

BETWEEN:

SHANE DOWLING
Applicant

and

CAPILANO HONEY PTY LIMITED
First Respondent

BEN MCKEE
Second Respondent



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AFFIDAVIT

I, Alexander Maile Latu, of Level 12, 60 Carrington Street, Sydney NSW 2000, solicitor, say on oath as follows:

1. I am a solicitor employed by Addisons, solicitors for the plaintiffs. Subject to the supervision of Martin O'Connor, who is the partner on the record; and with Richard Keegan, solicitor of Addisons, I have the day to day carriage of this matter. I am authorised to swear this affidavit on the plaintiffs' behalf.
2. I believe that the contents of this affidavit are true and correct.
- 30 3. I have reviewed Mr Dowling's Application for Removal filed on 31 May 2019 (No. S162 of 2019) – "**Application**".
4. Part A of this affidavit sets out details of some other proceedings involving the applicant, Mr Dowling, and a procedural history of events in this proceeding.
5. Parts B to C then address specific facts set out in Mr Dowling's Application.

A. BACKGROUND

6. I have acted, and am acting, for various plaintiffs in multiple proceedings in the Supreme Court of New South Wales commenced against Mr Dowling based on publications he has made online, including on a website that he operates (the "**KCA Website**").
- 40 7. To summarise those proceedings:

- a. Proceeding number 2014/114469, *Munsie & Ors v Shane Dowling* (the **2014 KCA Proceeding**). The cause of action was defamation. Final orders were made by his Honour Justice Rothman on 27 May 2019. The plaintiffs, three individual persons, were successful. A contempt charge was successfully brought by the plaintiffs based on breaches of orders made in this proceeding (see *Munsie v Dowling (No 2)* [2014] NSWSC 1042).
- 10 b. **This proceeding**, number 2016/299522, *Capilano Honey Limited & Anor v Shane Dowling*. The causes of action are defamation, injurious falsehood and a claim under the Australian Consumer Law. In the most recent judgment in the proceeding (*Capilano Honey Ltd v Dowling (No 3)* [2019] NSWSC 539), the plaintiffs/respondents (the named corporate entity and its CEO) successfully struck out portions of Mr Dowling's defence. An overview of the relevant procedural history is contained at paragraphs [4]-[16] of that judgment. The plaintiffs' motion to strike out Mr Dowling's amended defence dated 11 June 2019 is presently listed for hearing on 26 July 2019.
- 20 c. Proceeding number 2016/00383575, *Jane Doe 1 & Ors v Dowling* (the **Jane Does Proceeding**). The cause of action is defamation. In *Doe 1 v Dowling* [2018] NSWSC 1278, the plaintiffs (four individual persons) successfully struck out Mr Dowling's defence, with no leave granted to re-plead. On 17 May 2019 his Honour Justice Hoeben, Chief Judge at Common Law, listed the proceeding for hearing on 26 and 27 August 2019. A contempt charge was successfully brought by the plaintiffs based on breaches of orders made in this proceeding (see *Doe v Dowling* [2017] NSWSC 1037).
- 30 d. Proceeding number 2017/116771, initially commenced against an unknown "Publisher X" (the **Publisher X Proceeding**). The cause of action is breach of confidence. The plaintiffs have brought a contempt charge in this proceeding based on apparent breaches of court orders, which is yet to be heard. Mr Dowling has sought to have the Publisher X Proceeding removed to the High Court of Australia (matter no. S145 of 2019).

8. The table below sets out an overview of the procedural history of events in this proceeding, and includes references to other relevant events outside of this proceeding that are italicised.

Row No.	Date	Event
1	15 February 2016	<i>Plaintiffs commence proceedings against Simon Mulvany in the Supreme Court of New South Wales (proceeding 2016/48481). The causes of action are defamation, injurious falsehood and a claim under the Australian Consumer Law (Mulvany Proceeding).</i> <i>The Mulvany Proceeding has been transferred to Victoria (proceeding S CI 2018/2367)</i>

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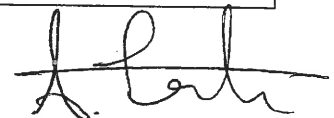
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2	7 October 2016	Plaintiffs commence this proceeding by way of summons filed in Court before Hall J during ex parte hearing. Interlocutory orders restraining publication of specified material by the defendant are made by Hall J, in addition to a suppression order preventing the disclosure of any aspect of the proceeding including pleadings, evidence or orders made in the proceeding. Matter relisted for 10 October 2016.
3	10 October 2016	Hearing before Davies J. Mr Dowling, on notice of the hearing, does not appear. Davies J orders that the injunctions and suppression order should remain on foot, and further orders Mr Dowling to take down and not republish a further article.
4	10 August 2017 – 9 December 2017	<i>Mr Dowling sentenced to four months' imprisonment for breach of orders made in the Jane Does Proceeding (Doe v Dowling [2017] NSWSC 1037).</i>
5	6 April 2018	Hearing before McCallum J (as her Honour then was) dealing with multiple applications made by Mr Dowling. Orders made by McCallum J varying suppression orders, by consent, in order to permit listing of this proceeding under its name, and standing proceeding over to 19 April 2018, part-heard.
6	8 June 2018	In determining applications made by Mr Dowling, McCallum J makes orders revoking the non-publication orders and discharges the interlocutory injunctions. (See <i>Capilano Honey Ltd v Dowling (No 2)</i> [2018] NSWSC 865.) The operation of the orders is stayed until 15 June 2018.
7	15 June 2018	Basten JA stays the operation of the orders made by McCallum J on 8 June 2018 until the determination of the plaintiffs' application for leave to appeal from the decision of McCallum J (Leave Application).
8	19 July 2018	Hearing of the Leave Application before the Court of Appeal.
9	28 August 2018	<i>Mr Dowling sentenced to 18 months'</i>



		<i>imprisonment (13 months' non-parole) for contempt of court, arising from comments made in Court (and subsequent behaviour) on 3 February 2017 that led to the initiation of contempt proceedings by the Prothonotary of the New South Wales Supreme Court (Prothonotary of the Supreme Court of New South Wales v Shane Francis Dowling [2018] NSWSC 1301).</i>		
10	10	10	3 October 2018	Court of Appeal affirms the orders of McCallum J made on 8 June 2018 but stays the operation of the orders until 17 October 2018 (see <i>Capilano Honey Ltd v Dowling (No 2)</i> [2018] NSWCA 217).
	11		18 October 2018	Court of Appeal publishes reasons for the orders made on 3 October 2018 in <i>Capilano Honey Ltd v Dowling (No 2)</i> [2018] NSWCA 217 (Appeal Judgment).
20	12		21 December 2018	<i>Sentence referred to in row [9] above reduced to four months by Court of Appeal (Dowling v Prothonotary of the Supreme Court of New South Wales [2018] NSWCA 340). Mr Dowling released from gaol.</i>
	13		8 March 2019	Mr Dowling files a notice of motion in this proceeding seeking to file a statement of charge against seven persons (including persons not parties to this proceeding); together with a similar notice of motion in the 2014 KCA Proceeding filed 17 April 2019 (Contempt Motions).
30	14		3 May 2019	During the course of the defamation list before his Honour Hoeben CJ at CL, the Contempt Motions are discussed. His Honour declined to recuse himself, ruled that leave was required to allow the Motions to proceed, and declined to grant that leave. (See, in relation to the Contempt Motion in this proceeding, <i>Capilano Honey Ltd v Dowling (No 3)</i> [2019] NSWSC 539). Plaintiffs apply to strike out portions of Mr Dowling's defence in this proceeding.
40	15		13 May 2019	Hoeben CJ at CL delivers judgment concerning the plaintiffs' application to strike out parts of Mr Dowling's defence (successful).

		Leave granted to file an amended defence. <i>Capilano Honey Ltd v Dowling (No 3)</i> [2019] NSWSC 539.
16	11 June 2019	Mr Dowling files amended defence.
17	12 June 2019	Plaintiffs file a notice of motion seeking to strike out Mr Dowling's amended defence dated 11 June 2019 (Strike Out Motion). The Strike Out Motion is presently listed for hearing on 26 July 2019.

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B. Part III of the Application

9. At paragraph [3.1] Mr Dowling characterises an article he wrote to have "exposed" the first plaintiff as having acted in a certain manner. I dispute this characterisation of the first plaintiff's actions.

10. At paragraph [3.1], Mr Dowling refers to the Mulvany Proceeding, in which I also act for the plaintiffs. I dispute the characterisation of those proceedings as being almost identical to the Mulvany Proceeding, including because distinct publications are involved.

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11. I dispute the characterisation of lawsuits, and the conduct of those lawsuits, in paragraph [3.2], as well as the asserted role of the person identified in paragraph [3.2], who is a plaintiff in the 2014 KCA Proceeding, and not in this proceeding. Proceedings in which Addisons acts or has acted against Mr Dowling have been identified above.

12. I dispute the assertion as to the basis for the modification of suppression orders by consent in paragraph [3.5].

13. I dispute the assertion of the composition of honey that is made in paragraph [3.7] (beginning "In July 2018").

30 14. I dispute the state of mind attributed to me at paragraph [3.7] (beginning "On the 7th...").

15. At paragraphs [3.8] and [3.9] Mr Dowling refers to the Appeal Judgment. I dispute the characterisation of the Court's reasons and findings as described by Mr Dowling at paragraphs [3.8] and [3.9].

16. I dispute the interpretation of test results and media reports stated in the first sentence of paragraph [3.10]; and the assertion of ongoing conduct of the type stated in the second sentence of paragraph [3.10].

40 17. I dispute the assertions of clear bias made in paragraph [3.12].

C. Other Parts of the Application

18. I dispute the assertions of fraudulent and/or abusive conduct by the plaintiffs made by Mr Dowling in paragraph [4.3], and in Part V.
19. I dispute the conclusions drawn as to the actions of the CDPP and from police statements in the last two sentences of paragraph [4.6].

10 SWORN by the deponent
at Sydney in New South Wales
on 21 June 2019.

Before me: TARA JANE KOH

Address: Level 12, 60 Carrington Street,
Sydney NSW 2000

And as a witness, I certify the following
matters concerning the person who made
this affidavit (the deponent):

- 20 1. I saw the face of the deponent.
2. I have known the deponent for at least
12 months.



an Australian legal practitioner within the
meaning of the Legal Profession Uniform
Law (NSW)

