

IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION

5 McCALLUM J

TUESDAY 6 MAY 2014

2014/114469 - JUSTINE MUNSIE v SHANE DOWLING

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Mr A Dawson for the Plaintiff

No appearance for or on behalf of the Defendant

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(Mr Dawson moved on the notice of motion seeking short service.)

(Her Honour declared that she had been briefed as a barrister in the past by Ms Munsie. No objection to her Honour dealing with the matter. Her Honour requested that the defendant be advised.)

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AFFIDAVIT OF ELIZABETH MUNSIE OF 14/04/14 READ

AFFIDAVIT OF RICHARD MICHAEL KEEGAN OF 17/04/14 READ

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DAWSON: This motion arises out of applications which have been before Harrison J in previous weeks in his capacity as duty judge.

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On 14 April 2014 the plaintiffs moved on an ex parte basis for an injunction to restrain the publication of a defamatory matter and for at least an interim suppression order. The reasons were explained to his Honour. I will give your Honour an overview.

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On that day his Honour declined to make any interim injunction, brought the matter back before his Honour on Thursday of that week, the Thursday before and on that day there was a contested hearing.

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On 14 April his Honour made an interim suppression order which was communicated annexed with the other orders to the defendant.

Between the 14th and 17th the defendant breached the suppression orders in various ways. The details of that is not necessary to descend into at the moment.

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When the matter came before his Honour on the contested hearing, on the application for the injunction, on Monday 14th, the plaintiffs articulated an additional basis for the injunction that had been sought and for the injunction to be granted in wider terms sought on the Monday in light of the fact that there had been a breach of the suppression order and conduct amounting to, on the plaintiffs' application, contempt of the kind designed to intimidate parties to the

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proceedings; in other words, on another view and alternative basis, for relief of an injunctive kind.

5 After argument on the Thursday, his Honour reserved, having accepted an undertaking of the defendant of a limited kind as to future publication. His Honour did not make any other interim orders in respect of publication or any other matter and his Honour delivered judgment on 24 April.

10 At para 25 of that judgment Harrison J recorded that (read). That is not, on the plaintiffs' point of view, accurate. What must have appeared to his Honour was that, in articulating the further and additional basis for the injunction, the plaintiffs had in some way abandoned the original basis for the application. In any event, whatever transpired, the application for the injunction on the defamation basis hasn't been determined and the plaintiffs wish to have that
15 application heard and determined.

HER HONOUR: And what is the urgency which warrants the abridgement of the time for service?

20 DAWSON: The urgency is that the key publications remain on line. The proceedings are for a permanent injunction to restrain the publication of that material. No award of damages is sought in the statement of claim which commenced the proceedings, and the longer the plaintiffs go without their application for interrogatory relief being heard and determined, hopefully in
25 their favour, the less is the value finally sought in the formation of a permanent injunction.

30 On the plaintiffs' case, this is the strongest kind of case for a defamation injunction because Mr Dowling hasn't been able to and did not offer any evidence to suggest that he was in a position to defend the allegations that have been made and which have defamed the plaintiffs and Harrison J makes some remarks about the nature of the material which strengthens the plaintiffs' resolve on that front.

35 For example, at para 45 of his Honour's reasons, his Honour says (read).

I attempted to have the proceedings relisted before Harrison J last week. His Honour declined to relist it and he is on leave this week, so there is no opportunity to go back before his Honour, which might seem to be the most
40 obvious first course. If Thursday isn't convenient--

HER HONOUR: It's not a question of convenience, I don't know that it's proper for me to hear it, is it? We could wait and see if there is an objection.

45 DAWSON: Perhaps if the matter were to come back for directions tomorrow and Mr Dowling could indicate.

50 HER HONOUR: I have to say, Mr Dawson, whilst I could well appreciate the anxiety that might be caused by the failure to determine the application on that primary basis on which it was put, given that the application was originally

heard on 17 April 2014 and the passage of time between then and now, it's difficult to see any urgency such as to warrant abridging the three day period to two days, or one day.

5 DAWSON: Two days to three days would see us come back on Friday.

HER HONOUR: If you serve by 5 pm today. Why not serve it by 5 pm today and have it returnable on Friday and that doesn't involve an abridgement?

10 DAWSON: We could do that if your Honour is against us on an abridgement of time.

(Discussion re date.)

15 HER HONOUR: At the moment I am not persuaded that there is such urgency to warrant the abridgement of time between now and Thursday.

20 DAWSON: the application was brought promptly upon the plaintiffs becoming aware of the publications. If your Honour goes to the affidavit of Ms Munsie of 14 April, in para 4 (read). One of the concerns, having become aware of the existence of the article, is the matter referred to by Ms Munsie in para 11 (read).

25 HER HONOUR: What was Google's response?

30 DAWSON: There has been no response. The Google search does indicate that whatever might be said about the relative absurdity of Mr Dowling's website, we wouldn't accept it necessarily falls into that category, but whatever is searched as the most popular search engine is bringing this up when Mr Dowling's name is mentioned.

(Mr Dawson sought instructions as to the matter coming back before her Honour on Friday.)

35 (Short minutes of order handed up by Mr Dawson.)

HER HONOUR: I note orders 1 to 4 in the short minutes of order.

40 I grant leave to the plaintiffs to file in Court the affidavit of Justine Melissa Munsie sworn 6 May 2014.

Notice of motion filed in Court.

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