

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

CIV 2003-404-4113

BETWEEN	WASAN INTERNATIONAL CO LIMITED Plaintiff
AND	SUNG WOO LEE First Defendant
AND	BONG IL KIM Second Defendant
AND	JUNG HAN JIN Third Defendant

Hearing: 18 May 2006

Counsel: G Kohler for plaintiff
J Clearwater for defendants

Judgment: 19 May 2006

**JUDGMENT OF ASSOCIATE JUDGE FAIRE
[on applications for non-contact and extension of time]**

Solicitors: Connell & Connell, PO Box 5275, Auckland for plaintiff
Song Jae Hon, PO Box 33 359, Takapuna for defendants

The application

[1] The defendants seek orders expressed as follows:

- a) The plaintiff, Wasan International Company Limited, and its agents including Edward Kang and Duck Seung Ahn are not to have any contact or association with any defence witness in this proceeding (being persons who have either signed witness briefs, or who have been subpoenaed by the first and second defendants to give evidence in the proceeding) unless the solicitor for the first and second defendants or their agent solicitor is present;
- b) The first and second defendants be granted an extension of time to file and serve an amended list of documents; and
- c) The first and second defendants be granted an extension of time within which to serve defence evidence briefs on the plaintiff.

Trial directions

[2] At a chambers call of this proceeding on 30 September 2005, after hearing Mr Kohler, for the plaintiff, and Mr Clearwater, for the defendant, I recorded the position and gave directions as follows:

Trial date and directions

The plaintiff has already served its briefs.

I allocate five days for the trial of this proceeding. It shall be heard in the week commencing 3 July 2006. The proceeding shall be listed in the Judges' callover at 9am on 28 June 2006. The proceeding shall be set down as at 5 May 2006..

The defendants' briefs of evidence shall be served by 30 November 2005.

In all other respects rr441B to 441I and 441M to 441Q of the High Court Rules shall apply.

Supplementary list of documents

The defendants shall file and serve their supplementary list of documents by 30 November 2005. In accordance with the Rules copies of the documents shall be available for inspection from that time.

[3] The defendants, to date, have not complied with the directions referred to in [2] of this judgment. Instead, they applied for the orders which are set out in [1] of this judgment by application filed on 21 February 2006.

The proceedings

[4] By a third amended statement of claim, which was filed on 22 August 2005, the plaintiff seeks:

- a) A declaration in accordance with s 24 of the Defamation Act 1992 to the effect that the defendants have defamed the plaintiff; and
- b) Solicitor/client costs incurred by the plaintiff in the litigation.

[5] The proceedings rely on an article allegedly published by the first defendant in its Korean language newspaper on 18 July 2003. It is alleged that the second defendant is the editor of the newspaper and the reporter of the article concerned.

[6] The third defendant is alleged to be an employee of the first defendant. It is alleged that the third defendant has told members of the public that the first and second defendants intend to make complaints to the New Zealand Immigration Service about the plaintiff's "illegal activities".

[7] The proceedings allege that further articles allegedly published by the first defendant on 8 August 2003 are defamatory of the plaintiff.

[8] It is alleged that the articles call into question steps allegedly taken by the plaintiff to arrange permanent residency for Korean nationals who wish to settle in New Zealand. It is pleaded that the articles allege that the plaintiff is acting illegally, defrauds its clients, charge exorbitant fees, will be investigated by the Immigration

Service, prepare phoney documents and act in a way that is damaging to the interests of the Korean community in New Zealand.

The grounds advanced in support of the application

[9] Affidavits have been filed in support of the first order sought in the application by the first defendant and by an employee of the *New Zealand Korean Times*.

[10] Mr Clearwater advanced the defendants' case on the basis that order (1) was justified because there was concern that there could be a contempt. He drew attention to s 117(a) of the Crimes Act 1961 and noted that a criminal contempt occurred where a person persuades or attempts to persuade a person by threats, bribes or other corrupt means from giving evidence in any cause or matter, whether civil or criminal. In addition, he submitted a person will commit a contempt if that person obstructs, prevents, perverts or defeats the course of justice in New Zealand. It will also be a contempt, he submitted, if a person endeavours to influence a witness against a party by disparaging the party. He submitted it will be a contempt if a person attempts to deter or obstruct a party from bringing or continuing proceedings or induces a party to suppress evidence or give false evidence. It will also be a contempt, he submitted, if a person assaults, threatens or intimidates a party so that it is carried out with the intent that the party will not commence or continue with a proceeding.

[11] It is unnecessary for me to review further the legal background for the application. That is because the affidavits which have been filed by the applicant in support do not disclose any evidence at all of an attempt to interfere with the defendants' defence of this proceeding. There is no threat in relation to giving of evidence. There is no question of bribery. The allegations that are made against a witness for the plaintiff in no way evidences the matters that I have just referred to.

[12] Mr Kohler submitted, first, that there was no jurisdiction for the orders sought to be made and, second, that even if there is jurisdiction, there was no proper foundation for the finding of the contempt that would justify the orders being made.

He drew attention to the fact that the actions complained of by Mr Ahn followed the publication of an advertisement by the defendant which is not the subject of this proceeding.

[13] Nothing has been placed before me that indicates to me that there is any risk of the actions of the plaintiff interfering with the proper disposal of the trial of this proceeding. Certainly, no foundation for taking action based on a possible contempt of Court has been laid out before me.

[14] Accordingly, I conclude that there is no justification for the first order sought.

[15] The applications seek extensions of time to file amended affidavits of documents and for the service of briefs of evidence. I have not been provided with any reason why the order was not complied with in the first place.

[16] Because the contents of the affidavit of documents and the briefs of evidence have not been disclosed I do not regard it as appropriate to make orders at this stage. There may be prejudice to the plaintiff by granting the extension without some reservation. What I propose, therefore, to do is to give an indication that the defendants should serve the briefs of evidence and the affidavit of documents no later than Monday of next week, 22 May 2006. If appropriate, the application can be brought on for hearing on three days' notice. Counsel may well agree that that step is not required and the matter will not interfere with the orderly disposal of the trial which is set for 3 July, in which case no further order on this application would be required.

[17] I invited counsel to advance submissions on costs. They both confirmed that the appropriate course was that the party who was successful in this application should be awarded costs on a 2B basis. That, indeed, is justified and is the reason for the orders as to costs that are later made in this judgment.

Orders

[18] The first order sought by the defendants is declined. The application for the orders granting extensions of time for the filing and service of lists of documents and service of briefs of evidence is adjourned sine die to be brought on by either party on three days' notice.

Costs

[19] The defendants shall pay the plaintiff's costs based on an interlocutory application according to Category 2 Band B of the High Court Rules.

JA Faire
Associate Judge