

**IN THE DISTRICT COURT OF NEW ZEALAND  
MANUKAU REGISTRY**

**CIV: 2012-092-1969**

**BETWEEN MATTHEW BLOMFIELD**  
*Plaintiff*

**A N D CAMERON JOHN SLATER**  
*Defendant*

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**SUBMISSIONS OF MATTHEW BLOMFIELD**

DATED this 23<sup>rd</sup> day of August 2013

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**Next event:** 2<sup>nd</sup> September 2013 at 2:15pm  
**Before:** Judge CS Blackie

Mathew Blomfield

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## Memorandum of Matthew John Blomfield

MAY IT PLEASE THE COURT:

1. I refer to the Memorandum of Counsel for the defendant dated 7 December 2012 filed in opposition to the plaintiff's Notice of Application for Orders for Discovery and Interrogatories dated 5 and 6 December 2012 (Copies attached).
2. His Honour Judge Gibson did not say In Court on 12 November 2012 that Discovery and Interrogatories did not need to be responded to by the Defendant. He stated that there were no applications before him that needed to be dealt with, and that the Notices served could follow their normal course. They have, and the defendant is now in default.
3. If the defendant wished to assert that His Honour Judge Gibson had taken the extraordinary step of setting aside Notices for Discovery and Interrogatories, one might think the defendant would have some evidence of that. There is none, because he did nothing of the sort.
4. The rules for responding to Discovery are clear: High Court Rules Rule 8
5. In reference to the Interrogatories. Rule 8.35 of the High Court Rules states:

### **8.35 Duties of party served**

- (1) A party required by notice under [rule 8.34](#) to answer interrogatories must answer the interrogatories within the period specified in the notice.
- (2) The period specified commences on the first working day after the day on which the notice under [rule 8.34](#) is served and may not be less than 10 working days (or, if the party is resident out of New Zealand, 20 working days).

*(3) The party required to answer the interrogatories must file and serve on the party requiring the answers—*

*(a) if the answers do not have to be verified, a statement in accordance with [rule 8.39](#); or*

*(b) if the answers do have to be verified, an affidavit verifying the statement together with the statement verified unless it has already been filed and served.*

The Affidavit supplied by counsel for the defence was late by over a week. Furthermore, as stated in the High Court Rules at S8.36(1)

*A Judge may, on the application of a party required to answer interrogatories, order that answers to interrogatories under [rule 8.34](#) by that party—*

*(a) are not required; or*

*(b) need to be given only to specified interrogatories or classes of interrogatories or to specified matters that are in question in the proceeding*

However, the Defendant has not supplied any such application to the Court. The Defendant's statement in answer to Interrogatories dated 7 December 2012, did not contain answers to the questions put.

Moreover, it should have been sent as an Application to the Judge under section 8.36(1) of the High Court Rules.

### **The Legal Basis for the Defence**

6. Mr Slater has accused me, amongst other things, of making pornography, drug dealing, fraud, theft, being a "cocksmoker", a psychopath, a criminal and a thief . He has made some disgusting allegations against my wife.

7. In his defence, Mr Slater relies upon both Truth and Honest Opinion.
8. Truth is a relatively straight forward concept, and the Court is asked to assume for the purposes of this Application that establishing truth may be difficult.
9. The submissions of Counsel for the defendant, dated 29 November 2012, offers a deceptively simple and impossibly unsound analysis of the term "Honest Opinion". It states *"Mr Slater has a strong defence. For him to succeed with the honest opinion defence alone, Mr Slater need only show his opinion was genuinely held. His opinion does not need to be sound nor even one shared by reasonable people."*
10. Whilst Honest Opinion does give the "Crank the right to be a Crank", the concept is more sophisticated than just that. Genuinely held opinions must be informed by the following:
  - a. *"Supporting Facts"*.
  - b. These facts must be *"True Facts"*. This requirement is designed to prevent a defendant from simply rattling off defamatory opinions without providing a factual matrix.
  - c. The readers of the publication must be able to hear those *"Facts and the opinion together"* This allows public debate to be informed, as opposed to being a one-sided character assassination.
  - d. For further edification, these *"Supporting Facts"* must be *"Known to the writer at the time of publication"*. Common sense, and the law, says that, if the writer/publisher does

not know the facts at the time of publication he could not form a reasonable opinion<sup>1</sup>.

- e. There must be some “*public interest*” in the publication, rather than just, say, the wholesale publication of a stolen hard drive together with a malicious commentary.

11. One final point, I have served a notice under Section 10 of the Defamation Act 1992 relating to the genuineness of the opinions held. S. 10 is a replacement to the common law concept of malice. The requirement is on the defendant to prove his opinion was really genuine.

#### **Relevance of Discovery and Interrogatories**

12. Before sudden exposure on the Whaleoil Website, I had barely heard of Mr Slater. I did know Mr Warren Powell (a former director of Hell Pizza, whom I worked for, and with but ultimately fell out with), Marc Spring ( a friend of Mr Powell, and Ms Amanda Easterbrook (the PA of Mr Powell)).
13. The most recent Statement of Defence relies almost solely relies on information provided by Mr Warren Powell [referred to more than 10 times in the SOD]. The defendant will need to call Mr Powell to establish Truth, or the True Facts which support the Honest Opinions pleaded. Mr Powell was my former “employer” (I was a contractor) for 8 years, and therefore must be the “former employer” who provided the stolen hard drive to the Defendant.
14. There is clear evidence in Mr Price’s affidavit of 13 August 2012 of meetings, involving the defendant, at the home of Ms Easterbrook. The meetings were held for the purpose of collating and providing information for the Whaleoil Website.

(1) A Fairly Genuine Comment on Honest Opinion in New Zealand By Bevan Marten

15. It goes without saying that if the defendant was paid to publish defamatory material, that it was unlikely to be an “Honest Opinion”, or in the public opinion.
16. There is some evidence of the defendant obtaining a benefit from, or through, Marc Spring. I believe there is more evidence to be found. How the defendant obtained the information he did, from whom, when, and on what basis, will inform the Court, both as to the genuineness of the opinion, and the public interest in the publication of it.
17. The relationship between the defendant and those who provided him with the information will be set out in the email correspondence between them.
18. Who has held the information will be relevant to damages and will help ensure that all relevant information is provided.
19. Establishing who retains the information now is relevant to the publication, damages and other remedies.

Dated 23<sup>rd</sup> August 2013



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Matthew Blomfield  
Plaintiff