

149

Ⓟ

FWT +

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

A. 773/84

**Special
Consideration**

1136

new

BETWEEN COLIN ROSS BLAIR of
Auckland, Harbourmaster

Applicant

AND GARY MOULTON of the
yacht "Phoenix". Little
Shoal Bay, Auckland,
Occupation unknown

Respondent

Hearing: 16th August, 1984

Counsel: Chapman for Applicant
No appearance for Respondent

Judgment: 20 AUG 1984

JUDGMENT OF SINCLAIR, J.

The Applicant seeks a writ of injunction against the Respondent restraining him from living on board the yacht "Phoenix" while the said yacht is berthed, moored or anchored within the limits of the Auckland Harbour inside a straight line joining the easternmost point of North Head and the northernmost point of Musick Point for any period of more than 48 consecutive hours unless the Respondent has been granted written permission by the Harbour Master so to do for a specified period in a specified area of the harbour.

The Respondent in this case has for some years waged a running battle with the Auckland Harbour Board in relation to his living on board yachts in the Auckland harbour. He has defied all authority and prosecutions against him which have resulted in his being convicted have not brought about any change in his attitude. Indeed, Moulton goes further and

gives interviews to the news media wherein he makes it quite plain that he has no intention of conforming with the By-laws of the Auckland Harbour Board.

The By-law in question is No. 66(1) and it provides as follows:

"66.(1) No person shall live on board any pleasure boat berthed, moored or anchored within the Auckland Harbour limits inside a straight line joining the easternmost point of North Head and the northernmost point of Musick Point for any period of more than 48 consecutive hours unless such person has been granted written permission by the Harbourmaster so to do for a specified period in a specified area of the harbour. Application for such permission shall be made to the Harbourmaster on a form approved by the Board and in determining whether to grant permission the Harbourmaster shall give consideration to matters of public health, safety, convenience to port and other such other matters pertaining to the due and proper administration of the Auckland Harbour waters pursuant to the Harbours Act 1950 and the Auckland Harbour Board By-laws."

The evidence shows, as I have earlier indicated, that for some years Moulton has lived on a yacht at various places within the confines of the Auckland Harbour designated in By-law 66(1) and has twice been convicted of a breach of that By-law, once in respect of an offence in 1979 while a second was in respect of an offence which occurred in October, 1982.

In support of the present application a number of affidavits were filed, all of which show that Moulton has continued to defy the law by living on board the vessel "Phoenix" within the confines of the Auckland Harbour more or less as and when it pleased him. Mr Haynes kept the yacht under observation at Little Shoal Bay in March and April, 1984

and of significance is that on the 4th April, 1984 Moulton was seen to be on the deck of the "Phoenix" at 4.15 that day and until 10 a.m. on Sunday 8th April, 1984 he was observed living on board the vessel for a total of 65 3/4 hours, during which time he also made visits ashore. Various other references are made to the Respondent and others being seen upon the vessel which was moored in Little Shoal Bay by means of a mooring chain attached to a tyre firmly sunk in the sea bed.

Moulton was observed to deposit rubbish bags in a public receptacle on the shore and an examination of it by Mr Haynes showed that the rubbish bag contained normal household and kitchen rubbish, food scraps, empty food tins, containers and the like.

Mr Hovelmeier went on board the vessel on the 2nd December, 1983 and advised Moulton of complaints which had been received from local residents concerned at the continued presence of the "Phoenix" at that time in Cox's Bay. In a conversation with Moulton Mr Hovelmeier states that Moulton admitted that sewage was discharged into the bay, but considered that such discharge was of lesser danger than discharge from nuclear vessels.

On the 16th February, 1984 he, Mr Hovelmeier, observed the "Phoenix" lying at anchor in Little Shoal Bay with several items of clothing and a towel hanging from the rigging as if they had been washed and hung out to dry.

No affidavits were filed in opposition and no submissions were made on behalf of Moulton.

In a case such as this there is ample authority for the

Court to issue an injunction and particularly where the party seeking the injunction has earlier prosecuted the offender and where the offender continues to commit the offence notwithstanding conviction. In Hammersmith L.H.C. v. Magnum Automotive Forecourts Ltd (1973) 1 W.L.R. at page 55, Lord Denning M.R. said:

"The High Court has inherent power to secure by injunction obedience to the law by everyone in the land - whenever a person with sufficient interest brings the case before the Court."

A similar case is that of Stafford Borough Council v. Elkenford Limited (1977) 1 W.L.R. 324 which concerned illegal Sunday trading by the defendant company which had been prosecuted for an offence in respect of such trading and that prosecution resulted in a conviction. The Council sought an injunction from the High Court to restrain the company from breaches of the Shops Act. Oliver, J. granted the injunction stating in the course of his decision:

"I entertain no doubt whatever that the provisions of the Act have been, are being and will, unless I grant an injunction, continue to be deliberately and flagrantly flouted and I propose, therefore, to grant to the local authority the relief which it seeks on this motion."

Those words are particularly applicable to the present case, but the matter went on appeal and Lord Denning in the Weekly Law Reports at page 329 said:

"When there is a plain breach of the Statute I do not think that the authorities concerned, the County Councils, need wait at all for finality anywhere. They can take proceedings in the High Court before any other proceedings are even started. It is open to the Court in its discretion to grant an injunction straight away, at all events when the breach of the law is plain and where there appears to be an intention by the defendants to continue with the breach."

Probably the leading case in this field is Attorney-General v. Chaudry (1971)1 W.L.R. 1614. At page 1624 Lord Denning, M.R. said:

"Whenever Parliament has enacted a law and given a particular remedy for the breach of it, such remedy being in an inferior Court, nevertheless the High Court always has reserved power to enforce the law so enacted by way of an injunction or declaration or other suitable remedy. The High Court has jurisdiction to ensure obedience to the law whenever it is just and convenient so to do."

At page 1624 he went on to say:

"There are many statutes which provide penalties for breach of them - penalties which are enforceable by means of a fine - or even imprisonment - but this has never stood in the way of the High Court granting an injunction. Many a time people have found it profitable to pay a fine and go on breaking the law. In all such cases the High Court has been ready to grant an injunction. As Sellers L.J. said in Attorney-General v. Harris (1961)1 Q.B. 74, 86: 'It cannot, in my opinion, be anything other than a public detriment for the law to be defied, week by week, and the offender to find it profitable to pay the fine and continue to flout the law.' "

Those statements are particularly appropriate to that which has occurred in the instant case save for the comment that Moulton has not paid the fines which were imposed. In other words he continues to defy the law week by week and refuses to acknowledge the existence of a legal provision which he is content to flout by totally ignoring it.

It is little wonder that the Harbour Board has received numerous complaints which are exhibited to the affidavits at the Respondent's continued presence within the Harbour limits, particularly when he has made no provision for the discharge of sewage from the vessel and discharges it straight into the sea. If ever there was a case which required the

Court's intervention by way of injunction this is it and accordingly there will be an injunction in the terms sought by the Applicant. If Moulton continues to act in defiance of the law then there are adequate ways of dealing with him and no doubt that is precisely what the Harbour Board will do if there is any infringement of the injunction which I have just granted.

The Applicant sought costs and to my mind it is entitled to an order. There is no reason at all why the Respondent should expect the ratepayers of Auckland to pay the total costs of his flagrantly breaching the law. The Applicant is entitled to costs in the sum of \$1,250 plus any necessary disbursements.

P. R. King

SOLICITORS:

Russell McVeagh McKenzie Bartleet & Co., Auckland for Applicant

No appearance for Respondent