

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S197 of 2019

BETWEEN:

SHANE DOWLING
Applicant

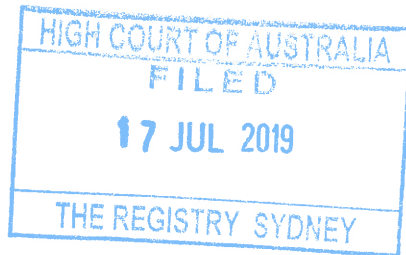
and

JANE DOE 1
First Respondent

JANE DOE 2
Second Respondent

JANE DOE 3
Third Respondent

JANE DOE 4
Fourth Respondent



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AFFIDAVIT

I, Richard Michael Keegan, of Level 12, 60 Carrington Street, Sydney NSW 2000, solicitor, say on oath as follows:

- 30 1. I am a solicitor employed by Addisons, solicitors for the respondents. Subject to the supervision of Martin O'Connor, who is the partner on the record, I have the day to day carriage of this matter. I am authorised to swear this affidavit on the respondents' behalf.
- 2. I believe that the contents of this affidavit are true and correct.
- 3. I have reviewed Mr Dowling's Application for Removal filed on 26 June 2019 (No. S197 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.

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Ref: Richard Keegan

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").

7. To summarise those proceedings:

10 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).

20 b. Proceeding number 2016/299522, *Capilano Honey Limited & Anor v Shane Dowling* (the **Capilano Ltd v Dowling Proceeding**). 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 (the named corporate entity and its CEO) successfully struck out portions of Mr Dowling's defence. Mr Dowling has sought to have the Capilano Ltd v Dowling Proceeding removed to the High Court of Australia (matter no. S162 of 2019).

30 c. **This Proceeding**, number 2016/00383575, *Jane Doe 1 & Ors v Dowling*. 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).

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).

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

Row No.	Date	Event
1	21 December 2016	<p>Mr Dowling publishes an article on his KCA Website (defined in this Proceeding as the "21 December Article").</p> <p>The first and second plaintiffs commence this Proceeding by way of statement of claim filed in Court before Campbell J, with leave granted to the plaintiffs to commence and continue the Proceeding by the pseudonyms Jane Doe 1 and Jane Doe 2. Plaintiffs then make an ex parte application to Campbell J for interim injunctions restraining publication of the imputations specified in the statement of claim and of the matter complained of in any form which includes the names of the plaintiffs.</p> <p>Plaintiffs' application granted by Campbell J, who also made a non-publication order prohibiting publication of the names of the first and second plaintiffs (see <i>Jane Doe 1 and Jane Doe 2 v Dowling</i> [2016] NSWSC 1909; as discussed in <i>Doe v Dowling</i> [2017] NSWSC 1793).</p> <p>Proceedings made returnable inter partes on 23 December 2016 to give Mr Dowling an opportunity to be heard.</p>
2	From 21 December ongoing	<p>Mr Dowling continues to publish material on his KCA website relating to this Proceeding, his initial allegations concerning the first two plaintiffs, and similar allegations concerning an additional two persons.</p>
3	23 December 2016	<p>Hearing before Campbell J. Mr Dowling, on notice of the hearing, does not appear.</p> <p>Campbell J orders that, until further order, the injunctions and non-publication order are to remain on foot (see <i>Jane Doe 1 and Jane Doe 2 v Dowling</i> (No 2) [2016] NSWSC 1910; as discussed in <i>Doe v Dowling</i> [2017] NSWSC 1793).</p> <p>Additional orders made concerning substituted performance; and case referred to Prothonotary to consider whether contempt</p>

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		proceedings should be commenced against Mr Dowling.
4	17 January 2017	Defence filed by Mr Dowling.
5	1 February 2017	Plaintiffs file a notice of motion seeking to strike out defence of 17 January 2017.
6	2 February 2017	Plaintiffs file a notice of motion seeking to punish Mr Dowling for contempt.
7	3 February 2017	<p>Proceeding listed for callover before the Registrar. Mr Dowling makes a number of "scurrilous" assertions in Court.</p> <p><i>Upon application by the Prothonotary of the Supreme Court of NSW, Beech-Jones J (sitting as Duty Judge) makes an interim suppression order suppressing the content of the claims made by Mr Dowling and the fact of his making them. On notice of the Prothonotary's application, Mr Dowling does not appear (Prothonotary of the Supreme Court of New South Wales v Shane Dowling [2017] NSWSC 664).</i></p>
8	10 February 2017	<p>Mr Dowling's defence is struck out by Fagan J (<i>Jane Doe 1 v Dowling (No 5)</i> (Supreme Court (NSW), Fagan J, 10 February 2017, unrep; discussed in <i>Doe v Dowling</i> [2017] NSWSC 1793).</p> <p>Mr Dowling makes an application in Court seeking dismissal of the plaintiffs' contempt motion. Mr Dowling's application is dismissed by Fagan J.</p>
9	21 February 2017	<p>Plaintiffs 1 and 2, together with a further two plaintiffs, move on a notice of motion dated 21 February 2017, with the matter proceeding ex parte before Walton J.</p> <p>Plaintiffs are granted leave to file an amended statement of claim joining the third and fourth plaintiffs under the pseudonyms "Jane Doe 3" and "Jane Doe 4", and suppression orders are made with respect to those persons.</p> <p>(See <i>Jane Doe 1 v Dowling (No 3)</i> [2017] NSWSC 126.)</p>

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10	22 February 2017	<p>Walton J makes orders in respect of the third and fourth plaintiffs in substantially the same terms as those made by Campbell J in respect of the first and second plaintiffs (see <i>Jane Doe 1 v Dowling (No 3)</i> [2017] NSWSC 126; as discussed in <i>Doe v Dowling</i> [2017] NSWSC 1793).</p> <p>Restraints ordered by Walton J are made until 3 March 2017, when the matter was returnable before the Duty Judge.</p>
11	23 February 2017	Defence filed by Mr Dowling to the original statement of claim (not the amended statement of claim joining the third and fourth plaintiffs).
12	1 March 2017	Hearing of plaintiffs' contempt motion filed on 2 February 2017 before Harrison J.
13	2 March 2017	Plaintiffs file notice of motion seeking to strike out defence of 23 February 2017, which is listed for argument on 10 March 2017.
14	3 March 2017	Hearing before N Adams J as Duty Judge. By consent, restraints ordered by Walton J are extended by N Adams J until 10 March 2017 (when the proceeding was listed for argument on the plaintiffs' notice of motion to strike out the 23 February 2017 defence).
15	10 March 2017	<p>Hearing before McCallum J (as her Honour then was). Given the 23 February 2017 defence did not deal with the third and fourth plaintiffs, the plaintiffs suggest that the strike out application not proceed pending a defence to the amended statement of claim and that further time be given to Mr Dowling.</p> <p>Hearing focuses on challenges raised by Mr Dowling to the orders put in place by Campbell J (first and second plaintiffs) and Walton J, as extended (third and fourth plaintiffs). Plaintiffs seek orders made by Walton J to be continued until further order.</p> <p>Proceeding stood over part heard to 13 March 2017. By consent, restraints ordered by Walton J and continued by N Adams J extended until 13 March 2017.</p>

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	16	13 March 2017	Conclusion of hearing before McCallum J on the defendant's challenges to the orders made by Campbell J and Walton J (as extended) in this Proceeding; and the plaintiffs' applications to extend the orders initially made by Walton J until further order.
	17	15 March 2017	Harrison J hands down judgment in relation to plaintiffs' contempt motion. Mr Dowling is found guilty of contempt for contumacious disobedience of the orders of Campbell J (<i>Doe v Dowling</i> [2017] NSWSC 202). Sentencing submissions to occur at a later date.
10	18	21 June 2017	<i>NSW Police execute a search warrant at an address in Bondi Beach. (Plaintiffs become aware of this subsequently based on comments made by the defendant on his KCA Website).</i>
	19	5 July 2017	<i>A subpoena is issued at the request of the plaintiffs in the Publisher X Proceeding to the Commissioner of Police, NSW seeking material resulting from the execution of the search warrant on an address in Bondi Beach on 21 June 2017.</i>
20	20	21 July 2017	Sentencing hearing before Harrison J, following the 15 March 2017 decision. On notice of the hearing, Mr Dowling does not appear.
	21	10 August 2017 – 9 December 2017	Mr Dowling sentenced to four months' imprisonment by Harrison J for breach of orders of Campbell J (<i>Doe v Dowling</i> [2017] NSWSC 1037).
30	22	19 December 2017	McCallum J hands down judgment in relation to matters heard on 10 and 13 March 2017 (see rows 15 and 16 above). Order 5 made by Walton J on 22 February 2017 is continued until further order, non-publication orders made by Campbell J and Walton J confirmed (<i>Doe v Dowling</i> [2017] NSWSC 1793). Upon oral application by Mr Dowling after judgment, McCallum J recuses herself from this Proceeding (see <i>Capilano Honey Ltd v Dowling</i> [2018] NSWSC 876 at [6] and [10]). Proceeding adjourned to 5 March 2018 before the Registrar.
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		Note: prior to 5 March 2018 the Registrar recused himself and referred the Proceeding back to McCallum J.
10 20 30 40	23 2 March 2018	<p><i>The Capilano Ltd v Dowling Proceeding is listed for directions before McCallum J upon her Honour receiving email communications from Mr Dowling seeking that her Honour recuse herself from the Capilano Ltd v Dowling Proceeding.</i></p> <p>This Proceeding is listed together with the Capilano Ltd v Dowling Proceeding on the basis that the Registrar referred this Proceeding back to McCallum J (see row 22 above); and because of the relevance of her Honour's recusal in this Proceeding to Mr Dowling's recusal application in the Capilano Ltd v Dowling Proceeding.</p> <p><i>During the course of the hearing, Mr Dowling seeks an adjournment of his recusal application in the Capilano Ltd v Dowling Proceeding. Mr Dowling is directed to notify the Court whether he intends to press his recusal application within 14 days.</i></p> <p>Both Proceedings are stood over to 23 March 2018.</p>
	24 23 March 2018	<p>This Proceeding is listed before McCallum J, together with the Capilano Ltd v Dowling Proceeding.</p> <p><i>Although Mr Dowling declined to make a formal recusal application in the Capilano Ltd v Dowling Proceeding the plaintiffs submit that McCallum J consider whether her Honour ought to recuse herself based on her recusal in this Proceeding. McCallum J hears submissions from the parties on this issue (see Capilano Honey Ltd v Dowling [2018] NSWSC 876 at [10]).</i></p> <p>Both Proceedings are stood over to 4 April 2018.</p>
	25 4 April 2018	<p>This Proceeding is listed before McCallum J, together with the Capilano Ltd v Dowling Proceeding.</p> <p><i>McCallum J hands down judgment in Capilano</i></p>

		<p><i>Honey Ltd v Dowling [2018] NSWSC 876 in which her Honour declines to recuse herself.</i></p> <p>Mr Dowling is directed to file a defence to the amended statement of claim joining the third and fourth plaintiffs. This Proceeding stood over to 18 May 2018 before the Duty Judge.</p>
26	30 April 2018	Amended defence is filed by Mr Dowling.
27	10 May 2018	Plaintiffs file notice of motion to strike out the 30 April 2018 defence.
28	18 May 2018	Proceeding listed for directions before Adamson J sitting as Duty Judge. Plaintiffs' strike out motion of 10 May 2018 listed for hearing on 14 June 2018.
29	14 June 2018	Hearing before Walton J of plaintiffs' strike out motion of 10 May 2018.
30	17 August 2018	<p>Mr Dowling's amended defence is struck out by Walton J without leave to re-plead (<i>Doe 1 v Dowling [2018] NSWSC 1278</i>).</p> <p>Walton J refers the Proceeding to the common law list clerk.</p>
31	22 August 2018	<p><i>Mr Dowling sentenced to 18 months' 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></p>
32	13 September 2018	<p><i>Hearing in the Publisher X Proceeding before Rees J of Mr Dowling's motion to transfer the proceeding to the Federal Court of Australia (Transfer Motion). Mr Dowling declines to participate in the hearing. The hearing is adjourned to 27 September 2018.</i></p>
33	27 September 2018	<p><i>Hearing in the Publisher X Proceeding before Rees J. Mr Dowling informs the Court that he has faxed to the High Court Registry an application for removal of the Publisher X Proceedings and requests a stay of the Publisher X Proceeding (see Seven Network</i></p>

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		(Operations) Limited v Shane Dowling [2018] NSWSC 1890).	
10	34	7 December 2018	Rees J delivers judgment in the Publisher X Proceeding (Seven Network (Operations) Limited v Shane Dowling [2018] NSWSC 1890). Mr Dowling's application for a stay is refused, the Transfer Motion is dismissed, a regime is put into place to allow plaintiffs access to a hard drive that was produced by the Commissioner of Police, NSW under subpoena following inspection by an independent solicitor (see row 19 above).
	35	21 December 2018	Sentence referred to in row [31] 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.
20	36	11 March 2019	Directions hearing in the Publisher X Proceeding before the Registrar. Relisted for directions on 3 April 2019, with plaintiffs to review the hard drive and indicate their position on filing further evidence.
	37	8 May 2019	Proceeding is listed before Hoeben CJ at CL for directions. His Honour then lists the Proceeding for directions on 17 May 2019.
	38	17 May 2019	Hoeben CJ at CL strikes out Mr Dowling's application for dismissal for want of prosecution and lists the Proceeding for final hearing on 26 and 27 August 2019.
30	39	14 June 2019	Sackar J rejects Mr Dowling's application for recusal and dismisses Mr Dowling's application to administer interrogatories and seek discovery of documents.

B. Part III of the Application

9. The following factual matters contained in Part III of the Application are in dispute:
- a. in paragraph [3.4], the assertion that I lied about the person(s) funding the litigation of this proceeding. Accounts I have given to Mr Dowling accurately reflect the fact that Addisons' clients in this Proceeding are the four plaintiffs;

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- b. in paragraph [3.10], the assertion that the orders referred to were made with no legal basis or contrary to authority;
- c. in paragraph [3.7], the words attributed to his Honour Justice Ian Harrison. I was present at the hearing of the plaintiffs' contempt motion in this proceeding on 1 March 2017, and do not recall this indication being given to Mr Dowling. In his Honour's judgment of 15 March 2017 (*Doe v Dowling* [2017] NSWSC 202), paragraphs [34]-[35] refer to indications given by his Honour during the hearing that a term of imprisonment was a possibility. Exhibited to this affidavit and marked "RMK1" is an extract of the transcript to the hearing on 1 March 2017 before his Honour Justice Harrison, which is referred to in paragraph [3.7] of the Application, in which his Honour draws Mr Dowling's attention to the possibility of imprisonment (at lines 32 to 37);
- d. in the last sentence of paragraph [3.10], the assertion that the withdrawal of any police charge is for obvious reasons;
- e. in paragraph [3.14], that her Honour Justice Rees engaged in bullying or intimidating behavior as asserted during a hearing that I attended. Exhibited to this affidavit and marked "RMK2" is the transcript to the hearing on 13 September 2018 before her Honour Justice Rees, which is referred to in paragraph [3.14] of the Application;
- 20
- f. in paragraph [3.15], the characterisation of the lawsuits by the identified parties in the second sentence. Proceedings in which Addisons acts or has acted against Mr Dowling have been identified above. The company identified is a plaintiff in the Publisher X Proceeding, and the person identified is a plaintiff in the 2014 KCA Proceeding. They are not parties to the other proceedings identified above;
- g. in paragraph 3.22, the accusation that my response to Mr Dowling was a "blatant lie";
- h. in paragraph 3.26, the characterisation of the person identified in the last sentence in relation to the instructions he is said to provide;
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- i. in paragraphs [3.28]-[3.29], the assertions of clear bias.

C. Other Parts of the Application

10. The following factual matters contained in Part IV of the Application are in dispute:

- a. in paragraph [4.2], the characterisation of this lawsuit; and
- b. in paragraph [4.4], the assertions about this Proceeding.

Richard Keeg

11. The assertions in Part V of the Application about the conduct of this Proceeding are in dispute.

SWORN by the deponent
at Sydney in New South Wales
on 17 July 2019.

10 Before me: *Tara Koh*

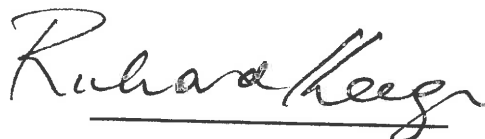
Address: Level 12, 60 Carrington Street,
Sydney NSW 2000

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

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)



Affidavit of Richard Michael Keegan sworn on 17 July 2019

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INDEX OF EXHIBITS

EXHIBIT	DESCRIPTION	PARAGRAPH	PAGE
RMK1	Extract of transcript of hearing before Harrison J on 1 March 2017	9.c	14
RMK2	Transcript of hearing before Rees J on 13 September 2018	9.e	16

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S197 of 2019

BETWEEN:

SHANE DOWLING
Applicant

and

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First Respondent

JANE DOE 2
Second Respondent

JANE DOE 3
Second Respondent

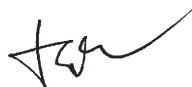
JANE DOE 4
Second Respondent

EXHIBIT "RMK1"

This is the exhibit marked RMK1 produced and shown to Richard Michael Keegan at the time of swearing his affidavit this 17 July 2019.

Extract of transcript of hearing before Justice Harrison on 1 March 2017

Before me



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Solicitor

SML:CAT

5 SMARK: To deal with it in short form, your Honour. It could be received as submissions at least. It would need to be marked confidential because its contents breach a clear matter to further contempt unless your Honour gives leave. Because they name right at the start, Jane Doe 1 and Jane Doe 2, in apparent defiance of the orders previously made. That would need to be, if your Honour were minded to take this course, that would need to be regularised by a grant of leave otherwise the document leaves itself contemptuous.

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DEFENDANT: Just one thing, your Honour. Those, exactly what is in there, has already been filed before the Court in relation to my defence in January, not the February one.

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HIS HONOUR: I'll check these as submissions only. Can I raise one matter with you Mr Dowling before we proceed. I think I recall having a conversation of this type with you on one earlier occasion. I'm assuming you don't propose, whether because you choose not or you can't afford to, employ any legal representatives in these contempt proceedings.

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DEFENDANT: No, it wasn't my plan, your Honour.

25 HIS HONOUR: Do I understand that you understand that the possible consequences of a finding of contempt, if the plaintiff succeeds, that one of the possible consequences is that you could be imprisoned. Do you understand that?

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DEFENDANT: Your Honour, my viewpoint is if you're going to jailed for doing nothing more than journalism, well, so be it. I'll have to do it.

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HIS HONOUR: All I'm saying is, I haven't heard the proceedings, I don't know what Mr Smark will want to say in due course. All I'm attempting to do at this stage is draw to your attention the seriousness of these proceedings. A possible consequences, not an inevitable consequence but one on the table as a possibility, is that if the charge is made out, subject to some application by you if it is to plead your contempt, one of the possibilities is that you could be sent to jail.

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DEFENDANT: Your Honour, if the Court is going to do that. We've got major problems in this country and I'm fully aware of that. I'm fully prepared to do that. If journalism is a criminal offence, prepared to go to jail. And it is going to be a major league scandal if that happens. I just want to put you on notice as well your Honour. In 2014 you had your hearing. Kerry Stokes instituted contempt proceedings against me, Justine Munsie and Kerry Stokes.

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Ultimately I was found guilty of contempt for breaching your superinjunction, which only lasted two days. It is an absolute scandal. I was found guilty. I was fined \$2,000. I shouldn't have been fined anything for a number of reasons. Ultimately, it went to the state's legal body. What's the state's legal body? Department of Justice. They refused to enforce the \$2,000 fine

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because it was that scandalous. They wrote to me and said don't worry about

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S197 of 2019

BETWEEN:

SHANE DOWLING
Applicant

and

JANE DOE 1
First Respondent

JANE DOE 2
Second Respondent

JANE DOE 3
Second Respondent

JANE DOE 4
Second Respondent

EXHIBIT "RMK2"

This is the exhibit marked RMK2 produced and shown to Richard Michael Keegan
at the time of swearing his affidavit this 17 July 2019.

Transcript of hearing before Justice Rees on 13 September 2018

Before me



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Solicitor

ATJ:KCS:OL

IN THE SUPREME COURT
OF NEW SOUTH WALES
EQUITY DIVISION

5 REES J

THURSDAY 13 SEPTEMBER 2018

10 **2017/00116771 - SEVEN NETWORK (OPERATIONS) LIMITED & ANOR v
SHANE DOWLING**

HEARING

15 Ms M Cowden for the Plaintiff
Defendant appeared in person via AVL

20 VIDEO LINK TO ST HELIERS CORRECTIONAL CENTRE,
MUSWELLBROOK COMMENCED

HER HONOUR: Mr Dowling, I understand that you can now hear us via the phone, is that right?

25 DEFENDANT: Yeah, I can hear but not brilliant but I can hear, yes.

HER HONOUR: All right. At any point if you can't hear, can you speak up so that we can make sure that you know what is going on?

30 DEFENDANT: Can I have your name, your Honour?

HER HONOUR: Rees, R-E-E-S. So, Mr Dowling, I understand the matter is listed today for the hearing of your motion filed on 12 January 2018. Have you been served with a Court book which contains the motion and the evidence in respect of that motion?

40 DEFENDANT: I got a book yesterday, I don't have it on me, I wasn't told until ten minutes ago that I was - had a hearing today. They'd called me up, put me straight in a booth here. Point one is, I don't know if you've noticed but I'm in gaol. I'm not in a position to proceed and won't be until I get out of gaol, as simple as that.

45 HER HONOUR: I'll tell you what is simple, Mr Dowling, is that the motion is proceeding today. I have reviewed the Court file and I can see that orders have been made by a number of Court officers, being both Registrars and judges, to progress the determination of the issues which you have raised, and you have been given a number of adjournments in order to put your evidence on and I can see that the matter is now listed for hearing today.

50 Can arrangements be made. Firstly, might I hear from the plaintiff's counsel as

ATJ:KCS:OL

to the service which has been effected of the Court book on Mr Dowling?

COWDEN: Yes, your Honour, may I read and hand up the affidavit of Cassie Lock which is the affidavit of service of the Court book?

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DEFENDANT: I don't have it.

HER HONOUR: I don't have it either yet, Mr Dowling. We'll just do this one step at a time.

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COWDEN: If it's of assistance, I provide your Honour with a working copy, thank you.

HER HONOUR: I give the plaintiff leave to file in Court an affidavit of service of Cassie Lock sworn today. Is there a way, Ms Cowden, that we can get a copy of this affidavit to Mr Dowling, or has that already been attended to?

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COWDEN: We have not yet attended to it but we could serve it in the same way that we have served the Court book.

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HER HONOUR: Just give me a moment. Mr Dowling, I'm just making inquiries to see how we can get this affidavit to you. I'm just going to read to you, Mr Dowling, what the affidavit says.

DEFENDANT: I'd just like to say this, I won't be proceeding, I've been denied natural justice. I got called up ten minutes ago, I've got a bit of paper in front of me. I do not have access to all of my documents. I will not be proceeding today. If you want to proceed you do it, you hand down your judgment, and you will be held accountable for your judgment like every judge is.

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HER HONOUR: Mr Dowling, can I just say that we are making arrangements, that is, my staff are making arrangements for the Court book to be provided to you where you are now so that it is before you.

DEFENDANT: Your Honour, I'm not going to proceed with these proceedings. I have been denied natural justice. I'm in a booth and I got called up ten minutes ago. You're telling me, we're going to provide you with a Court book and then we're going to proceed now. You've got to be kidding. They served that Court book yesterday. I'm in a working gaol, I've got to try and file an appeal and everything like that. And here you are saying, Mr Dowling, we'll lock you up in a booth, demand that you proceed with these proceedings.

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This is a civil proceeding. If you have a look at that claim, they own that website they are instituting proceedings against. It's a joke. You want to hand down some dodgy judgment, so be it. They are after, they want a police brief on evidence which has allegations in it that Chief Justice Tom Bathurst is a known paedophile. That is in that police brief of evidence that they want, and here you are trying to stitch me up while ten minutes ago I was out walking in the yard.

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ATJ:KCS:OL

HER HONOUR: Mr Dowling, I'm just going to read, allow to you this affidavit of service, but a copy is being provided to you.

5 DEFENDANT: No, no, I'm not proceeding, I'm going to hang up, thank you for your time. Hand down that dodgy judgment, you can explain that you denied me natural justice, and you've tried to stitch me up ten minutes after I've been locked up and advised on this hearing. Thank you for your time.

10 HER HONOUR: Mr Dowling, I can arrange for the Court book to be provided to you. Can it be noted for the record that Mr Dowling has hung up and the time is presently 10.14am and he has left the booth.

15 COWDEN: Your Honour, may I note for the record Mr Dowling has not left the booth.

HER HONOUR: No, he hasn't left the booth. Where is he?

COWDEN: He's lying down on the ground, your Honour.

20 HER HONOUR: Pardon me. But in any event he doesn't appear to have the telephone anymore.

COWDEN: Yes.

25 HER HONOUR: So what shall we do today?

DEFENDANT: I'm not proceeding with the proceedings.

30 CORRECTIONS OFFICER: Pardon?

DEFENDANT: I've told her. I said they can stitch me up if they want.

CORRECTIONS OFFICER: Hello?

35 HER HONOUR: Hello, thank you.

CORRECTIONS OFFICER: Sorry. Can you call back?

40 DEFENDANT: No, I'm not going to proceed.

CORRECTIONS OFFICER: Could you possibly call back the centre, please? This inmate is underneath the desk and he doesn't want to proceed with the call.

45 HER HONOUR: All right.

DEFENDANT: It's simple, I'm being bullied. They call me up and they tell me I'm going to proceed with some proceeding, simple. I'm not a criminal.

50 HER HONOUR: Okay. I'll just be a moment.

ATJ:KCS:OL

CORRECTIONS OFFICER: He is sitting under the desk and I see the corporation doesn't think - they can hear us but we can't hear them--

5 SPEAKER: All right, what's he doing to do, go and get called?

DEFENDANT: I'm not going to come back.

10 SPEAKER: Go and get your call - listen, you're in custody--

DEFENDANT: Yep.

15 SPEAKER: --okay, you have to appear. If you want to hide under the table when you come back here, that's fine.

DEFENDANT: Okay, I'll do that.

20 HER HONOUR: For the record, I've been informed we need to adjourn for ten minutes to allow time for the Court book to be placed in Mr Dowling's hands, and for him to be given an opportunity to resume his seat. But I ask during that time that the affidavit of service be faxed by my Associate to the facility so that hopefully that can also be provided to Mr Dowling. I'll adjourn until I'm informed that those matters have been attended to.

25 SHORT ADJOURNMENT

HER HONOUR: Mr Dowling, I understand that you have now been provided with a copy of the Court book which you were given yesterday, is that right?

30 DEFENDANT: No, no, I've told you once, I will not be participating in these proceedings, I've been denied natural justice. Up until 10 to 10 I didn't even know these proceedings were going to be afoot. I was called up here to go into the video link and then told. So if you think that's allowing someone natural justice you've got to be kidding, you shouldn't be on the bench.

35 HER HONOUR: Mr Dowling, I would like to afford you natural justice in the following manner. It seems to me that this matter was listed for hearing today by Registrar Walton on 13 June 2018, and I understand that your evidence in support of your motion has been filed by you which are two affidavits that you have sworn of 12 January 2018 and 12 June 2018, is that right?

40 DEFENDANT: Look, I'm not participating, your Honour. You've got to be kidding. If you think you can ring up a gaol and put someone on video ten minutes before a hearing and say, "Represent yourself, son". I haven't got access to all my documents, one. Two, any final - you've got to remember, the whole - whole thing is a joke. The allegations, they are after police documents, they are after police documents, that's what they want, in a malicious police prosecution which they dropped, and they own the website that they want locked. It's a total joke the whole case, and I don't have access to all of my documents. You shouldn't be bullying me and making me represent myself.

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You're a bully, you're committing a crime. Bullying is a criminal offence, do you realise that?

5 HER HONOUR: Mr Dowling, is it correct that you rely on the two affidavits--

DEFENDANT: No, I'm not answering questions.

10 HER HONOUR: --that you have sworn on 12 January 2018 and 12 June 2018 in support of your application, Mr Dowling?

DEFENDANT: What you need to put down: "Mr Dowling was in gaol, we stitched him up, we told him ten minutes before the hearing that there was an actual hearing. So we've stitched him up." Put that in your judgment.

15 HER HONOUR: Mr Dowling, you were informed by Registrar Walton on 13 June 2018 that the motion was listed for hearing today.

20 DEFENDANT: I'm in gaol, we don't have documents and everything to gaol, and we don't have access to a computer or the Internet or anything like that. To suggest otherwise shows you're nothing but a joke and you are trying to stitch me up on behalf of Chief Justice Tom Bathurst. Is that correct? Is that what's happening?

25 HER HONOUR: I notice from the file that you have not filed any written submissions in support of your motion, Mr Dowling? Is it your intention to file any written submissions in respect of your motion?

30 DEFENDANT: Your Honour, I am in gaol, I have no intention of proceeding with this matter. You might as well cut off the video link now. You spend tax payers money on behalf of Channel Seven. Are you on their payroll, too, are you? Why are you spending tax payers money trying to stitch up someone in gaol?

35 HER HONOUR: Is it the case that you don't intend to proceed with your application made on 12 January 2018, Mr Dowling?

DEFENDANT: I have full intentions of proceeding but I'm not going to proceed now while I am denied natural justice.

40 Now, I can tell you now the evidence they want and the police statement, there's allegations against 18 judicial officers - well, 15 judicial judges, one magistrate and two registrars, for being suspected paedophiles and known paedophiles, and raising allegations of judicial bribery. Now, it includes
45 allegations against Chief Justice Tom Bathurst, that he is a known pedophile which I don't challenge the allegations, which shows up in Chris Day's police statement. Chris Day filed that evidence with the police in a police statement--

50 HER HONOUR: Mr Dowling, I understand from what you are generally saying, that what you would like to see today is to adjourn your motion of 12 January 2018 to be heard on another occasion. Is that, in essence, what you want to

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happen today?

DEFENDANT: Yes, your Honour, until I'm out of gaol.

5 HER HONOUR: Are you able to indicate when that is expected to be, Mr Dowling?

DEFENDANT: Well at the latest it should be 21 September 2019.

10 HER HONOUR: All right. I will just hear from counsel for the plaintiff.

DEFENDANT: Did you get the date right--

15 HER HONOUR: Just a moment, Mr Dowling. I'll come back to you in a minute. But just in respect of Mr Dowling's application to adjourn the application today, might I hear from you, Ms Cowden, as to the plaintiff's attitude to that application?

20 COWDEN: We would oppose any adjournment of the length that Mr Dowling is seeking. Clearly 21 September next year is an inappropriate length of time for an adjournment. Given the circumstances, and given your Honour is au fait procedurally with how long this has been on foot, we would say there's no reason why Mr Dowling isn't in a position today to deal with this motion, and if he chooses not to, the parties and your Honour would be in a position to
25 dispose of or deal with the motion. If Mr Dowling chooses not to be represented, that's a matter for him.

DEFENDANT: I don't have any money to represent me. What do you mean--

30 HER HONOUR: Just hang on, Mr Dowling, I'll hear from you shortly. I'm just trying to capture the plaintiff's attitude to your application to adjourn the motion. Yes, Ms Cowden?

35 COWDEN: Weighing all the matters in balance, if an adjournment of one to two weeks is sought, Mr Dowling clearly has the Court book, all he needs to do is read it. All the evidence is on. The timetable for submissions has come and gone, and in the circumstances, we would consent to an adjournment of that length but not of anything of the kind Mr Dowling is seeking.

40 HER HONOUR: Before you sit down, I notice that the matter is listed for a full day. Does that remain your estimate of the length of time? And Mr Dowling, I'll ask that of you in a moment.

45 COWDEN: May I turn my back on your Honour momentarily?

HER HONOUR: Yes.

COWDEN: My estimate is half a day, your Honour, at the most.

50 HER HONOUR: All right.

ATJ:KCS:OL

Mr Dowling, the plaintiff is amenable to the motion being adjourned for a week or two to enable you to review the Court book. That seems to me to be sufficient time to do that, but I just want to see if there is - before I ask -
5 Mr Dowling, do you remain of the opinion that the hearing of your motion would take a full day, or do you agree that it is more likely to take half a day?

10 DEFENDANT: I have no viewpoint on that, your Honour, but what I am arguing is that I shouldn't have to deal with this until I get out of gaol. I've got documents that prove the website is not mine on, you know, in storage. So I have evidence that - the website is not even mine, your Honour. I just make this point now--

15 HER HONOUR: Can I just stop you there, Mr Dowling. All that I am being asked to determine at the moment is not the whole of this case which is brought against you by Channel Seven, but is simply your motion of 12 January 2018 in which you seek two matters. You seek an order that the whole case be heard by an interstate judge or a judge of the Family Court. So that's the first matter.
20

DEFENDANT: Federal Court.

25 HER HONOUR: Yes, thank you. Pardon me. So that's the first matter that I'm being asked to decide, and the second matter is in respect of the subpoena. So it's not proposed that I would today or on any adjourned date be determining the entirety of the case which Channel Seven is bringing it against you, but simply your application which I've just referred to. That's all that we are dealing with at this point. So I understand that you want an adjournment of this application, is that right?
30

DEFENDANT: Yes.

35 HER HONOUR: Firstly, do you agree that the length of time to hear this application is more like half a day than a day, or do you think it needs a full day?

DEFENDANT: I think it probably needs a full day, your Honour, because they give me that.

40 HER HONOUR: Would you just pardon me for a minute, Mr Dowling. We're just having a look, Mr Dowling, to see if we can find a day which would be - I'm not going to adjourn your motion of 12 January 2018 until you are released from gaol, Mr Dowling, because I can see from the Court file that the issue that is presently before me which is in relation to the subpoena, has been an issue
45 since July 2017, and it needs to be dealt with promptly, and I can see that there have been a number of orders of the Court to progress that issue to a determination. What I can do is adjourn the motion to 27 September at 11.30am.

50 DEFENDANT: I need, your Honour, I just got in three weeks ago, and I am on

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5 a tight timeframe for making sure I have everything filed for my appeal, and so over the next two weeks I need a - I don't technically have a lawyer but I have someone helping me a little bit. How long they will keep helping me I don't know. But over the next two weeks I need to focus on my appeal, bail, trying to get Legal Aid. I filled in Legal Aid - I'm not going to bore you with my situation - but I filed Legal Aid a couple of weeks ago. It still hasn't been - gone through, so I'm refiling all that sort of stuff. So the next two weeks I need to totally focus on that, otherwise, it just doesn't get done.

10 HER HONOUR: Mr Dowling, I hear what you say but in fact this matter was listed for determination today, and I'm not prepared to give you an adjournment longer than two weeks. I'm only giving you an adjournment because the plaintiff is amenable to that happening. I note that the Court book was provided to you yesterday. It contains material which dates from 19 April 2017, 15 and the most recent document in it is the plaintiff's written submissions of 26 July 2018. I understand that you, from the Court file, that you have had most of, if not all of, the contents of that Court book for some time already. I am prepared to give you--

20 DEFENDANT: I'm in gaol.

HER HONOUR: Mr Dowling, let me finish. I am prepared to give you a further two weeks to prepare for the hearing of your motion, and I'm also prepared to give you an opportunity, should you wish to avail yourself of it, to provide any 25 written submissions in support of your application before the matter comes back before me on 27 September 18. So I propose to make the following orders:

30 DEFENDANT: What day is the 27th?

HER HONOUR: A Thursday.

35 1. On the defendant's application for an adjournment of the hearing of his motion filed on 12 January 2018, and with the consent of the plaintiff to that application, I adjourn the hearing of the motion to 11.30am on 27 September 2018.

40 2. I grant leave to the defendant to provide any written submissions in support of his motion by Monday 24 September 2018. Those submissions may be emailed to my chambers and copied to the plaintiff's legal representatives.

DEFENDANT: I don't have email, your Honour.

45 HER HONOUR

3. I reserve the costs of today.

50 DEFENDANT: I don't have email. Why put that order in there "I can email you the submissions"?

ATJ:KCS:OL

HER HONOUR: Pardon me. Mr Dowling, thank you for drawing that to my attention. I understand, however, that there are fax facilities at the correctional facility so you may wish - I'll go back to that order, and you can delete the reference to email as it's not applicable.

5

DEFENDANT: How come it's an 11.30 start? I think it needs a full day.

HER HONOUR: It's an 11.30 start because I have another matter at 10 o'clock, Mr Dowling, and so I will start it at 11.30. If we need to sit on to complete the hearing of your application, then we will do so.

10

DEFENDANT: Sit on another day you mean?

HER HONOUR: I beg your pardon?

15

DEFENDANT: Sit on another day?

HER HONOUR: No, on that day.

20

4. Liberty to apply.

DEFENDANT: Can I be sent a copy of the orders you just made?

HER HONOUR: I'll arrange, Mr Dowling, for my chambers to fax a copy of the orders to you.

25

DEFENDANT: If you could just mail them, will be fine.

HER HONOUR: Something will happen in that regard to make sure that they get to you. Ms Cowden, can I enquire whether you think it will be necessary to file any written submissions in reply, or not?

30

COWDEN: I don't think so, your Honour.

35

HER HONOUR: All right. I will adjourn the Court.

DEFENDANT: Just one other issue, your Honour. Can you ask Mr Keegan to mail me a copy of the transcript from the other day with McCallum J?

40

HER HONOUR: I'll have to leave that between the parties. I'm not going to make any order in respect of that. I'll adjourn the Court.

DEFENDANT: Thank you.

45

AUDIO VIDEO-LINK DISCONNECTED 10.55AM

ADJOURNED TO THURSDAY 27 SEPTEMBER 2018 AT 11.30AM

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