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IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY **CIV-2015-404-1845**

UNDER	the Defamation Act 1992
BETWEEN	JORDAN HENRY WILLIAMS
	Plaintiff
AND	COLIN GRAEME CRAIG
	First Defendant

Hearing:	23 September 2016
Counsel:	P A McKnight and A J Romanos for plaintiff S J Mills QC and J Graham for first defendant
Date of Ruling:	30 September 2016

RULING NO. 6 OF KATZ J

Solicitors:	Langford Law, Wellington Chapman Tripp, Auckland
Counsel:	S J Mills QC, Barrister, Auckland P A McKnight, Quayside Chambers, Wellington A Romanos, Barrister, Wellington

[1] Mr McKnight seeks a suppression order in respect of certain passages in a purported Facebook chat exchange between Mr Williams and Mr Slater on 15 March 2012. A redacted version of the document is included in the common bundle of documents. It was released by an anonymous source known as "Rawshark" in 2014 along with a number of other documents which appeared to have been hacked from the Facebook account of Cameron Slater, the editor of the Whaleoil blog.

[2] A second version of the document, which is purportedly the unredacted version of the document, was released on Twitter during the course of the trial. It includes the following additional phrases that were not in the original document released:

> [that girl that I was seeing on and off]

[3] And at the end of the document:

> She'll no doubt want to root me tomorrow I'll have to take one for the team to get the details out of her.

[4] When he was re-called to be cross-examined on the document, Mr Williams raised concerns regarding those passages and said that he would not have written those words about the particular woman referred to in the email. Ultimately, any findings as to the credibility of Mr Williams' evidence about the email, and its authenticity, is of course a matter for the jury.

[5] Mr McKnight seeks a permanent suppression order in respect of the now (purportedly) unredacted passages. The basis for the order is that the most recent version of the document has been publicly released in breach of an interim injunction made by Fogarty J on 8 September 2014. In particular, Fogarty J made an interim order restraining the hacker from committing further wrongs by releasing information which very likely was obtained illegally, further into the community. It does not appear to be in dispute that the unredacted version of the email has been released in breach of that order.

[6] The issue before me is accordingly whether, in light of that fact, I should suppress the content of the document to the extent that it contains additional material which is not included in the original version of the document, which is in the common bundle.

[7] Mr Mills opposed suppression. He submitted that the issues raised by the document are central to the defence. They will likely to be referred to in closing and there is no basis for suppression of the document.

[8] Mr Gay, on behalf of the media who were present in court, submitted that the document relates to an integral part of the case. The relevant passages have been heard by the jury. Full and fair reporting favours the media being able to report on matters that have been dealt with in open court and heard by the jury.

[9] Taking all of these matters into account, I have not been persuaded that a suppression order should be made in respect of the document. I note that the issue raised is similar, in some respects, to an argument that was advanced in opposition to Mr Williams being recalled for further cross-examination in respect of this document. At that stage Mr Romanos submitted that I should take into account that the relevant document was obtained as a result of the hacking of Mr Slater's Facebook messages and should exclude it on policy grounds because the Court should not be seen to be condoning hacking.[1]

[10] I accept that there may be cases (although less likely in civil proceedings) where a suppression order should be made on the basis that evidence has been unfairly or unlawfully obtained. The key factor here, however, is that regardless of the circumstances in which the email was released publicly, I have previously found it to be relevant and admissible in these proceedings, as set out in Ruling No. 5. The document is therefore before the Court. It has been seen by the jury. It goes to key issues in the case, from the defence perspective at least.

[11] The media, as the eyes and ears of the public, have an important role in reporting court proceedings and should be able to do so fully and fairly. Mr Williams is the author of the relevant document (although he disputes the authenticity of parts of it, which is an issue for the jury). This is not an email authored by an unrelated third party and relating to their private affairs. Privacy interests must carry less weight in relation to documents authored by a party to the proceedings. The documents is one of Mr Williams' own documents, in whatever version the jury view to be authentic. As such, the document was once in Mr Williams' power, possession or control. It would have been discoverable in these proceedings, if it had still existed at the time the proceedings were issued. Similarly, if the identity of "Rawshark" was known, a non-party discovery order

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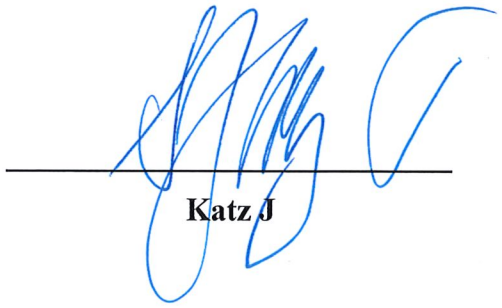
1 I rejected that submission at [33] to [37] of Ruling No. 5. The same reasoning applies here.

could have been sought to obtain the document from him to her. This is not a case where documents have become available that would not otherwise have been discoverable and admissible in the proceeding.

[12] I accordingly decline to grant the suppression order sought.



Katz J