

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION

5 HAMILL J

FRIDAY 16 MAY 2014

**2014/000114469 - JUSTINE MUNSIE v SHANE DOWLING**

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Mr S Dawson for the First and Second Plaintiff  
Defendant appeared in person

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DAWSON: I appear for the first and the second plaintiffs.

DEFENDANT: And I appear for myself, self-represented.

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DAWSON: I can indicate that it is in for directions today. I have proposed some short minutes of order but Mr Dowling tells me he does not agree with them. But I think he prefers to raise it with your Honour rather than with me and I don't want to press him in those circumstances.

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HIS HONOUR: No, of course.

DAWSON: It will probably take no more than five to ten minutes. And if I may say so, if there is a chance of dealing with it earlier on because I am supposed to be elsewhere this morning, I would appreciate it, your Honour.

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HIS HONOUR: Mr Dowling, I really do not seek to hear from you. At this stage, I just want to know the likely length of time for this directions hearing.

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DEFENDANT: Hopefully but Mr Dawson has a habit of arguing for a long time. We have just had a judgment handed down in this matter.

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HIS HONOUR: I tell you what I know. When I walked into court, my associate was handed the file and I've been told that Hall J has just published a judgment which I gather and I haven't read it, some form of injunction was granted.

45

DEFENDANT: There's two things I was going to argue for. Two things, a stay put on Hall J's judgment because it's a civil proceedings and there's also a criminal proceedings, contempt of court to be dealt with. So a stay should be put on his judgment which is quite common when there's criminal proceedings relating to the same matter.

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HIS HONOUR: Is the injunction to stop publication of further material? Is that the basis or the nature of the injunction? Was the question of a stay raised with his Honour when he published his judgment this morning?

DEFENDANT: It was raised when it was set down for hearing, your Honour. It was raised by me when it was down for hearing. And that's quite common when there is a criminal matter.

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HIS HONOUR: Thank you for that. I propose to stand it down. I think five to ten minutes might be an ambitious estimate.

10 DAWSON: Although I can say your Honour that in relation to the stay there is a fairly short answer to that but we will come to that.

HIS HONOUR: Can I invite you to not go far while I see what else is in the list? There is a prospect of assistance from another judge.

15 MATTER STOOD IN LIST

HIS HONOUR: I think I should come back to matter number one.

20 As I said, I know precisely nothing about the case apart from what you both told me a little earlier.

DAWSON: I would give you a very brief history, if it assists?

HIS HONOUR: It would.

25

DAWSON: Without too much reference to the papers, the proceedings were first before the Court on 14 April this year on an ex parte application for an injunction to restrain Mr Dowling from continuing to publish on his website material said to be and accepted by Hall J, in the judgment which your Honour 30 was referred to today as being arguably defamatory.

His Honour, Harrison J, before whom this matter came in his capacity as duty judge declined to make an ex parte injunction but made an interim suppression order to protect the parties' interests between that day and when the matter 35 could come back for a contested hearing. It came back on 17 April.

In the meantime, Mr Dowling, having been served with the orders of the Court made on the Monday, 14th and I am referring specifically to the suppression order, nonetheless published the pleadings, the evidence on which we 40 proceed before Harrison J, and a raft of other documents which were proceeded on the face of the suppression order.

HIS HONOUR: That's your case.

45 DAWSON: That's our case and I don't think there is any dispute from Mr Dowling about that. But I accept your Honour's qualification with respect. When the matter came before the Court on the Thursday--

HIS HONOUR: Date?

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- DAWSON: 17 April 2014, for the contested hearing on the plaintiff's notice of motion filed in court on Monday, the 14th, the plaintiffs moved on an amended notice of motion which expanded the relief that we sought on an injunctive basis to include a ground in addition to the defamation grounds for contempt.
- 5     And the nature of the contempt was that by reason of the publication since the Monday, Mr Dowling had fallen foul of the principle which says one cannot engage activity which is calculated to influence the way another party to the litigation will conduct themselves.
- 10    We also filed in court on that day, a notice of motion with the statement of charge attached to it, seeking a declaration that Mr Dowling had committed a contempt of court and that he be punished for it. That matter came before the Court today for directions, as is the defamation case.
- 15    The result of the argument that took place on 17 April was that on 24 April, his Honour Harrison J delivered judgment dismissing the plaintiff's application on the ground that the contempt basis for the relief sought had not been made out. His Honour did not determine the defamation ground, being under the impression that his Honour said in the judgment that we had abandoned that
- 20    course of action on the injunction application. From our point of view that was not so, and we relisted the matter.
- HIS HONOUR: Can I just stop you one moment? Harrison J's dismissal of the contempt part of the claim is not currently subject to any form of review?
- 25    DAWSON: No.
- HIS HONOUR: And you were then telling me about what his Honour was doing in respect of the defamation.
- 30    DAWSON: I'm sorry, your Honour.
- HIS HONOUR: My fault.
- 35    DAWSON: I suspect mine, your Honour.
- So coming back to the chronology on the 17th, there was a contested hearing his Honour reserved an on the 24th, delivered judgment, and as your Honour correctly observed, rejecting the injunction application on the contempt ground
- 40    and not determining the defamation ground for the reason I have indicated namely, his Honour had the impression that we had in fact relinquished that ground as a basis for the injunction. That was not our view of the matter. We sought to have the matter relisted and eventually it came before Hall J, in his Honour's capacity as the duty judge.
- 45    HIS HONOUR: That was on 8 May?
- DAWSON: That was on 8 May.
- 50    HIS HONOUR: And his Honour published his decision this morning?

DAWSON: That's so. And his Honour granted the injunction on the basis of the defamation ground and what that requires is that Mr Dowling take steps to ensure that he no longer publishes the matter complained off in the defamation proceedings, in other words the publication sued on.

HIS HONOUR: Mr Munsie, don't worry, I will be hearing from you in due course. But I think I am being assisted by Mr Dawson giving me at least an outline of the history of the litigation. So don't be worried that I'm not hearing 10 from you, I will.

DEFENDANT: No, I am not.

DAWSON: So the effect of the injunction this morning your Honour is that 15 Mr Dowling cannot publish the publication on which we have sued on the defamation proceedings any further. The practical effect of that is that is, he has to take it off the internet because as soon as somebody downloads the publication - and I should have said earlier, that Mr Dowling runs a website which is where the publication sued on is presently available.

HIS HONOUR: Sorry to interrupt you but Mr Dowling has raised the question 20 of stay. And I have two reasonably fundamental questions as to that. One factual and one legal. The first one, is whether or not that matter was raised before Hall J when he delivered his judgment?

DAWSON: Regrettably I was in another court when his Honour delivered 25 judgment but I am told that was not raised.

DEFENDANT: I raised that when we had the argument last week, your 30 Honour, during the notice of motion. But he never mentioned it this morning so I assume he rejected it, I don't know.

HIS HONOUR: And the second one is legal. And that is, Mr Dawson if you 35 can assist me, whether or not the judge sitting in the duty list has power to stay an order made by another judge half an hour earlier or whether that matter should go to the Court of Appeal?

DAWSON: Your Honour, if there had been a stay application made and determined then absent any relevant change in circumstances, the correct 40 course for a party complaining about that result would be to seek an appellate review by the Court of Appeal. In this situation though, your Honour--

HIS HONOUR: Is Mr Dowling correct to tell me that he did raise the matter in 45 the course of argument?

DAWSON: I would not accept your Honour that he made an application for a stay in the event that he lost. What he did raise, your Honour, what he did raise and I made various remarks about it with Hall J at the hearing on 8 May, was the fact that the motion for contempt is at least a quasi criminal matter and 50 that--

HIS HONOUR: Sorry, we just received a note in one of the other matters. I interrupted your chronological analysis, can you go back to it?

5 DAWSON: Yes, I will and I will address the question of stay separately.

HIS HONOUR: Yes.

10 DAWSON: So we're up to the point at which his Honour delivered judgment this morning.

HIS HONOUR: Yes.

15 DAWSON: On the application for the involuntary injunction which his Honour has granted on the defamation ground. Now as I say, the effect of that is that the publication via the internet will have to stop unless the order is otherwise stayed.

20 What is before the Court this morning your Honour, is both the defamation proceedings themselves as well as the contempt motion. Both are in for directions and we have some proposed short minutes which might be convenient if I hand it up now.

HIS HONOUR: Are you content for me to receive those, Mr Dowling?

25 DAWSON: They're not agreed, your Honour.

DEFENDANT: I am happy for you to read it, your Honour.

30 HIS HONOUR: I might just mark it as an exhibit.

EXHIBIT #A PROPOSED SHORT MINUTES TENDERED, ADMITTED WITHOUT OBJECTION

35 DAWSON: I hand up a working copy.

HIS HONOUR: Thank you.

40 DAWSON: Your Honour, orders 1, 2 and 3 relate to the defamation proceedings. Orders 4 and 5 relate to the contempt motion.

45 So, your Honour may have been spared too much to do with the defamation list in your Honour's time at the bar and if that is right, allow me to tell your Honour how that works procedurally. Where a plaintiff files a statement of claim, it is open to the defendant to take various pleading points and they are the subject of very interesting discussion in the defamation list. If there are no objections to the statement of claim then a defence is usually filed in the ordinary way and discovery and interrogatories follow.

50 What has occurred in this proceedings is that Mr Dowling has filed a defence

and we say, the defence is not in compliance with the rules. What it does and if I will just cut to the chase your Honour, is that it sets out provisions of the Defamation Act and it does not give the basic requirements in the rules and the intention.

5

HIS HONOUR: Can you tell me what part I am looking at when I come to look at the rules?

10 DAWSON: It is contained in pt 14 and 15 of the Rules and there is a specific ruling that deals with the defamation pleading and I will give your Honour in a moment of the specific Rule numbers.

HIS HONOUR: I will see if I'll need them and if we are going to debate about this, I will need to refer to it. Yes.

15

DAWSON: So your Honour we say that the defence has to be struck out. But what we have provided for, in order 1, we put on a motion to that effect.

20

I can tell your Honour that usually in the defamation list, motions are not required. It is done on a more informal basis than that because of the number of disputes, the costs of motion has been accepted as somewhat being an inhibition to the proper conduct of that list. But in these circumstances we accept it's sensible to have a motion. We also propose to file an outline of objections so Mr Dowling knows what it is we are saying in precise terms.

25

Order 2 provides for Mr Dowling to respond to that. Order 3 provides for leave to approach, that is to get a hearing date for the hearing of the motion to strike out the defence.

30

Now the reason it is not going to the defamation list, as it ordinarily would, your Honour, is that her Honour McCallum J who is the defamation list judge, when she was at the bar was briefed regularly by the first plaintiff, who was a solicitor. And we anticipated Mr Dowling may have a different view. But we anticipated that that might cause Mr Dowling some concern. And that, rather than waste time and put it into the defamation list for him only to take that point when her Honour would inevitably raise it, we should raise it now and raise it before another judge of the division. If Mr Dowling has no objection to McCallum J hearing the pleading arguments then it can go in the defamation list in the ordinary way.

35

So that is orders 1, 2 and 3. Orders 4 and 5 your Honour provide for the bringing on for hearing of the contempt application. Mr Dowling has already put on an affidavit in response to the affidavit on which the plaintiff moves on the notice of motion of contempt. I understand he has provided another affidavit today which I apprehend is deployed on the contempt application. Order 4 simply reserves for the parties the ability to put on any further evidence by 23 May, with a view to the matter coming on reasonably urgently after that for hearing. With an estimate of one day.

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HIS HONOUR: Is it proposed in the short minutes of order to set a hearing

date?

DAWSON: It is, your Honour in the sense that we have leave to approach the list clerk.

5

We have been trying to do where possible and if I was guessing I think I would look at a date in early June or something like that.

DAWSON: Yes.

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HIS HONOUR: When is your other commitment?

DAWSON: It was some time ago. I'm just waiting for a call.

15

Can I come back to the stay question? Just to identify the issue for your Honour without seeking to take any forensic advantage by remaining on my feet.

20

What Mr Dowling is putting to your Honour, as I understand it is that he wishes the order that Hall J made in the nature of injunctive relief, to be stayed pending the outcome of the contempt motion. On the basis that, and it is an uncontroversial proposition that a person who is facing a criminal or quasi criminal charge and I accept that that is the general character of the motion for contempt ought not be put into the invidious position of having to deal with the same subject matter of the civil context before the criminal matter is determined.

25

It was for that reason, your Honour, that when Mr Dowling raised that before Hall J on 8 May, I would say not in the context of any application for a stay should Hall J grant the injunction. But when Mr Dowling raised that, I indicated to Hall J that it might be advisable for his Honour to refrain from making any finding or purporting to make any finding about the publication said to constitute contempt, to the extent that it was relevant to the injunction application.

30

HIS HONOUR: And did his Honour accept that submission and did his Honour then comply with the publishing of his judgment or haven't you had time to read it?

35

DAWSON: His Honour noted the submission on the day and from my reading of the judgment which has been a bit of a skim read, your Honour, there does not seem to be a finding which would contravene that proposal.

40

HIS HONOUR: Before you sit down, is it proposed that the substantive defamation proceedings is going to run at the same time as the contempt proceeding?

DAWSON: Not in terms of the same hearing but certainly in parallel, yes.

45

HIS HONOUR: What does that mean, in parallel? Is it going to be the same

evidence, different bodies of evidence, two hearing dates or one?

- DAWSON: Two hearing dates. And the reason that that is so your Honour is because and this is if I may say so, the answer to the stay controversy, the  
5 publication which is sued on the defamation proceedings is a different publication to the one said to constitute the contempt.

- So the publication sued on the defamation proceedings is an article on Mr Dowling's website concerning Ms Munsie and Mr Stokes and it raises  
10 certain allegations about the recent controversy that your Honour may have some familiarity with what appeared in the press surrounding--

HIS HONOUR: Is that about a finding in Bondi?

- 15 DAWSON: It wasn't that controversy, it was the Schapelle Corby proceeds of crime controversy. And there was a suggestion between Channel 7 and Ms Corby for a paid interview and--

HIS HONOUR: I don't think I need to go into much detail.

- 20 DAWSON: I won't go into it, your Honour.

- HIS HONOUR: At the moment, I don't think I need to go into the precise details of the nature of the defamation but the article in relation to which the  
25 contempt proceedings are said to arise was an article published subsequently - is it on twitter?

- DAWSON: One, there is a twitter link and there is a twitter publication and there is a substantive article which appeared after 14 April in which all of the  
30 documents which Harrison J suppressed from publication, were made available. And so that article which itself is, on our case, seriously defamatory of the plaintiffs, it alleges amongst other things that Mr Stokes had bribed Harrison J and Harrison J had accepted the bribe as an explanation for the suppression order that was made. That article is not yet sued on in  
35 defamation. It stands alone as the basis for the contempt.

- So the short answer to the stay controversy if there is one, your Honour, is that by staying the injunction, one does not achieve any protection of Mr Dowling's rights in respect of the contempt application. If I need to expand on that to  
40 assist your Honour, I would be obviously very happy to -

HIS HONOUR: Thank you very much. You are instructed here today, I gather?

- 45 DAWSON: Yes, I am.

- HIS HONOUR: I just wanted to make sure in case I stand the matter down to read something and give you the opportunity to go down to the Downing Centre but that will turn to a degree on what Mr Dowling has to say. So I might  
50 call on him.

Firstly, Mr Dowling, Mr Dawson has given me what is largely a neutral appraisal of the background to the case. Obviously towards the end, he ventured into some submissions about the stay. But in terms of the chronology he provided me, I gather there is no controversy about that?

DEFENDANT: No, your Honour, no issue.

HIS HONOUR: Thank you. If I can deal with one matter at a time--

10 DEFENDANT: Would it help if I raise the three matters that I want to answer?

HIS HONOUR: That's fine. But can I suggest to you that the first thing that I really need to concern myself with before we get to the nitty gritty of the 15 proposed stay of Hall J's orders, is the case management. I mean, you take it are keen to have the matter progress to a final hearing?

DEFENDANT: There's two matters - yes, your Honour.

20 One, what I was going to argue first is that today be adjourned for say four weeks because Hall J has just handed a decision half an hour ago and I haven't had an opportunity to review it. I have got 28 days to appeal it. Without even getting into the detail, I think the average person can say it is highly appealable based on the fact that it in effect overturns Harrison J's 25 judgment. So we have two judgments, at the moment and just on that basis--

HIS HONOUR: Is it correct for me to think they are on different publication?

30 DEFENDANT: No the same publication, your Honour, exactly the same publication.

DAWSON: That's not right.

35 DEFENDANT: They are the same publication. The publication on my website, they are orders on the same publication.

HIS HONOUR: Mr Dowling just address your arguments to me.

40 DEFENDANT: Okay. So I believe it should be adjourned, I think it's fair and reasonable. I am a self-represented litigant and I've had half an hour to look at the judgment, I haven't read it in full. And based on the fact that Harrison J handed down a judgment on exactly the same published article and it was in my favour and Hall J determined in their favour, you'd have to say strong ground for appeal.

45 Two, so I want to vacate today those directions hearing for at least four weeks to have an opportunity to have a really good look at it. There is two stays. There is a stay on his orders today, in Hall J's orders today. And also a stay on the defamation as a whole. That way I can totally focus on that application 50 for contempt which is in effect criminal proceedings.

It is standard to have, like I said at the beginning it is standard to have any civil proceedings stayed until the criminal proceedings are heard. As a self-represented litigant that would give me the best opportunity to represent myself in that application for contempt which has to take priority.

5 HIS HONOUR: Is another way of thinking about that, that if I am minded to do anything by way of case management, putting aside the possibility of simply adjourning it for four weeks to allow you to contemplate your appeal options,  
10 that the defamation hearing should be listed well beyond the contempt hearing?

DEFENDANT: Yes, your Honour, yes.

15 HIS HONOUR: So I think you said when you stood up and I might have side-tracked you, that you had three things that you wanted to talk about. One was, if I can call it broadly, the case management issue and you're really saying this should go over for four weeks to allow me to exercise my appeal rights against Hall J's judgment rather than making anybody serve anything.

20 DEFENDANT: Yes.

HIS HONOUR: The second point is that you want a stay of the orders that Hall J made and the third is that you want a stay of the defamation proceedings altogether until the contempt proceedings have been finalised.

25 DEFENDANT: Yes. And the next one I have is an argument for why a stay should be put in place.

30 DAWSON: Your Honour, can I offer this? I do not want to interrupt but just taking the advantage, I just want to offer this and if this narrows things, if Mr Dowling wants to consider his appeal rights and does not want to have to deal with the first instance defamation proceedings generally, I would not oppose, there being no directions made in the defamation proceedings until  
35 such time as Mr Dowling has decided to do what he wants to do by way of appeal if anything.

HIS HONOUR: Really, when you were giving me the broad outline and made the concession that ordinarily - and you did not say it in these terms - but  
40 ordinarily, the defamation procedures would or - the finalisation of the contempt and I may have misunderstood you but you said something in that nature--

45 DAWSON: Yes, if it related to the same publication which in this case it does.  
HIS HONOUR: That is a matter of controversy between you that I don't think I need to resolve at the moment, particularly if you're very reasonably saying, I am happy for the case management of the defamation case to be effectively adjourned.

50

DAWSON: Yes, I wouldn't oppose that your Honour, as long as we keep the injunction.

HIS HONOUR: Yes, we haven't heard Mr Dowling's argument on that. What I  
5 have heard is some argument from you on that, albeit truncated and I think  
done in a fairly neutral fashion. But just coming back to the case management  
aspect of it, Mr Dowling, wouldn't it be appropriate, given the significance to  
everybody of the contempt allegation and perhaps you, above all else, to get  
back that matter moving along whilst at the same time you had the opportunity  
10 to exercise any rights of appeal you have in respect of Hall J's judgment. And I  
could push out the time table in respect of service of material in the contempt  
proceedings to take into account that you want that 28 days to consider it. I  
must say it is, I think, important and at least something happened other than  
simply a four-week adjournment.

15 DEFENDANT: Yes.

HIS HONOUR: We will come to the question of stay in due course. But given  
they are separate proceedings and your main concern, which Mr Dawson fairly  
20 concedes the force of is, that you're not caught on this bind, where you are  
arguing on two fronts, the civil and quasi criminal point. And I take your point  
on that and on a preliminary basis at least, accept it. But I think we can  
fashion orders to alleviate that risk.

25 DEFENDANT: I am happy to do because I am thinking about two things at  
once and so you're juggling, that's why that four weeks. But I am happy to  
have all evidence filed and served say within four weeks in relation to the  
application for contempt. So that way when we come back we can set a date.  
I am too happy to do that, because that was one of the things that's in the back  
30 of my mind, I just want some extra weeks to file a defence and that. I just  
didn't get to the detail because--

HIS HONOUR: And you can see just from observing the fact that this is the  
duty list and if matters are going to go on for too long they are not going to be  
35 dealt with here at all. So we can probably fashion some orders in relation to  
the case management of both proceedings which, (1) get the contempt  
proceedings moving along.

40 DEFENDANT: Mm-hmm.

HIS HONOUR: And two, puts off the final determination of the defamation  
proceedings and serve some evidence in relation to that beyond your appeal  
period.

45 DEFENDANT: Yes.

HIS HONOUR: So we'll come back to work out the nuts and bolts of that but  
let's talk about your stay application.

50 DEFENDANT: One, obviously that defamation proceeding as a whole--

HIS HONOUR: Now we are going to work a solution to that through the case management orders, so I don't want to hear you about that. And I am utterly disinclined to make a stay of those proceedings--

5

DEFENDANT: Yes, at this point.

HIS HONOUR: --if I can avoid making such an order by case management. Talk to me about why it is that I should stay the order of Hall J that was made  
10 this morning?

DEFENDANT: I think - it's my website is what I work on full time. That is how I make my living. His judgment is just basic logic that says, okay we have two judgments that contradict each other. One is Nicholson J and one is Hall J--

15

HIS HONOUR: Sorry, do you mean Harrison J--

DEFENDANT: Yes and one Hall J. His orders by and large are fairly futile anyhow in the context of, there is another website called Wayback Machine  
20 which actually stores all websites. So even though I take it down on my site, people are still going to access it on Wayback Machine.

HIS HONOUR: Can I ask you this, do you accept that the material to which Hall J's orders relate is at least capable of being defamatory?

25

DEFENDANT: No, your Honour, no. I wrote an article in 2011, trying to say--

HIS HONOUR: Did Hall J altogether make a finding of that to the contrary?

30

DEFENDANT: I don't think he made a point. He can't because we haven't had the defamation hearing.

DEFENDANT: I did read briefly somewhere that he said I haven't given evidence in relation to the defamation. I remember reading that somewhere briefly. As far as I was concerned that proceeding last Thursday shouldn't have gone ahead. He hasn't dealt with it as far as I can see.

5

HIS HONOUR: I don't want to hear about that.

DEFENDANT: No, he hasn't. There's no damage that's going to be done to Kerry Stokes or Justine Munsie. I am well-known within the certain fraternity, I sit in the media room in the Royal Commission into the unions and ICAC.

10

HIS HONOUR: The Sydney Morning Herald is well-known too but from time to time injunctions are granted to stop them publishing articles. I am not doubting your credentials, I don't need to know them.

15

DEFENDANT: I am saying in relation to my income. That's how I derive my income.

20

HIS HONOUR: But presumably your income is not merely derived from publishing things about Ms Munsie and Mr Stokes.

25

DEFENDANT: No, no, it goes to my credibility. It's really futile. There's no huge benefit. My personal viewpoint is these proceedings are lengthy and to some degree and in relation to the Federal Police and Schapelle Corby because the costs are still being worked out there and I think taking out this injunction will sort this - because it implicates how much costs they will be awarded. I wrote an article back in 2007 calling Kerry Stokes Australia's number one perjurer. He sent me a threatening letter but never did anything after that.

30

In 2013 I called him Australia's number one bribe-taker because fees for the television were dropped after a private communication and private holiday with him and Stephen Conrod who was the Minister for Communication at the time. They took no action. Those two articles are up there and they're always going to be up there because it's too late, it's gone past the--

35

HIS HONOUR: Stop talking about it and tell me about it. Does Hall J's judgment have anything to do with either of those articles?

40

DEFENDANT: I think in the context of it's fairly futile orders anyhow.

HIS HONOUR: Because there is other materials on the internet defamatory of Mr Stokes.

45

DEFENDANT: And that exact material is available on the website Wayback Machine which archives not all but a lot of the websites and certainly archives mine to the best of my knowledge, I haven't gone on there for a while but they used to. So the actual material is still going to be on the internet. Wayback Machine to my knowledge is based overseas in Europe or the US somewhere.

50

So they're not removing the material they're just removing it from my site. So it's one all, it's not two to one. It's not an appeal where they have got two judges against one, it's one judge against judge. I won the first round. They won the second round. It's highly appealable.

5

HIS HONOUR: I am going to ask you to clarify the defamation proceedings which are going to adjourn off into the future to allow the contempt procedure proceedings to be heard. Did those defamation proceedings on which you are being sued presumably for damages, is it that material that Hall J's judgment relates to?

10

DEFENDANT: The contempt - my defence does. They're saying it's different material. I say it's not because my defence does rely on that exact same material. For them to argue that it doesn't, he's referring to his case, not my defence. My defence relies on that material.

15

HIS HONOUR: I am just looking at the calendar trying to get a timetable that might work.

20

DAWSON: I should correct something that I said earlier, it's just his Honour hall J didn't touch on the questions of a stay. Expressed in a general way that statement was incorrect. His Honour didn't detail with an application for a stay of the injunction were his Honour to make it.

25

I take your Honour to paragraph 64(ii), in recording Mr Dowling's submissions his Honour said that Mr Dowling had said, as your Honour reads there, that the civil proceedings should be stayed generally.

30

At 66(ii) his Honour rejects that on the basis that I put to your Honour which is that the defamation proceedings and contempt proceedings are entirely different controversies.

HIS HONOUR: They're obviously related. One follows upon the other.

35

DAWSON: The contempt of the suppression order flowed from the commencement of the defamation proceedings.

HIS HONOUR: I understand that.

40

DAWSON: I can take your Honour to the two different publications on the Court file.

HIS HONOUR: I don't think I need you to do that at the moment. Thank you for your assistance.

45

Anything else you want to say on the question of the stay? It's an exercise in futility you say, injunction Hall J granted this morning because it's on Wayback and there's other stuff you published.

50

DEFENDANT: My defence does rely on both articles. Well the original article

which is where the contempt comes from. My friend's arguing differently but that's his application, contempt relies on the original article. Not my defence. My defence does rely on that original article.

- 5 If everyone filed application for contempt so they would have been aware of that you would suspect they filed the application for contempt it undermines the right to a suppression order.

DAWSON: Does your Honour wish to hear from me in reply?

- 10 HIS HONOUR: Just give me a moment to collect my thoughts.

- HIS HONOUR: Mr Dawson, apart from the usual requirements of case management that matters get dealt with expeditiously and taking on board your sensible concession about perhaps putting off the defamation final hearing beyond the contempt final hearing, the fourth order you seek nominates a date being 23 May being the date for service of additional evidence.

DAWSON: It's one week

- 20 HIS HONOUR: I am more minded to put it over further than that to allow Mr Dowling to exercise any rights he chooses to in the Court of Appeal.

- 25 DAWSON: I am happy to take up Mr Dowling's suggestion of four weeks which would make it 13 June. And it might be convenient if Mr Dowling indicates that - and I think this is right - the affidavit that he's provided to us today, which is additional to the affidavit already on the Court file, is to be taken into account on the contempt motion. It might be convenient if he indicates that to the court so the Court and the plaintiffs know.

- 30 HIS HONOUR: Has that been filed?

DAWSON: I'm not sure. I am told it has been.

- 35 HIS HONOUR: I am resisting--

DAWSON: I will ask Mr Dowling.

HIS HONOUR: Did you serve that in the Court registry or in the court?

- 40 DEFENDANT: I went to the registry at 9 o'clock this morning and I served it this morning.

- 45 HIS HONOUR: You intend to rely on that material in the contempt proceedings?

DEFENDANT: Both proceedings.

- 50 HIS HONOUR: Before I embark on giving reasons, I just want to make it clear that the case comes before me in what is a reasonably busy list as duty judge

and the reasons that I give will be accordingly very brief.

FOR HIS HONOUR'S JUDGMENT SEE SEPARATE TRANSCRIPT

5 HIS HONOUR: Anything further?

DAWSON: Would it be convenient if we could have the order for evidence by say 12 June so we have it before the directions hearing on the 13th just in case any matter needs to be raised about that?

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HIS HONOUR: Mr Dowling, I think that's not a bad idea, isn't it? So you all know where you stand. I know that's one day before the expiration of your appeal opportunity.

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DEFENDANT: I think that's only a directions hearing on the 13th. I actually filed it this morning which was a date late on the basis that I only had to come here once. The 13th suits me better. It's only a directions hearing.

HIS HONOUR: You could always take the view that you don't have to do

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everything at the last minute.

DEFENDANT: But some evidence might come up. It's only a direction hearing.

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DAWSON: If Mr Dowling comes to Court with it--

HIS HONOUR: I suspect whatever I do, that might be what happens. I am proposing to leave the order as they stand.

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DAWSON: Could we have the costs of our stay application today. The matter was going to come for directions in any event.

HIS HONOUR: I would have thought costs should be costs in the cause.

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DAWSON: I won't press it. We will in the interests of fairness, but without in any way wishing to cut across the idea that the defamation proceedings will sit in the background for the moment, provide Mr Dowling with an outline of our objections to the defence in the event that he has some time and wants to consider it before the 13th, but there's no obligation on him to do that.

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HIS HONOUR: I note that undertaking - I will call it indication - he's going to provide you with some idea of what his case is.

DEFENDANT: Yes.

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HIS HONOUR: In relation to what he says are the deficiencies in your defence. Thank you.

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