

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

**CIV 2007-404-007297**

BETWEEN	RICHARD JAMES MARTIN Plaintiff
AND	TONY WALL First Defendant
AND	FAIRFAX NEW ZEALAND LIMITED Second Defendant

Hearing: 23 November 2007

Appearances: M S Cole for plaintiff  
RKP Stewart for defendants

Judgment: 23 November 2007

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**ORAL JUDGMENT OF WOODHOUSE J**

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Solicitors / Counsel:  
Mr M Cole, Barrister, Auckland (Fax: 3075292)  
Mr RKP Stewart, Izard Weston, Solicitors, Wellington (Fax: 04-473 4457)

Copy to:  
Mr R J Martin, Solicitor, Mairangi Bay, Auckland (Fax:4759547)

[1] At approximately 5:15 p.m. the plaintiff through his counsel filed an ex parte application for an injunction to restrain publication of an article in the Sunday-Star Times this coming Sunday. Informal notice had been given to the solicitors for Fairfax New Zealand Limited and when I saw counsel for the plaintiff I had Mr Stewart of Izard Weston on the line.

[2] Mr Cole recognised the difficulty he faces from the authorities applying to applications of this sort, including *TV3 Network Services Ltd v Fahey* [1999] 2 NZLR 129 (CA), but sought to urge on me that there are special circumstances here. The difficulty faced by his client is that the content of the article that it has been confirmed will be published is not known in any detail.

[3] Izard Weston, on behalf of their client, had sent an e-mail to Mr Cole indicating that the publisher intends to plead justification. I indicated to Mr Stewart that it would be necessary to have formal and express confirmation of that from the publisher.

[4] That has now been received on terms that I will set out in this judgment.

[5] In the light of that express confirmation from the second defendant, Fairfax New Zealand Limited, that it intends to prove the allegations that will be published are true and in the light of the authorities, I decline to make the order sought by the plaintiff.

[6] Mr Cole has advised me as I was concluding dictating this judgment that he in fact filed the application at approximately 4:30 p.m., which of course I accept.

[7] The only other matter which I simply record for convenience is that Mr Cole will serve both defendants and Mr Stewart has confirmed that he is able to accept service by fax on behalf of both defendants.

[8] It will be necessary for a case management conference date to be allocated in the usual way and as soon as conveniently possible.

## **Addendum**

[9] The terms of the letter from the second defendant, addressed to the plaintiff, are as follows:

Richard Martin  
C/- Michael Cole  
Barrister  
AUCKLAND

Dear Mr Martin

### **PROPOSED ARTICLES**

As requested by the High Court earlier this evening, on behalf of Fairfax New Zealand Limited as the publishers of the *Sunday-Star Times* newspaper, I confirm that the newspaper intends publishing an article regarding your involvement in corrupt immigration practice in this Sunday's edition of the newspaper.

I confirm that in the event you issue proceedings against the newspaper/Fairfax in defamation as a result of that publication, Fairfax intends proving the allegations contained in the proposed article true.

Yours sincerely

Cate Brett  
Editor  
Sunday Star-Times

cc. The Registrar, High Court, Auckland.

[10] What I am about to record was not stated when delivering the oral judgment, recorded above, although it is perhaps implicit in paragraph [2] above. The authorities binding on me make clear that an interlocutory injunction will not be granted to restrain publication of an allegedly defamatory article when the defendant confirms it will plead justification unless what is to be published is not only defamatory but obviously untruthful. The application before me is not one where it can be said that the article to be published is obviously untruthful for the reason noted in paragraph [2] – the content of the article is not known in any detail.