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LOW PRIORITY

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

15/1 C.P. NO. 1091/91

BETWEEN FAY RICHWHITE & CO. LIMITED & ORS

Plaintiffs

A N D EXAMINER NEWSPAPERS LIMITED

First Defendant

A N D F.A. O'SULLIVAN

Second Defendant

2690

Hearing: December 1, 1992 (In Chambers)

Counsel: Mr. K.G. Catran for Plaintiffs
Mr. P.W.G. Ahern for Defendants

Judgment: 23 DEC 1992

JUDGMENT OF MASTER ANNE GAMBRILL

This is an application by the Defendants fhat the Plaintiffs:

(a) Particularise the alleged meanings of the words referred to in paragraphs 8 and 12 of the Statement of Claim;

(b) Particularise and identify the words the Plaintiffs allege to be defamatory exclusive of those words the Plaintiffs allege to be contextual or from which the words complained of take their meaning;
(c) Particularise and identify the words not alleged to be defamatory of the Plaintiffs but from which it is alleged the meaning of the defamatory words are to be taken;
(d) Particularise the claim for special damages.

The Defendants accept that it will be necessary for the Plaintiffs to file further particulars relating to the special damages and there seems to be no dispute herein.

Meanings

Although the Defendants wish to know whether other meanings are applicable to the words, the Plaintiffs say and accept they must rely on the meanings of the words specifically all now included in the Statement of Claim.

The circumstances relating to the application are that over two weeks, two lengthy pages of articles were published in the "Examiner". The Plaintiffs submit that over a third of the words are repetitive and because of the nature of the articles it is submitted the articles themselves written by the Defendant's journalist it has caused the complications and the difficulties in pleadings. The Plaintiffs have prepared a lengthy Statement of Claim, it has identified that all the words that come into play to support the allegations of defamation and it has annexed all these words as identified from the article in a schedule to the pleadings. The Plaintiffs recognize they are not entitled to sue on the whole article. They are required to specify the words relied

on for the defamatory meanings and these words have been set out in schedule to the Statement of Claim.

Counsel for the Defendants addressed me as to the distinction that the words were defamatory and the fact that some are related to the context only. The Defendants say that the Plaintiffs have not identified the defamatory passages in contrast with the contextual words so that the words from which the defamatory words take their meaning are identified. He relies on Gatley, paragraph 1069 where it is stated:

> ".....if the meaning of the passages needs clarification from the context.....the plaintiff should specifiy those other passages which, as he contends, are the context from which the natural and ordinary meaning is derived."

Counsel referred me to DDSA v. Times Newspapers [1972] 2 All ER, 417 at 419:

> "You must pick out the particular bits and rely on the rest as extrinsic or surrounding facts giving a defamatory meaning to the words."

The Defendants say the Plaintiffs must specify the particular passages alleged to be defamatory and identify the other passages in which those words take their meaning. The Defendants say the words cannot be given and identified as defamatory without reference to the alleged meanings which in turn qualify the passages again. The Defendants say the Plaintiffs have failed in their obligation not only to identify the defamatory words but where those words take their meaning from other words and identify the

other words. The Plaintiffs must not run the two together without distinction. The Defendants say they cannot plead because there is not identification of which words are said to be defamatory and which words are the words that give meaning to those defamatory words. The Defendants say this is a classic case for the pleading of a true innuendo.

The Defendants took me through the pleadings and identified 22 different meanings which they say could arise from the articles. They say they all carry a common thread, namely a sale by the Plaintiffs of the shares in the BNZ to the National Provident Fund when the Plaintiffs were aware of the BNZ's problems. Subseqeuent portions of the articles carry a common thread that in matter pertaining to the merger of Fay Richwhite & Co. Ltd., with Captial Markets Ltd., the Directors were aware of the BNZ's problems. The Defendants say that the distinct meanings are what should be pleaded and a reasonable test of distinctness should be whether justification would be substantially different.

The Plaintiffs say that the Defendants' application is incorrect because it refers to the Defendants' belief that some of the words are defamatory while some relate to context only. The Plaintiffs say defamatory words arise often by way of inference when all the words relied on to what particular meaning are read together. Clearly the Plaintiffs cannot refer to the whole article but must specify the words relied on. The Plaintiffs have done this and done it meticulously and carefully. This is why there is such a quantity of numbering in the file of papers. The Plaintiffs say it is not a question of context but the words give rise to the meanings when read together. With that view I agree. The Plaintiffs say that the application has come before the Court because the Plaintiffs have required the Defendants

to stipulate the words complained of the Defendants say they are fact and the words which they say are comments. By R.189 of the High Court Rules this notice should be complied with. I am satisfied the Plaintiffs have been very specific in their pleadings. They have met their obligations as to specificity and I accept the submission the Defendants must now do the same. If this is a complex or lengthy task, that task arose because of the articles and the form in which they were written.

Having read the pleadings and the material before the Court, I am satisfied that the Plaintiffs have complied with the terms of the Rules in the form of their pleading and the identification of the words. If the Plaintiffs fail to plead innuendo then that will be the Plaintiffs' responsibility. I believe the Defendants cannot force the Plaintiffs to give more particulars than they presently have given in the form it has given and they have bound themselves by that form. It is for these reasons I believe the application should be dismissed. I believe the costs should be reserved. The hearing took all morning. It is essential the large Eastlight folder be released back to the Plaintiffs' solicitors.

MASTER ANNE GAMBRILL

Solicitors:

Russell McVeagh McKenzie Bartleet & Co., Auckland, for Plaintiffs
Morrison Morpeth, Auckland, for Defendants

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