

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE NO. 15277/2014

Date: ~~18~~ 20 AUGUST 2014

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES /NO.	
(2) OF INTEREST TO OTHER JUDGES: YES /NO.	
(3) REVISED.	
20/8/14	<i>M. Bredenkamp</i>
DATE	SIGNATURE

In the matter between:

COLIN ANDREW WEBSTER

APPLICANT

and

GAVIN MANNION

RESPONDENT

IDENTITY NUMBER: 780701 5337 083

JUDGMENT

BREDENKAMP AJ:

INTRODUCTION

[1] The Applicant applies for an interim interdict pending the adjudication and

contained the following terms:

[1.1] That pending the adjudication and finalization of the pending action between M J Webster/C I Holliday/C A Webster/The Master of the High Court in the South Gauteng High Court, Johannesburg, case no. 47589/2012.

[1.2] That the respondent be ordered to immediately and/or forthwith remove and delete all blogs, tweets, posts and comments made by the Respondent, or any other person whatsoever, which pertain to any comment and/or allegation and/or insinuation and/or inferences that the Applicant has been or is currently involved in any form of fraud and/or dishonest and/or unlawful conduct from whatsoever nature, either in his personal or professional capacity, which have been published and appear in one or more of the following:

[1.2.1] the respondent's blog page known as "Lazygamer.net";

[1.2.2] the respondent's Twitter account know as "Gavin Mannion@lazygamers)_"

[1.2.3] the respondent's Twitter account known as
"@LazygamerNet");

[1.2.4] the respondent's face book account known as "Gavin Mannion";

[1.2.5] the respondent's face book account as "Lazygamer" and;

[1.2.6] any other social media page and/or account whatsoever, which directly or indirectly pertains to the Applicant in any

manner whatsoever.

[2.1] That the Respondent be ordered to immediately and/or forthwith remove and/or delete the following blogs and/or articles and/or publications:

[2.1.1] The blog article published on the Respondent's blog page (Lazygamer.net") on 17 February 2014 at 12:30, together with all comments and posts made on the blog article on the Respondent's blog page and/or blog facility; and

[2.1.2] The blog article published on the Respondent's blog page (Lazygamer.net") on 20 February 2014 at 9:15, together with all comments and posts made on the blog article on the Respondent's blog page and/or blog facility.

[2.2] That the Respondent be interdicted and ordered to refrain from publishing, in any manner whatsoever whether in writing or verbally, any comments and/or allegations and/or insinuations and/or inferences that the Applicant has been or is currently involved in any form of fraud and/or dishonest and/or unlawful conduct whatsoever, in either his personal or professional capacity;

[2.3] That the respondent be interdicted and ordered to refrain from requesting and/or instructing other person(s) to publish, in any manner whatsoever whether in writing or verbally, any comments and/or allegations and/or insinuations and/or inference that the Applicant has been or is currently involved in any form of fraud and/or unlawful

conduct whatsoever, in either his personal or professional capacity;

[2.4] That the Respondent be interdicted and ordered to refrain from contacting or liaising with any person whatsoever for the purposes of making any comments and/or allegations and/or insinuations and/or inferences that the Applicant has been or is currently involved in any form of fraud and/or dishonest and/or unlawful conduct and/or activities whatsoever, in either his personal or professional capacity;

[3] A cost order was also sought on the scale between the Attorney and Client including costs of occasioned by the appointment of two counsel. This order was then suspended pending the return date of the Rule Nisi that was issued.

[4] The Respondent opposed this application and the Rule Nisi was extended on various occasions. An answering and replying affidavit were eventually filed.

[5] From the correspondence and more specifically that of the Respondent's attorneys dated 5 March 2014, it appears that respondent made the offer that it will publish the following retraction and the apology on his sight, www.Lazygamer.net in prominence equal of the articles referred to in paragraph 2.2 of applicant's Notice of Motion at the time of their initial publication:

*"RETRACTION OF ALLEGATIONS OF FRAUD MADE
AGAINST COLIN WEBSTER:*

4.1 *...In previous article on this blog titled 'Is the ex MSSA President Matatheni Mosotho', I reported on a reported court case that had been instituted by Colin Webster's brother in Johannesburg. I was mistaken when I referred to that court case as an action against Colin Webster for fraud. The court case is an action by Colin Webster's brother to have the will of Colin's mother declared to be invalid. There is no suggestion in the court papers that Colin had acted fraudulently, nor am I aware of any basis for this allegation. I apologise to Colin for the error, which I regret.*

4.2 *our client will delete and remove from publication on all of the sites and social media accounts of our client (including our client's site www.laczygamer.net);"*

[6] No tender of costs was forthcoming, it was not even mentioned in the letter. After the exchange of a number of letters and emails and the filing of pleadings, the Respondent eventually on the 5 August 2014, posted four prominent retractions and apologies on his website, face book page and Twitter pages.

[7] The apologies were handed up to court. It appears that apologies were made in Bold and it also explained in it that the respondent was mistaken when he referred to 2 court cases as in action against the applicant for fraud.

- [8] This apology was done voluntarily and on the initiative of the respondent. It was not published in terms of any agreement with the applicant. However in the letter of 15 August 2014, accompanied the apology, the respondents attorney stated that each party should be liable for their own costs.
- [9] It is clear from the apology published by the respondent that it substantially complies with the relief sought and awarded to the applicant in the interim order. As the applicant was then substantially successful, I am of the opinion that costs should follow the result. The apology was in essence similar to the apology referred to in paragraph 5 above.
- [10] Why the respondent did not tender any costs *in casu*, remains a mystery. Furthermore, such a tender of costs could have been done in the early stages of this litigation. Had the respondent tendered costs at an early stage, a cost order on a party and party scale, would have been appropriate. However, because of the respondent's stubbornness, and delay in his actions to publish an apology as well as tender costs, the matter dragged out and an apology was only made a number of days before the hearing of this matter.
- [11] In order to indicate the court's displeasure with the actions of the respondent, it is to my mind appropriate that a cost order on the scale of attorney and client scale should be awarded. Furthermore, it appears from the apology that there is no basis for the allegation of fraud.

[12] The question remains whether the employment of two counsel was justified in *casu*.

[13] It was argued on behalf of the applicant that this matter attracted wide public attention on the various networks, that the applicant is a public figure on the internet domain and the false accusations made by the respondent against him, caused him a lot of hardship and possibly also a lot of damages. I agree with above contention and is of the opinion, that the applicant was justified in instructing two counsel to appear in this particular matter.

[14] It is not necessary to confirm the rule nisi in this matter, as the respondent has substantially, complied with the terms of the rule nisi. All that remains is the question of costs as indicated above.

[15] Consequently, I make the following order:

15.1 The *rule nisi* is discharged;

15.2 Respondent is ordered to pay applicant's costs of the application on the scale of attorney and client, this includes the reserved costs and including costs of two counsel.



**BREDENKAMP IM
ACTING JUDGE OF THE HIGH COURT**