

IN THE SUPREME COURT OF NEW ZEALAND

**SC 69/2008
[2008] NZSC 101**

BETWEEN APN NEW ZEALAND LIMITED
 Appellant

AND SIMUNOVICH FISHERIES LIMITED
 First Respondent

AND PETER JOHN SIMUNOVICH
 Second Respondent

AND VAUGHAN HILTON WILKINSON
 Third Respondent

SC 70/2008

BETWEEN TELEVISION NEW ZEALAND
 LIMITED
 Appellant

AND SIMUNOVICH FISHERIES LIMITED
 First Respondent

AND PETER JOHN SIMUNOVICH
 Second Respondent

AND VAUGHAN HILTON WILKINSON
 Third Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: B D Gray QC, A L Ringwood and T C Goatley for Appellant in
 SC69/2008
 W Akel and T J Walker for Appellant in SC70/2008
 J G Miles QC, A E L Ivory and M G Keall for Respondents

Judgment: 1 December 2008

JUDGMENT OF THE COURT

A The applications in these two cases for leave to appeal are granted.

B The approved grounds of appeal are as follows:

Whether the Court of Appeal was correct in its determinations:

In SC69/2008:

- (1) That s 38 of the Defamation Act 1992 applies to a stand-alone defence of truth.
- (2) That in pleading “circumstances” in support of a truth defence pursuant to s 38(b), a defendant may not rely on the fact that third parties made statements.
- (3) That the “repetition” and “conduct” rules apply to pleadings of truth to “tier 2” imputations.
- (4) That the “repetition rule” applies not only at an evidential stage but at the pleading stage of a proceeding.
- (5) That there is no exception to the “repetition rule” for reliance on judicial decisions in support of a pleading of truth to a “tier 2” imputation.
- (6) That the position is not affected by the changes to the treatment of hearsay evidence brought about by the Evidence Act 2006.
- (7) Regarding matters which the appellant may not plead as part of its truth defence.
- (8) That a defendant may not plead in support of an honest opinion defence the fact that third parties made statements.

In SC70/2008

- (9) That the repetition and conduct pleading rules adopted in the United Kingdom jurisdiction, apply without modification, to a truth defence to “tier 2” meanings which impute only that there are reasonable grounds to suspect the plaintiffs rather than that the plaintiffs are guilty.**
- (10) That accordingly a defendant may not seek to prove the truth of “tier 2” imputation by reference to the opinions or assertions of others.**
- (11) That the phrase “facts and circumstances” in s 38 of the Defamation Act 1992 does not mean that the third party assertions or opinions may be pleaded since they are not capable in law of establishing a defence of truth by virtue of the repetition and conduct rules.**
- (12) That judicial decisions and opinions do not fall outside the repetition and conduct rules, are not primary facts for the purposes of the law of defamation, and may not be relied on as evidence of facts in issue by virtue of s 50 of the Evidence Act 2006.**
- (13) That third party assertions, opinions and judicial decisions may not be relied on as publication of facts on which a defence of honest opinion is based.**

Solicitors:
Bell Gully, Auckland for Appellant in SC69/2008
Simpson Grierson, Auckland for Appellant in SC70/2008
LeeSalmon Long, Auckland for Respondents