IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

CIV-2013-404-005218
[2016] NZHC 210

BETWEEN	MATTHEW JOHN BLOMFIELD Plaintiff
AND	CAMERON JOHN SLATER Defendant

Hearing: 16 February 2016

Counsel: BG Beresford for Plaintiff
Defendant in person

Judgment: 18 February 2016

JUDGMENT (No 4) OF ASHER J

This judgment was delivered by me on Thursday, 18 February 2016 at 3 pm pursuant to r 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Solicitors/Counsel:
MG Beresford, Auckland.

Copy to:
Defendant

Introduction

[1] This judgment must be read in conjunction with my judgment of 10 February 2016, in which I found that four articles published by Mr Slater constituted breaches of the undertaking provided to the District Court on 1 October 2012.[1] I adjourned the proceeding to give Mr Slater an opportunity to take action to make his publications compliant with the undertaking, as I had interpreted it. It is now necessary to give my final judgment on the contempt application, and to rule on costs.

[2] Mr Blomfield succeeded in establishing that Mr Slater had breached the undertaking; firstly in continuing to host on his website the first article, which had been the subject of an earlier judgment finding it in contempt,[2] and second by referring to Mr Blomfield, albeit without naming him, in the three more recently published articles. He failed, however, in the submission that the three other articles which principally concerned third parties, constituted contempts. I found that the bulk of those three articles, being written about persons other than Mr Blomfield, were not a breach of the undertaking.

[3] Given that Mr Slater has now removed all material that I have found to be in breach of the undertaking (which Mr Blomfield accepts), and given my finding that the three other articles were not in total a breach of the undertaking, Mr Beresford on Mr Blomfield's behalf has withdrawn his submission that Mr Slater should be imprisoned. He submits that the appropriate penalty is a fine of $2,000.

The first article

[4] In relation to the first article Mr Slater submits that this was an understandable error of judgment on his part, based on his interpretation of my earlier judgment, and the ambit of the undertaking.

[5] In my view, continuing to publish the first article was plainly a breach of the undertaking in that it was pejorative and concerned Mr Blomfield. Although I

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1 *Blomfield v Slater* [2016] NZHC 149.
2 *Blomfield v Slater* [2015] NZHC 2239.

previously found the publication to be a "minor" contempt, it was a contempt nevertheless. This was clear from my judgment. It was also a contempt of Court not to comply with the terms of my earlier judgment (regardless of the undertaking), since my earlier judgment ordered him to remove the article.

[6] Mr Blomfield has submitted variously that Mr Slater deliberately breaches Court undertakings or pushes publications as far as they can go, to test the boundaries of orders made.

[7] I do not consider that Mr Slater deliberately set out to defy the Court in continuing to publish the first article. I accept the statements that he has made, both on oath and in submissions, that he is endeavouring to abide by the terms of the undertaking (while seeking to set it aside). Nevertheless, I do think there is some force in Mr Blomfield's submission that Mr Slater has been testing the boundaries of the Court directions. It was reckless of him to leave that publication on his website with only two changes, given its frequent pejorative references to Mr Blomfield. The appropriate fine is $1,500.

The three new articles

[8] The undertaking provided:

> … that there would be no further publication concerning Mr Blomfield and/or his associates on the blog site or any other blog site under the control of Mr Slater or at the behest of Mr Slater, other than that might relate to information that is already in the public domain via a reputable media source, for example radio, television or radio or weekly newspapers.

[9] There has to be an element of wilfulness or recklessness in the disobedience of a Court order before the contempt jurisdiction will be invoked. This requirement was explained in *Morris v Douglas*, where Paterson J observed of a writ of sequestration:[3]

> As the writ is very drastic in form, the Courts have generally been reluctant to allow the writ to issue except in the clearest cases and will not normally issue the writ unless the conduct has been intentional or reckless. The conduct must be shown to have been contumacious or wilful and it is necessary to establish that conduct to the standard of proof beyond

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3 *Morris v Douglas* (1996) 10 PRNZ 363 (HC) at 366.

> reasonable doubt. Casual, or accidental, or unintentional disobedience to an order of the Court is not enough to justify either sequestration or committal. If the disregard is wilful, then it is contumacious.

[10] Those comments were cited with approval by Randerson J in *Douglas Pharmaceuticals Limited v Nutripharm NZ Limited*, where he observed:[4]

> I am also of the view that where a Court has asked to exercise its power to levy a fine for contempt of Court, it is again necessary to establish something more than accidental or unintentional behaviour: ... Although the imposition of a fine does not carry the same drastic consequences as the issue of a writ of sequestration, it is nevertheless my judgment that it is necessary for the parties seeking the levying of a fine to establish some degree of wilful or reckless disobedience of the Court order.

[11] The offending material in this instance was a number of paragraphs, set out in my earlier judgment, which referred to Mr Blomfield without naming him.[5] Given the prolonged campaign that Mr Slater has run against Mr Blomfield, particularly in articles on his website, in my view it was likely that some readers would assume that the person who had been referred to was Mr Blomfield.[6] The articles contain historical or geographical detail that might lead a reader to identify Mr Blomfield as the person who was being written about.

[12] I consider that the references to Mr Blomfield without naming him were reckless in that the paragraphs were on their face publications "concerning" Mr Blomfield. However, I accept that Mr Slater might have genuinely thought that there was insufficient detail in the article to lead to identification of Mr Blomfield, meaning that there was no breach. Indeed, there was no evidence provided that any persons assumed that the paragraphs were about Mr Blomfield.

[13] While I accept that some readers may have made the connection, I doubt whether Mr Blomfield's reputation has suffered in any particular way. Those readers who could work out that he was being mentioned would, in any event, likely have been aware of the other, earlier pejorative material published by Mr Slater about Mr Blomfield. Any perception that they might have had about Mr Blomfield was unlikely to have changed as a result of the articles.

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4 *Douglas Pharmaceuticals Ltd v Nutripharm NZ Ltd (No 2)* (1998) 12 PRNZ 176 (HC) at 182.
5 *Blomfield v Slater*, above n 1, at [14]–[17].
6 At [28].

[14] In all the circumstances, the unnamed references in the three articles to Mr Blomfield were breaches of the undertaking that warranted an application for an order that they be removed, but not sufficiently serious to be contempt. No penalty for contempt is imposed. I formally order that the offending paragraphs be removed (and I am informed that Mr Slater has already done this).

Costs

[15] Mr Blomfield has succeeded in this application, in that he has obtained orders that have resulted in the removal of material adverse to him. This is reflected by the fine of $1,500 in relation to the first article, and in that he obtained orders for the removal of the unnamed references to him. This degree of success must be reflected in a costs order.

[16] However, I am mindful of the fact that, as Mr Slater points out, Mr Blomfield failed in a significant aspect of his application. He had argued that the articles about the third parties were in their entirety a breach of the undertaking, and I have found that this was not so. This argument took a considerable portion of the hearing time.

[17] In the circumstances I propose reducing the standard scale 2B costs that would otherwise be ordered by 40 per cent.

Result

[18] Mr Slater is fined $1,500 for the publication of the article of 1 December 2013. He is to pay 60 per cent of scale costs, calculated on a 2B basis, together with reasonable disbursements.

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Asher J