clearly in breach of the injunction of 5 May 2005 which prohibits publication in any form of information containing allegations of criminal or unethical conduct or as to improper personal enrichment on the part of the plaintiffs in relation to Paragon and publication of any information as to the fact of complaints made by Mr Siemer and/or Paragon to ICANZ.

[143] Further, the website has been maintained including the original material which gave rise to the injunctions (except for documents obtained by Mr Siemer or Paragon in the course of discovery in another proceeding which were removed following the May injunction) and it has been updated, clearly by Mr Siemer or with the provision of information provided by Mr Siemer, to include additional material directly in breach of the March injunction.

[144] I find these breaches proved beyond reasonable doubt.

## *Summary*

[145] Each of the breaches I have found proved beyond reasonable doubt following consideration of the relevant evidence, involves conduct which amounts to serious and deliberate breach of the April and March injunctions. When the totality of what has occurred is considered the only possible conclusion is that the first and second defendants have conducted a systematic and deliberate campaign to defy and subvert the Court orders, in order to maintain before the eyes of the public the serious allegations against Mr Stiassny which were the subject of the injunctions.

## **Bill of Rights**

[146] Mr Siemer placed considerable reliance on his right to freedom of expression in his submissions to the Court and in declining to answer questions put to him in cross-examination.

[147] I turn briefly to consider the impact of the New Zealand Bill of Rights Act 1990 which accords to Mr Siemer and Paragon by s 14:

Freedom of expression, including the freedom to ... impart information and opinions of any kind and any form.

[148] Section 5 of the Bill of Rights provides:

... the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

[149] Thus the right to freedom of expression may be subject only to such reasonable limits as can be demonstrably justified in a free and democratic society.

[150] In *Duff v Communicado Limited* Blanchard J analysed the relationship between the law of contempt and the right to freedom of expression. He stated at 101:

The role of the Bill of Rights must also be considered in each individual case of alleged contempt in relation to the particular facts of the case. A balancing exercise has to be carried out between the individual litigant's

right to freedom of expression and society's interest in protecting the administration of justice. Striking the balance may be seen as inherent in the process of determining what criticism is both "fair" and "temperate" ... the Bill of Rights guarantee of freedom of expression must form the backdrop to any application of the test for contempt. It requires that an application to punish for contempt be scrutinised most carefully.

[151] He observed that that position is very similar to the position at common law as described by Lord Reid in *Times Newspapers* at 294 [see [16]:

Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be real prejudice to the administration of justice.

[152] On the facts of this case, given the findings I have made as to the multiple deliberate breaches of the injunctions by the defendants, this is not a case where there has been "fair" and "temperate" criticism which the public interest requires should be protected, but one where the deliberate and systematic breaches of the injunctions create real prejudice to the administration of justice.

### **Post-Hearing memoranda**

[153] Mr Siemer indicated in his closing submissions on 20 December 2005, that he had tried to contact Mr Tunney with the objective to purchase back the website and shut it down pending trial. I invited him to consider pursuing this objective and to advise me by memorandum if he achieved it.

[154] By memorandum dated 9 January 2006 Mr Siemer advised that he was successful in purchasing back the website and had removed the material identified in the injunction proceedings from it on 29 December 2005. He stated that the defendants' action in purchasing the website was merely a gesture of goodwill to the Court and constituted no concession of any sort.

[155] The plaintiffs by memorandum of 25 January 2006 acknowledged that the website had been cleared of the material that was in breach of the two injunctions but drew to the Court's attention that there has been added to the website a copy of a letter by Mr Siemer to Ms Paula Rebstock, Chairperson of the Commerce Commission dated 14 November 2005 which they say contains allegations against

Mr Stiassny as Chairman of Vector Energy which breach the terms of the May injunction.

[156] Mr Siemer in a further memorandum dated 30 January 2006 denies that the paragraph which causes concern to the plaintiffs refers to the subject matter of the injunctions.

[157] On the information available to me, I am not in a position to advance that issue, beyond observing that in light of the orders I make at the end of this judgment, Mr Siemer may consider it is in his and Paragon's interests to ensure that no material is published on the website or elsewhere which is at risk of being in breach of the May injunction, pending hearing and determination of the substantive proceeding.

[158] Mr Siemer's first memorandum comprised nine typewritten pages with three pages of annexures and the second, three and a half pages. Beyond the advice that the website has been repurchased and cleared they contained material which is inappropriate and irrelevant and which I have not taken into account except to this extent: the memoranda indicate to me that Mr Siemer fails properly to accept and respect the absolute requirement for him to comply with Court orders. He appears to remain utterly unrepentant about the numerous breaches of the orders for which he has been responsible.

### **Conclusions and penalty**

[159] The Court's response to any failure to comply with the terms of an injunction is a matter of discretion but when the defendants' conduct shows deliberate defiance of Court orders, a mere declaration that the defendant has acted in contempt of Court will not be sufficient. In such cases a fine will usually be the minimum response.

[160] While recognising the Court's discretion in the matter, the plaintiffs submit that the penalties imposed should ensure that the website is closed down, that Mr Siemer complies with the Court orders and that the plaintiffs' costs are paid on a solicitor and client basis.

[161] Mr Siemer has not closed down the website but he has cleared the website of the offensive material that gave rise to the injunctions (subject to a possible issue with the letter to the Commerce Commission). In those circumstances I consider that the more serious responses of an order for committal of the first defendant, a writ of sequestration against the assets of the second defendant, or an order debarring the defendants from defending the proceeding, are not required at this stage. However, it is necessary that a punishment be imposed which will reflect the Court's outrage when its orders are deliberately disregarded. Further, that the penalty will deter Mr Siemer and Paragon from any future breaches of the May injunction.

[162] As to past conduct I consider those imperatives can be met by an order requiring the defendants to meet the costs of the plaintiffs on a solicitor and client basis in respect of this proceeding and the imposition of a fine.

[163] The fine imposed must reflect that the Court orders have been systematically ignored and flouted, and that deliberate steps were taken by Mr Siemer to enter into a sale of the website to enable the course of conduct which had been enjoined to be maintained in defiance of the Court orders.

[164] As to the level of fine, I have referred to the limited number of authorities that are of assistance. In *The Director of the Land Transport Safety Authority v McNeill* HC Auckland M509-IM99, 20 December 2000, Chambers J, a fine of \$25,000 was imposed for deliberate and ongoing breaches over a period of two years, of an injunction prohibiting Mr McNeill from being involved in any trucking operation, following a history of non-payment of fines and road user charges.

[165] In *Television New Zealand Ltd v Newsmonitor Services Limited* (1997) 12 PRNZ 168, Smellie J stated:

The Court's response to such high-handed and irresponsible conduct inevitably must be a condign one which makes it clear that such breaches will not be tolerated.

He imposed fines of effectively \$22,500 on the defendants for persistent and widespread breaches of an injunction restraining Newsmonitor from breaching the plaintiffs' copyright, which extended over a period of nearly four years. He awarded

costs on a basis that equated solicitor and client costs on the contempt aspects of the proceeding.

[166] In *Norbrook Laboratories Limited v Bomac Laboratories Limited* HC Auckland CIV 2002-404-1732, 18 December 2003, Heath J, a fine of \$10,000 was imposed for several breaches of a Court order that disclaimers be published in relation to the defendant's product. The breaches were found to be unintentional and promptly rectified. Costs were awarded but not on an indemnity basis.

[167] In *Taylor Bros Limited v Taylors Group Limited* [1991] 1 NZLR 91, which concerned proceedings under the Fair Trading Act 1986 regarding the use of the appellant's trade name, the Court of Appeal observed that the conduct of the defendant since the permanent injunction had shown that there was a risk of further attempts to evade it, and imposed a fine of \$5,000 and ordered payment of costs on a solicitor and client basis "throughout the litigation". Costs on that basis amounted to a considerable figure, the full extent of which is not apparent from the two Court of Appeal judgments reported respectively in [1991] NZLR 19 and [1991] 1 NZLR 91.

[168] As to future conduct, the Court ordered that the writ of sequestration should continue to lie in Court and reserved liberty to the plaintiff to apply to the High Court for issue of that writ, or other relief, in the event of evidence becoming available that the injunction (as clarified by the Court of Appeal) was further breached.

[169] In this case, because I am far from satisfied that the likelihood of any future non-compliance with the injunctions has been eliminated I propose to proceed along similar lines.

## **Orders**

[170] There will accordingly be the following orders:

- a) There will be a declaration that the conduct of the defendants in breaching the April and May injunctions, as detailed in this judgment, is a contempt of Court.
- b) For past breaches of the injunctions the first and second defendants jointly and severally are fined \$15,000 for contempt to be paid within 30 days of the date of this judgment to the Registrar of the High Court at Auckland.
- c) One half of that fine (\$7,500) is to be paid to the plaintiffs pursuant to the principle in *Taylor Bros Limited v Taylors Group Limited* [1991] 1 NZLR 91 at 93.
- d) As to the future, the injunction granted by Ellen France J on 5 May 2005 stands.
- e) The plaintiffs' application for the issue of a writ of arrest for the committal of the first defendant, for a writ of sequestration against the assets of the second defendant, and for an order that the first and second defendants be debarred from defending this proceeding shall lie in Court with liberty reserved to the plaintiffs to apply for such relief, in the event of evidence becoming available that the injunction has again been breached.
- f) The defendants are to pay the costs of the plaintiffs in respect of this committal proceeding. Such costs are awarded jointly and severally against the first and second defendants. The plaintiffs are to file a memorandum detailing costs and disbursements within 7 days of the date of this judgment. Such costs and disbursements may include the costs in relation to the adjournment application on 5 December 2005 which I awarded in favour of the plaintiffs on a solicitor and client basis. The defendants are to file in response within a further 7 days. I will then fix the costs to be awarded against the defendants pursuant to this order. They will thereupon become payable by the defendants

to the plaintiffs within 30 days. In the event that the defendants fail to file a memorandum in accordance with this timetable, I shall proceed to determine costs on a solicitor and client basis in the absence of such memorandum.

### **Substantive proceeding**

[171] The substantive proceeding needs to be advanced to hearing as soon as practicable. I am advised that a telephone conference has been set down before Ellen France J on 4 April 2005 at 9 a.m.