

27/4

NZLR

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

AP 201/89

**NOT
RECOMMENDED**

1833

BETWEEN

JONES

Appellant

AND

THE POLICE

Respondent

Hearing &
Judgment

6 November 1989

Counsel

J. Geoghegan for Appellant
C. Gudsell for Respondent

ORAL JUDGMENT OF ANDERSON J.

This is an appeal against a decision by a District Court Judge to decline to make an order prohibiting publication of the name and particulars of the appellant who has been remanded for a deposition hearing in the District Court at Hamilton on a charge of theft.

The particulars alleged against Mr Jones are that he received the sum of \$59,377.50. on terms requiring him to account for the same and fraudulently converted part of the same to his own use thereby committing theft. An affidavit was filed by the appellant in support of an application to this Court, which application was superseded by alternative procedures, but the affidavit in respect of which is being read in conjunction with the present appeal. The affidavit deposes that the appellant is the director of a small private company involved in debt collection,

repossession and process serving. This business has fallen on bad times following a motor accident to the appellant whose personal fortunes have diminished to the stage of mortgagees sales and petitions for bankruptcy. The bankruptcy petitions have been compromised but the appellant is still in serious financial difficulties. He hopes to sustain the business now operated by his wife to the point where it can be sold. He apprehends that the publication of his name will depress the value of the business, as indeed it would because the goodwill of the business is inextricable from the reputation in the community of its major personal elements.

The learned District Court Judge noted that without in any way judging the validity or otherwise of the allegations made against the appellant, nevertheless the public was entitled to know that the appellant was suspected of offending in relation to monies entrusted to him in the particular business. I take from the sentencing notes the acceptance that the value of the business was dependent upon the goodwill of the appellant, that the goodwill was significantly affected by his reputation in the community irrespective of whether or whether it were not deserved and that the reputation in the community was a matter of which the potential buyers of the business in the community were entitled to know about. Such an approach does not prejudice the validity of the allegations but leave unconcealed matters highly relevant to the value of the business in

terms of personal reputation. I think it quite inappropriate that this Court should artificially affect the value of the goodwill by making an order prohibiting publication and the appeal fails.

N. Anderson J