IN THE HIGH COURT OF NEW ZEALAND A. No. 48/84

AUCKLAND REGISTRY

BETWEEN C

Plaintiff

AND

Second Plaintiff

AND HIS HONOUR DISTRICT COURT JUDGE AVINASH DEOBHAKTA

First Defendant

AND THE DEPARTMENT OF INTERNAL AFFAIRS

Second Defendant

PLAINTIFFS' NAMES NOT TO BE PUBLISHED

Hearing: 9 February 1984

Counsel: Mr W. Akel for Plaintiff
Mr Wyeth for Crown

Judgment: 9 February 1984.

(ORAL) JUDGMENT OF HILLYER J.

This is a motion for review of a decision of His Honour District Court Judge Avinash Deobhakta.

The plaintiffs have been charged with a number of offences under The Freshwater Fisheries Regulations, Fisheries Act, and Wildlife Act. The second defendant, the Department of Internal Affairs is the informant in those charges.

On 31 January 1984 the plaintiffs appeared in the Auckland District Court and pleas of not guilty were entered to all of the charges. Charges were adjourned for a defended

hearing on 14 May 1984. Following the taking of the pleas, the plaintiffs sought an order for suppression of name pursuant to S.46(1) of the Criminal Justice Act 1954. That application was refused by the learned District Court Judge. He did however make an order for interim suppression of the name until 10 am on Friday 3 February 1984.

On 2 February 1984 the matter came before me on the motion for review, and I then inquired whether a note had been taken of the comments made by the learned Judge at the time he refused the order sought. I was advised that there was some doubt as to whether there had been a note made of the remarks made by the Judge, but that inquiries would be made, and that if necessary the Crown and the plaintiffs would consent to a memorandum prepared by the District Court Judge being put before me. In those circumstances I granted a further suppression of name to continue until 10 February.

The matter has come before me again this morning with a memorandum from the Judge, setting out his reasons for refusing the Order sought. I am conscious of the fact that the Judge has exercised a discretion and of the principles referred to in Fitzgerald v Beattie 1976 1 NZLR.268 at 265, that such a discretion should be interfered with only if the Judge has acted on the wrong principles or given undue weight to any particular factor, or insufficient weight to another factor.

I note that under S.115(1) of the Summary Proceedings Act a right of appeal will lie only where there has been a determination of an information or complaint, and clearly in this case there has as yet been no determination of the informations that have been laid. I am advised, however, by counsel for the plaintiff that there is authority for seeking by way of review of the Judge's decision, an

order for interim suppression pending the determination of the informations, and Mr Wyeth for the Crown accepts that that is the situation, although I have not been provided with the authority by counsel.

I proceed therefore to consider the motion for review applying to it the principles that would normally be applied to an appeal from the exercise of a discretion. I note that in the case of The Police v S. 1977 1NZLR.1 the Court of Appeal indicated that it was important in the public interest that the then Supreme Court should have a supervisory control over the important discretion conferred by section 46(1) of the Criminal Justice Act, that control of course being limited by the principle governing appeals from the exercise of a discretion conferred on a Court in the first instance. It is for that reason that I apply that same principle to the determination of this motion for a review.

There has not been put before me in support of the motion, any affidavit evidence in support of the factual matters alleged in the statement of claim that has been filed, but again helpfully Mr Wyeth for the Crown accepts the facts that have been put before me from the bar by Mr Akel on behalf of the plaintiffs, and I am therefore able to consider the matter on the basis of those facts.

Briefly, the allegations made by Mr Akel on behalf of the plaintiffs were that the plaintiffs have a substantial reputation in their business as a food distributor to restaurants, takeaway bars, hotels and other catering outlets, and that damage would be done by the publication of their names. He also produced to me newspaper clippings which indicate that there is a multi-million dollar poaching industry operating in New Zealand, and that there is to be an "international crackdown on illegal trafficking in New Zealand's endangered species and trout."

It was suggested that the harm that would be done to the plaintiffs in the light of the newspaper publicity, and in the light of TV publicity of a similar nature that has taken place, would be substantial, even if in the end result the plaintiffs were acquitted of the charges brought against them. It is this aspect of the matter which Mr Akel suggests was insufficiently considered by the learned judge.

I have considered carefully the memorandum prepared by the Judge and the submissions that have been made by Mr Wyeth for the Crown. Mr Wyeth submits that the learned Judge did consider the matters that were involved, and that no wrong principle or undue weight or insufficient weight had been demonstrated. He submitted that the decision, being a decision in the exercise of the learned Judge's discretion, should be left undisturbed.

I am conscious of the fact that I am differing from the decision of an experienced District Court Judge, but I am unable to accept the Judge's comment that "any undue publicity [the charges] might gain would be remedied in any case in the event of the charges being dismissed." I think there is force in Mr Akel's submission that damage would be done between the present time and 14 May when the hearing will take place, and that that damage would not be undone if it were to be that the plaintiffs were acquitted of the charges against them. The common experience of counsel involved in eg defamation suits, is an indication of the fact that once a harmful remark has been made about a person, that it is not possible to undo the harm that has thereby been caused.

Not everybody who saw the reports about the charges that were laid against the plaintiffs, would necessarily see the fact that the plaintiffs had been acquitted, and

further in the meantime harm may have been done which could not be remedied in the nature of damage to the plaintiff's business.

This is not in my view, nor did it so appear apparently to the learned Judge, a case in which it is necessary for the protection of other members of the public, to publish the names of the persons charged with offences. That is in some circumstances a situation which will weigh heavily when a question of suppression of a name is being considered, but it does not seem to me that such a factor need influence the decision that I have to make.

I therefore grant the order sought, quashing the decision of the first defendant refusing interim suppression of the name, and remitting the matter back to the first defendant with a declaration that this is an appropriate case for the granting of an interim suppression of name.

In all the circumstances I do not allow costs in the matter, and I order that pending the granting of interim suppression of name, no publication of the name be made. The Order for interim suppression will be until the charges before the District Court have been heard and determined.

P.G. Hillyer J.

Solicitors:

Simpson Grierson for plaintiff
Crown Law Office for defendants.