SUPREME COURT OF QUEENSLAND No 1998 of 1991

CIVIL JURISDICTION

SHEPHERDSON J

NICHOLS HOMES PTY LTD and RODERICK RICHARDSON Plaintiffs/Respondents

and

IVAN PETER and BRENDA ETEROVIC Defendants/Applicants

BRISBANE

.. DATE 4/3/92

ORDER

HIS HONOUR: The applicants today are the defendants who appear in person. The male defendant, Ivan Eterovic, has addressed the Court for himself and the other defendant. He has sought, to use his words, to have an interlocutory injunction made on 3 December 1991 by Mr Justice Derrington lifted.

It is best if I begin at the beginning. This action was commenced by a writ issued on 22 November 1991. The only relief sought is an injunction to restrain the defendants from publishing or further publishing words appearing in the document, a copy of which is Exhibit 6 to

an affidavit of the second plaintiff sworn on 22 November 1991, or words to that like effect.

The defendants have at all times represented themselves. Briefly, it seems that the plaintiff company, of which the second plaintiff was the controller, built a house for the defendants in 1985. The defendants were not happy with the workmanship. District Court proceedings were commenced in Brisbane. The defendants claimed against the present first plaintiff and the Builders Registration Board $40,000 damages and interest.

Pleadings were delivered and ultimately the Eterovics discontinued that action. Not long afterwards the Eterovics sent to Mr and Mrs Nichols a letter dated 13 November 1991 containing matter which they threatened to distribute - 10,000 pamphlets - in the Nichols' area. It is this matter which is in the document RN6 which the plaintiffs seek to have restrained from publication.

At about the same time a further document, which is Exhibit RN7, and which had not been mentioned in the writ, was apparently sent to the Nichols. The matter came before Mr Justice Derrington on 3 December 1991. His Honour on the plaintiffs' undertaking as to damages ordered that until judgment in the action or earlier order the defendants, and each of them, be restrained from publishing or further publishing the word appearing in the document, copies of which are Exhibits 6 and 7 to the affidavit of Roderick Richardson Nichols filed on 25 November 1991, or words to the like effect.

His Honour then went on to give directions as to filing and service of affidavits by the defendants and the plaintiff. I pause to say that the parties have complied with the time limitations and have filed affidavits. His Honour further ordered that the further hearing of the application be adjourned to a date to be fixed and in para 4 said that, “the parties have liberty to apply on four days' written notice”. The Eterovics have relied on para 4 to bring the matter to Court today. On 26 February 1992

they served on the plaintiffs' solicitors a document which said, “I now serve notice on you to appear at the Supreme Court on Wednesday, 4th April 1992 as per para 4 of the order of Mr Justice Derrington.”

Now that the matter has come before me, the plaintiffs have found that the real purpose was, as Mr Eterovic said, to have the injunction of 3 December 1991 lifted. It is patently obvious that the plaintiffs seek to restrain publication of defamatory matter. In my view, there can be no doubt that the matter publication of which is sought to be permanently restrained is defamatory. However, when I asked Mr Eterovic why the injunction should be lifted, he told me that he wanted to publicly reveal his personal experiences with the plaintiffs over six years because that would benefit the public, so that they could be cautious in dealings with the male plaintiff.

Mr Eterovic told me that he has not had legal advice. He was unaware of the provisions of the Criminal Code relating to defamation, but one can glean from the submission which I have just mentioned a possible reliance on a defence of qualified privilege. It is my view that in order to properly have this matter heard, there should be pleadings delivered. I shall come to that shortly.

In the meantime I point out that in accordance with the decision of the Queensland Full Court in Shiel v. Transmedia Productions Limited (1987) 1 Qd R 189, “the power to grant an interlocutory injunction to restrain publication of defamatory matter although it exists is one to be exercised with great caution and only in very clear cases.” I refer particularly to the propositions stated in the extract from the decision of Mr Justice Walsh in Stocker v McElhinney No 2 (1961) 79 Weekly Notes New South Wales 541 which are set out at pp 204 and 205 of Shiel's case.

I mention also proposition no 4 in which it is said:

> “If on the evidence before the judge there is any real ground for supposing that the defendant may succeed upon any such ground as privilege or of truth and public benefit or even that the plaintiff if successful will recover nominal damages only the injunction will be refused.”

I do not have sufficient material to say that there is any real ground for supposing the defendant may succeed upon a defence of privilege. Damages are not being claimed and I just do not know whether truth and public benefit is to be pleaded. What I propose to do, as I have told Mr Eterovic, is to refuse his application and order pleadings. Mr Rapoport for the plaintiff does not dissent from an order for pleadings being made.

I therefore order that the plaintiffs do deliver their statement of claim to the defendants within seven days.

I order that the defendants do deliver their defence and counterclaim (if any) within 21 days of the delivery of the statement of claim.

I order that the plaintiffs do deliver their reply and answer (if any) to the defence and counterclaim (if any) within seven days of delivery of the defence and counterclaim, if any.

I do not propose to make orders regarding discovery, as it seems that the parties have in their affidavits so far placed before the Court quite a large amount of material, much of which concerns the construction of the house for the defendants.

I am prepared to certify the matter as one which ought to be tried speedily. This means that when the parties have completed the certificate of readiness in accordance with the rules, the matter will be expedited by virtue of that certification.

The costs of today are reserved to the trial judge.
