

**IN THE DISTRICT COURT
MANUKAU REGISTRY**

CIV-2012-092-1969

UNDER: the Defamation Act 1992

BETWEEN: **MATTHEW JOHN BLOMFIELD**
Plaintiff

AND: **CAMERON JOHN SLATER**
Defendant

**DEFENDANT'S SYNOPSIS OF SUBMISSIONS IN OPPOSITION TO
INTERLOCUTORY APPLICATION BY THE PLAINTIFF
29 AUGUST 2013**

Next Event Date: 2 September 2013

Before: Judge C S Blackie



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1 OVERVIEW

- 1.1 The plaintiff, Mr Blomfield, seeks orders for discovery and to answer interrogatories in these proceedings in defamation against the defendant, Mr Slater.
- 1.2 Mr Slater, notwithstanding his position that the interrogatories and requests for discovery are not relevant to the issues in this proceeding, has answered all but one of the interrogatories and provided all but one category of documents requested for discovery. Mr Slater objects to answering the remaining interrogatory and the remaining request for discovery on the grounds that that to do so would reveal his sources.
- 1.3 The sole issue for determination is whether the information sought is protected from disclosure under section 68 of the Evidence Act 2006 and rule 6.63.13 of the District Court Rules.

2 BACKGROUND

- 2.1 Mr Slater has written and posted a series of blogs about Mr Blomfield which Mr Blomfield claims are defamatory of him. Mr Blomfield seeks a retraction of all blogs and an award of punitive damages. While Mr Slater admits that some, but not all, of the statements are capable of the defamatory meanings asserted by Mr Blomfield, he says that the statements are true and/or based on his honestly held opinion. Mr Slater has offered Mr Blomfield an opportunity to respond to each of the blogs¹ but Mr Blomfield has declined to accept the offer.
- 2.2 On the 12th of November 2012, Mr Blomfield served on Mr Slater a “Notice to answer interrogatories” and “Request for discovery”.
- 2.3 Mr Slater answered the interrogatories by affidavit sworn 7 December 2012. Mr Slater objected to answer the interrogatories on the basis that they did not relate to a matter in question between the parties, that the interrogatories were vexatious or oppressive and for interrogatory

¹ Statement of defence dated 21 November paragraph [20]

number 1, that the information sought was protected as it would identify an informant to whom he owed a duty of confidentiality.

- 2.4 On 7 December 2012, Mr Slater’s lawyers wrote to Mr Blomfield informing him that none of the documents requested in the request for discovery were relevant to any issue in the proceeding.²
- 2.5 On 22 August 2013 Mr Blomfield served submissions and subsequently an “Application for orders for discovery and to answer interrogatories” dated 26 August 2013.
- 2.6 On 27 August 2013, notwithstanding his position that the interrogatories do not relevant to a matter in question in the proceedings, Mr Slater:
- (a) Answered by affidavit all of the interrogatories, except number 1;
 - (b) Confirmed that no documents within the request for discovery number 1 existed;
 - (c) Refused to provide the information within the request for discovery number 2 on the basis that that the information would reveal his source(s); and
 - (d) Otherwise objected to the orders sought.
- 2.7 The only outstanding interrogatories and discovery requests are:
- (a) Interrogatory number 1 (“Interrogatory 1”):
“Who supplied the defendant with the hard drive and other information referred to on the Whale Oil website?”
and
 - (b) Request for discovery number 2 (“Discovery 2”):
“All email correspondence between the defendant and the following parties:

² Refer to plaintiff’s bundle of documents filed 26 August 2013

- *Mr Warren Powell (including emails sent and received from his partners email address; Oksana Bross roxanna0000@gmail.com)*
- *Mr Marc Spring*
- *Ms Amanda Easterbrook*
- *Mr John Albert Price*
- *Mr Gareth Neil*

3 ISSUES

3.1 There is a single issue which applies to both Interrogatory 1 and Discovery 2: whether Mr Slater can claim the immunity given to journalists to protect sources of information.

3.2 Section 68 of the Evidence Act 2006 states:

Protection of journalists' sources

(1) If a journalist has promised an informant not to disclose the informant's identity, neither the journalist nor his or her employer is compellable in a civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant or enable that identity to be discovered.

(2) A Judge of the High Court may order that subsection (1) is not to apply if satisfied by a party to a civil or criminal proceeding that, having regard to the issues to be determined in that proceeding, the public interest in the disclosure of evidence of the identity of the informant outweighs—

(a) any likely adverse effect of the disclosure on the informant or any other person; and

(b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

(3) The Judge may make the order subject to any terms and conditions that the Judge thinks appropriate.

(4) This section does not affect the power or authority of the House of Representatives.

(5) In this section,—

informant means a person who gives information to a journalist in the normal course of the journalist's work in the expectation that the information may be published in a news medium

journalist means a person who in the normal course of that person's work may be given information by an informant in the expectation that the information may be published in a news medium

news medium means a medium for the dissemination to the public or a section of the public of news and observations on news

public interest in the disclosure of evidence includes, in a criminal proceeding, the defendant's right to present an effective defence.

- 3.3 This Court has jurisdiction to consider whether the privilege applies under section 68(1) but any further enquiry under section 68(2) can only be conducted by a High Court Judge.
- 3.4 Mr Slater has given evidence that he promised the source or sources of his information that he would keep their identities confidential and compliance with Interrogatory 1 and Discovery 2 would disclose their identity or identities.³
- 3.5 The principles underpinning the protection of journalist's informants are matters of important public interest⁴ and the starting point is that journalists have prima facie immunity unless there is an order under section 68(2).
- 3.6 Section 68(1) would apply to this situation unless Mr Slater and the www.whaleoil.co.nz blog site falls outside the definitions of "journalist" and "news medium" set out in section 68(5). An ambulatory or dynamic interpretation of "news medium" would not exclude blogger or blog

³ Affidavit of Cameron John Slater sworn 27 August 2013

⁴ *Police v Campbell* [2010] 1 NZLR 483; *Isbey v NZBC* (No 2) [1975] 2 NZLR 237 (SC) ("Isbey")

sites simply because they are new media. The Law Commission has recently reached the view that the definition of “news medium” is wide enough to include blog sites.⁵ In *Police v Slater* Judge Harvey considered a blog to be no different from other news media.⁶ The definition of “news media” has previously been extended from print dissemination to radio and television broadcasting. By extension, it should also apply to all modern day media used to disseminate news and observations on news to the public.

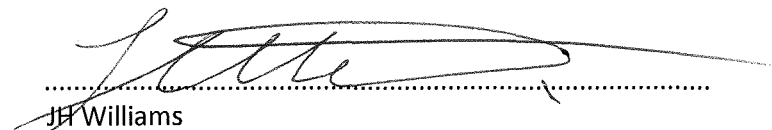
3.7 HCR 8.46 (DCR 6.63.13) is also applicable. It states:

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant’s sources of information or grounds of belief may be allowed unless the interrogatories are necessary in the interests of justice.

3.8 The rule extends to the discovery process⁷ and the reference to “sources” in the rule extends beyond the name of the informant.⁸

3.9 “Interests of justice” is not defined but it must be more than simply being potentially relevant to a defence of honest opinion, otherwise the rule would be redundant.

Date: 29 September 2013


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JH Williams
Counsel for the defendant

⁵ *The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age* (NZLC R128, 2013)

⁶ *Police v Slater* [2011] DCR 6

⁷ *BCNZ v Alex Harvey Industries Ltd* [1980] 1 NZLR 163 (CA)

⁸ *Brill v Television Service One* [1976] 1 NZLR 683 (SC)