

DISTRICT COURT OF QUEENSLAND

CITATION: *Lee v Di Carlo* [2023] QDC 199

PARTIES: **CHOONHWA LEE**
(plaintiff/respondent)
v
SALVATORE DI CARLO
(defendant/applicant)

FILE NO: BD No 726 of 2021

DIVISION: Civil

PROCEEDING: Application

ORIGINATING COURT: District Court at Brisbane

DELIVERED ON: Date of Order: 23 October 2023
Date of Publication of Reasons: 3 November 2023

DELIVERED AT: District Court at Brisbane

HEARING DATE: 23 October 2023

JUDGE: Sheridan DCJ

ORDER: **The application filed 18 October 2023 is refused.**

CATCHWORDS: COURTS AND JUDGES – COURTS – OTHER MATTERS
– OTHER PARTICULAR MATTERS – where defendant in
a civil trial is facing criminal charges – where defendant
applies for an order prohibiting the publication of evidence
and outcome in respect of civil trial and related proceedings –
whether non-publication order necessary in the interests of
justice or the public interest

LEGISLATION: *District Court Act 1967 (Qld)*, s 69, s 126

CASES: *Emanate Legal Services Pty Ltd v Hood* (2021) 7 QR 575
Ex parte The Queensland Law Society Incorporated [1984] 1
Qd R 166
Hogan v Hinch (2011) 243 CLR 506
Re Hogan; Ex parte West Australian Newspapers Ltd [2009]
WASCA 221
Russell v Russell (1976) 134 CLR 495

COUNSEL: P G Jeffrey for the plaintiff/respondent
M J Jackson for the defendant/applicant

SOLICITORS: Aitken Whyte Lawyers for the plaintiff/respondent
NR Barbi Solicitors for the defendant/applicant

Introduction

- [1] The defendant seeks an order from the court prohibiting the publication of any evidence given in these proceedings and of the outcome of the proceedings until criminal proceedings against him are finalised.
- [2] The application was heard on the first day of the trial, prior to the commencement of the trial. On that day, I refused to make the order and indicated I would provide my reasons at a later time. These are my reasons.

Background

- [3] The plaintiff's claim is for \$240,000 said to have been monies loaned by the plaintiff to the defendant at the defendant's request. The total amount loaned is said to be \$290,000, paid in various amounts between on or about 2 April 2015 and on or about 23 December 2015. The terms of the loan are said to have been varied from time to time with the plaintiff accepting that the defendant had repaid an amount of \$50,000 and had paid an amount of \$20,000 by way of interest on the loan. The defendant denies he owes any debt to the plaintiff.
- [4] The defendant is awaiting two separate criminal jury trials in the District Court.

Contentions

- [5] In written submissions filed on behalf of the defendant, it was submitted that parts of the evidence in the civil proceedings are inflammatory and, whilst not relevant to the criminal proceedings, would prejudice (if published) the defendant's right to a fair trial. In oral submissions, it was conceded by counsel that it was not the evidence in the civil proceedings that was likely to be inflammatory but rather, it was submitted, there was a real possibility of any reporting on the civil trial being inflammatory.
- [6] In support of this submission, reliance was placed upon an annexure to the affidavit of the solicitor for the defendant of an article published in the Courier Mail on 11 August 2023 titled, "Paul Pisasale's madam Choonhwa 'Pam' Lee suing 'sick' barrister Di Carlo for \$240k loan." The article appeared in the Courier Mail following an adjournment of the civil trial in July 2023. The article described Ms

Lee as a “brothel madam” and referred to the fact of Ms Lee having been convicted of a charge of conducting unlawful prostitution between November 2015 and December 2017 from premises on Stanley Street, East Brisbane.

- [7] Ms Lee referred to in the article is one and the same person as the plaintiff in the civil proceedings brought against the defendant.
- [8] The article referred to there being a connection between the applicant and Paul Pisasale. It was said that the defendant was the “barrister awaiting trial on a corruption charge related to ex-mayor Paul Pisasale.”
- [9] In making submissions, counsel acknowledged that there was no express power of the District Court to make a non-publication order but referred to s 69(1)(b) of the *District Court Act 1967* (Qld).
- [10] Section 69(1)(b) provides that:

“69 Powers of District Court

- (1) Subject to this Act and to the rules of court, the District Court has, for the purposes of exercising the jurisdiction conferred by this part, all the powers and authorities of the Supreme Court, including the powers and authorities conferred on the Supreme Court by an Act, and may in any proceeding in like manner and to like extent –

...

- (b) make any order, including an order for attachment or committal in consequence of disobedience to an order; and”

- [11] Reference was also made to s 126 of the *District Court Act 1967* (Qld) which provides:

“126 Business of court

- (1) The business of the court –
- (a) is taken to be conducted in court wherever it is conducted; and
- (b) is to be conducted in open court.
- (2) However, subject to any Act, the court may, if the public interest or the interests of justice require, by order limit the extent to which the business of the court is open to the public.”

- [12] It was submitted that the court has an implied power to make a non-publication order. It was accepted by counsel for the plaintiff that the court had power to make such an order but, on the facts, the plaintiff opposed the making of the order.
- [13] The submissions focused on the exercise of the power with both counsel accepting the importance of the principle of open justice and that orders restricting publication can only be made in exceptional circumstances.¹ It was accepted that the exceptions are based on the balancing of competing public interests.
- [14] The written submissions of counsel for the defendant listed one of the relevant factors as being whether the case involved matters of public importance or public affairs. It was also accepted that the information to be withheld must do more than cause collateral disadvantage to a party such as loss of privacy, embarrassment, distress or financial harm. Adverse pre-trial publicity, it was submitted, can impact a defendant's right to a fair trial and of relevance will be the likely content of any publicity and its likelihood to arouse emotions. Finally, reference was made to considering the impact of the making of an order by way of delay or the way in which witnesses give their evidence.
- [15] The focus of the submissions on behalf of the defendant was the likely content of the article which it was said would be directed to "provocative aspects of the relationship between Mr Pisasale and the defendant" and the probability of the accumulation of the publicity. Reliance was placed upon previous pre-trial publicity given to the criminal charges against the defendant.
- [16] Counsel for the plaintiff submitted there was no nexus between the present proceedings and the criminal proceedings and the evidence in the civil trial will speak only of the defendant's failure to repay the debt.

Consideration

- [17] It is appropriate to determine the application on the basis that this court has power to prohibit publication of its proceedings conducted in open court but that such a

¹ *Russell v Russell* (1976) 134 CLR 495, 520.

power is limited to the regulation of its own proceedings for the purpose of administering justice, and hence will only be exercised in exceptional cases.²

- [18] The rationale for the principle of open justice is that “exposure of court proceedings to public scrutiny is essential for the maintenance of confidence in the integrity and independence of the courts.”³
- [19] I accept as relevant the factors referred to by counsel for the defendant; each of those factors having been identified by McPherson J in *Ex parte The Queensland Law Society Incorporated*.⁴
- [20] In reliance on the article published in the Courier Mail, the focus of the submissions on behalf of the defendant was on the likely content of further articles and the possibility of that content arousing jurors’ emotions unfairly against the defendant.
- [21] The difficulty for the defendant is that there is no connection between the evidence in the civil proceedings and the criminal proceedings. The article does not suggest otherwise. Rather it is the headline of the article which attempted to draw an association between the plaintiff, the defendant and a third party, Mr Pisasale. The full text of the article makes it clear the suit between the plaintiff and the defendant is a debt claim and does not involve Mr Pisasale.
- [22] Whilst there appear to have been a number of articles regarding the previous criminal proceedings, in respect of which the defendant is waiting a re-trial, in the affidavit of Mr Hunt there is only the one article making any reference to the civil proceedings.
- [23] The affidavit of Mr Hunt deposed to the fact that there is as yet no date for the re-trial and that there are in fact to be two pre-trial applications, one of which is not until May 2024. In oral submissions, counsel accepted that any re-trial would not be before June 2024.

² *Ex parte The Queensland Law Society Incorporated* [1984] 1 Qd R 166, 170; quoted with implicit approval by French CJ in *Hogan v Hinch* (2011) 243 CLR 506, 533; and see *Emanate Legal Services Pty Ltd v Hood* (2021) 7 QR 575, 589.

³ *Re Hogan; Ex parte West Australian Newspapers Ltd* [2009] WASCA 221, [33].

⁴ [1984] 1 Qd R 166.

- [24] Even if a further article were to be published regarding the civil proceedings currently before the court, it is hard to imagine that such an article would impact a jury in a criminal trial to be held not before June next year.
- [25] In all the circumstances, I am not satisfied that the interests of justice or the public interest requires the making of a non-publication order in relation to the evidence in or the outcome of the civil proceedings.