IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV 2017-485-443
[2017] NZHC 3188

BETWEEN	DENISE DRIVER Plaintiff
AND	RADIO NEW ZEALAND LIMITED First Defendant
AND	FAIRFAX NEW ZEALAND LIMITED Second Defendant
AND	TELEVISION NEW ZEALAND LIMITED Third Defendant
AND	NZME PUBLISHING LIMITED Fourth Defendant
AND	MEDIAWORKS HOLDINGS LIMITED Fifth Defendant
AND	ALLIED PRESS LIMITED Sixth Defendant
AND	SUN MEDIA LIMITED Seventh Defendant

Hearing: 25 September 2017

Counsel: P McKnight and J Langford for Plaintiff
R Fowler QC and R Stewart for Defendants

Judgment: 18 December 2017

JUDGMENT OF ELLIS J

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[1] Ms Driver sues the media defendants in defamation. In essence the alleged defamatory statements were first published in December the end of 2014, following her arrest in India. The sting of the alleged defamation relates to statements that her arrest resulted from her involvement in an international Ponzi scheme.

[2] This judgment relates to an early interlocutory skirmish in which the plaintiff seeks extension of the primary limitation period and the defendants seek:

(a) to have some or all of her claims struck out on the ground that they are statute barred; and

(b) substantial security for costs.

Background

[3] Ms Driver was born in New Zealand but has spent much of the past 30 years overseas. In late 2014 she was based in Bangalore, India, promoting a multi-level or network marketing scheme called Smart Media. On 3 December 2014, she attended a meeting in a hotel room with potential Smart Media clients, when she and three Indian associates were arrested by local Police on suspicion of "cheating" (which I understand to be an Indian legal term) and being engaged in an illegal money circulation scheme.

[4] The Bangalore Police subsequently issued a statement to the media regarding these events. Between 7 and 9 December 2014 reports of Ms Driver's arrest were published and broadcast by the defendants in New Zealand. On 8 December, it seems that Ms Driver was told by MFAT staff about the media reports. The subsequent chronology of events (as deposed by Ms Driver) is as follows:

(a) on 15 December Ms Driver was transferred from Police to judicial custody. Two days later she was granted bail, but remained in judicial custody;

(b) on 28 December 2014 RNZ broadcast a follow up report on the events surrounding Ms Driver's arrest;

(c) on 24 January 2015 Ms Driver was released from judicial custody, following a modification to her bail terms which included the surrender of her passport;

(d) on 14 February 2015, Ms Driver contacted a New Zealand defamation lawyer, Mr Stephen Price, about the media reports. The following day he advised her of the two year limitation period for defamation claims;

(e) Ms Driver remained on bail in India for the rest of 2015. In December, she again contacted Mr Price and advised that she intended to sue five New Zealand media organisations, but took no further steps;

(f) in June 2016 Ms Driver conducted her own research about the operation of ss 45-46 of the Limitation Act 2010 (the LA);

(g) in August 2016, she again contacted Mr Price and another New Zealand lawyer (Mr Nilsson) confirming her intention to sue seven New Zealand media organisations. On 14 October 2016 Mr Nilsson reminded Ms driver of the two year limitation period;

(h) in February 2017 Ms Driver was acquitted on the "cheating" charges and on the 17th of that month she received permission to leave India. She arrived back in New Zealand shortly afterwards.

[5] On 25 May 2017, she filed a defamation claim against the first to seventh defendants. The eighth and ninth defendants were joined to the claim on 20 July 2017.

The relevant limitation periods

[6] All of Ms Driver's causes of action are in defamation. The primary limitation period for all claims is two years from the "date of the act or omission on

which the claim is based", namely the "publication" of the allegedly defamatory statement.[1]

[7] All but two of the pleaded causes of action relate to statements originally printed, broadcast or posted on websites between 7 and 9 December 2014. The second cause of action relates to follow up reporting by the first defendant on 28 December 2014. The majority of the "publications" accordingly took place on those dates. The primary limitation period for claims relating to those publications therefore expired between 7 and 28 December 2016. While some of the statements available on various websites may have been downloaded and read at later dates, any such "publication" is likely to be limited (and can be ascertained).

The strike out and related applications

[8] On 28 June 2017, the first to seventh defendants applied to strike out claims relating to publications prior to 25 May 2015, on the grounds that they were clearly statute-barred.

[9] Ms Driver's response was to:

(a) seek orders extending the primary limitation period for all claims in the proceeding until 17 February 2019 under s 45 of the LA on the grounds of "incapacity", which is said to arise from her "detention" in India between 3 December 2014 and 17 February 2017;

(b) file a second amended statement of claim (2ASOC) expressly pleading various late knowledge dates for the purposes of s 14 of the LA in relation to the defendants' publications;

(c) seek orders "granting" those "late knowledge dates".

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1 Limitation Act 2010, ss 11(1) and 15. The concept of publication in the defamation context essentially has two elements: the defendant making the statement available to a third party, and the third party reading and understanding it. Publication is not complete until both have occurred. When and how publication occurs differs depending on the medium used. News items broadcast on television or radio or published in newspapers will generally be "published" by the relevant news outlet on the date of broadcast or distribution. On the other hand, statements posted on websites are "published" each time they are downloaded and read within the relevant jurisdiction.

[10] As a consequence of these further steps, the defendants acknowledge that:

(a) if Ms Driver's application for an extension of the primary limitation period is successful, their strike out application becomes redundant; and

(b) if the extension application is unsuccessful:

(i) the recent addition of late knowledge pleadings in the 2ASOC limits the scope of the strike out application, because whether a plaintiff has late knowledge of a claim is a matter of fact to be proven at trial following discovery and cross-examination (it is not an issue suitable for determination on an interlocutory application); and

(ii) the strike out application nonetheless remains relevant in relation to the six publications in respect of which the plaintiff has pleaded a late knowledge date of 1 February 2015.

[11] The application for security requires determination in any event.

[12] Those propositions form the structure of the remainder of this judgment.

Extension of primary limitation period

Sections 45 and 46 of the LA

[13] Sections 45 and 46 of the LA replaced the former, more limited, power in s 24 of the Limitation Act 1950 to extend a limitation period in the case of "disability". Disability was defined in s 2(2) as meaning infancy (being under the age of 20) or unsoundness of mind.[2] The 17th century extensions for married women, prisoners or those who were "absent beyond the seas" had been removed in the English Limitation Act 1939 and New Zealand followed suit in 1950.

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2 Section 2(3) conclusively presumed unsoundness of mind for anyone who was detained pursuant to the Mental Health Act 1969.

[14] The ambit of the extension was considered by the New Zealand Law Commission in its 1988 report *Limitation Defences in Civil Proceedings*.[3] After reviewing a number of overseas statutes and considering issues around infancy, the Commission said:[4]

> In relation to other forms of incapacity, we have concluded that the 1969 NSW Act provides the most appropriate model in many respects … . More particularly, we recommend that –
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> (a) incapacity extend to any impairment of a person's physical or mental condition, restraint of that person, and to war or warlike operations and conditions; but
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> (b) the claimant must prove that such incapacity resulted in his or her being actually incapable of (or substantially impaired in) managing their affairs in relation to the claim for a continuous period of 28 days or more - if the claimant had someone else managing his or her affairs, this criterion might not be satisfied;
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> (c) where any such periods are proved, the standard limitation period should be correspondingly extended;
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> (d) there be no special provisions providing for a minimum period for commencing proceedings following the end of some disability - the extension ensures three "able" years for such commencement and we are not persuaded that any further complexity or allowance of time can be justified;
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> …

[15] Then, by way of clarification, the Commission said:[5]

> To avoid misunderstanding in relation to incapacity by reason of lawful or unlawful detention, it may be appropriate to indicate that our proposals are not intended to provide an automatic extension of a limitation period for persons in penal institutions. The onus is to be on a claimant that the relevant circumstances actually impeded management of his or her affairs. Ordinarily, where communication with those outside the institution is possible, this would be a difficult onus to discharge; but there might be extraordinary circumstances - perhaps some form of solitary confinement - where the onus would be able to be discharged. When such an issue arises, it will have to be decided as a question of fact by the court.

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3 Law Commission *Limitation Defences in Civil Proceedings* (NZLC R6, 1988).
4 At 258.
5 At 260.

[16] Sections 45 and 46 broadly reflect the Law Commission's recommendations.[6] Thus s 45(1) applies to a plaintiff who "proves" that he or she was either "incapacitated" at the start of the claim's primary period, longstop period or Part 3 period or became "incapacitated" during those periods.[7] The section goes on to provide:

> (2) If this section applies to a claimant, the specified court or tribunal may, if it thinks it just to do so on an application made to it (before or after the end of the period) for the purpose, order that a claim's primary period, longstop period, or Part 3 period is extended to the close of a date stated in the order.
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> (3) In determining whether to make an order under this section, the specified court or tribunal must take into account—
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> (a) whether, while the claimant was incapacitated, a litigation guardian or other authorised representative managed the claimant's affairs with respect to the act or omission on which the claim is based; and
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> (b) any steps taken by the litigation guardian or other authorised representative to manage those affairs; and
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> (c) any effects or likely effects of the delay on—
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> (i) the defendant's ability to defend the claim; and
>
> (ii) the cogency of the evidence offered, or likely to be offered, by the claimant or the defendant; and
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> (d) the defendant's conduct on and after the date of the act or omission on which the claim is based, including the extent to which the defendant responded to requests for information or inspection that were reasonably made by or on behalf of the claimant in order to discover facts that were, or might be, relevant to the claim; and
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> (e) the extent to which prompt and reasonable steps were taken by or on behalf of the claimant to make the claim after the claimant became aware that the claimant was entitled to do so; and
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> (f) any steps taken by or on behalf of the claimant to obtain relevant medical, legal, or other expert advice, and the nature of any relevant expert advice received by or on behalf of the claimant; and
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> (g) any other matters it considers relevant.

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6 The most notable departure relates to the absence from s 45 of a specifically mandated extension period of three "clear" years.

7 The primary limitation period is relevant here.

[17] And the term "incapacitated" is defined in s 46 as meaning:

> ... that a claimant or a personal representative is not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings with respect to the act or omission on which the claim is based, or *is unable to give sufficient instructions* to issue, defend, or compromise proceedings of that kind, because of all or any of the following:
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> (a) temporary or permanent physical intellectual, or mental impairment:
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> (b) lawful or unlawful detention:
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> (c) a situation that is, or circumstances that arise from, war, another similar emergency, or a state of emergency declared under the Civil Defence Emergency Management Act 2002.
>
> (emphasis added.)

Discussion

[18] It is my clear view that Ms Driver cannot be said to have been "incapacitated" during the time she spent in India on bail, for the reasons which follow.

[19] As far as "detention" is concerned, that term is not defined in the LA. It has, however, been considered by New Zealand courts in other contexts, predominantly in cases concerning whether the rights of detained persons to consult a lawyer, and against self-incrimination under s 23 of the New Zealand Bill of Rights Act 1990 (NZBORA) have been engaged.

[20] Central to the concept of detention is real and "substantial interference" or deprivation of liberty "of a nature similar in characteristics to but not equivalent with arrest".[8] This, in turn, requires physical confinement. In other words, a person is "detained" when they are (or are led to believe that they are) prevented from leaving the place where they are being held.[9]

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8 *Police v Smith* [1994] 2 NZLR 306 (CA) at 316 and 317.

9 *Moon v R* [2017] NZCA 56.

[21] In general terms, it is difficult to regard a person released on bail as being in "detention". Usually, the terms are mutually exclusive. By its very nature, bail involves release from detention, strictly so-called. This is made clear (for example) by:

(a) s 24(b) of the New Zealand Bill of Rights Act 1990 (NZBORA) which provides that any person charged with an offence has the right to be released on reasonable terms and conditions "unless there is just cause for *continued detention*" (emphasis added);[10]

(b) s 95 of the Parole Act 2002 which provides that time spent "released from detention on bail" does not count as time served under any sentence, nor does it amount to "pre-sentence detention" as defined in that Act.

[22] Similarly, a person who is released on bail is not regarded as having been substantially deprived of their liberty for the purposes of the common law meaning of detention as set out in *Smith*. That is because his or her access to counsel is by no means impeded or restricted. Nor is the person to whom bail is granted subject to any significant or substantial "physical confinement".

[23] In the present case, however, Ms Driver was on bail in India. India is of course a large country. But she was unable to leave it. She was, in that sense "confined" albeit not substantially so. But in my view the issue is not so much whether Ms Driver's circumstances constituted "detention" in the orthodox sense but whether they caused her to be *unable to give sufficient instructions* to issue proceedings of the present kind. If she was, by virtue of her inability to leave India, in fact unable to "give sufficient instructions" then the Court might be more readily inclined to find that a relevant state of "detention" existed.[11]

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10 Similar wording is found in ss 7 & 8 of the Bail Act 2000.

11 As it happens the absence of a *defendant* "beyond the seas" was, historically, a discrete ground of disability for limitation purposes. But in recommending its abolition in 1936, the Wright Committee noted that "it deals with circumstances which may at one time have created hardship but can rarely produce this result at the present day": Law Revision Committee *5th Interim Report (Statutes of Limitation)* (1936).

[24] As Ms Driver's own account makes clear, however, she was in fact able to contact (two) counsel in New Zealand during the time she was on bail, and to discuss the possible issuing of defamation proceedings with them. She sought and obtained legal advice. While it may be that issuing civil proceedings was not the most pressing thing on her mind, she was plainly entertaining the prospect and, indeed, conducting her own research. There is no suggestion in her evidence that she did not have access to the necessary means of communication, should she choose to use them. And while such communication may have been more difficult than had she been in New Zealand, the words "not capable" and "unable" set a high threshold. The threshold is not met by mere, or even significant, *difficulty* in giving instructions.

[25] Accordingly, I am unable to conclude that Ms Driver was either detained or incapacitated in the relevant sense. No grounds for extending the primary limitation period for her claims under s 45 of the LA have been made out.

Strike out

[26] A cause of action will be struck out on limitation grounds where it is clearly time-barred.[12] This does not involve a positive finding by the Court that a limitation defence has been established as a matter of fact. Rather, it is an exercise of the Court's jurisdiction to strike out claims that are frivolous, vexatious, or otherwise an abuse of process.[13] And because I have held that there should be no extension of the limitation period on the grounds of incapacity, the strike out application remains live.

[27] Under ss 11, 14 and 15 of the LA, it is a defence to a claim for damages in defamation if a defendant proves that the claim was filed at least two years after any relevant late knowledge date. As noted earlier, the recent addition of a late knowledge pleading limits the scope of the strike out on this basis, because whether a plaintiff has late knowledge of a claim is a matter of fact to be proven at trial.

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12 Limitation defences must generally be pleaded and proven to be effective. Here I proceed on the basis that the defendants have made their intention to plead limitation defences clear in this proceeding. A draft statement including the defence was annexed to the synopsis filed in support of their security for costs application discussed later in this judgment.

13 *Murray v Morel & Co Ltd* [2007] NZSC 27, [2007] 3 NZLR 721 (SC).

[28] That said, however, even the pleaded late knowledge date does not save some of the impugned publications. For convenience, the defendants have termed these the "Google 6". Essentially, they are publications discovered by Ms Driver as a result of a Google search conducted between 26 January 2015 and 14 February 2015 for which a later knowledge date of 1 February 2015 is sought. In particular, Ms Driver now alleges that she became aware of six of the impugned articles on or about 1 February 2015. Those articles are:

(a) **RNZ Article 1** published by the first defendant;

(b) **Stuff Article** published by the second defendant;

(c) **TVNZ Website video and article publication** by the third defendant;

(d) **Herald Website Article 1** published by the fourth defendant;

(e) **Herald Website Article 2** published by the fourth defendant; and

(f) **Newshub Website Article** published by the fifth defendant.

[29] Given that the pleaded late knowledge date for the articles is 1 February 2015, any late knowledge period relating to "publication" of the articles either on or before that date expired on 1 February 2017. To avoid being time-barred, any proceeding in relation to those publications had to be filed before 2 February 2017. It was not. The plaintiff filed this proceeding on 25 May 2017, almost four months after the expiry of the alleged late knowledge date.

[30] Accordingly, I agree with the defendants that all claims relating to downloads of the Google 6 articles before 25 May 2015, being two years prior to the commencement of the proceeding, are clearly statute barred. The precise terms of the relevant orders to which that gives rise will be set out at the end of this judgment.

Security for costs

[31] Each of the nine defendants seek security for costs in the sum of $50,000 (ie a total of $450,000) and a direction that the proceeding be stayed until security is given.[14]

[32] Rule 5.45(1) sets a threshold test which is satisfied if (inter alia) "there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful". If the threshold is met, then pursuant to sub-clause (2), the Judge may order the giving of security for costs "if the Judge thinks it just in all the circumstances".

[33] In the present case, Ms Driver has chosen to concede, without filing any evidence as to her financial position, that she would be unable to pay the defendants' costs.[15] But she submits that the Court should exercise its discretion not to order security. She says the sum sought would prevent her from pursuing her claim; she has a strong claim; and the litigation is not overly complicated. She submits that even a smaller sum, for example $10,000 per defendant, would seriously impede her ability to prosecute her claims.

Discussion

[34] The likely costs award in the event of the defendants' success has been conservatively calculated on a 2B basis at $74,036 per defendant.[16]

[35] In determining whether security should be ordered, balancing the interest of the plaintiff and defendant is the overriding consideration:[17]

> [15] The rule itself contemplates an order for security where the plaintiff will be unable to meet an adverse award of costs. That must be taken as contemplating also that an order for substantial security may, in effect, prevent the plaintiff from pursuing the claim. An order having

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14 The eighth and ninth defendants are not required to file defences until the limitation issues are determined. They both seek security in the event that the proceedings against them continue.

15 Her position is consistent with the basis for the security application, namely that, to the defendants' knowledge, she has no discernible employment, her residence in New Zealand is unclear and she has no assets in New Zealand.

16 This includes only one case management conference, one additional interlocutory application, and an anticipated trial length of two weeks. It does not include the present applications.

17 *A S McLachlan Ltd v MEL Network Ltd* (2002) 16 PRNZ 747 (CA).

> that effect should be made only after careful consideration and in a case in which the claim has little chance of success. Access to the courts for a genuine plaintiff is not lightly to be denied.
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> [16] Of course, the interests of defendants must also be weighed. They must be protected against being drawn into unjustified litigation, particularly where it is over-complicated and unnecessarily protracted.

[36] I address the usual relevant considerations below.

Merits of the claim

[37] It is necessarily difficulty to assess the merits in any meaningful way at this early stage. Unsurprisingly, Ms Driver has deposed that she is advised that she has a strong case, although she has not disclosed the specifics of that advice.

[38] But similarly, the defendants consider they have strong defences.

[39] First, they deny that the words complained of carry or are capable of carrying the tier one meanings pleaded. Almost all of the publications sued upon report on the fact of the Ms Driver's arrest, and the ongoing nature of the Indian investigations. The defendants say they do not, and cannot, impute actual guilt.

[40] Secondly the defendants plead truth to the tier two meanings and the publications as a whole. Expert evidence filed by the defendants suggests that, on the basis of the documents so far available, the scheme Ms Driver was promoting "appears to be a 'money circulation scheme' or can at least, be reasonably suspected to be a money circulation scheme" of the kind prohibited by Indian law.

[41] Thirdly, they rely on statutory qualified privilege on the basis that the majority of the publications constituted fair and accurate reporting of:

(a) the proceedings of a court outside New Zealand for the purposes of cl 2 of Part 2 of Schedule 1 to the Defamation Act 1992, to the extent that they reported on Ms Driver being remanded in custody, which occurred by order of a Magistrate;

(b) a statement or statements issued for the information of the public by a or on behalf of a local government department, being a local Police force, for the purposes of cl 15 of Part 2 of Sch 1 to the Defamation Act.

[42] And fourthly there are the limitation defences. These have been addressed earlier. The pleaded late knowledge dates will require proof at trial.

[43] On the basis of the information thus far before the Court, all of the defences raised appear to me to be arguable.

Have the actions of the defendants caused the plaintiff's impecuniosity?

[44] If the defendants' actions are an obvious cause of a plaintiff's impecuniosity then that will weigh against an order for security. This consideration involves a consideration of linkage, rather than any further examination of the merits. Here, Ms Driver says that the impugned publications have "substantially contributed" to her in ability to find meaningful employment; and her relationships with financial institutions. She deposed that

> … it would be an absolute waste of time for me to seek any sort of work with notoriety.

[45] The defendants are critical of this statement because (they say) it suggests that Ms Driver has not made any meaningful effort to try and secure employment. There is certainly no evidence that she has tried to do so or from any potential employer that it would not employ her because of the publicity in New Zealand about her problems in India.

[46] Ms Driver has also stated that her ANZ bank account (opened shortly before she travelled to India in 2014) had been closed by the bank by the time she returned to New Zealand because the bank had "been led to believe by, by the Indian police, [she] had 'been involved in an illegal scheme'; and that, if [she] wished to reactivate the account, [the Bank] would need the advice of the bank's legal officer." But even assuming that this belief was based on reports by one or more of the defendants of what the Indian police said, Ms Driver has not claimed she can still not access her

account. As a matter of logic, access would presumably be permitted once she had advised them that she had been acquitted on the charges. The fact that Ms Driver chose not to disclose any detail of her current financial position (including what funds that account may or may not contain) must count against her here.

Delay

[47] It is not disputed that the defendants' application was made at the first reasonable opportunity. Delay is therefore not a factor requiring consideration.

Other matters

[48] Additional considerations of a more general nature, such as the conduct of the parties and whether the litigation has public interest overtones, can be relevant to the balancing exercise. In that regard:

(a) I accept the defendants' submission that it is of some relevance that soon as Ms Driver's solicitor wrote to (some of the) defendants outlining her concerns about their publications those entities immediately offered her an opportunity to tell her side of the story;

(b) I acknowledge the converse point made by Ms Driver, namely that while the defendants have taken down the relevant publications they have not apologised to her or formally retracted the statements. But in light of the proposed defence of truth and the fact that failure to apologise is principally a matter going to damages I do not consider that it weighs heavily in the context of security;

(c) I also acknowledge Ms Driver's stated intention to proceed to a trial as soon as possible but consider that it must inevitably be tempered by the following points:

(i) the claim involves nine independent media defendants, numerous causes of action and multiple publications;

(ii) affirmative defences are being raised and Ms Driver has already indicated her intention to seek to strike out any pleaded qualified privilege defence;

(iii) there may well be further interlocutory matters including in relation to particulars and discovery;

(iv) Ms Driver has not yet indicated whether she wishes to have her claim tried before a judge and jury;

(v) the trial is likely to take at least two weeks and a trial before 2019 would appear highly unlikely.

[49] Ms Driver also submitted that there was a wider public interest in the issues raised by the proceedings and that this militates against an order for security. In particular, she referred to issues about:

(a) the right of media to report statements made by a foreign police force and in foreign media publications; and

(b) the multiple publication rule and publishers' liability for non-party publications and re-publications.

[50] Again, however, I am inclined to agree with the defendants that it is unclear what is truly "novel" about those matters. The first is simply subject to a defence of statutory qualified privilege and/or neutral reportage. I was advised that the second is already the subject of other litigation before the High Court, and will likely be decided in the context of that proceeding.

[51] On balance, I consider that the matters I have discussed favour an order for security.

[52] Notwithstanding that conclusion, however, I accept that the order should not, if possible, impose a burden that is stifling. I also accept that if security in the $450,000 amount sought by the defendants were ordered that would indeed be its

effect. I therefore propose to ameliorate that as best I can by ordering the staggered payment of a lesser (but still meaningful) global amount. I do not propose to make specific orders in relation to each defendant at this stage, although I take into account that there are nine of them.

[53] Accordingly, I order that Ms Driver is to pay security for costs as follows:

(a) $20,000 within 10 working days of receipt of this judgment;

(b) $20,000 within 10 working days of service of the plaintiff's affidavit of documents;

(c) $20,000 within 10 working days of service of the plaintiff's briefs of evidence; and

(d) $40,000 10 working days before commencement of trial.

[54] If the sums are not paid by the relevant dates above, the proceeding will be stayed pending further order of the Court.

Result

[55] For the reasons I have given:

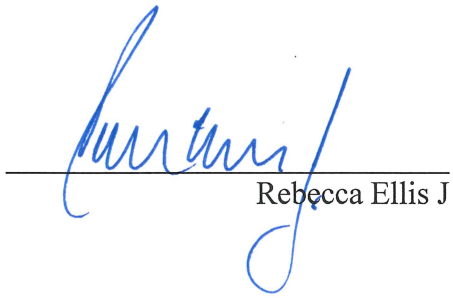
(a) the application for orders extending the primary limitation period for all claims in the proceeding until 17 February 2019 under s 45 of the LA is declined;

(b) the strike out application is dismissed except insofar as it relates to any cause of action arising from publication of the "Google 6" on or before 25 May 2015;

(c) the statement of claim is to be amended within 20 working days of the date of this judgment to remove all references to those publications on or before that date;

(d) Ms Driver is to pay security for costs in accordance with [53] above.

[56] It seems to me that the defendants are entitled to their 2B costs in relation to the present applications. I trust they can be agreed.



Rebecca Ellis J