IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

Not Restricted

No. SCI 2010 00868

PHILIP GLUYAS — Plaintiff

v

JOHN BEST JUNIOR — Defendant

JUDGE:	KAYE J
WHERE HELD:	Melbourne
DATE OF HEARING:	21 January 2013
DATE OF JUDGMENT:	24 January 2013
CASE MAY BE CITED AS:	Gluyas v John Best Junior
MEDIUM NEUTRAL CITATION:	[2013] VSC 3

DEFAMATION – Internet publications – Undefended trial – Whether material published in Victoria – Whether defamatory – Imputations – Damages.

APPEARANCES:	Counsel	Solicitors
For the Plaintiff	Mr T Greenway (pro bono)	
No appearance by Defendant		

HIS HONOUR:

1 The plaintiff claims damages for defamation arising from a number of items uploaded by the defendant onto the internet by use of various different websites.

2 The proceeding was issued on 18 February 2010. The defendant resides in Londonderry, New Hampshire, in the United States of America. The plaintiff arranged for the proceeding to be served on the defendant in the United States, relying on Rule 7.01 of the Rules of the Supreme Court. The defendant did not file an appearance to the writ. Accordingly, the plaintiff, pursuant to r 7.04, required leave to proceed. His application for leave had a rather protracted history, which it is not necessary for me to set out at any length. On 25 November 2011, Associate Justice Mukhtar, having concluded that the statement of claim served on the defendant was deficient, required the plaintiff to file and serve an amended statement of claim.

3 Pursuant to that order, the plaintiff filed an amended statement of claim dated 31 January 2012. Service of that amended pleading was effected on the defendant in the United States. The defendant responded to that pleading by a letter to the court dated 21 March 2012, to which I shall later further refer. By an order dated 30 April 2012, Associate Justice Mukhtar noted that the plaintiff's amended pleading had been served under the Hague Convention procedure. His Honour declined to give the plaintiff unconditional leave to proceed at that point, because of the unusual features of the case. Accordingly, he referred the matter to the Associate Justice responsible for trial fixtures, so that the case might be fixed in the Trial Division as an undefended trial.

4 The case was originally listed to be heard in the Supreme Court in Ballarat in September. However, the case could not be heard on that occasion. The trial of the case was then referred to myself. Because of other court commitments, I was unavailable to hear the case until 21 January 2013.

5 By the letter which he sent to court, the defendant made it clear that he did not

intend to appear in the case, or to defend the claim made against him by the plaintiff. Accordingly, the case proceeded before me as an undefended trial. Originally, the plaintiff had intended to present his case in person. However, in late 2012, he sought the assistance of the Victorian Bar. As a result, Mr Tim Greenway of counsel appeared, pro bono, for the plaintiff before me. Three witnesses were called in the proceeding, namely, the plaintiff, his psychiatrist Dr Hickey, and Ms Elinor Broadbent.

Background

6 The plaintiff is 47 years of age. He was diagnosed as suffering from Asperger's Syndrome in February 1997. In the meantime, the plaintiff had left school in 1982. Between 1985 and December 1991, he was employed by Australia Post in a number of clerical positions. As a result of his Asperger's Syndrome, he had difficulties with social interactions with fellow employees. In September 1990, he made a claim under the provisions of the *Commonwealth Employees Rehabilitation and Compensation Act 1988* in respect of a stress related condition, which he claimed had been contributed to by his employment. That claim was rejected. The plaintiff unsuccessfully appealed to the Commonwealth Administrative Appeals Tribunal. Upon the failure of that appeal, the plaintiff left his employment with Australia Post. Subsequently, in 1996 he gained a traineeship with the Department of Defence. His traineeship was terminated on medical grounds six months later in April 1997, based on a report of a Commonwealth medical officer. The effect of the report was that because of the plaintiff's condition, he was not medically fit for appointment with the Defence Department.

7 Since then, the plaintiff has been in receipt of a disability support pension. He has become an active advocate for the rights and interests of those who are on the autism spectrum. For that purpose, he has created and maintained websites, on which he has published his views concerning the rights of members of the autistic community. The plaintiff has attached to his website a forum, which may be accessed by others who are referred to as members. Generally, there have been between 25 and 38

members of the plaintiff's website.

8 In addition, the plaintiff has been an Australian Rules football umpire since 1983. He commenced umpiring with the Doncaster and District Junior Football League. Subsequently, he has umpired junior football in the Ballarat area, and particularly in the Ballarat Junior Football League. The plaintiff has a keen interest in Australian Rules football, and he has conducted historical research on the sport. He has also been active in the sport of wrestling, as a referee, a manager and a commentator.

Dispute with defendant

9 The present proceedings arise out of a long running dispute, which the plaintiff has had with the defendant concerning the causes of autism. As I stated, the plaintiff himself suffers from Asperger's Syndrome. That condition is considered to be part of the autism spectrum. Persons who suffer from Asperger's Syndrome do not suffer the cognitive or developmental deficits, which commonly affect those with autism. However, like autism, those with Asperger's Syndrome have social deficits, and, in particular, they have difficulty empathising or being able to interact appropriately in social situations.

10 The defendant has maintained websites, and contributed to websites, on which he has published a number of entries concerning the causes of autism. In essence, the defendant maintains that all forms of autism are caused by mercury poisoning, and that they can be cured by a form of treatment referred to as chelation. The plaintiff has challenged that view, and has contended that conditions on the autism spectrum are congenital and are not susceptible of a cure.

11 The defendant's responses to the plaintiff's views have gone well beyond the bounds of ordinary discussion and intellectual debate. The items posted by the defendant on the internet, concerning the plaintiff, contain an extraordinary level of invective and personal denigration, which, in some measure, have been repeated in two letters which he has forwarded to the court in response to the proceedings served on him.

The publication issue

12 As I stated, the plaintiff's claim arises out of the uploading by the defendant of various entries on the internet of and concerning the plaintiff, which the plaintiff claims were defamatory of him. In order that the plaintiff have leave to proceed under Rule 7.04 of the Rules of the Supreme Court, he must establish that the tort of defamation, of which he complains, was committed by the defendant in the State of Victoria (rule 7.01(1)(i)).

13 The essence of defamation is the publication by a defendant of material of and concerning the plaintiff, which is likely to lower the plaintiff's reputation in the eyes of right thinking members of the community. In the case of material on the internet, in order to establish publication of the matter by the defendant, it is not sufficient for a plaintiff to prove that the defendant uploaded the letter onto the internet. In *Dow Jones & Co Inc v Gutnick*[1], Gleeson CJ, McHugh, Gummow and Hayne JJ held that publication occurs where the material, complained of, is available in comprehensible form. Thus, in the case of material available on the internet, their Honours held that such material would not be published, until it was downloaded onto the computer of a person, who has used a web browser to pull the material from the web server. Consequently, it has become accepted, in defamation trials concerning material on the internet, that in order to prove publication, the plaintiff must demonstrate that a person, or persons, downloaded the material and read it.[2] Thus, to prove the commission by the defendant of the tort of defamation in Victoria, the plaintiff must establish that at least one person, in Victoria, downloaded and read the letter from the defendant's website.

14 Accordingly, with respect, it was quite appropriate for the Associate Justice to reserve the question of whether the plaintiff should be granted leave to proceed for the determination of the trial judge. In order to satisfy the requirement necessary for leave to proceed, and to prove his cause of action, the plaintiff was required to prove that at least one person, in Victoria, downloaded the material, of which he

1 (2002) 210 CLR 575, 607 [44].
2 Compare *David v Abdishow* [2012] NSWCA 109, [259].

complains, from the internet, and read it.

15 In his amended statement of claim the plaintiff, complained of a large number of entries uploaded by the defendant onto the internet. In opening the case before me, and in adducing evidence, the plaintiff did not seek to establish the publication of each of the entries contained in the amended statement of claim. Further, I permitted the plaintiff to rely on some entries uploaded by the defendant onto the internet since the issue of the proceeding in this case. Those entries were all to the same effect, and of the same tenor, as the entries complained of by the plaintiff in his amended statement of claim.

The publications complained of by the plaintiff

16 I am satisfied, by the evidence of the plaintiff, that the defendant created and maintained two websites, namely www.philgluyas.blogspot.com and www.philgluyas5.blogspot.com, onto which he uploaded entries of and concerning the plaintiff. I am also satisfied, by the evidence of the plaintiff, that the defendant also uploaded entries onto a website www.hatingautism.blogspot.com, which was maintained by another individual, Mr Skipsey. In particular, I am satisfied, on the evidence of the plaintiff, that the defendant uploaded onto those websites the following articles, of which the plaintiff complains, namely:

(a) (Exhibit G).- An entry entitled "Phil Gluyas' history of brutality" which was uploaded by the defendant on the website www.philgluyas.com on or about 3 February 2010.

(b) (Exhibit L). An entry entitled "Severely deranged mental case sues me again" uploaded by the defendant onto the website www.hatingautism.blogspot.com ("the hating autism website"). The plaintiff downloaded and read that entry in December 2010.

(c) (Exhibit M). The entry entitled "Phil Gluyas of Australian Football abuses autistic women" dated 11 April 2009 uploaded by the defendant onto the hatingautism website.

(d) (Exhibit N). The same entry entitled "Phil Gluyas of Australian Football abuses autistic women" uploaded by the defendant to the website www.philgluyas5.blogspot.com (the "philgluyas5 website") and dated 23 November 2009.

(e) (Exhibit O). The entry entitled "Is Phil Gluyas the next Adam Lanza?" uploaded by the defendant onto the hatingautism website on 20 December 2012.

(f) (Exhibit P). The same entry "Is Phil Gluyas the next Adam Lanza?" uploaded by the defendant on the philgluyas5 website dated 3 January 2013.

(g) (Exhibit R). The entry "Pneumonic plague averted in Melbourne" uploaded by the defendant on the philgluyas5 website on 3 November 2009.

(h) (Exhibit S). Various entries by the defendant as part of comments in relation to the "Youtube" video "I am autism". Those comments were uploaded by the defendant over a period of a few weeks leading to 23 November 2009 (when the plaintiff downloaded them from the internet).

17 I am satisfied, by the evidence of Elinor Broadbent, that she downloaded and read, in Victoria, exhibit N, exhibit O and exhibit P, to which I have just referred. Ms Broadbent read exhibit N in 2012, exhibit O on or about 20 December 2012, and exhibit P in early January 2013.

18 Ms Broadbent also gave evidence that she downloaded and read exhibit G. However, as Mr Greenway properly pointed out, she recalled doing so at a time at which exhibit G was no longer exhibited on the internet.

19 The plaintiff also gave evidence as to responses on the internet, and to him, by other persons in Victoria, in relation to some of the publications of which he complained. I permitted the plaintiff to adduce hearsay evidence to that effect, because it fulfilled the requirements of s 64 of the *Evidence Act 2008* (Victoria). In particular, the plaintiff gave evidence as to the responses by others, on the internet, and to him, indicating

that those persons had downloaded and read exhibits G, M, N, O and P in Victoria.

20 Thus, I am satisfied on the evidence that the defendant published, in the State of Victoria, of and concerning the plaintiff, the entries on the internet which are contained in exhibits G, M, N, O and P.

Whether publications defamatory of plaintiff

21 The next question is whether the publications, which the plaintiff has proven that the defendant made about him, were defamatory of him. In other words, the question is whether the publications, of which the plaintiff complains, bore an imputation, or imputations, which would have tended to lower the plaintiff in the estimation of right thinking members of the community.

22 That issue must be determined by reference to how the publications by the defendant would have been understood by an ordinary reasonable reader. The attributes, ascribed by the law to the "ordinary reasonable" reader, are well known. Such an hypothetical person is described as someone who is not "avid for scandal", and who is neither "unusually suspicious nor unusually naïve".[3] Equally, the hypothetical "ordinary reasonable" reader has been described as an ordinary person, who does not live in an ivory tower, and who reads between the lines in light of his or her general knowledge and experience of worldly affairs.[4] Thus, the ordinary reasonable reader does engage in a degree of loose thinking.[5] In this respect, it is important to bear in mind that the ordinary reasonable reader is a lay person, and not a lawyer, and such a person has a much greater capacity for implication than a lawyer.[6] On the other hand, it is necessary to bear in mind the distinction between the reader's understanding of what the article is stating, and a judgment or conclusion, which the reader may reach as a result of his or her own beliefs and prejudices, after reading the article; the defamatory quality of the material is to be

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3 *Lewis v Daily Telegraph Ltd* [1964] AC 234, 259 to 60 (Lord Reid), 277 (Lord Devlin).
4 *Lewis v Daily Telegraph Ltd* (above), 258 (Lord Reid).
5 Above, 258 (Lord Reid).
6 *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, 1245; *Lang v Australian Consolidated Press Ltd* [1970] 2 NSWR 408, 412.

determined by the former, and not the latter, proposition.[7]

23 In his amended statement of claim, the plaintiff pleaded a number of imputations, which he alleged the publications, of which he complained, bore. Before me, the plaintiff did not rely on each of those imputations. Further, Mr Greenway sought to rely on behalf of other imputations than those contained in the amended statement of claim. I gave leave to the plaintiff to rely on the further imputations. Although those imputations were different to those contained in the amended statement of claim, they were, essentially, of the same tenor. In his two letters to the court, the defendant had manifested a clear intention not to defend the proceeding at all. Accordingly, I did not consider that any unfair prejudice would be occasioned to the defendant by permitting the plaintiff to rely on the further imputations.

24 I turn, then, to the imputations which the plaintiff contends were borne by the publications which he has proven in this case.

Exhibit G: imputation

25 The plaintiff seeks to rely on one imputation borne by exhibit G (the entry entitled "Phil Gluyas' history of brutality" on the website www.philgluyas.blogspot.com). That imputation was as follows:

> "Phil Gluyas has on more than one occasion caused serious physical injury to others."

26 In my view, the imputation, complained of by the plaintiff, is clearly derived from the publication by the defendant contained in exhibit G. The title to the entry itself is sufficient to give rise to that imputation. The use of the word "history" denotes that the plaintiff has a background in which he had a tendency or proclivity of violence. The use of the word "brutality" goes beyond mere assault, and indicates that the plaintiff has a background in which he has tended to use serious violence against other persons. The first sentence of the article then proceeds "here's the link to Phil's court case after he brutalised someone". That sentence, combined with the heading,

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7 *Mirror Newspapers Ltd v Harrison* (1982) 149 CLR 293, 301 (Mason J, with whom Wilson J agreed).

in my view clearly gives rise to the imputation complained of, namely, that the plaintiff had on more than one occasion caused serious physical injury to others.

27 As a matter of law, any defamatory publication by a defendant of a plaintiff is presumed to be false and untrue. The onus lies on the defendant to plead, and prove, the truth of the publication. The defendant has not defended the action, and he has not sought to plead and prove the truth of the publication made by him. Accordingly, the publication by the defendant of the plaintiff was false and untrue.

28 Nevertheless, before me the plaintiff sought to prove the untruth of the publication contained in exhibit G. That was his right. A plaintiff is entitled to prove the untruth of the defamation, notwithstanding that the defendant has not sought to raise a defence of truth or justification.

29 Exhibit G contains a quotation from a letter by the plaintiff to the Human Rights and Equal Opportunity Commission dated 17 October 1999, in which the plaintiff made a complaint of harassment and discrimination. In the course of that letter, he referred to an incident which occurred at the offices of TLC Consulting Services in January 1999. The plaintiff stated that on that occasion he committed an offence under the Criminal Code "… when I was pushed too far by the third party (TLC Consulting Services) and I lashed out physically for the first time in my life".

30 In evidence, the plaintiff described in some detail the incident which occurred, and the background circumstances which gave rise to it. On the evidence before me, the incident was minor, and the plaintiff was acting under strong provocation. He pleaded guilty to a charge of common law assault. He was released on a bond of be of good behaviour for twelve months and required to pay costs. That disposition by the court reflects the rather minor nature of the incident. It certainly does not justify an allegation that the plaintiff had on more than one occasion caused serious physical injury to others, or that he had a "history of brutality". Thus, although the plaintiff was not required to prove the untruth of the allegation made about him by the defendant, he has successfully done so in his evidence.

Exhibits M, N – imputations

31 The plaintiff relies on three imputations in respect of exhibit M (the entry "Phil Gluyas of Australian football abuses autistic women" on the hatingautism website) and exhibit N (the same entry on the philgluyas5 website). Those imputations are:

(a) By analogy with Hannibal Lecter, Phil Gluyas is a mentally unwell person who poses a serious threat to the physical safety of others.

(b) A medical authority determined that Phil Gluyas was so physically dangerous to others, as a result of a medical disorder, that he was banned from working anywhere in Australia.

(c) Phil Gluyas suffers from a serious mental disorder that causes him to be violent towards others.

32 I am satisfied that the two entries, published by the defendant, conveyed each of those three imputations of and concerning the plaintiff. Immediately beneath the heading of each entry, is a photograph depicting the character Hannibal Lecter, from the film Silence of the Lambs. That character was a psychopathically violent and dangerous individual. Underneath the photograph, the defendant stated:

> "Phil Gluyas is a severely deranged man from Australia who likes to abuse people with autism, especially women. Gluyas was found to be so dangerous to his co-workers that a medical authority proclaimed him to be mentally unfit for employment anywhere in Australia."

33 The photograph and that passage, alone, are sufficient to give rise to each of the three imputations. However, the balance of the article reinforces and repeats each of the imputations. The defendant then referred to the fact that the plaintiff umpired Australian Rules football. He stated:

> "What might happen with Gluyas umpiring if some autistic woman happens to wander onto the field? With his history of being medically banned from all work places in the country, I shudder to think what this lunatic might do to a disabled person that he could get his hands on."

34 The article concluded that an official from the Australian Football should be

informed "of the deranged nature of the psychopath Gluyas … ".

35 The substance, language and tenor of the article give rise to each of the three imputations relied on by the plaintiff. As such, the article is seriously defamatory of the plaintiff. Again, the defendant has not sought to plead and prove the truth of the article, and the allegations by the defendant against the plaintiff are thus presumed to be false.

36 As I have stated, the plaintiff was not required to prove the falsity of the allegations. However, he did put forward proof of the falsity of the allegation that he had been found so dangerous to co-workers that he had been proclaimed by a medical authority to be mentally unfit for employment anywhere in Australia. The plaintiff put in evidence the report of the medical examination on the basis of which his employment with the Department of Defence was terminated. That report did not, in any form at all, support the allegation made by the defendant about the plaintiff in his article. Thus, that allegation is demonstrably without foundation.

Exhibit O, P – imputations

37 The plaintiff relies on six imputations derived from exhibit O and exhibit P, each of which were entitled 'Is Phil Gluyas the next Adam Lanza?". Those imputations are as follows:

(a) Phil Gluyas is a threat to the physical safety and lives of others to a similar extent as Adam Lanza, a man thought to have Asperger's Syndrome who entered an elementary school and shot dead twenty children and four adult staff members on 12 December 2012.

(b) By analogy with Adam Lanza, Phil Gluyas is a mentally unwell person who poses a serious threat to the physical safety of others.

(c) Phil Gluyas has a violent history of physically harming co-workers.

(d) A court ruled Phil Gluyas to be so mentally unwell and violent that it banned him from working anywhere in Australia.

(e) Phil Gluyas is a paedophile.

(f) Phil Gluyas sexually pursues young girls and boys.

38 I am satisfied that the article published by the defendant, and contained in exhibit P and exhibit O, bears each of the six imputations complained of by the plaintiff.

39 The title to the article, and the first two imputations, refer to the horrific massacre of some twenty school children, and a number of adult staff members, at a primary school in Newtown, Connecticut on 12 December 2012. The massacre was perpetrated by a young man, Adam Lanza. The articles were published on 20 December and 3 January respectively. Thus, the articles, published by the defendant, appeared shortly after the appalling tragedy to which I have just referred, and which received prominent worldwide publicity, including in Australia. That publicity has, understandably, been ongoing, and indeed has been accentuated by the moves in the United States of America to tighten the controls on the availability of firearms.

40 It is neither desirable or necessary that I set out the article, which is severely defamatory of the plaintiff. It imputes, if not expressly states, that there is a significant risk that the plaintiff will replicate the appalling massacre perpetrated by Adam Lanza in Newtown. The article imputes that the plaintiff is likely to conduct such an outrage because of his mental condition. It alleges that the plaintiff is subject to a court order that he not work anywhere in Australia because he is "so deranged", and because he has a "violent history of attacking co-workers". Thus, each of the first four imputations clearly emerge from a simple reading of the article published by the defendant.

41 The defendant further makes allegations in the article which clearly give rise to the fifth and sixth imputations. Those allegations are primarily contained in the third paragraph of the article, which I shall not repeat.

42 Taken together, the article, and the imputations to be derived from them, are highly

defamatory of the plaintiff. Again, the defendant has not sought to plead and prove the truth of any of those allegations. As such, each of the allegations by him about the plaintiff are false.

Damages

43 It follows that the plaintiff has proven that the defendant published, of and concerning him, the articles which are contained in exhibits G, M, N, O and P. The plaintiff has also established that those articles contained imputations which are seriously defamatory of him. The final question, which I must determine, is the amount of damages, which should be awarded to the plaintiff, to compensate him for the injury sustained by him as a consequence of the tort of defamation committed by the defendant against the plaintiff in the State of Victoria.

44 In general, an award of damages for defamation has three principal functions, namely, as reparation for the harm done to the plaintiff's reputation, as solatium for the distress and embarrassment occasioned to the plaintiff by reason of the publication, and as vindication of the plaintiff's reputation.[8]

45 An important component of an award for damages for defamation consists of the compensation for injury to the plaintiff's feelings, and for the embarrassment and distress, occasioned by the defamatory publication. In an appropriate case, a plaintiff is entitled to an award of aggravated damages, where the conduct of the defendant, subsequent to publication, has been such as to compound the distress and humiliation occasioned to the plaintiff as a result of the publication.[9] However, an award of damages may only be made where the conduct of the defendant is lacking in bona fides, or is improper or unjustifiable.[10]

46 The third aspect, of an award of damages for defamation, consists of the vindication of the reputation of the plaintiff. In *Broome v Cassell & Co Ltd*[11], Lord Hailsham

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8 *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44, 60 (Mason CJ, Deane, Dawson and Gaudron JJ); *Coyne v Citizen Finance Ltd* (1991) 172 CLR 211, 216 (Mason CJ, Deane J).

9 *Herald & Weekly Times Ltd v Popovic* (2003) 9 VR 1, 77 [380] (Gillard AJA).

10 *Triggell v Pheeney* (1951) 82 CLR 497, 514.

11 [1972] AC 1027, 1071.

referred to the role of an award of damages, in vindicating the reputation of a plaintiff, in the following terms:

> "In actions of defamation and in any other actions where damages for loss of reputation are involved, the principle of *restitution in integrum* has necessarily an even more highly objective element. Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge."

47 I am satisfied that the plaintiff does have a relatively well known reputation, particularly among people who are interested in issues relating to the autism spectrum. As I have already mentioned, the plaintiff has, for some years, advocated, on the internet, for the rights and interests of people who have disorders on the autism spectrum. In that capacity, in 2008, he contributed to the development of an Autism State plan in Victoria, and he has appeared before, and made submissions to, the Productivity Commission in respect of its inquiry into a proposed national disability insurance scheme. In October 2012, the plaintiff attended at an Autism State conference, at which he directed questions to some of the speakers.

48 In addition, as I have already mentioned, the plaintiff has been actively involved in umpiring junior Australian Rules football leagues over the last thirty years. He also has a profile in the sport of wrestling.

49 The plaintiff has only proven a limited amount of publication in Victoria of the items uploaded by the defendant on the internet. I do not have any evidence as to the visits made by persons in Victoria to the websites, which contained the items uploaded by the defendant, and of which the plaintiff makes complaint. However, in assessing damages, the court takes into account that the damage occasioned to a person's reputation, as a result of the publication of defamatory material, is likely to

spread beyond the original publication along the human "grapevine".[12]

50 It is clear from the evidence of the plaintiff, and from the evidence of Dr Hickey, that the plaintiff has suffered feelings of distress and disquiet as a result of the serious defamatory matter published of him by the defendant in Victoria. The plaintiff described feelings of anger, humiliation and frustration caused by the publication of the defamatory entries uploaded by the defendant on the internet. It is readily understandable that the type of allegations made by the defendant, and in particular those contained in exhibits M, N, O and P, would occasion substantial distress to the plaintiff.

51 As I have already stated, the defamatory imputations published by the defendant about the plaintiff are particularly serious. In a case such as this, the damages must be of such magnitude as to "nail the lie" contained in each of the defamatory imputations published by the defendant, so as to appropriately vindicate the reputation and standing of the plaintiff.

52 In addition, I am satisfied that the conduct of the defendant has been such as to seriously aggravate the harm caused to the plaintiff's feelings, and the embarrassment and humiliation occasioned to him as a result of the defamatory publications made by the defendant of and concerning the plaintiff. In particular, there are, I consider, two particular aspects of the defendant's conduct which have each constituted an aggravation of the plaintiff's injury.

53 The first aspect of aggravation consists of the two letters written by the defendant to this Court. The first letter was dated 1 April 2010, in response to the writ served on him on behalf of the plaintiff. The second letter was dated 21 March 2012 and was written in response to the amended statement of claim served on him. Both letters, and in particular the second letter, repeated some of the defamatory remarks made by the defendant about the plaintiff, and contained material which is insulting of

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12 *Ley v Hamilton* (1935) 153 LT 384, 386 (Lord Atkin); *Crampton v Nugawela* (1996) 41 NSWLR 176, 194-5 (Mahoney ACJ); *Prendergast v Roberts* [2012] QSC 144, [31] (Mullins J).

him and which ridicules him.

54 The second aspect of aggravation in the case consists of the item contained in exhibit L entitled "Severely deranged mental case sues me again". That item was uploaded by the defendant onto the hatingautism website on 14 December 2010, in response to the proceedings brought against him in this Court on behalf of the plaintiff. The content and tone of the article aggravated the damages which are to be awarded to the plaintiff.

55 In his original pleading, the plaintiff claimed damages of $10,000. However, that pleading did not include some of the publications made by the defendant of the plaintiff, and in particular the ones comparing the plaintiff to Hannibal Lecter (exhibits M and N) and the articles alleging that the plaintiff was a similar threat to public safety as was Adam Lanza (exhibits O and P). In addition, the defendant has continued to aggravate the damage caused to the plaintiff's feelings by the conduct to which I have referred.

56 Taking into account the foregoing considerations, I consider that it is appropriate to award the plaintiff the sum of $50,000 damages to compensate him for the publications made by the defendant of the plaintiff in Victoria. I should add that, if I had been satisfied that the publication in Victoria of the items, of which the plaintiff complained, had been more widespread than that proven in the evidence, I would have awarded the plaintiff a considerably larger sum of damages.

Interest on damages

57 The plaintiff is also entitled to interest on those damages pursuant to s 60 of the *Supreme Court Act 1958*. It is generally accepted that the appropriate rate of interest, in respect of pre-trial non-economic loss, is 4 percent per annum.[13] However in this case, two of the publications of which the plaintiff complains (contained in exhibits O and P) occurred after the issue of proceedings, and quite recently. Accordingly, in my view, it is appropriate that the plaintiff be awarded interest on damages at the

[13] *MPB (SA) Pty Ltd v Gogic* [1991] HCA 3; (1990) 171 CLR 657.

rate of 3 percent per annum since the date of issue of proceedings. It follows that the plaintiff is entitled to an award of interest on damages in the sum of $4,375.

Other relief

58 In his statement of claim, the plaintiff also sought a mandatory injunction requiring the defendant to remove from the internet all of the offending materials uploaded by him onto it. Although Mr Greenway, on instructions, maintained that application, he correctly conceded that, given the equitable principles which govern the grant of such a relief in this case, there are considerable difficulties which lie in the path of the making of such an injunction. In those circumstances, Mr Greenway did not press the grant of such relief.

Conclusion

59 In conclusion, then, I am satisfied that the defendant has published in Victoria a number of items on the internet, contained in exhibits G, M, N, O and P, each of which were seriously defamatory of the plaintiff. On the evidence before me, the allegations contained in each of those publications were false. The plaintiff has suffered injury to his reputation and to his feelings as a result of the publication of those items. He is entitled to an award of damages, including aggravated damages, in the sum of $50,000, together with interest in the sum of $4,375.

Acknowledgment

60 Before departing from the case, it is appropriate that I acknowledge, and express my gratitude to, Mr Greenway for his assistance in the case. As I earlier noted, Mr Greenway appeared pro bono on behalf of the plaintiff. Originally, the plaintiff had complained about a large number of items published by the defendant on the internet. It is clear from the manner in which Mr Greenway presented the case that he had devoted a considerable amount of time, work and effort to ensuring that he only put before the Court matters which the plaintiff would be able to prove in evidence. Mr Greenway presented the case on behalf of the plaintiff in a skilful and methodical manner. He conducted himself in accordance with the highest and best

traditions of the Victorian Bar and the legal profession. As such, I am particularly grateful to Mr Greenway for his assistance in the case.

Orders

61 Subject to hearing counsel, I shall make orders:

(1) That the plaintiff be granted leave to proceed pursuant to Rule 7.04 of the Rules of the Supreme Court;

(2) That the defendant pay the plaintiff damages in the sum of $54,375 (which sum consists of damages of $50,000 and interest pursuant to s 60 of the *Supreme Court Act 1958* of $4,375);

(3) That the defendant pay the plaintiff's costs of the proceeding, including any reserved costs.