

**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
AND	YAHOO! INC Fourth Defendant

Hearing: 12 February 2007

Counsel: JG Miles QC and P Hunt for Plaintiffs  
First Defendant in person  
DJ Gates for Second Defendant  
No appearance for Third and Fourth Defendants

Judgment: 19 April 2007

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**JUDGMENT OF RODNEY HANSEN J**

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*This judgment was delivered by me on 19 April 2007 at 4.00 p.m.,  
pursuant to Rule 540(4) of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date: .....*

Solicitors: McElroys, P O Box 835, Auckland for Plaintiffs  
Dennis Gates P O Box 222, Whangaparaoa for Second Defendants

## **Introduction**

[1] This judgment deals with a further raft of interlocutory applications in this long-running proceeding. It follows my judgment of 8 September 2006 in which I disposed of then outstanding interlocutory applications and made timetable orders for dealing with further applications.

[2] The applications which require consideration in this judgment are:

- a) An application by the plaintiffs for the first and second defendants (who I will refer to as the defendants as the third and fourth defendants have no further role in the proceeding) to provide them with copies of documents at a reasonable cost.
- b) An application by the plaintiffs to strike out parts of the second amended statement of defence to the third amended statement of claim.
- c) An application by the defendants for further and better discovery by the plaintiffs.

## **Background**

[3] The first plaintiff is a firm of chartered accountants, of which the second plaintiff (Mr Stiassny) is a principal. In December 2000 he was appointed receiver of the second defendant, Paragon Services Limited (Paragon), following disputes between shareholders of Paragon, one of whom was the first defendant (Mr Siemer). The receiver was appointed primarily for the purpose of protecting intellectual property. The issues between the shareholders were resolved during 2001 and Mr Siemer became sole shareholder. The receivership then came to an end.

[4] Mr Siemer had complaints over the conduct of the receivership, as a result of which the plaintiffs and the defendants entered into a compromise agreement, dated

9 August 2001, which relevantly provided that the defendants would not comment on any matter arising in or from the receivership, including the fact of the settlement.

[5] In early April 2005, Mr Siemer had a billboard erected in a prominent position in central Auckland which included the name and a picture of Mr Stiassny and referred viewers to a website. The website contained a range of material which, to put it neutrally, was critical of Mr Stiassny. The plaintiffs sought and obtained an *ex parte* injunction which provided for the removal of the objectionable material from the websites and the removal of the billboard. The injunction also restrained the defendants from reinstating the billboard.

[6] Although the offending material was initially removed from the website as required by the injunction, in the course of 2005 further material was published which prompted a successful application by the plaintiffs to have Mr Siemer held in contempt of Court. Following a hearing before Potter J, the defendants were fined \$15,000 and ordered to pay indemnity costs which totalled over \$180,000. They have paid the fine. The costs remain outstanding. The Court of Appeal has recently dismissed an appeal against the costs judgment (CA55/06, CA150/06 4 April 2007).

[7] There are two causes of action pleaded against the defendants. The first alleges there was a breach of the contract of 9 August 2001 as a result of what was published on the website. The second claim is for defamation. Both causes of actions seek general damages of \$1,250,000, special damages for economic loss, punitive damages and a permanent injunction.

### **Application for copies of documents**

[8] Following inspection of the first and second defendants' discovered documents, copies of specified documents were requested. The defendants were prepared to make copies available only on payment of \$1.00 per page. The plaintiffs are prepared to pay 12 cents per page plus GST. They support their offer with a quote from a commercial printer who would provide photocopies at that price.

[9] I can appreciate that the process of extracting, separating and collating documents for the purpose of photocopying may well add to the basic cost. That may explain why the plaintiffs themselves have charged 30 cents per page for supplying discovered documents. In my view and, if need be as an interim measure only, that is the price the plaintiffs should pay the defendants. If they wish, the parties may reserve the right to have the issue examined by the Registrar when the costs of the proceeding are finally determined.

### **Plaintiffs' application to strike out**

#### ***Paragraph 1.12***

[10] In response to allegations in the statement of claim which set out part of the factual background, including the grant of interim relief by Winkelmann J, paragraph 1.12 of the statement of defence states:

They admit paragraph 1.12(a), (b), (d), (e) of the third amended statement of claim. They also admit that Winkelmann J granted an ex-parte order to her former chambers partner Julian Miles, the barrister engaged by the plaintiffs, on the evening of 8 April 2001 [sic]. Save as admitted they deny the allegations in para 1.12 of the third amended statement of claim.

Mr Miles submitted that the second sentence should be struck out as constituting nothing more than a snide allegation of bias with no evidence to support it. Mr Siemer was prepared to concede that the sentence was unnecessary but not that it was irrelevant or inappropriate. I do not agree. The passage complained of is irrelevant and, in the absence of an allegation of bias, plainly scandalous. It must be struck out.

#### ***Paragraph 2.7***

[11] In response to a pleading that, without the assistance of an injunction, the defendants are likely to publish the same or substantially similar allegations to those complained of, paragraph 2.7 of the statement of defence pleads:

They admit that they will continue to exercise their fundamental legally protected rights to speak truthfully regarding the plaintiffs' misconduct, as well as to share evidence of the plaintiffs' misconduct where such misconduct is considered to pose a serious threat to the well-being of New Zealand citizens and the New Zealand economy, but otherwise deny the allegations in para 2.7.

[12] Mr Miles submitted that the paragraph is irrelevant and an abuse of process. He said the defendants' right to criticise the plaintiffs is not in issue. What is relevant is whether the publications complained of are defamatory and whether the defendants can rely on any available defences.

[13] Mr Siemer submitted that the pleading is relevant having regard to the interim relief granted by the Court which restrained the defendants from continuing to publish the alleged defamatory statements. He argued that the pleading does no more than to reaffirm the defendants' right to freedom of expression in circumstances in which that right had been denied.

[14] I accept that the defendants' right to freedom of expression is not in any sense in issue in the substantive proceeding. Paragraph 2.7 must also be struck out.

***Paragraph 3.2(a)***

[15] Paragraph 3.2 of the statement of claim alleges that certain of the words relied on meant and were understood to mean:

That the second plaintiff, in his professional capacity as receiver of Paragon Oil Systems Limited, acted criminally or that there were good grounds for believing that he acted criminally.

[16] In response, at paragraph 3.2(a), the defendants pleaded:

3.2(a) That they deny that the articles pleaded mean that the second plaintiff acted criminally. **But say** the article expressly states that the serious fraud office declined to act.

If it is determined that the articles pleaded mean that the second plaintiff acted criminally (which is denied) **they say**:

The articles are an expression of honest opinion as:

3.2.1 It is a criminal offence to with intent to gain any pecuniary advantage to dishonestly (and without claim of right) use or attempt to use any document (s 228 CA 1961)

3.2.2 In an attempt to gain pecuniary advantage the plaintiffs submitted documents to the first and second defendants namely:

...

3.2.3 The first defendant holds the honest opinion that the plaintiff's [sic] did so dishonestly. Particulars whereof are:

...

Particulars of the allegations in paragraph 3.2.2 and 3.2.3 are provided in the statement of defence but do not need to be quoted for present purposes.

[17] The plaintiffs' first complaint is that the first part of paragraph 3.2(a) is contradictory. Mr Miles submitted that the pleading must either admit or deny the plaintiffs' allegation. Mr Siemer acknowledged that the second sentence might more happily begin with "And" rather than "But", but asserted it was otherwise unobjectionable.

[18] In my view, Mr Miles' submission is well founded. Either the words have the pleaded meaning or they do not. There is no room for qualification. The second sentence of the paragraph is struck out.

[19] The second complaint concerns the particulars provided in support of the defence of honest opinion set out in paragraphs 3.2.2 and 3.2.3. The particulars provide details of the facts and matters relied on to support the claim that the plaintiffs submitted documents for the purpose of gaining a pecuniary advantage and did so dishonestly.

[20] Mr Miles submitted that in the circumstances of this case the particulars should include a reference to where they appear in the published materials or to their being generally known at the time of publication. He relied on s 11 of the Defamation Act 1992 which provides:

In proceedings for defamation in respect of matter that consists partly of statements of fact and partly of statements of opinion, a defence of honest

opinion shall not fail merely because the defendant does not prove the truth of every statement of fact if the opinion is shown to be genuine opinion having regard to—

- (a) Those facts (being facts that are alleged or referred to in the publication containing the matter that is the subject of the proceedings) that are proved to be true, or not materially different from the truth; or
- (b) Any other facts that were generally known at the time of the publication and are proved to be true.

[21] Mr Miles initially sought orders striking out the particulars because they are not facts referred to in the relevant publication. However, he accepted that, while the particulars were inadequate and (subject to a further argument confined to some only of the particulars) they were not improper provided they were alleged or referred to in the published materials or were generally known at the time of publication. For that purpose, however, I accept, and Mr Siemer did not attempt to argue otherwise, that the particulars should include references to where they can be found in the published materials or contain an assertion that they were generally known at the time of publication.

[22] Particulars of paragraph 3.2.3 include the following which Mr Miles submitted should be struck out as irrelevant:

- 3.2.3.18 The plaintiffs as a matter of practise in insolvency work appear to overcharge the companies for the time that they expend and/or they mishandle assets of those companies. If challenged, they aggressively move to silence these legitimate critics by putting up legal barriers or initiating legal action against them rather than properly account for such time or misappropriations, in particular Para para Growers Ltd;
- 3.2.3.19 The defendants knowledge from discussion with owners of other companies where the plaintiffs have been appointed by debenture holder or Court (as examples, Para Para Growers and Kralc Investments), is that the plaintiffs' eventual admission of overcharging in this case only occurred because of the court requirement here that the first defendant co-sign the plaintiffs' fee cheque and the first defendants steadfast refusal to sign the cheque as demanded until these fees were properly supported;
- 3.2.3.20 In his professional function, the second plaintiff has a disturbing capacity to make profound accounting errors in otherwise simple accounting exercises, as well as make

accounting claims that cannot be supported by accounting standards and practices, and admit to conduct that violates security exchange regulations in much of the developed world. In addition to the experience of the second defendant, the second plaintiff demonstrated this capacity on 19 October 2005 when during a public presentation he claimed he grew Vector from a \$1 billion company to a \$5 billion company in three years, then admitted to manipulating the equity share market to ensure a successful IPO of Vector the previous August.

[23] The defendants' alternative defence to the claim that the words meant Mr Stiassny had acted criminally relies on events which are alleged to have occurred in the course of the receivership of Paragon Oil. They rely on documents submitted to the defendants allegedly for the purpose of obtaining funds the plaintiffs were not entitled to receive. All particulars, save those in subparagraphs 3.2.3.18, 3.2.3.19 and 3.2.3.20, relate directly to those allegations. Mr Miles submitted that the defendants are not entitled to rely on these matters for the purpose of the defence of honest opinion. He said they are unrelated to Mr Stiassny's work as receiver of Paragon and are vague and unsubstantiated.

[24] Mr Siemer submitted that, for the purpose of the defence of honest opinion, the defendant should not be confined to events which occurred during the receivership of Paragon. He said the publications on the website were concerned with the *modus operandi* of Mr Stiassny. They were intended to expose a pattern of behaviour and he submitted that for the purpose of showing that the allegations were not defamatory, it was permissible to rely on the plaintiffs' activities in other areas.

[25] Section 11 confines the facts on which the defendants may rely for the defence of honest opinion to facts alleged or referred to in the publication and facts generally known at the time of the publication: see also *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) where Blanchard J, giving the judgment of the Court, said at [22]:

If the words complained of are found to be an opinion, the defendant must next be able to point to the existence of facts upon which the opinion is based. It must be shown to be an opinion based on facts alleged or referred to in the publication which are proved to be true or not materially different from the truth, or it must be based on other facts which were generally known at the time of the publication and are proved to be true; but the defendant does not need to prove the truth of all the facts which are asserted in support of the opinion (s 11).



[26] Such facts as are set out in the particulars are not included in the published materials and it was not suggested that any could be generally known. They introduce matters that have nothing to do with the plaintiffs' conduct of the receivership. The main factual allegation in subparagraph 3.3.20, for example, refers to an event which occurred after publication and self-evidently could not be relied on. These matters cannot be relied on to support the defence of honest opinion.

[27] Subparagraphs 3.2.3.18, 3.2.3.19 and 3.2.3.20 are accordingly struck out.

***Paragraph 3.2(b)***

[28] Paragraph 3.2(b) of the statement of defence addresses the alternative meaning relied on in paragraph 3.2 of the statement of claim, namely, that there were good grounds for believing that Mr Stiassny acted criminally in his professional capacity as receiver of Paragon. Paragraph 3.2(b) reads:

3.2(b) That they admit that the articles pleaded mean that there were good grounds for suspecting that the second plaintiff acted criminally as:

3.2.5 It is a criminal offence to with intent to gain any pecuniary advantage to dishonestly (and without claim of right) use or attempt to use any document (s 228 CA 1961)

3.2.6 In an attempt to gain pecuniary advantage the plaintiffs submitted documents to the first and second defendants namely:

3.2.6.1 Invoice dated 28 February 2001 to the second defendant with the intent that the second defendant pay the same.

3.2.6.2 The plaintiffs submitted a report dated the 12<sup>th</sup> March 2001 to the High Court that demonstrates they attempted to require the payment of \$124,000 by the first defendant with the intent that the first defendant would pay such sum to a bank account controlled by the plaintiffs.

[29] Mr Miles' complaint is that the addition of the particulars set out in subparagraphs 3.2.5 and 3.2.6 raises the possibility that a defence of truth is being pleaded. That is because, having admitted the alternative pleaded meaning, there was no requirement for the defendants to provide particulars of why they accept the

pleaded meaning. He submitted subparagraphs 3.2.5 and 3.2.6 should be struck out as superfluous unless truth is being advanced as a defence, in which case the pleading did not comply with s 38 of the Defamation Act.

[30] I am satisfied there is no intention to raise a defence of truth. Reading this part of the statement of defence as a whole, I take the view that the defendants intend paragraphs 3.2.5 and 3.2.6 to support a defence of honest opinion (as did paragraphs 3.2.1 and 3.2.2 in relation to the first pleaded meaning). I will not make a strike out order but direct the defendants to amend paragraph 3.2(b) to make it clear that the particulars are relied on in support of a defence of honest opinion, not truth.

[31] Paragraphs 3.2.7.18, 3.2.7.19 and 3.2.7.20 contain the same particulars as 3.2.3.18, 3.2.3.19 and 3.2.3.20 and, for the reasons already given, should also be struck out.

### ***Paragraph 3.3***

[32] Paragraph 3.3 of the statement of claim alleges that certain of the published words in their natural and ordinary meaning meant and were understood to mean:

That the second plaintiff's conduct as receiver of Paragon Oil Systems Limited was significantly more scandalous than that of the Enron accountants or financial officers.

[33] In response, paragraph 3.3 of the statement of defence pleads:

They admit that when one considers the relative size comparison between Enron and the second plaintiff, the number of inexplicable accounting errors and false representations by the second plaintiff are arguably more scandalous. Otherwise they deny the allegations in para 3.3.

[34] Relying on *Television New Zealand Limited v Haines* [2006] 2 NZLR 433 (CA), Mr Miles submitted that paragraph 3.3 should be struck out as it does not plead the meaning claimed. In that case the Court of Appeal said at [57] – [59]:

If the plaintiff succeeds on one or more specified imputations, then a defendant may defend itself, in terms of s 8(2)(a), by satisfying the trier of fact that the imputation is true or not materially different from the truth. It is insufficient for a defendant at this point to suggest that, even though the

words are capable of bearing the defamatory meaning complained of, they also bear a lesser meaning, which may be proved to be true. This is for two reasons.

First, proving the truth of a lesser meaning would not have an effect on the defamatory meaning pleaded by the plaintiff, and the defamatory meaning would remain undefended. As a matter of logic, a defence must always be a defence to something. In cases of defamation that something is the defamatory imputations pleaded by the plaintiff.

Secondly, a parallel inquiry into something about which the plaintiff is not complaining is unhelpful and potentially confusing for the jury.

[35] As the strike out application did not refer to paragraph 3.3, I gave Mr Siemer leave to file a supplementary submission after the hearing. He submitted there are no grounds to strike out paragraph 3.3 but offered to clarify the pleading by adding the following to paragraph 3.3 of the statement of defence:

AND FURTHER SAY that it is the honestly-held opinion of the first and second defendant that, when considering the relative size and comparison between Enron (a multi-billion dollar company, faced with multi-million dollar accounting errors) and the second plaintiff (non-trading, one employee, minimal unpaid creditors and no fixed debt), the number of accounting errors and erroneous representations by the second defendant as to the second plaintiff's financial position is more scandalous. Otherwise they deny the allegations in para 3.3.

[36] This amendment would not answer the plaintiffs concerns. The pleading must respond to the allegation. If the defendants accept the passages relied on in the publication carried the pleaded meaning, but rely on honest opinion, they should say so. But for the reasons given by the Court of Appeal in *Haines*, they cannot substitute another meaning of their choosing.

[37] Paragraph 3.3 is also struck out.

### ***Paragraph 3.5***

[38] Paragraph 3.5 of the statement of claim pleads that certain of the words relied on meant and were understood to mean:

That the second plaintiff gained improper personal enrichment through exploitation of the Paragon receivership.

[39] In response, at para 3.5 of the statement of defence pleads as follows:

They deny the allegations in para. 3.5, and say further the articles are true or an expression of honest opinion that are clearly not limited to the second plaintiff's conduct in the Paragon Receivership. They say further if it is determined the articles pleaded mean the second plaintiff gained improper enrichment through his exploitation of the Paragon receivership, then they rely on the defences in para. 3.2.

[40] Mr Miles submitted that the defendants cannot deny the meaning pleaded and then purport to plead truth and honest opinion to an extended meaning not relied on by the plaintiffs. It is submitted that the words of the first sentence commencing with "and say ..." should be struck out.

[41] I accept the submission. For the reasons already discussed in relation to paragraph 3.4, the defendants are not permitted to invoke defences to a meaning which is not relied on by the plaintiff. The words complained of must be struck out.

#### ***Paragraph 3.14***

[42] Paragraph 3.14 of the statement of defence contains a pleading in substantially the same terms as paragraph 2.7 and, for the reasons already given ([11] – [14] above), must be struck out. In reaching this view I do not overlook the further (uninvited) arguments advanced by Mr Siemer on this point in his supplementary submissions.

#### **Defendants' application for further and better discovery**

##### ***Identification of documents***

[43] The defendants' first complaint relates to the way in which documents are listed in the plaintiffs' list of documents. In a number of instances, particularly where documents are in a file, they have been identified by number but compendiously described rather than individually itemised in the list of documents. (I give an example in the next section of this judgment.) Mr Siemer submitted that the list does not comply with the High Court Rules.

[44] Rule 298 of the Rules provides:

- (1) The schedule referred to in rule 297(2)(d) must identify or list the documents in the following categories and provide the information specified in relation to each category:
  - (a) documents that are in the control of the party giving discovery and for which the party does not claim privilege or confidentiality. These documents may be identified by number:
  - (b) documents that are in the control of the party giving discovery for which privilege is claimed, together with a statement as to the nature of the privilege claimed:
  - (c) documents that are in the control of the party giving discovery for which confidentiality is claimed, together with a statement as to the nature and extent of the confidentiality:
  - (d) documents that have been, but are no longer, in the control of the party giving discovery, together with a statement as to when the documents ceased to be in the party's control and the person who now has control of them:
  - (e) documents that have not been in the control of the party giving discovery but that are known by that party to relate to a matter in question in the proceeding, together with a statement as to who has control of them.
- (2) Documents in any of categories (b), (c), (d), or (e) may be described as a group or groups if all documents concerned are of the same nature.
- (3) The schedule need not include—
  - (a) copies of documents filed in Court; or
  - (b) correspondence that may reasonably be assumed to be in the possession of all parties.

[45] The distinction drawn between documents for which no claim for privilege or confidentiality is made (in (1)(a)) and those in subparagraphs (b) – (e) which may be described in groups, is to be contrasted with the former r 298 which made no distinction between the two categories of documents. Rule 298(3) and (4) relevantly provided (prior to 31 October 2004):

- (3) The list shall enumerate the documents which are or have been in the possession, custody, or power of the party making the list.
- (4) The list shall enumerate the documents in a convenient sequence and as shortly as possible, but shall describe each document or, in the

case of a group of documents of the same nature, shall describe the group, sufficiently to enable the document or group to be identified.

[46] Rule 298(1)(a) now expressly provides that documents for which there is no claim of privilege or confidentiality may be identified by number. It gives effect to the rule laid down in *Hunyady v Attorney General* [1968] NZLR 1172 (CA) that documents must be separately identified but, in the case of a file or bundle of documents, that may be achieved by a generic description provided individual documents or pages are numbered. This is sufficient to enable the party seeking discovery, and if necessary the Court, to call for the production of any documents individually – per North P and Turner J at 1173-4.

[47] In contrast, documents in other categories may be grouped without being separately numbered as, if they are of the same nature, the description will be sufficient to enable the other party and the Court to determine whether the claim of privilege or confidentiality or otherwise is properly based – see the discussion of Tompkins J in *Guardian Royal Assurance v Stuart* [1985] 1 NZLR 596 (CA) at 607.

[48] The way in which the plaintiff has listed documents in all categories is in conformity with the Rules and meets their underlying objectives.

#### ***Document 14.4***

[49] The second issue arising from the plaintiffs' discovery concerns a document numbered 14.4 in the plaintiffs' list. It was discovered as one of 84 documents described as "*correspondence, documents, copy pages from websites*" in a file of Ferrier Hodgson marked "*Other sites and attacks*". It was included in part one of the list as documents in the first and second plaintiffs' control for which they do not claim privilege or confidentiality.

[50] When Mr Siemer received copies of documents requested from the plaintiffs following inspection, he noticed document 14.4 was missing. At the time of inspection he had noted this document to be an email from Mr Stiassny to Robert Fardell QC dated 20 July 2001. He asked the plaintiffs' solicitors for a copy. He

was told document 14.4 had been mistakenly included in the list of documents as a discoverable document when it should have been privileged.

[51] A legal executive employed by the plaintiffs' solicitor, Louise Greenslade, has sworn an affidavit. She deposes that she assisted in the preparation of the plaintiffs' list of documents and in preparing the documents for inspection by Mr Siemer. She says that before his arrival she reviewed the documents which were to be discovered and noticed that document 14.4 was an email from Chen Palmer, solicitors, to Mr Stiassny dated 26 May 2006. She queried the status of the document with her supervising partner and subsequently removed the document from the discoverable documents and replaced it with a pink page on which she wrote, "*document 14.4 was privileged email (FH/Chen) accidentally included in discoverable section*". Ms Greenslade states that, to the best of her knowledge and belief, the only document referring to the number 14.4 which Mr Siemer would have seen during inspection was the document she had inserted.

[52] In response, Mr Siemer reiterates that the notes he made at the time indicate that document 14.4 was an email from Mr Stiassny to Mr Fardell. He says that he has no recollection of seeing the document with the note made by Ms Greenslade.

[53] The evidence of Mr Siemer and Ms Greenslade cannot be reconciled. I am satisfied, however, that there is an email from Chen and Palmer to Mr Stiassny dated 26 May 2006 (which the plaintiffs are prepared to make available for me to inspect) that the solicitors wrongly included among the discoverable documents. The outstanding issue, arising from Mr Siemer's note, is whether there is a second document, albeit one which on its face would appear likely to attract a claim of privilege.

[54] I think the best way of laying the matter to rest one way or another is to require the plaintiffs to file an affidavit directed specifically to the document Mr Siemer claims to have seen, stating whether they have now or have ever had in their possession or power an email dated on or about 20 July 2001 from Mr Stiassny to Robert Fardell QC and, if the document has been but is no longer in their power or possession, what has become of it.

### *Particular discovery*

[55] The defendants seek further and better discovery of eight categories of documents each of which require separate consideration.

#### *Phone records*

[56] The first category is the phone records of the plaintiffs for the period 23 November 2000 to 31 March 2002. These have been discovered in a supplementary list of documents sworn on 15 December 2006. I am advised that inspection has taken place since the hearing.

#### *Bank records*

[57] The defendants seek discovery of full bank records in relation to Paragon and a company called Paramount. Mr Siemer asserts that no banking records for Paragon have been discovered. However, I am satisfied on the basis of examples of discovered documents produced that there has been discovery of Paragon banking records.

[58] Paramount banking records are said to be relevant because, in the course of the Paramount receivership, time spent on a Paramount file was (on the plaintiffs' account) mistakenly charged to the Paragon receivership file. However, Mr Alan Garrett, an accountant employed by Ferrier Hodgson who is taking responsibility for dealing with discovery issues on behalf of the plaintiffs, has deposed that even if Paramount's bank records were relevant, none are in existence as records in that category were not provided by the client to the plaintiffs. His evidence disposes of the issue.

#### *Documents relating to the overcharge*

[59] The defendants seek correspondence, accounting records, invoicing and bank records in relation to the overcharge to Paragon. Mr Garrett has deposed that all



relevant documents have been discovered. I have been provided with examples of documents in that category. There is no basis for thinking that there are further discoverable documents in this category.

*Paragon accounting documents*

[60] The defendants seek discovery of all accounting worksheets, spreadsheets and valuation exercises in relation to the receivership of Paragon. Again, this is conclusively disposed of by Mr Garrett in his affidavit. He deposes that all documents in this category have been discovered after a thorough search. Mr Siemer claimed in a supporting affidavit that he could find no documents in this category. However, I have been provided with copies of documents which confirm that there has been discovery in this category. Again, there is no reason to order further discovery.

*Documents relating to legal costs*

[61] The defendants seek further discovery of documents relating to legal costs projected in a report to the High Court in relation to the receivership of Paragon. Mr Garrett deposes that an estimate of legal costs was made but there were no documents recording the calculation. His evidence must again be accepted as conclusive.

*Documents relating to legal advice*

[62] The defendants seek all documents relating to legal advice sought and obtained by Mr Stiassny as receiver of Paragon. Mr Garrett has deposed that at a late state of the receivership the plaintiffs intended to seek legal advice but, before doing so, learned that the receivership had been terminated by the Court. In the event, legal advice was not sought. There is no basis for ordering further discovery of documents in this category.

*Records relating to other receiverships and activities of the plaintiffs*

[63] The defendants seek discovery of all records relating to the plaintiffs' conduct of the receivership and/or liquidation of Access Brokerage and the receivership of Para Para Growers; correspondence relating to complaints against Mr Stiassny made to the Institute of Chartered Accountants in relation to other matters; a presentation by Mr Stiassny to the Institute of Directors on 19 October 2005; and Vector customer pricing information relating to "recent public claims" made by Mr Stiassny in his capacity as Chairman of Vector. The defendants claim these documents are relevant to the defence position that the plaintiffs acted dishonestly or that the defendants' claims to that effect were matters of honest opinion.

[64] I am satisfied that documents in these categories have no relevance to the matters in issue in the proceeding and are not discoverable. The published material relied on by the plaintiffs relates and refers to Mr Stiassny's conduct of the Paragon receivership. The defamatory meanings relied on concern his actions in his capacity as receiver of Paragon. For the purpose of establishing that the words complained of are true or expressions of honest opinion, the defendants are confined to the conduct of the receivership and, as discussed in relation to the application to strike out disputed particulars ([22] – [26] above), to facts referred to in the published materials or generally known.

*Financial statements, bank records and tax returns of plaintiffs*

[65] The final category of further discovery sought relates to financial statements, bank records and tax returns for the plaintiffs, as well as for their insolvency charges, to support Mr Stiassny's sworn evidence that he had not become wealthy at the expense of his insolvency charges. Again, these documents plainly have no relevance to the issues raised in the proceeding.

## **Result**

[66] I make orders:

- a) For the payment of photocopying costs as set out in [9].
- b) Striking out those passages of the statement of defence referred to in [10], [14], [18] [27], [31], [37], [41] and [42] of this judgment.
- c) That the defendants provide the particulars referred to in [21] of this judgment.
- d) That the defendants amend paragraph 3.2(b) of the statement of defence in accordance with [30] of this judgment.
- e) For particular discovery in terms of [54] of this judgment.

[67] The applications otherwise are dismissed.

[68] As the plaintiffs have been successful on the major questions argued, they are entitled to costs on a Category 3 Band C basis.

## **Conference**

[69] In accordance with the direction given in [2] of my minute of 13 February 2007, a conference is to be convened at the earliest convenient date to address the disposal of further outstanding interlocutory applications.