

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 12/11/2018 3:40:05 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Non-Prescribed Notice/Request
File Number: NSD2179/2017
File Title: GEOFFREY ROY RUSH v NATIONWIDE NEWS PTY LIMITED &
ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 12/11/2018 3:40:08 PM AEDT

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.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



NSD 2179/2017

GEOFFREY RUSH

Applicant

NATIONWIDE NEWS PTY LIMITED & JONATHON MORAN

Respondents

AGGRAVATED DAMAGES

The applicant relies upon the following matters as aggravating the damages to which he is entitled:

1. The respondents' failure to apologise for publication of the matters complained of. This was improper in relation to imputation 10(g) because the respondents intended to convey that imputation to their readers but have never pleaded truth to it.
2. The respondents' failure to withdraw the truth defence to imputation 10(f) and apologise for pleading truth to that imputation. That was improper, at least since the respondents' decision not to call McIntyre at which time they must have known there would be no evidence capable of supporting it. The fact that the respondents continue to maintain this plea is also improper when it is wholly unsupported by evidence.
3. The unfair, sensational and extravagant method of publication evidenced, in particular, by the headlines which cannot be justified by any information in the possession of the respondents. Examples are "Scandal Claims", "King Leer", "Bard Behaviour", "World Exclusive".
4. The improper motives of the respondents, including, specifically, the second respondent. The motive was to boost sales and increase circulation by sensational articles concerning the #Metoo movement. This is evidenced by Ex A-38 and the juxtaposition of the article concerning Don Burke in the second matter complained of.

5. The dishonesty of the first respondent in relation to the first matter complained of. It knew that the STC had not confirmed inappropriate behaviour. The assertion that it had done so was a calculated falsehood to boost sales.
6. The calculated cruelty of the respondents in publishing the second matter complained of knowing that the STC had requested it not to, that Ms Norvill did not wish it to and Mr Rush had, through his solicitors, denied the allegations.
7. The publication of the contents of Mr Pullen's letter when it had been marked "Not for Publication".
8. The publication of the second matter complained of and its serious allegations of impropriety without having confirmed any detail with Ms Norvill. That was reckless and improper. Ex A-39, A-40 and A41.
9. Exhibit A-5. Mr Moran's email:
 - (a) He only approached the applicant, indirectly through his agent, at 5.06pm the night before the publication of the first and second matters complained of.
 - (b) He said the story was "running in tomorrow's" paper (ie it was going to be published regardless of what the applicant said).
 - (c) He wrote to the applicant, in relation to what he described as "an alleged incident of abuse", stating that the investigation was part of a broader investigation in the wake of the Don Burke and Harvey Weinstein scandals.
 - (d) He did not suggest to the applicant that he was going to refer to the applicant as "King Leer", or misappropriate the photograph of the applicant from *King Lear*, or that he was going to allege the applicant had engaged in "Bard behaviour".
 - (e) He did not send the applicant the text of the first and second matters complained of.
10. The dishonesty of the respondents in relation to the third matter complained of, as follows:

- (a) Brandon McClelland. The respondents knew, because Mr McClelland had told them (Ex A-45), that he knew nothing about events during *King Lear* but presented his words as if he did and as if he confirmed the complainant's story from his personal knowledge; (see also heading to A-44).
 - (b) The respondents redacted Mr McClelland's tweet and Facebook post (A42 and A43) to give a false impression of his views.
 - (c) The respondents presented Mr Wyatt's Facebook post as if it was in support of Ms Norvill whereas it was plainly generic. They also did so without speaking to Mr Wyatt.
 - (d) The respondents deliberately omitted the words set out in the third paragraph of Ex A-46 "*The STC has at all times been clear that this was an allegation made to (not by) STC and not a conclusion of impropriety*". That was done so as to give a deliberately false impression of the STC's position.
 - (e) The respondents fabricated the assertion that the STC would not work with the applicant again. There is no evidence to support the proposition that such a decision had been made and it is contradicted by the last paragraph of A-46.
 - (f) The dishonesty in these words, "*Despite denials, Rush was told who made the claims in a phone call with executive director Patrick McIntyre weeks ago*". The respondents knew this was false from Ex A-48 which directly informed Moran that the applicant had not been told. The omission of the content of this email from the third matter complained of was also dishonest.
11. Publication of the applicant's solicitors' letter in the third matter complained of despite the notation "Not for Publication".
 12. Failure to seek comment from the applicant in respect of the third matter complained of until 6.20pm on 30 November 2017.
 13. The content of Ex A-50. By asking the question whether he would like to "say sorry to the victim", the second respondent asserted that the applicant was

actually guilty. That was improper behaviour. The second respondent had no basis for such an assertion. It was also an insult.

14. The respondents improperly cast around for material having nothing to do with the allegations in the matter complained of in an attempt to smear and traduce the applicant (Ex A-53).
15. The manner in which the first respondent reported the course of the proceedings – Ex A-54. This further added to the damage to the applicant’s reputation and was improper because it was a biased attempt to smear the applicant and punish him for suing the respondents.
16. The respondents' Defence of 1 February 2018. The respondents alleged at paragraphs 22 and 23, that during an after-party for the production on 9 January 2016, the applicant entered the female bathroom and stood outside a cubicle which was occupied by the complainant. The same allegation was raised in the respondents' Amended Defence of 20 February 2018 at paragraphs 23 and 23A.
17. Those allegations were widely reported including by *The Daily Telegraph*.
18. The respondents have made public comments that the matters complained of were accurate and reasonable.
19. The respondents' conduct of the litigation, including:
 - (a) The filing of plainly inadequate Defences in February 2018 - including particulars which are no longer pursued;
 - (b) The Interlocutory Applications of April 2018, seeking to file a Further Amended Defence and seeking to file a Cross-Claim against the STC;
 - (c) The application for leave to appeal, on a discretionary issue of practice and procedure, in relation to particulars which would never have made any difference to the ultimate outcome of the proceedings;
 - (d) The late abandonment of the defence of statutory qualified privilege, when it suited the respondents to do so in order to resurrect the previously struck out defence of justification;
 - (e) Refusing to admit any of the matters subject to the applicant's Notices to Admit: Tabs 19, 20, 28, 29, 31, 33, 34.

20. Publication of material on 30 October 2018 in breach of the Court's suppression order.
21. The respondents' cross-examination of the applicant, including suggesting he was not virtually housebound following the matters complained of and questioning the applicant's evidence that he had led "a hermit existence".
22. The falsity of the imputations.
23. By reason of these matters it will be inferred that the respondents were actuated by express malice in publication of the matters complained of and in the conduct of the litigation which increased the hurt and harm to the applicant.