

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2020-485-000757
[2021] NZHC 3348**

BETWEEN

SERGEY GRISHIN
Applicant

AND

JOHN BOWIE
Proposed Defendant/Respondent

Judgment: 8 December 2021

(Determined on the papers)

JUDGMENT OF GENDALL J

This judgment was delivered by me on 8 December 2021 at 12.00 pm

Pursuant to Rule 11.5 of the High Court Rules

Registrar/Deputy Registrar

Date

Introduction

[1] On 27 May 2021 I gave a judgment in this proceeding granting the application by the applicant for pre-commencement discovery orders against the respondent.

[2] Those orders required the respondent to serve an affidavit of documents on the applicant by 25 June 2021 and to make the documents in question available for inspection by 9 July 2021.

[3] The applicant says the respondent has failed to comply with those orders. On 30 September 2021 the applicant filed in this Court an Application for Inspection and Related Orders (the Inspection Application) together with a supporting affidavit of Ella Arbuckle Page, affirmed 30 September 2021. Subsequently a further affidavit of Elizabeth Annette Keall affirmed 17 November 2021 in support of this application was filed. All documents as I understand it have been served on the respondent.

[4] Submissions on behalf of the applicant in support of the Inspection Application dated 17 November 2021 have now been filed. Submissions in response from Mr Bowie, the respondent, dated 1 December 2021 have also been filed. Brief reply submissions from the applicant dated 2 December 2021 have also been filed.

[5] All these matters have been referred to me now and, having had an opportunity to consider all the material filed, I give my decision on the Inspection Application.

The Inspection Application

[6] The applicant's 30 September 2021 Inspection Application specifically sought orders that:

- (a) within 10 working days, the respondent make available and provide access to a forensic technology expert nominated by the applicant, his computer(s) and any other data repositories (eg USB drive, Cloud-based email, Cloud-based file storage etc) for examination on behalf of the applicant;

- (b) during the examination such expert may download and take copies in their native file format (that includes the metadata, eg. msg or .eml files for emails, .docx, .doc or .wpd for word processed documents) of all documents encompassed by the discovery orders made by the Court on 27 May 2021. Such documents may include the original emails, attachments and other documents that have already been disclosed or referred to by the respondent and any other documents that are subject to the orders;
- (c) the examination to take place at the offices of Simpson Grierson in Wellington;
- (d) the respondent and a solicitor on behalf of the applicant may be present during the examination;
- (e) the expert is permitted to request the respondent to use the built-in search function of the computer system(s) and other electronic mediums to assist in locating all documents;
- (f) the expert is permitted to take notes of their examination, including instances where searches for particular documents do not yield any results;
- (g) the respondent may require redaction of any part of any document which he claims privilege in respect of. The forensic expert will assist in implementing any such redaction;
- (h) the outputs from this examination process will be copied to a clean USB drive for provision to the applicant's solicitors on completion, with a further copy to be maintained by the expert;
- (i) costs.

[7] In his submissions in opposition to the Inspection Application the respondent, amongst other things, raised certain practical concerns in relation to the inspection.

Counsel for the applicant in his reply submissions dated 2 December 2021 clarified certain aspects. The first related to the identity of the nominated forensic technology expert to undertake this examination. Given that this needed to be a reputable New Zealand based independent expert, the applicant proposed Campbell McKenzie of Incident Response Solutions. As I understand it, Mr McKenzie is a leading expert in this field in New Zealand. No objection to his appointment as an appropriate expert has been made.

[8] Secondly, counsel for the applicant confirmed in this 2 December 2021 Memorandum that the costs of the independent expert would be borne by the applicant, Mr Grishin, and further that the applicant understood the examination and download of the files in question in any event should be a relatively routine exercise for the expert to undertake.

[9] So far as the Inspection Application is concerned, I have considered the detailed submissions before me both in support of and in opposition to the application along with the affidavits noted above.

[10] In his submissions dated 1 December 2021 in opposition to the application the respondent, Mr Bowie, endeavours to assure the Court that at all times he has attempted to cooperate with the applicant's solicitors on the earlier pre-commencement discovery orders made by this Court. He complains too in his words that with the current application, "the applicant's solicitors have "shifted the goalposts" by also pursuing the question of other parties who have communicated with myself ...". On this aspect I simply comment that the earlier orders made by this Court for pre-commencement discovery were wide and required the discovery of documents identifying "all other persons in any way involved in the publication of the Articles" and elsewhere "any persons" who made payments for publishing the Articles. As I see it, those orders are aimed directly at orders sought in the present Inspection Application.

[11] And, at para 25 of his submissions the applicant states amongst other things "I am mindful of the need to advise the Court that there is no intention to create

obstruction in any way whatsoever, but simply to provide what has been ordered". As I see it, that is precisely what the applicant is endeavouring to achieve here.

[12] The applicant goes on to state in his submissions that if the Court is minded to make the inspection and related orders which are sought, then the cost of this should fall on the applicant. This is to be the case as the applicant accepts and as I note above.

[13] In conclusion I accept the arguments advanced on behalf of the applicant here that proper grounds do exist for the making of the orders sought here. It is necessary, as I see it, that all those who were or may have been involved in the publication of what are alleged to be defamatory articles about the applicant the subject of disclosure here. Also, it is clear that any privilege matters can be addressed by the respondent's ability to redact any part of a document to which he claims privilege, as order [6](g) above specifically permits.

Result

[14] The applicant's present Inspection Application succeeds.

[15] For all the reasons I have outlined above, orders for inspection and related matters as set out in paragraphs [6](a), (b), (c), (d), (e), (f), (g) and (h) above (including the appointment of Mr Campbell McKenzie of Incident Response Solutions as the forensic technology expert specifically nominated under these orders) are now made.

Costs

[16] As to costs, the applicant has succeeded in this application and I see no reason why costs should not follow the event in the usual way.

[17] The applicant therefore is entitled to costs against the respondent with respect to this Inspection Application, on a category 2B basis, together with disbursements, if any, as approved by the Registrar.

Gendall J

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