IN THE DISTRICT COURT
AT AUCKLAND

CIV-2014-004-000122

BETWEEN	GRANT NORMAN KING Applicant
AND	STEPHEN DYLAN TAYLOR Respondent

Hearing: 15 April 2014

Appearances: The Applicant in Person
The Respondent in Person

Judgment: 24 April 2014

RESERVED JUDGMENT OF JUDGE D M WILSON QC

Introduction

[1] Mr King complains that blog sites operated by Mr Taylor have harassed him. He seeks to close them down. This case raises the legal issue of whether posts on a blog site which provide consumer information can amount to specified acts in terms of the Harassment Act 1997.

The history

[2] Mr Taylor had issued proceedings for recovery of $23,500.00 which he said Mr King had kept of his deposit money and failed to deliver on a sleep out contract. At the time of the contract Mr King was an undischarged bankrupt. Mr Taylor acted on advice following a judicial settlement conference in the District Court that he would need to apply to the High Court for leave to proceed against an undischarged bankrupt. The cost of doing this would have been prohibitive so he discontinued the proceedings.

[3] Mr Taylor was frustrated by this course of events. He made enquiries from which he believed that Mr King had a long history of fraud. He decided that he would commence a public awareness consumer campaign leading to the formation of a Blog at www.grantnormanking.com. He submitted that the site had become a forum for dozens of dissatisfied customers of Mr King who have shared their stories on the Blog. Other people joined in as a result of media coverage of Mr Taylor's story. The mainstream media has picked up on some of those stories.

[4] Mr King went to the police with complaints about Mr Taylor's activities. In January of this year the police decided that there was insufficient evidence to justify a prosecution for criminal harassment. On 30 January 2014 Mr King accordingly filed the present application seeking civil restraining orders in a comprehensive way against Mr Taylor and the Blog site and other social media to which he thought Mr Taylor was a contributory.

The alleged "specified acts"

[5] At the outset of the hearing I asked Mr King to advise me specifically what he claimed were specified acts in terms of the Harassment Act 1997 ("the Act").[1]

[6] He identified the following and submitted they were specified acts under the Act:

6.1 A posting on the website on 12 August 2013 after Mr Taylor abandoned his civil claim against Mr King. The website posting read:

> The legal campaign might be over – however the public exposure campaign will now be a permanent companion of Grant Norman King, for the rest of his natural and self-imposed pitiful life.

6.2 Mr Taylor published a 'timeline of activities' to his website in 2014 including reference to a banning of Mr King from Trade Me for the second time for conducting illegal trading while an opposed

[1] I adjourned to allow him time to do this since much of his affidavit recounted historical material which fell outside the 12 month period before he filed the application: see the definition of harassment in s 3 of the Act.

undischarged bankrupt. The post alleged Mr King was posing as "Michael Wei" when he canvassed over $52,000.00 of Trident Cycle products and two horse floats on "Trade Me" in multiple breach of Trade Me Terms and Conditions. All $52,000.00 worth of products were deleted from the "Trade Me website" by "Trade Me". "The Official Assignee and the media were duly alerted as King (once again) breaching his bankruptcy conditions and once again (affirming his ongoing pathological and serious risk towards NZ consumers."

6.3 In May 2013 Mr King said that Mr Taylor generated a complaint against his employers "Trident Cycles" and published false allegations regarding their business in an ongoing attempt to have him dismissed:

> 2013: Launches "Trident Cycles" at Big Boys Toys Expo in Auckland, Grant King's fourth illegal business venture, whilst an undischarged (and opposed) bankrupt.

6.4 Mr King alleged that Mr Taylor had generated multiple complaints to the Official Assignee and to the Press in an attempt to prevent him from being discharged from bankruptcy and listed the following:

> 2013: Investigation by the Official Assignee into "Tern Anchor" another illegal business being run by Grant King.
>
> 2013: Herald on Sunday issues a consumer watch warning on Grant King's impending automatic discharge from bankruptcy in October 2013.
>
> 2012: Attempts to defraud 'China Red' takeaways, and 'Fay's Place' restaurant. Advisories to both businesses by this website see King fired.

Mr King deposed that no such fraud or attempted fraud occurred and that Mr Taylor's harassment of both business owners resulted in the termination of his position.

6.5 Mr Taylor posted an entry in "Grant Norman King" on 23 September 2013 posting images of Mr King's daughter Sequoia, an 18-year old. These images were taken from her Face Book and included a commentary about her. Mr King said this resulted in harassment and

teasing at her school and loss of many friends. Mr King complained that Mr Taylor had posted the following comments on his website inter alia:

> This is not particularly good news for Sequoia, as any of us who are employed... will quickly realise that employers now routinely Google applicants for jobs as part of the recruitment process as do training organisations such as universities and polytechnics who are screening applicants for study courses. The ramifications are thus obvious. So once again Grant King fails to protect his daughter's best interests and instead (once again) hides behind her in a public forum, and then pushes her forward to defend his indefensible behaviour thereby creating a very significant and longitudinal consequence for her in the process. It therefore seems no one is safe in Grant King's cohesive, manipulative and abusive behaviour – least of all his own family. It also appears that the proverbial "apple" is not fallen far from the proverbial "tree".

6.5.1 In answer to this Mr Taylor produced the text of some abusive postings by Sequoia King on the website to which Mr Taylor said he was simply responding.

6.6 In September 2013 Mr Taylor published on his website "Grant Norman King gets convicted for six charges of benefit fraud by the Ministry of Social Development, while the Ministry of Business Innovation and Employment is (finally) opposing Grant King's automatic discharge from bankruptcy in October 2013. This posting included a photograph (which appears in the affidavit of Mr King) at an advertising facility for Tern Anchor at the Hutchwilco Boat Show in 2013 where Mr King was said to be fronting the company display.

6.7 Article in the Herald on Sunday for 22 September 2013 detailing Mr King's prosecution by the Ministry of Social Development for six charges of benefit fraud for which he got 200 hours of community work and an order for a refund.

This article was placed on the website by Mr Taylor and the full content of it can be seen at page 21 of Mr King's affidavit.

6.8 The publication of a scam alert in regard to Trident Cycles and the Grant King website scam on 27 September 2013 posted on the Blog site "Grant Norman King".

6.9 Posting on 19 January 2014 on "Grant Norman King" "Tern Anchor" and "Trident Cycles" posing the question why is BurnsCo stocking the product of a convicted sex offender, convicted fraudster and current bankrupt.

The blog site invited people to leave a reply. The posting also included Grant King offence time line 1982 to the present day which includes past convictions of Mr King and reference to an advisory being sent to the Head Office of BurnsCo which was posted on the Grant Norman King and Tern Anchor Blog sites on 19 January 2014.

6.10 The posting on Tern Anchor and Trident Cycles on 19 January 2014 by Mr Taylor "Cycles2use. The latest "Trade Me" business scam being operated by Grant Norman King and despite being given evidence Trade Me confirms a "do nothing" response and throws future fraud victims under the bus.

6.11 An update on 22 January 2014 stated

"the cycles2use" membership of Grant King posing as "Michael Wei" has been suspended pending further investigation and all 64 products totalling $52,000.00 have now been removed from Trade Me. Gotcha again, GNK: chalk up another victory for the "GNK ASS" network.

6.11.1 That entry was posted on "Grant Norman King, Trade Me, and Trident Cycles on 21 January 2014 by Mr Taylor.

Mr King's submissions

[7] Mr King observed that this material was still available for public viewing and submitted that these postings constituted 'specified acts' within s 4(1) (d) (e) and (f)

(i) and (ii) of the Act.

[8] He said he feared for his personal safety. He said he had received threats on the street and at home but he was unable to provide dates for these so did not establish their relevance and I leave them out of account. I treat the fears for personal safety in this case in terms of mental well being.[2]

[9] He produced transcripts of text messages[3] during the course of the hearing on 22 February 2013 and 17 June 2013 which he submitted were part of the ongoing campaign of harassment. It is not clear from the context of them that they came from Mr Taylor. The context, for instance, the reply at 756 on 17 June 2013 "so how did Steve Taylor happen to just find you?" supports the proposition that neither of these originated from Mr Taylor. I find them to be irrelevant.

[10] Mr King also relied on a series of emails which were from Mr Taylor dated 5 August 2012, 16 September 2012 and 30 November 2012. Those of course fall outside the 12 months limitation for specified acts. Mr King submitted they indicated malicious intent by Mr Taylor which carried forward into the postings that did occur during that period.

Mr Taylor's submissions

[11] Mr Taylor filed a very detailed affidavit in support of his notice of defence. The essential points made by Mr Taylor were:

- that he was acting as a consumer watchdog;
- that the "Grant Norman King" Blog was commenced early in 2012; and
- that the site had given the opportunity for people unable to collect on their civil claims against Mr King to share their stories.

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[2] "Safety" is defined in the Act to include a person's "mental well-being".
[3] As exhibit "A".

[12] A number of people who said that they had been defrauded by Mr King filed affidavits in the proceedings asserting that they had been Mr King's victims in commercial dealings with him. They included Ms Sarah Bloxham, Mr R M Thomas, Mr R A and Mr J A Amodeo and Mr J V Devern.

[13] Addressing those affidavits Mr King said that the complaints by both Mr Amodeos could be met by considering the liquidator's report. I read that report and did not understand Mr King's point. He said Ms Bloxham did not want to commit and that he will refund her and that in relation to Mr Thomas that while his business transported the sleep-outs that he had produced the shortfall there was simply because he could not pay the last bill. He agreed that money was owed to Mr Thomas. Mr King did not submit to me that the complaints were false.

[14] Mr Taylor submitted that even if the postings on the Blog sites could amount to specified acts (which he denied) then the Blog continued to serve as a legitimate lawful purpose in terms of 17 of the Harassment Act 1997. He pointed out that a restraining order could not be made without having regard to s 17. He said that:

- The lawful purpose was established by eight successful statutory convictions of Mr King arising directly from the blog's existence.

- The items were true or at the very least expressions of honest opinion and were subject to common law privilege for people with social, moral or legal duties to reveal information. He acknowledged that each of these categories came from defamation law, but submitted that they each was capable of going to the statutory defence of "lawful purpose" in s 17 of the Act. I agree they are.

[15] He cited the writings and decisions of Judge David Harvey an acknowledged internet expert. His Honour has pointed out "the Court must consider all the circumstances of the case before deciding whether the degree of the stress experienced by the applicant justifies the making of an order". Such circumstances could include the nature of the material, the frequency and manner of the specified acts, the particular characteristics of the applicant.

[16] In *Brown and Flannagan v Sperling* (CIV-2012-004-000925) Judge Harvey held that the defendant's blog may have been offensive and even qualified as "specified acts" so far as the Harassment Act was concerned in all but one respect: they could not be "causative of any distress" because the plaintiff effectively sought the comments out. Mr Taylor pointed out that Mr King's application relies on posts Mr King had accessed on the www.grantnormanking.com blog and submitted that I should follow Judge Harvey's decision and decline to make restraining orders on that basis.

[17] Mr Taylor asserted that there was a significant ongoing public interest in warning the public about Mr King's longitudinal criminal activities. Senior consumer reporters in the mainstream media publication Herald on Sunday had recognised the degree of the public interest and had written six articles to date on Mr King in 28 months including a consumer warning advisory with more media stories. He points out that Mr King has a 31 year criminal and fraud history from 1982 until at least 2011 and submitted that this had resulted in an estimated $3 million dollars in fraud being committed against an estimated 74 victims to date.

[18] In an important submission related to the truth or otherwise of the postings he pointed out that in the 28 months of the blog's existence Mr King had never made a complaint to him about the content on the blog nor had he challenged or even requested any amendment to any information contained in the blog during that time.

[19] Mr King's explanation that he was under directions from the police not to make any contact with Mr Taylor while the police considered whether there was enough to charge Mr Taylor with criminal harassment does not explain his inaction since they decided not to prosecute in January this year. I do not accept that was a genuine excuse and proceed on the basis that apart from bare denials in his affidavit, Mr King has allowed the information in the posts to continue without challenge.

Discussion

[20] Judge Harvey's decision refusing the restraining order[4] is authority for the

[4] Reported as *Brown v Sperling* [2012] DCR 753.

propositions which I accept that

(i) Blog posts can fall within the ambit of the Act as a means of performing a specified act in certain circumstances;

(ii) The behaviour of a blogger can amount to harassment for the purposes of the Act;

(iii) Even so a restraining order may not be "justified".

[21] A subsequent application was made a month after that decision because Ms Sperling had continued to post derogatory material of a personal nature against the applicant alleging dishonesty, fraud, addiction to painkillers and making disparaging remarks about her professional abilities. Subsequently she revitalised her blog in December 2012 making available all of the earlier material which Judge Harvey's decision of 12 June 2012 had identified as constituting specified acts which amounted to harassment.

Legal principles

[22] With respect to Judge Harvey, I adopt and accept some of his statements of the legal test in his decision of 4 June 2013:

> **The Legal Test**
>
> [9] The Harassment Act makes a civil remedy available to any victim of harassment. It makes the most serious types of harassment criminal offences. It empowers the Court to make orders to protect victims who are not covered by domestic violence legislation,[5] and provides effective sanctions for breaches of the criminal and civil law relating to harassment.[6]

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[5] *Woodman v Brooks* (1998) 17 FRNZ 612 is authority for the point that the Harassment Act specifically applied to those relationships not covered by the Domestic Violence Act 1995. 'Domestic Relationship' is not identified in the Harassment Act 1997. Section 9(4) of the Harassment Act provides that a person in a domestic relationship may not apply for a restraining order against the other person in the domestic relationship. 'Domestic Relationship' is however defined in the Domestic Violence Act 1995; section 4.

[6] [7] *P v H* [1998] DCR 715; *C v G* [1998] DCR 805, 806; *H v S* [2000] DCR 90, 95.

[10] The object of the Harassment Act is stated in section 6. This is the primary guide for Courts and persons exercising powers conferred by the Act. The range and relative gravity of various behaviours that could constitute harassment are recognised:

> 6. **Object-** (1) The object of this Act is to provide greater protection to victims of harassment by-
>
> > (a) Recognising that behaviour that may appear innocent or trivial when viewed in isolation may amount to harassment when viewed in context; and
> >
> > (b) Ensuring that there is adequate legal protection for all victims of harassment.
>
> (2) This Act aims to achieve its object by-
>
> > a. Making the most serious types of harassment criminal offences:
> >
> > b. Empowering the Court to make orders to protect victims of harassment who are not covered by domestic violence legislation:
> >
> > c. Empowering the Court to make orders to protect victims of harassment who are not covered by domestic violence legislation:
> >
> > d. Providing effective sanctions for breaches of the criminal and civil law relating to harassment.
>
> (3) Any court which, or any person who, exercises any power conferred by or under this Act must be guided in the exercise of that power by the object specified in subsection (1).

[11] This requires the Court to recognise that behaviour that may appear innocent or trivial when viewed in isolation, may amount to harassment when viewed in context.[7] This is beneficial when considering the application of this Act to online harassment, as emails, for example, may appear trivial in isolation, but when viewed in context, clearly could constitute harassment.

[12] "Harassment" is defined in s.3 of the Harassment Act 1997:

> "A person harasses another if he or she engages in a pattern of behaviour that is directed against that other person, being a pattern of behaviour that includes doing any specified act to the other person on at least two separate occasions within a period of 12 months."

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[7] *P v H* [1998] DCR 715; *C v G* [1998] DCR 805, 806; *H v S* [2000] DCR 90, 95.

[13] Civil harassment which enables the Court to make a restraining order[8] occurs when the following requirements are met:

(a) The respondent has harassed or is harassing the applicant; and

(b) The behaviour causes the applicant distress or threatens to cause the applicant distress, and that behaviour would cause distress or would threaten to cause distress to a reasonable person in the applicant's circumstances and in all the circumstances the degree of distress caused or threatened by that behaviour justifies the making of an order and the making of an order is necessary to protect the applicant from further harassment.

The Legislative Scheme

[15] The legislative scheme of the Harassment Act has been described thus by the Court of Appeal:[9]

[13] Where the necessary elements of intent or knowledge are not present there is no criminal aspect, but a person being harassed may apply for a restraining order under s 9. A restraining order may be made by the Court under s 16(1) where the respondent has harassed or is harassing the applicant and additional requirements are met

(i) The behaviour in respect of which the application is made causes the applicant distress, or threatens to cause the applicant distress; and

(ii) That behaviour would cause distress, or would threaten to cause distress, to a reasonable person in the applicant's particular circumstances; and

(iii) In all the circumstances, the degree of distress caused or threatened by that behaviour justifies the making of an order; and

(c) The making of an order is necessary to protect the applicant from further harassment.

[14] A restraining order, if no longer or shorter period is specified, expires after one year.[10]

[15] It is an offence under the Act to contravene a restraining order.[11]

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[8] The Act expressly excludes people who have been in a domestic relationship[8].

[9] *R v D* [2000] 2 NZLR 641 para 12-19.

[10] It may be made under s 21 only for such period "as the Court considers necessary to protect the applicant from further harassment."

[11] For a first offence of breaching a restraining order, the offender is liable to imprisonment for a term not exceeding six months. Repeat or serial breaches are punishable by imprisonment for three years.

[16] Under s 3 "harassment" is defined as a "pattern of behaviour" that is directed against the complainant[12] which includes any of the acts specified under s 4 "on at least 2 separate occasions within a period of 12 months." Section 4(1) defines "specified act" for the purposes of the Act to mean "in relation to a person" any of the following:

> (a) Watching, loitering near, or preventing or hindering access to or from, that person's place of residence, business, employment, or any other place that the person frequents for any purpose:
>
> (b) Following, stopping, or accosting that person:
>
> (c) Entering, or interfering with, property in that person's possession:
>
> (d) Making contact with that person (whether by telephone, correspondence, or in any other way):
>
> (e) Giving offensive material to that person, or leaving it where it will be found by, given to, or brought to the attention of, that person:
>
> (f) Acting in any other way –
>
> > (i) That causes that person ("person A") to fear for his or her safety; and
> >
> > (ii) That would cause a reasonable person in person A's particular circumstances to fear for his or her safety.[13]

[16] In my decision in *Brown v Sperling*[14] at paragraph [27] I considered whether or not harassment could take place on-line and concluded that it did after an analysis of the Statute together with recent case law set out at paragraphs [42] to [55] of that decision.

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[12] Subsection (2) provides, "to avoid any doubt", that subs (1)(f) includes the situation where:

(a) A person acts in a particular way; and
(b) The act is done in relation to a person ("person B") in circumstances in which the act is to be regarded, in accordance with section 5(b), as done to another person ("person A"); and
(c) Acting in that way-
  (i) Causes person A to fear for his or her safety; and
  (ii) Would cause a reasonable person in person A's particular circumstances to fear for his or her safety,-
  whether or not acting in that way causes or is likely to cause person B to fear for person B's safety.

Subsection (3) provides that subs (2) does not limit "the generality of subsection (1)(f)".

[13] Williams J, in the High Court, was of the view that the relationship between s 4(1)(f) and s 8(1)(b) was of some difficulty because s 4(1)(f) imposed an objective standard (that which would cause a reasonable person in the complainant's particular circumstances to fear for his or her safety) whereas s 8(1)(b) requires the accused to know that the harassment is likely to cause the other person, "given his or her particular circumstances" to reasonably fear for his or her safety.

[14] Above n.1.

[17] I also considered the nature of information flows and the circumstances by which it may be anticipated that the requirement in the Harassment Act of leaving offensive material where it would be found by, given to or bought to the attention of that person may take place (section 4 sub-clause 1 sub-clause (e).

[18] Once harassing conduct has taken place it then becomes necessary to consider the power to make a restraining order pursuant to s 16 of the Harassment Act 1997 which states:

> **16 Power to make restraining order**
>
> (1) Subject to section 17[15] the court may make a restraining order if it is satisfied that—
>
> (a) The respondent has harassed, or is harassing, the applicant; and
>
> (b) The following requirements are met:
>
> (i) The behaviour in respect of which the application is made causes the applicant distress, or threatens to cause the applicant distress; and
>
> (ii) That behaviour would cause distress, or would threaten to cause distress, to a reasonable person in the applicant's particular circumstances; and
>
> (iii) In all the circumstances, the degree of distress caused or threatened by that behaviour justifies the making of an order; and
>
> (c) The making of an order is necessary to protect the applicant from further harassment.
>
> (2) For the purposes of subsection (1) (a), a respondent who encourages another person to do a specified act to the applicant is regarded as having done that specified act personally.
>
> (3) To avoid any doubt, an order may be made under subsection (1) where the need for protection arises from the risk of the respondent doing, or encouraging another person to do, a specified act of a different type from the specified act found to have occurred for the purposes of paragraph (a) of that subsection. (Emphasis added)

[19] Essentially the requirements are:

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[15] Section 17 provides: Defence to prove that specified acts done for lawful purpose:

- A specified act cannot be relied on to establish harassment for the purposes of section 16(1)(a) if the respondent proves that the specified act was done for a lawful purpose.

(a) Harassment of the applicant by the respondent;

(b) The behaviour in respect of which the application is made causes the applicant distress or threatens to do so;

(c) The behaviour would cause distress or threaten to cause distress to a reasonable person in the applicant's particular circumstances;

(d) In all the circumstances the degree of distress caused or threatened by that behaviour justifies the making of the order;

(e) The making of the order is necessary to protect the applicant from further harassment.

[23] Judge Harvey noted that posting information on a blog:

> Falls within the ambit of material in s 4(1) (e) of the Harassment Act where it is intended that other persons will be able to view it and/or also that its contents will be drawn to the attention of Ms Flannagan.

[24] Readers had drawn the posted material to the complainant's notice. Given that that was the way in which the material had come to the complainant's notice previously His Honour held it was clear that Ms Sperling could conclude it was foreseeable that others would see her posts and bring them to the complainant's attention. It was not now a case that the complainant had "put herself in the harm's way" by randomly accessing the blog to keep an eye on Ms Sperling's activities. In that case the materials were found to be offensive and had been caused distress. His Honour considered that an order was justified. He made a comprehensive restraining order.

Discussion and decision

[25] The power to make a restraining order under section 16 is specifically subject to section 17 which provides:

> **17. Defence to prove that specified acts done for lawful purpose**-A specified act cannot be relied on to establish harassment for the purposes of section 16(1)(a) if the respondent proves that the specified act was done for a lawful purpose.

[26] I hold that the actions of Mr Taylor as a consumer advocate informing the public of matters directly relevant to their decision whether to enter consumer arrangements with Mr King are in the public interest and constitute a lawful purpose.

[27] I find that the absence of any real challenge by Mr King to the accuracy of material on the postings is significant. It would be inappropriate if a man in Mr King's position could close down postings of essentially factual material on the basis that it interferes with his commercial plans and deprives him of customers.

[28] I record that Mr Taylor sought to call in aid the rights to freedom of expression in the New Zealand Bill of Rights Act. I express no view on that submission having decided this case on other grounds.

[29] I accept Mr King is distressed by the postings but in my view that distress arises because he would prefer potential customers were unaware of his history and is not such as justifies the making of restraining orders.

[30] I accept that Mr King was distressed about postings referring to his daughter[16] but it is relevant that Mr Taylor was responding to very abusive personal attack against him posted on a public forum by Ms King in support of her father. The Act was never intended to deal with a situation like that.

[31] I decline to make the restraining orders sought in this case on the grounds that in all the circumstances the degree of distress caused does not justify restraining orders.

[32] I also hold that posting this substantially unchallenged consumer information is a lawful purpose. Accordingly, there is no jurisdiction under s 16 of the Act to make the restraining orders sought.

[33] The application for restraining orders is refused.

Dated at Auckland this 24th day of April 2014 9 am/pm.

D M Wilson QC
District Court Judge

[16] See paragraph 6.5 above.