NZLR

NOT RECOMMENDED

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

2/10

CP 1701/90

1797

BETWEEN EVEREADY NEW ZEALAND LIMITED a duly incorporated company having its registered office at Auckland and carrying on business inter alia as a distributor of home safety products

First Plaintiff

AND HOME & SAFETY NZ LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as a distributor of home safety products

Second Plaintiff

AND TV3 NETWORK LIMITED (In Receivership) a duly incorporated company having its registered office at Auckland and carrying on business as a television broadcaster

First Defendant

AND TV3 NETWORK SERVICES LIMITED a duly incorporated company having its registered office at Auckland and carrying on business as a television broadcaster

Second Defendant

A N D MARTIN HENDRICKSON of Auckland, Occupation Unknown

Third Defendant

A N D ANTHONY ATKINSON of Auckland, Medical Practitioner

Fourth Defendant

A N D PETER WILLS of Auckland, Bio Physicist

Fifth Defendant

Hearing: 14 August 1992

Counsel: W A Smith for Plaintiffs
J G Miles QC and T J G Allan for First and Second Defendants
No appearance for Third, Fourth and Fifth Defendants

Judgment: 14 August 1992

ORAL JUDGMENT OF ROBERTSON J

On 14 July 1992 in a reserved judgment in respect of an application to review part of a Master's decision I reinstated a prayer in the amended statement of claim which had been struck out by the Master. There is now an application by the first and second defendants in reliance on r 61C(6) of the High Court Rules and r 27(1) of the Court of Appeal Rules for leave to appeal to the Court of Appeal.

The plaintiffs' claim against the defendants is for $1.5 million in special damages and $2.5 million in general damages in respect of a programme which was transmitted on TV3 and alleged to be defamatory.

The short point (in that part of the review which was the subject of my reserved decision and which is alive before the Court today) is whether a Court having found defamation established may, as all or part of the remedy to be provided to a plaintiff, order a person or an entity such as the first and second defendants, to transmit material correcting the erroneous information originally published. The learned Master found that there was no jurisdiction and accordingly struck out. I was not persuaded that the jurisdiction could not exist and reinstated the prayer.

There is no question in this case that a significant factor motivating the defendants is that without that prayer for relief the defendants will have a right to trial by jury. If that remedy is included it will be necessary for a party (in this case it in reality will be the defendant) to establish that the case can more conveniently be tried before a Judge and jury. Mr Smith properly says the present application should not be used to achieve a side wind. He submits the defendants should face the issue under the proper section and see if they can persuade a Court to allow trial by jury in any event. Inasmuch as the particular case and that aspect of it is concerned there is strength in that submission.

Notwithstanding, I am satisfied that there is still a fundamental and important question of policy and law. Counsel agree that the standard to be applied in determining whether to grant leave to appeal in a situation such as this is reviewed by Barker J in ***Green v Commission of Inland Revenue*** 3

PRNZ 628, where His Honour applied principles which had been re-enunciated in ***Cuff v Broadlands Finance Ltd*** [1987] 2 NZLR 343, and have a genesis which goes back at least as far as the decision of Salmond J in ***Rutherfurd v Waite*** [1923] GLR 34.

I must be satisfied that there is a question which is capable of bona fide and serious argument involving both a public and private interest of sufficient importance to justify the delay which an appeal will occasion. On the point of delay I should indicate that in my judgment there need not be a substantial or significant delay. There are unresolved interlocutory matters. Mr Smith does not see their disposition taking as long as Mr Miles, but the matter is certainly not as at today ready to be set down. Where there is determination and proper co-operation there is no reason why the resolution of a short and confined point by the Court of Appeal need be a lengthy process.

As far as the other aspects of the matter are concerned, it seems to me that there is at the heart of the application an important jurisdictional question. What remedies are properly and appropriately available in the Courts to deal with an established wrong in the field of defamation.

When the matter was argued before me substantial emphasis was placed on the reluctance of the Court to interfere by way of prior restraint. Issues of freedom of speech, public accountability, robust challenge and exposure were addressed. In my judgment once a defamation has been established the reasons for caution and reserve are less compelling.

I am persuaded that it is essential in this case (and one suspects in others) that litigants know the metes and bounds of the remedial

framework. Mr Smith has argued, as is consistent with the caution in the interlocutory area, that the issue (which he does not deny is important) should be postponed for consideration once all the facts are in. It does not appear on the basis the case was argued in this Court that further facts are necessary to decide the point of principle. I certainly have not held that if a defamation was established it would be appropriate or just, or even likely, that this particular form of relief would be granted. I held that it being ordered could not be excluded. Whether I be right or wrong is in my judgment an important question in respect of which this case, and the general body of the law, would be enhanced by having a definitive answer.

Accordingly, notwithstanding the fact that it is an interlocutory matter (and the occasions upon which leave will therefore be granted in that category are limited) I am satisfied that this is a case where leave is justified.

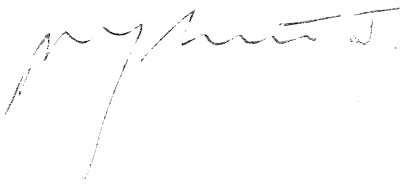
Leave accordingly is granted upon the following conditions :

The appeal is to be filed within 7 days of today and security dealt with forthwith.

The case is to be filed within 21 days. Thereafter it is to be set down for a hearing forthwith, the defendants having an obligation to use all endeavours to obtain the earliest possible fixture in respect of the matter in the Court of Appeal.

I make no order as to costs on this matter. Although the defendant has obtained the relief which it seeks it is a matter in respect of which costs

should simply fall where they lie. The question need not be added to what I imagine is a mounting list of reserved costs in a variety of applications on this file.



Solicitors

Chapman Tripp Sheffield Young, Auckland for Plaintiffs
Grove Darlow Auckland, for First and Second Defendants