

NOTICE OF FILING

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Details of Filing

Document Lodged: Concise Statement
File Number: NSD426/2021
File Title: JOANNE ELIZABETH DYER v SUE CHRYSANTHOU & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 18/05/2021 11:17:52 AM AEST

A handwritten signature in blue ink that reads 'Sia Lagos'.

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Concise Response of the Second Respondent

No. NSD 426 of 2021

Federal Court of Australia
District Registry: Sydney
Division: General

Joanne Elizabeth Dyer

Applicant

Sue Chrysanthou SC

First Respondent

The Honourable Charles Christian Porter

Second Respondent

In answer to the allegations in the Concise Statement dated 11 May 2021 (**CS**), the second respondent (**Porter**) says that he and his solicitor have only been provided with the redacted version of the CS and his counsel is prohibited by order 8 of the Court's orders of 12 May 2021 from discussing the unredacted portions of the CS with Porter and his solicitor. He therefore does not know and cannot admit the allegations made in the paragraphs of the CS that are redacted or partially redacted or any of the allegations in the CS that are unredacted but appear to be premised on paragraphs that are redacted or partially redacted.

1. In answer to the allegations in paragraph 1 of the CS, Porter:
 - (a) admits that the first respondent (**Chrysanthou**) is a barrister and senior counsel;
 - (b) says that Chrysanthou is one of few specialist defamation senior counsel;
 - (c) admits that Chrysanthou is acting for Porter and has held that brief since 10 March 2021;
 - (d) admits Chrysanthou drafted the Originating Application, Statement of Claim and Reply for Porter in his proceedings against the ABC and Louise Milligan (**the defamation proceedings**) in consultation with and on instructions from Rebekah Giles, Porter's solicitor in those proceedings;
 - (e) otherwise does know and cannot admit the allegations in paragraph 1 of the CS that are unredacted and does not plead to those parts of paragraph 1 that are redacted.

2. In answer to the allegations in paragraph 2 of the CS, Porter admits that Dyer by her solicitor, Michael Bradley, requested that Chrysanthou cease to act and that she has declined to do so and otherwise says that he has not seen copies of the correspondence that was exchanged.
3. Porter does not plead to paragraph 3 of the CS which makes no allegations of fact but says that any confidentiality or suppression orders made in these proceedings should be no broader than is necessary to protect confidential information or would otherwise be necessary to prevent an abuse of process of this Court.
4. In answer to the allegations in paragraph 4 of the CS, Porter:
 - (a) says that Dyer knew AB when they were teenagers;
 - (b) does not know and cannot otherwise admit the nature of the relationship between Dyer and AB;
 - (c) understands that AB committed suicide on about 24 June 2020;
 - (d) admits that it is alleged that AB made claims that she had been raped by Porter in 1988;
 - (e) admits that the ABC and Milligan published an article that repeated and endorsed the allegations said to have been made by AB and has given rise to the defamation proceedings.
5. In answer to the allegations in paragraph 5 of the CS, Porter:
 - (a) admits that on 9 November 2020 the ABC broadcast an episode of the Four Corners programme entitled "*Inside the Canberra Bubble*";
 - (b) admits that Dyer engaged in a filmed interview for that broadcast;
 - (c) does not know and cannot admit what other interviews and communications took place between Dyer and Milligan;
 - (d) admits that the filmed interview included Dyer discussing the allegations said to have been made by AB against Porter;
 - (e) admits that the allegations said to have been made by AB against Porter were not included in the episode of the Four Corners programme broadcast on 9 November 2020; and
 - (f) admits that parts of the filmed interview of Dyer were included in the episode of the Four Corners programme broadcast on 9 November 2020.
6. Porter does not plead to paragraph 6 because it is redacted.
7. Porter does not plead to the first sentence of paragraph 7 because it is redacted in part and does not know and therefore cannot admit the second sentence.

8. In relation to paragraph 8, Porter:
 - (a) admits that Dyer attended a conference at Chrysanthou's chambers on 20 November 2020 together with Richardson and Bradley;
 - (b) says that James Hooke was also in attendance;
 - (c) otherwise does not plead to the balance of the paragraph, which is redacted.
9. Porter does not plead to paragraph 9 because it is redacted.
10. Porter does not plead to paragraph 10 because it relates to paragraphs 6-9 which are redacted either in whole or in part and therefore does not know the basis for the allegation made in paragraph 10 of the CS.
11. In answer to the allegations in paragraph 11 of the CS, Porter:
 - (a) admits that Chrysanthou has advised and appeared for Porter in the defamation proceedings;
 - (b) admits that Chrysanthou prepared the pleadings in the defamation proceedings in consultation with and on instructions from Rebekah Giles, solicitor;
 - (c) admits that Chrysanthou is still briefed in the defamation proceedings;
 - (d) admits that Chrysanthou is under an obligation to inform Porter, as her client, of everything she knows will be of assistance to Porter within the scope of her brief, subject to matters about which Porter gives informed consent that Chrysanthou not inform him about or use for his benefit; and
 - (e) otherwise does not know and therefore does not admit the allegations in paragraph 11 of the CS.
12. Porter does not plead to paragraphs 12 – 21 of the CS because they are redacted.
13. Porter does not plead to paragraph 22 of the CS because it is partially redacted.
14. Porter does not plead to paragraphs 23 - 26 of the CS because it is based upon the preceding paragraphs of the CS which are redacted or partially redacted.
15. Paragraph 27 of the CS contains no allegations against Mr Porter.
16. Porter does not plead to paragraph 28 of the CS as he has not seen the documents referred to in that paragraph.
17. In answer to the allegation in paragraphs 29 of the CS, Porter:
 - (a) says that this a proceeding that should be conducted in open court;

(b) agrees that any information in the court documents or affidavits that contain material that is the subject of a confidentially, legally privileged communication should be the subject of interim suppression orders but says that such orders should not prohibit Porter's counsel from inspecting such material and that such inspection is necessary in order for Porter's counsel to effectively represent Porter in these proceedings.

18. In answer to the allegations in paragraph 30 of the CS, Porter:

(a) does not plead to the first sentence of paragraph 30 because it is based upon the preceding paragraphs of the CS which are redacted or partially redacted;

(b) denies that Dyer's state of mind or beliefs as to the veracity of AB's allegations is in any way relevant to the defamation proceedings or Chrysanthou's carriage of those proceedings;

(c) does not admit that Dyer could give relevant and admissible evidence in the defamation proceedings;

(d) does not admit that the ABC intends to call her as a witness in the defamation proceedings;

(e) says that Dyer has no legal interest in the outcome of the defamation proceedings;

(f) denies that Chrysanthou would be acting adversely to Dyer if she continues to act in the defamation proceedings;

(g) denies that Dyer is at real risk of being at a disadvantage or suffering detriment as a witness in the defamation proceedings if Ms Chrysanthou continues to act for Porter;

(h) denies that there is any conflict between Chrysanthou's duty to Porter and her interaction with Dyer;

(i) otherwise does not know and cannot admit the allegations in paragraph 30 of the CS.

In further answer to the entire claim, Porter says as follows.

19. Dyer, Bradley and Hooke have made many public statements and statements to third parties about Porter and the defamation proceedings, such that the Court must determine whether any information alleged to have been imparted to Chrysanthou on 20 November 2020 or thereafter is in the public domain or otherwise not confidential because it has been disclosed to third parties and if that is the case the imparting of that information to Chrysanthou would not provide a basis for the relief sought.

20. The Court must further determine whether any information alleged to have been imparted to Chrysanthou on 20 November 2020 or thereafter will remain confidential in the course of the

future conduct of the defamation proceedings and if the Court is satisfied the information will not remain confidential then relief should be denied.

21. Dyer has unreasonably delayed bringing these proceedings having been told by Chrysanthou no later than 15 March 2021 that she would not return the brief.
22. In the event Chrysanthou is restrained from acting for Porter in the defamation proceedings, Porter will suffer significant detriment because:
 - (a) he will be denied his counsel of choice to conduct the defamation proceeding, which proceeding seeks to vindicate his reputation in the face of an accusation made by the ABC and Milligan of the most serious kind;
 - (b) Chrysanthou is the counsel with the primary conduct of the defamation proceedings on his behalf and has held that role since 10 March 2021;
 - (c) defamation is a specialist jurisdiction and there is unlikely to be available to Porter a barrister of equivalent standing, skill, experience and expertise as Chrysanthou;
 - (d) Chrysanthou has expended hundreds of hours working on the defamation proceedings and has in depth knowledge of the factual and legal issues in the defamation proceedings;
 - (e) The ABC and Milligan are well resourced opponents, represented by Justin Gleeson SC, Renee Enbom QC and various junior counsel; and
 - (f) there is a real possibility the replacement of Chrysanthou with an alternative barrister will jeopardise the prospects of the trial in the defamation proceedings being completed this year.
23. There is no material risk that would warrant the grant of the relief sought of confidential information being misused by Chrysanthou where:
 - (a) Chrysanthou is not obliged to inform Porter of everything that she knows will be of assistance to him within the scope of her retainer because Porter has given his informed consent for Chrysanthou to not inform him of any confidential matters that she learned by reason of her attendance at the 20 November 2020 conference and communications with representatives of Dyer thereafter; and
 - (b) Chrysanthou has offered an undertaking to Dyer not to cross-examine her or to assist cross-examining counsel in preparing her cross-examination should she be called by the ABC and Milligan as a witness in the defamation proceedings.

This pleading was prepared by Rebekah Giles, lawyer and settled by Christopher Withers SC.

CERTIFICATE OF LAWYER

I, Rebekah Giles, certify to the Court that, in relation to the Concise Response to the redacted Concise Statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.



Signed by Rebekah Giles
Lawyer for the Second Respondent

Date: 17 May 2021