

FEDERAL COURT OF AUSTRALIA

Schiff v Nine Network Australia Pty Ltd [2022] FCA 658

File number: NSD 1086 of 2021

Judgment of: **JAGOT J**

Date of judgment: 1 June 2022

Catchwords: **PRACTICE AND PROCEDURE** — where applicant seeks separate and prior determination of defamatory imputations denied by respondents — separate determination could result in significant saving in costs and time — order made for separate questions to be determined separately from in and advance of other questions in proceeding

Legislation: *Federal Court of Australia Act 1976* (Cth) ss 37M, 37N
Federal Court Rules 2011 (Cth) r 30.01

Division: General Division

Registry: New South Wales

National Practice Area: Other Federal Jurisdiction

Number of paragraphs: 9

Date of hearing: 1 June 2022

Counsel for the Applicant: Ms S Chrysanthou SC and Mr N Olson

Solicitor for the Applicant: Kennedys (Australasia) Partnership

Counsel for the Respondents: Mr D Sibtain and Mr M Lewis

Solicitor for the Respondents: MinterEllison

ORDERS

NSD 1086 of 2021

BETWEEN: **PETER DAVID SCHIFF**
Applicant

AND: **NINE NETWORK AUSTRALIA PTY LTD ACN 008 685 407**
First Respondent

THE AGE COMPANY PTY LTD
Second Respondent

NICHOLAS MCKENZIE (and others named in the Schedule)
Third Respondent

ORDER MADE BY: **JAGOT J**

DATE OF ORDER: **1 JUNE 2022**

THE COURT ORDERS THAT:

1. The questions proposed for separate determination as set out in Annexure A to this order (**separate questions**) be determined separately from and in advance of all other issues in the proceeding.
2. Paragraphs 2–6 of the interlocutory application dated 2 May 2022 be adjourned pending the determination of the separate questions.
3. The respondents pay the applicant’s costs of and in connection with paragraph 1 of the interlocutory application dated 2 May 2022 as agreed or taxed.
4. The costs of and in connection with paragraphs 2–6 of the interlocutory application dated 2 May 2022 be reserved.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

ANNEXURE A

PROPOSED QUESTIONS FOR SEPARATE DETERMINATION

Applicant's claim

1. Does the Broadcast (as defined in paragraph 7 of the Statement of Claim) carry the following imputations in its natural and ordinary meaning, or imputations not different in substance?
 - 1.1. By permitting his bank, Euro Pacific, to be used as a vehicle for around one hundred Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people.
 - 1.2. Schiff orchestrated an illegal global tax evasion scheme.
 - 1.3. Schiff committed tax fraud.
 - 1.4. Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 1.5. Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations.
 - 1.6. Schiff, through his bank Euro Pacific, knowingly assisted the notorious Australian criminal Simon Anquetil to perpetrate a \$100 million tax fraud.
 - 1.7. Schiff, through his bank Euro Pacific, knowingly assisted Australian criminal Simon Anquetil to move his illegally obtained money offshore.
 - 1.8. Schiff, through his bank Euro Pacific, knowingly assisted convicted drug-trafficker Darby Angel to hide the proceeds of his crimes.
 - 1.9. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes.
 - 1.10. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to launder the proceeds of their crimes.

- 1.11. Through his bank Euro Pacific, Schiff poses a grave organised crime threat to Australia.
 - 1.12. Schiff is such an unscrupulous individual that he has no qualms about doing business with criminals and money launderers.
2. In relation to the meanings in 1 above to which the answer is Yes, are those imputations (or imputations not different in substance) defamatory of the Applicant?
- 2.1. By permitting his bank, Euro Pacific, to be used as a vehicle for around one hundred Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people.
 - 2.2. Schiff orchestrated an illegal global tax evasion scheme.
 - 2.3. Schiff committed tax fraud.
 - 2.4. Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 2.5. Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations.
 - 2.6. Schiff, through his bank Euro Pacific, knowingly assisted the notorious Australian criminal Simon Anquetil to perpetrate a \$100 million tax fraud.
 - 2.7. Schiff, through his bank Euro Pacific, knowingly assisted Australian criminal Simon Anquetil to move his illegally obtained money offshore.
 - 2.8. Schiff, through his bank Euro Pacific, knowingly assisted convicted drug-trafficker Darby Angel to hide the proceeds of his crimes.
 - 2.9. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes.
 - 2.10. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to launder the proceeds of their crimes.
 - 2.11. Through his bank Euro Pacific, Schiff poses a grave organised crime threat to Australia.

- 2.12. Schiff is such an unscrupulous individual that he has no qualms about doing business with criminals and money launderers.
3. Does the Article (as defined in paragraph 10 of the Statement of Claim) carry the following imputations in its natural and ordinary meaning, or imputations not different in substance?
- 3.1. Schiff orchestrated an illegal global tax evasion scheme.
- 3.2. Schiff knowingly facilitated tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
- 3.3. Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations.
- 3.4. Schiff, through the use of his bank Euro Pacific, assisted criminal Simon Anquetil to hide the proceeds of a \$100 million tax fraud.
- 3.5. Schiff, through his bank Euro Pacific, assisted convicted drug-trafficker Darby Angel to hide the proceeds of his crimes.
- 3.6. Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes.
- 3.7. Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes.
- 3.8. Through his bank Euro Pacific, Schiff poses a serious criminal threat to Australia's security.
4. In relation to the meanings in 3 above to which the answer is Yes, are those imputations (or imputations not different in substance) defamatory of the Applicant?
- 4.1. Schiff orchestrated an illegal global tax evasion scheme.
- 4.2. Schiff knowingly facilitated tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
- 4.3. Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations.

- 4.4. Schiff, through the use of his bank Euro Pacific, assisted criminal Simon Anquetil to hide the proceeds of a \$100 million tax fraud.
- 4.5. Schiff, through his bank Euro Pacific, assisted convicted drug-trafficker Darby Angel to hide the proceeds of his crimes.
- 4.6. Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes.
- 4.7. Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes.
- 4.8. Through his bank Euro Pacific, Schiff poses a serious criminal threat to Australia's security.

Respondents' defence

5. Did the Broadcast carry the following meanings?

- 5.1. Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime.
- 5.2. Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts.

6. Did the Article carry the following meanings?

- 6.1. Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime.
- 6.2. Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts.

7. Is the meaning "*Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud*"

and hide and launder the proceeds of crime” not substantially different from, nor more injurious than, each of the following imputations?

- 7.1. Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 7.2. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes.
 - 7.3. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to launder the proceeds of their crimes.
 - 7.4. Schiff knowingly facilitated tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 7.5. Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes.
 - 7.6. Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes.
8. Is the meaning “*Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts*” not substantially different from, nor more injurious than, each of the following imputations?
- 8.1. Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 8.2. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes.
 - 8.3. Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to launder the proceeds of their crimes.

- 8.4. Schiff knowingly facilitated tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities.
 - 8.5. Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes.
 - 8.6. Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes.
9. Are the following contextual imputations conveyed in addition to such of the imputations pleaded in paragraph 7 of the Statement of Claim as the Court finds to be carried by the Broadcast?
- 9.1. Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime.
 - 9.2. Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts.
10. Are the following contextual imputations conveyed in addition to such of the imputations pleaded in paragraph 10 of the Statement of Claim as the Court finds to be carried by the Article?
- 10.1. Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime.
 - 10.2. Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts.

REASONS FOR JUDGMENT

JAGOT J:

- 1 I have decided that an order for the proposed separate questions to be determined in advance
of all other questions in the particular circumstances of this proceeding should be made.
- 2 My brief reasons are as follows.
- 3 In the ordinary course, it is preferable for all issues in a proceeding to be tried together, because
experience shows that this is generally the most effective procedure overall, in terms of time,
cost and also quality of judicial reasoning, including with respect to the obvious prospect of
appeals.
- 4 However, in the present case, there are a large number of imputations pleaded by the applicant,
each of which is denied as being both conveyed and as being defamatory by the respondents.
- 5 Despite counsel for the respondents' disarming frankness about the practical unlikelihood of
the respondents' denial of each and every alleged defamatory imputation succeeding, I am
entitled to assume compliance, both in form and substance, with the requirements of ss 37M
and 37N of the *Federal Court of Australia Act 1976* (Cth). On that basis, I am entitled to infer
that there has been careful consideration of the denials in the amended defence filed 9 May
2022 and that those denials are seriously put, will be maintained, and have reasonable prospects
of success. On this basis, there is an obvious capacity for there to be a substantial saving in
time and cost if the respondents are correct and its denials are all upheld.
- 6 Even if none of the respondents' denials succeed, the separate questions extend to the
defamatory meanings alternatively alleged by the respondents. Contrary to the respondents'
submissions, I consider that there is a real capacity for a simplified ultimate hearing, if that be
necessary, in respect any of defamatory imputations that I find are conveyed in the publication.
- 7 I accept that there is always the capacity for an interim appeal against the determination of the
separate questions and any consequential order which would be made as a result of those
questions. However, I do not see such an interim appeal as being likely to add to the overall
time and costs of the proceedings.
- 8 Finally, I also consider that despite the fact that there has been mediation in relation to this
matter, the determination that is sought in the separate questions may well enable further

consideration by the parties about the potential resolution of the proceeding in a different factual and legal context from the present.

- 9 For these reasons, I am persuaded that in this case I should depart from the ordinary course and make an order that the questions identified in the applicant's proposed questions for separate determination be determined separately from, and in advance of, all other questions in the proceeding.

I certify that the preceding nine (9) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jagot.

Associate:

Dated: 1 June 2022

SCHEDULE OF PARTIES

NSD 1086 of 2021

Respondents

Fourth Respondent: CHARLOTTE GRIEVE

Fifth Respondent: JOEL TOZER