

IN THE SUPREME COURT  
OF NEW SOUTH WALES  
SYDNEY REGISTRY

COMMON LAW DIVISION

DEFAMATION LIST

No 11565 1993

THE COUNCIL OF THE SHIRE OF  
BALLINA

Plaintiff

W. RINGLAND

Defendant

STATEMENT OF CLAIM

CARMONT & GRACE  
Solicitors  
12 Moon Street  
BALLINA NSW 2478  
DX 27781 BALLINA  
Tel: (066) 866744

By their city agents

TURNER WHELAN  
Solicitors  
Level 3,  
60-70 Elizabeth Street  
SYDNEY NSW 2000  
DX 211 SYDNEY  
Telephone: (02) 2313122  
user1\supreme\930105

1. The Plaintiff is and was at all material times a body corporate constituted under the Local Government Act, 1919 with power to sue in and by its corporate name and style.

2. On or about 1 April 1993 the Defendant published in New South Wales of and concerning the Plaintiff the material set out in Schedule A hereto.

3. The matter complained of and referred to in paragraph 2 hereof in its natural and ordinary meaning conveyed the following imputations each of which was defamatory of the Plaintiff:

- (a) That the Plaintiff had and was continuing to discharge sewage secretly and unlawfully into the ocean through the Lennox Head outfall.
- (b) That the Plaintiff had wilfully and wrongfully deceived the residents of Ballina Shire about the treatment and disposal of sewage by it.
- (c) That the Plaintiff had wilfully and unlawfully falsified its Environmental Impact Statement relating to the proposed augmentation of its

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IN THE SUPREME COURT OF NEW SOUTH WALES

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Defamation List

COMMON LAW DIVISION

No. 11565 of 1993

DEFENCE

The Defendant says the statement of claim discloses no cause of action.

CROSS-CLAIM

THE COUNCIL OF THE SHIRE OF BALLINA  
Plaintiff

W RINGLAND  
Defendant

W RINGLAND  
Cross-Claimant

THE COUNCIL OF THE SHIRE OF BALLINA  
Cross-Defendant

DEFENCE AND CROSS-CLAIM FOR ABUSE OF PROCESS

1. On or about 9 May 1993 the cross-Defendant wrongfully caused legal proceedings to be instituted in the Supreme Court of New South Wales being the statement of claim herein in which the cross-Defendant purports to claim damages for defamation and injurious falsehood.
2. The cross-Defendant has abused the legal processes of the Court in that the said statement of claim was instituted and continued for the real and improper purpose of interfering, embarrassing, hindering and blackmailing the cross-Claimant in the carrying out of his duties as President of the Clean Seas Coalition; from examining and investigating the activities of the cross-Defendant particularly in regard to the outfall of sewage and pollution therefrom; from appraising and where necessary criticizing the activities of the cross-defendant and from exercising his right and privilege of freedom of speech.

McKenzie Cox  
Solicitors  
26 Carrington Street  
LISMORE NSW  
D.X. 7714 Lismore  
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Tel: (066) 21 9555

3. The said statement of claim was issued by and on behalf of the cross-Defendant for the abovementioned purposes and not for the purpose of vindicating the cross-Defendant's reputation or to obtain damages for defamation and injurious falsehood.

Particulars

- (a) The statement of claim herein is inherently defective in form and substance and in particular:-
- (i) Imputation 3(a) is defective in form, embarrassing and impossible to plead to because it makes two separate allegations being the cross-Defendant had continued to discharge sewage and was continuing to discharge same.
  - (ii) The use of the phrases "wilfully and wrongfully", "wilfully and unlawfully" and "wilfully and wrongly", " in imputations 3(b), (c) and (d) are embarrassing, ambiguous and impermissible.
  - (iii) Imputations 3(b), (c) and (d) are not capable of being conveyed by the material complained of.
  - (iv) The purported extrinsic facts set out in paragraph 4 of the defence are not facts.
  - (v) The cross-Defendant has failed to set out in the statement of claim the names and addresses of persons to whom it is alleged the material complained of was published and who had knowledge of the purported extrinsic facts.
  - (vi) The alleged particulars of falsity are not proper particulars. Particular (ii) rephrases (i) in other language and every one of the alleged particulars repeat the imputations without setting out the facts, matters and circumstances relied upon to establish the matter complained of was false.
  - (vii) The alleged particulars of malice even if established are not capable of amounting to malice.

- (viii) The alleged particulars of special damage are a sham and are not proper particulars of special damage but relate only to a meeting of the cross-Defendant and administration fees in respect thereof.
  - (ix) The cross-Defendant improperly claims aggravated damages.
  - (x) The particulars of exemplary damages are defective in that they do not establish a proper basis for such damages.
  - (xi) Although the publication was within in the Ballina area, the parties reside in the Ballina area and the witnesses come from that area, the cross-Defendant has nominated Sydney as the venue for the trial.
- (b) Paragraph 7 of the statement of claim discloses no cause of action.
  - (c) The cross-Defendant has no power, authority or right under the Local Government Act, at Common Law or otherwise to institute and maintain an action to recover damages for defamation.
  - (d) A full and adequate apology was published in the "Northern Star" being the newspaper in which the cross-defendant alleges the matter complained of was republished.
  - (e) Notwithstanding the full and adequate apology published in the "Northern Star" referred to in paragraph (d) above the cross-Defendant demanded the cross-Claimant apologise and threatened legal action he did not publish a harsh and false apology as proposed by the cross-Defendant. This conduct is evidence the cross-Defendant was insincere in bringing the claim to recover damages for injury to reputation and demonstrates its real motive was to punish and humiliate the cross-Claimant and to be vindictive and malicious towards him.
  - (f) The Shire President of the cross-defendant (Councillor Keith Johnson) has published defamatory matter of and concerning the cross-Claimant which said matter appeared in the "North Coast Advocate" of 30 September 1992. He and other Councillors and the cross-Defendant are using the proceedings as part of a campaign to crush and harass the

cross-Claimant and silence criticism and opposition by him and others who may wish to criticise the cross-Defendant.

- (g) The cross-defendant is being manipulated and used by Councillor Johnson and other Councillors to injure the cross-Claimant and as part of a vendetta against him and to prevent him from investigating, examining and/or criticising and appraising the cross-Defendant and exercising his right of free speech.
- (h) The cross-Defendant its servants and agents know that the words of the cross-Claimant the subject of the statement of claim are true being based on the report of the Shire Engineer (Mr P L Thorpe) dated 22 October 1981 in which it is stated:-

"The limiting of discharge to night or storm conditions should eliminate any evidence of disturbance to the area on a day to day basis caused by different colour of salt and fresh water".
- (i) The cross-Defendant is using the proceedings in an attempt to conceal the truth concerning its activities and to prevent investigations into its activities.
- (j) As a result of the statement of claim the cross-Claimant has been forced by reason thereof to cease examining, investigating and researching the activities of the cross-Defendant and has ceased appraising and criticising the cross-Defendant and exercising his right to freedom of speech. The cross-Defendant has been unable to comment or otherwise discuss the activities of the cross-Defendant in relation to sewage outfall and pollution and other aspects of the cross-Defendant's activities.
- (k) By reason of the issue of the statement of claim the cross-Claimant has incurred and will incur expense in and about defending same.
- (l) The issue of the statement of claim has resulted in the cross-Claimant becoming too frightened to continue in his capacity as President of the Clean Seas Coalition and he has been compelled to resign.
- (m) The cross-Defendant is aged 72 and is retired and has insufficient funds to defend the statement of claim. The cross-Defendant knows that the cross-Claimant will be unable to afford to pay damages and relies on its

financial superiority and the cross-Claimant's limited financial circumstances to prevent him from properly defending the action and from examining, investigating, commenting upon and criticising the activities of the cross-Defendant.

- (n) The cross-defendant is financing the action as commenced by the said statement of claim by misusing ratepayers funds.
- (o) The statement of claim was issued without proper authorisation.
- (p) The cross-Claimant relies on the above particulars as evidence of malice.

4. By reason whereof the Plaintiff has suffered injury, economic and financial loss and general loss and damage.

Particulars

The Plaintiff has incurred and will incur expense in and about the said legal proceedings instituted by the cross-Defendant.

Cross-Claimants legal costs for defence of statement of claim (estimated)	\$40,000
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5. And the cross-Claimant claims damages, punitive damages and interest

Particulars of Punitive damages

The statement of claim, the subject of these proceedings, was instituted by the cross-Defendant for the purpose of causing the cross-Claimant financial and economic hardship, possible bankruptcy and to prevent him from examining, appraising and investigating its activities and to further prevent him from commenting upon, appraising or criticising the cross-Defendant and engaging in his democratic right or freedom of speech. The cross-Defendant has been vindictive and malicious in instituting the said proceedings which have been brought without reasonable for probable cause. The said proceedings were also brought by the cross-Defendant to prevent the cross-Claimant from carrying out his duties as President of the Clean Seas Coalition. The cross-Claimant further relies on the cross-Defendant's financial superiority and advantage and on the other matters set out in paragraph 3 above.

- 6. And the Cross-Claimant further claims an order restraining the cross-Defendant from proceeding further with the statement of claim and an order that the statement of claim be struck out with costs..
  
- 7. The cross-Claimant also seeks an order that the hearing of the claim and cross-claim be expedited.

To: The Cross-Defendant  
The Council of the Shire of Ballina  
c/- Carmon & Grace, Solicitors  
12 Moon Street  
BALLINA NSW 2478

*M McKenzie GA*  
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Solicitor for the Cross-Claimant

Filed: