**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 49/2011**
**[2011] NZSC 63**

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| BETWEEN | VINCENT ROSS SIEMER<br>Applicant |
| AND | MICHAEL PETER STIASSNY<br>First Respondent |
| AND | KORDA MENTHA FORMERLY FERRIER HODGSON<br>Second Respondent |

Court: Elias CJ, Blanchard and William Young JJ

Counsel: Applicant in person
J G Miles QC and P J L Hunt for Respondents

Judgment: 3 June 2011

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

**REASONS**

[1] Vincent Ross Siemer seeks leave to appeal against a judgment of the Court of Appeal of 30 March 2011[1] dismissing his challenge to a judgment of Cooper J delivered on 23 December 2008 awarding the first respondent, Michael Peter Stiassny, defamation damages totalling $825,000 and the second respondent, Korda Mentha, damages of $95,000 ($75,000 for defamation and $20,000 for breach of an agreement settling a dispute between the parties).[2]

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1 *Siemer v Stiassny* [2011] NZCA 106.
2 *Korda Mentha v Siemer* HC Auckland CIV-2005-404-1808, 23 December 2008.

[2] An unusual feature of the case is that Mr Siemer had been debarred from defending the proceedings.[3] For this and other reasons, his appeal gave rise to a number of procedural difficulties. These were addressed in a judgment of the Court of Appeal of 22 December 2009,[4] the effect of which was to strike out the appeal in all respects save as to the quantum of damages.[5] A subsequent application for leave to appeal against that decision was dismissed by this Court.[6]

[3] Most of the bases upon which the applicant seeks leave to appeal involve attempts by him to revisit arguments which have been conclusively rejected by earlier judgments and which we therefore need not discuss. These include complaints about Hammond J which have been earlier addressed and rejected by this Court. This leaves in contention three possible issues which we will briefly discuss:

(a) Mr Siemer's complaint that the judgment of Cooper J wrongly accused him of engaging in "vile racist abuse";

(b) a comment made by the Court of Appeal that its attention had not been drawn to a worse case of defamation in the British Commonwealth and that its own researches had not disclosed one; and

(c) complaints about the way Mr Siemer was treated in the course of a hearing before the Court of Appeal.

[4] In the part of his judgment where he was reviewing the case for Mr Stiassny, Cooper J observed:

> [48] [Mr Stiassny] complained also that some of the language used by Mr Siemer had apparently been calculated to be offensive to him and caused distress. Examples that he gave included ridicule of his name. Mr Siemer had distributed stickers saying "There is an 'ass' in our website www.stiassny.org". Also there had been references to his Jewish religion and to the persecution of the Jews. Thus, in his letter to the New Zealand

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3 *Ferrier Hodgson v Siemer* HC Auckland CIV-2005-404-1808, 9 July 2007. The procedural history is outlined in the judgment under appeal at [10]–[18].

4 *Siemer v Stiassny* [2009] NZCA 624.

5 See [69].

6 *Siemer v Stiassny*[2010] NZSC 57.

> Institute of Chartered Accountants of 14 February 2005 Mr Siemer had written:
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> > News Flash! Michael Stiassny tells Professional Conduct Committee that sky is yellow ... again, the sky is yellow.
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> [49] Further, on www.stiassny.org, on the "interviews page" Mr Siemer had referred to him as a man with "exceptional sway within the small Jewish community" and had commented that "*when the judiciary determines that a ruthless and powerful man's reputation is so priceless ... the Gestapo cannot be far behind ... people like Adolph[sic] Hitler ...*".
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> [50] On a page headed "the Smartest Guy in the Room", Mr Siemer had stated:
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> > Stiassny will likely have taken his family and ill-gotten gains to exile in Israel or Switzerland.
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> [51] On the welcome page, Mr Siemer had referred to Mr Stiassny in the phrase:
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> > ... what a good Jew he is (no joke).
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> (Emphasis added)

Toward the end of his judgment, Cooper J, in what must have been a reference back the paragraphs just set out, said that "the defamatory comments have been accompanied in some cases by clear instances of vile racist abuse".[7]

[5] As we understand Mr Siemer's position, the words referred to by Cooper J at [49] which we have italicised appeared in a different "article" (if that is the right word[8]) from the reference to Mr Stiassny's "exceptional sway within the small Jewish community". He claims that his references to Mr Stiassny being Jewish are innocuous and that there was thus no basis for the Judge to find that he had engaged in "vile racist abuse".

[6] Mr Siemer's argument was dealt with by the Court of Appeal in this way:

> [69] A second matter is that Mr Siemer takes strong exception to the way in which he was characterised by the Judge as having made "vile racial attacks" on Mr Siemer. In his brief written submissions he said, "It is evidence Cooper J fabricated vile racist evidence because the anti-Semitic quote he created is a combination of words he took from different articles and juxtaposed into an unrepresentative quote". Before us, he enlarged on

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7 At [78].

8 From the material Mr Siemer has submitted the words were contained in what purported to be an interview with Mr Siemer.

> this: he suggested that the Judge had taken "Hitler", "Gestapo" and "Jew" out of discrete publications and rolled them all up, out of context, into a "quote" that he attributed to the appellant. In fairness to the Judge, the "quote" had been put in that manner by the plaintiffs in their submissions.
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> [70] We accept that the words Cooper J set out were taken from different articles and that intervening passages were omitted. However, we understand that the articles in question ran continuously on, one from another article on the website. It must also be said that Mr Siemer was, at the very least, sailing very close indeed to the wind. It was hardly unreasonable for the Judge to reach the view that, however expressed, Mr Siemer was poking racial gibes at Mr Stiassny. And, as the trier of fact, that inference was a matter for the Judge. Certainly it was a matter that he was entitled to take into account, although the precise weight to be given to it has to be seen – as indeed the Judge did – in the larger context. Mr Siemer's problem was that he had "personalised" the attacks he was making in the basest kind of way, quite deliberately, and on an ongoing basis. That was what the Judge appears to have been concerned about.

[7] It is not clear to us what Cooper J intended to convey in [49] by his references to "the Gestapo" and "people like Adolph[sic] Hitler". In the context of the "interview" provided to us by Mr Siemer, these expressions were used by way of criticism of the courts' willingness to grant injunctive relief to protect the reputation of someone who was "powerful, ruthlessly aggressive and dodgy in his public dealings", as Mr Siemer characterised Mr Stiassny. They thus do not have any apparent anti-Semitic connotation. This point was recognised by the Court of Appeal. The Court was nonetheless of the view that it was open to the Judge to conclude on the basis of the material as a whole that Mr Siemer was "poking racial gibes" at Mr Stiassny. In light of this, and in the more general context of the way the Court described Mr Siemer's behaviour in the last two sentences of [70], we do not see anything of substantial moment in this proposed appeal point.

[8] On the second question, it is clear that the egregiousness of Mr Siemer's conduct lay not so much in the detail of his allegations against Mr Stiassny which, while serious enough, must have been surpassed, in terms of sting, in other cases. Rather, it lay in the unusually broad scope and harassing nature of Mr Siemer's campaign against Mr Stiassny and his persistence in defiance of court orders. We have not ourselves surveyed Commonwealth jurisprudence in search of a case which is worse in the respects just mentioned, but interestingly, if there is a worse case, it has not been identified by Mr Siemer. In light of this, we do not see this complaint as warranting leave to appeal.

[9] On the third issue, it is necessary to refer to the material which has been placed before us in a little more detail.

[10] Mr Siemer's factual contentions are set out in various documents, but for present purposes, it is sufficient to take them from a letter of 8 November 2010 to the Judicial Conduct Commissioner as to what happened at the hearing of his appeal:

> The first concern arose when the three Justices ... attempted to prevent submissions in respect to Cooper J fabricating evidence in the form of racist invective where it did not exist. This was overcome by reading to them Para. [11] of the Supreme Court decision,[9] but the Judges were not happy.
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> The [B]ench then unfairly attempted to devalue the egregious nature of what Cooper J had done. The official audio-record will show the three [J]udges made comments evidently designed to coerce me to unfairly confirm my submissions were that Cooper simply "went too far" or "made inferences which were a stretch".
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> I was required to repeatedly correct these attempts at judicial steering, and referred Justice Hammond to the incontrovertible evidence that Cooper J took "Hitler" and "Gestapo" from an article I published which had nothing to do with Jews and combined these words with an innocuous comment about Stiassny's influence in the Jewish community from an unrelated article. Cooper J labelled his contrived quote evidence of "*vile, racist abuse*" **by me**. I asked Justice Hammond whether His Honour accepted the evidence proved – not my submissions – that Cooper J created racist invective where it did not naturally exist, and then unjustly attributed his contrived and unrepresented racist quote to me to support his finding of record damages. Justice Hammond refused to acknowledge this
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> ...
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> Yet when I responded [to the submissions made by the respondents' counsel] and attempted to put the blinkered submissions by respondents' counsel into proper context and refer the [B]ench to evidence which he evaded, Justices Arnold, Glazebrook and Hammond repeatedly and falsely claimed I was legally prevented from doing so. I quite appropriately stated that it was obviously an acceptable submission for the respondents to make, as the Court made [no] attempt to tell counsel such submissions were inappropriate or irrelevant. Justices Arnold, Glazebrook and Hammond were still inappropriately vocally unreceptive and dismissive.
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> (Emphasis in original)

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[9] This is a reference to the Supreme Court decision referred to above which specifically contemplated that the Court of Appeal would address Mr Siemer's complaint about the passage of the judgment of Cooper J referred to at [4] above, "to the extent that it may have influenced the level of the damages award".

[11] Mr Siemer complained that as well counsel for the respondents had misrepresented the position in submissions to the Court and that he had requested the Court of Appeal to refer the misrepresentation to the New Zealand Law Society of Disciplinary Conduct. This complaint in relation to the Judges is that:

> Justice Hammond refused to respond to this valid request.

[12] We were asked by Mr Siemer to obtain a transcript of the hearing in the Court of Appeal so that he could flesh out and particularise his complaints as to what the Judges, and particularly Hammond J, said during that hearing. A decision on this request was deferred pending receipt of the submissions on the leave application.

[13] The material which Mr Siemer has put to us (including the letter we have cited from above) is tendentious. The same is true of his arguments in the Court of Appeal. It is one thing to contend that there were errors in the analysis of Cooper J; it is another to accuse him of "fabricating evidence". Further, as in this Court, most of the arguments Mr Siemer wished to advance were irrelevant to what was in issue. The tendentiousness and irrelevance of so much of what he had to say meant that testy exchanges between him and the Judges were practically inevitable. All in all, we see nothing in the material put to us by Mr Siemer to suggest anything approaching bias. For the sake of completeness we also reject Mr Siemer's contention that the Court of Appeal displayed bias by not referring the conduct of counsel for the respondent to the Law Society. If Mr Siemer is of the view that counsel was guilty of professional misconduct, there is no reason why he should not complain himself. And given that nothing approaching a credible suggestion of bias has been put forward, we see no reason to obtain a transcript from the Court of Appeal.

[14] For those reasons, the application for leave to appeal should be dismissed.

Solicitors:
McElroys, Auckland for Respondents