



Reply

No. NSD 475 of 2023

Federal Court of Australia
District Registry: New South Wales
Division: General

ALEXANDER HART GREENWICH

Applicant

MARK WILLIAM LATHAM

Respondent

In relation to the Defence filed on 7 August 2023 (**Defence**), the Applicant (**Mr Greenwich**) adopts the same defined terms used in the Statement of Claim filed 29 May 2023 (**Statement of Claim**) and the Defence, and relies upon the following matters by way of Reply:

General matters

1. Mr Greenwich joins issue with the Respondent (**Mr Latham**) on the Defence except for the admissions which it contains.

Further aggravation

2. Mr Greenwich relies on the following pleas in the Defence as matters done by Mr Latham that are improper, unjustifiable and lacking in bona fides, and that have increased the hurt and harm occasioned to him, and which warrant an award of aggravated damages:
 - a. The denial of serious harm in paragraph 30 of the Defence.
 - b. The allegation in paragraph 30(c)(ii) of the Defence that the media coverage and responses to the Primary Tweet and DT Quotes “*enhanced*” the reputation of Mr Greenwich.

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- c. The allegation in paragraph 30(d) of the Defence that the pleaded imputations “*are not serious and are not capable of causing serious harm to Greenwich’s reputation*”.
- d. The allegation in paragraph 30(e) of the Defence that “*any demeaning language, alleged to be used in the Primary Tweet or DT Quotes, in connection with Greenwich’s sexuality or assumed sexual conduct or other vulgar abuse is not capable of causing serious harm to Greenwich’s reputation*”.
- e. The failure of Mr Latham in paragraph 30(f)(i) of the Defence to admit that there was any conduct by members of the public as a result of his publication of the Primary Tweet or the DT Quotes in the face of the matters pleaded in paragraph 30.4 of the Statement of Claim, including that:
 - i. members of the public responded to the Primary Tweet on Twitter (as it was then known) and Mr Latham liked responses made by members of the public, as pleaded in paragraph 30.4(c) of the Statement of Claim; and
 - ii. members of the public made the communications pleaded in paragraph 30.4(d) of the Statement of Claim on dates after the dates on which Mr Latham published the Primary Tweet and the DT Quotes.
- f. The allegation in paragraph 30(f)(ii) that the matters pleaded therein were “*intervening or independent*” causes, in light of the matters pleaded in paragraph 30.4 of the Statement of Claim and sub-paragraph (e) immediately above, and where the cause of the public conduct was patently a result of Mr Latham’s publication of the matters complained of.
- g. The allegation in paragraph 33(d)(ii)(1) of the Defence that the matters complained of were “*political speech*”, when they obviously and unarguably were not.
- h. The allegation in paragraph 33(d)(ii)(2), without particulars, that language used by Mr Greenwich against Mr Latham has been similar to the language used by Mr Latham in the matters complained of.
- i. The allegation in paragraph 77(h) that, “*Greenwich is an openly gay man who has participated in homosexual sexual activities, material that was set-out in specific or general terms in the Primary Tweet and is substantially true*”, in circumstances where:

- i. Mr Latham does not know, and could not have known, anything about the private sexual activities of Mr Greenwich such that he has no proper basis to plead that the terms of the Primary Tweet are “*substantially true*”;
- ii. the allegation in that paragraph of the Defence is based on disgraceful prejudices about homosexual people and their presumed private sexual activities; and
- iii. by that pleading, Mr Latham necessarily alleges that it is “*substantially true*” that homosexual sexual activity is inherently “*disgusting*”.

Common law qualified privilege – alleged Reply to Attack – Primary Tweet

3. In answer to the defence of qualified privilege at common law pleaded in paragraphs 38 to 48, Mr Greenwich says that:
 - a. the Primary Tweet was disproportionate and not germane to any of Greenwich’s attack, the Online SMH attack, the Tweet attack, the Pre-recorded Attack, the Second Online SMH attack or the Print SMH attack alleged in paragraphs 38 to 43 of the Defence, and accordingly the Primary Tweet was not published on an occasion of qualified privilege; and
 - b. further or alternatively, Mr Latham was actuated by malice in that he published the Primary Tweet predominantly for the improper purpose of exposing Mr Greenwich to public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich’s sexuality.

Particulars

- i. Mr Latham knew the imputations conveyed by the Primary Tweet were false or, alternatively, Mr Latham was recklessly indifferent to the truth or falsity of those imputations.
- ii. At the time of publishing the Primary Tweet, Mr Latham did not know, and could not have known anything about the private sexual activities of Mr Greenwich.
- iii. The Primary Tweet was based on homophobic prejudices of Mr Latham.
- iv. In publishing the Primary Tweet, Mr Latham included irrelevant, extraneous, and prejudicial statements, and used language that was demeaning, homophobic, and over-sensationalised.

- v. By Mr Latham's own pleading in paragraph 82(j) of the Defence, Mr Latham admits the Primary Tweet referred to sexual activity in graphic terms.
- vi. In publishing the Primary Tweet, Mr Latham used language that was disproportionate and not germane to the language used in any of the alleged attacks pleaded in paragraphs 38 to 43 of the Defence, which concerned Mr Latham's fitness for public office and had nothing whatsoever to do with graphic sexual activity.

Common law qualified privilege – DT Quotes and DT Article

- 4. In answer to the defence of qualified privilege at common law pleaded in paragraphs 49 to 56 of the Defence, Mr Greenwich says that insofar as the matters concerned were published on an occasion of qualified privilege (which is denied), Mr Latham was actuated by malice in that he published the DT Quotes predominantly for the improper purpose of exposing Mr Greenwich to public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich's sexuality.

Particulars

- a. Mr Latham knew the imputations conveyed by the DT Quotes were false or, alternatively, Mr Latham was recklessly indifferent to the truth or falsity of those imputations.
- b. The DT Quotes were based on homophobic prejudices of Mr Latham.
- c. In publishing the DT Quotes, Mr Latham included irrelevant, extraneous, and prejudicial statements, and used language that was demeaning, homophobic, and over-sensationalised, including:
 - i. the reference to "*habits*" in the whole of the context of the DT Quotes and DT Article; and
 - ii. the reference to "*Greenwich goes into schools talking to kids about being gay*", and the immediate next part of the DT Quotes suggesting such conduct warranted 'accusations', namely, "*I didn't want to be accused of anything similar...*".
- d. In publishing the DT Quotes, Mr Latham used language that was disproportionate and not germane to the language used in Mr Greenwich's alleged attacks.

Common law qualified privilege – alleged Reply to Attack – DT Quotes and DT Article

5. In answer to the defence of qualified privilege at common law pleaded in paragraphs 57 to 60 of the Defence, Mr Greenwich says that:
- a. the DT Quotes were disproportionate and not germane to the Latham attacks; and the Latham attacks were not made by Mr Greenwich, were not made in Mr Greenwich's name, were not authorised by Mr Greenwich, and Mr Greenwich was not complicit in them, and so were not in any event a licence to Mr Latham to further defame Mr Greenwich, and accordingly the DT Quotes were not published or republished on an occasion of qualified privilege; and
 - b. further or alternatively, Mr Latham was actuated by malice in that he published the DT Quotes predominantly for the improper purpose of exposing Mr Greenwich to further public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich's sexuality.

Particulars

- i. The particulars in paragraph 4 above are repeated.

Statutory qualified privilege – s 30 *Defamation Act 2005 (NSW)* – DT Quotes and Article

6. In answer to the defence of qualified privilege under s 30 of the *Defamation Act 2005 (NSW)* (***Defamation Act***) pleaded in paragraphs 61 to 67 of the Defence, Mr Greenwich says that insofar as the matters were published on an occasion of qualified privilege (which is denied), Mr Latham was actuated by malice in that he published the DT Quotes predominantly for the improper purpose of exposing Mr Greenwich to public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich's sexuality.

Particulars

- a. The particulars in paragraph 4 above are repeated.

Common law qualified privilege – Australian Constitution extension – DT Quotes

7. In answer to the defence of qualified privilege at common law pleaded in paragraphs 68 to 70 of the Defence, Mr Greenwich says that insofar as the matters concerned were published on an occasion of qualified privilege (which is denied), Mr Latham was actuated by malice in that he published the DT Quotes predominantly for the improper purpose of exposing Mr Greenwich to public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich's sexuality.

Particulars

- a. The particulars in paragraph 4 above are repeated.

Public interest – s 29A, *Defamation Act* – DT Quotes and Article

8. In answer to the defence of public interest under s 29A of the *Defamation Act* pleaded in paragraphs 71 to 74 of the Defence, Mr Greenwich says that Mr Latham was actuated by malice in that he published the DT Quotes predominantly for the improper purpose of exposing Mr Greenwich to public humiliation, ridicule, contempt and hatred by reason of Mr Greenwich's sexuality.

Particulars

- a. The particulars in paragraph 4 above are repeated.

Honest opinion – s 31, *Defamation Act* – Primary Tweet

9. In answer to the defence of honest opinion under s 31 of the *Defamation Act* pleaded in paragraphs 75 to 79 of the Defence, Mr Greenwich says that insofar and to the extent that the Primary Tweet is found to:
 - a. contain expressions of opinion;
 - b. which related to a matter of public interest; and
 - c. which were based on proper material,

(each of which is denied), then it is to be inferred that those opinions were not honestly held by Mr Latham at the time the Primary Tweet was published, by reason of the matters particularised immediately below.

Particulars

- i. At the time of publishing the Primary Tweet, Mr Latham did not know, and could not have known anything about the private sexual activities of Mr Greenwich.
- ii. The Primary Tweet was based on homophobic prejudices of Mr Latham, as opposed to any proper material upon which to base an opinion.

Honest opinion – s 31, *Defamation Act* - DT Quotes and DT Article

10. In answer to the defence of honest opinion under s 31 of the *Defamation Act* pleaded in paragraphs 80 to 84 of the Defence, Mr Greenwich says that insofar and to the extent that the DT Quotes are found to:

- a. contain expressions of opinion;
- b. which related to a matter of public interest; and
- c. which were based on proper material,

(each of which is denied), then it is to be inferred that those opinions were not honestly held by Mr Latham at the time the DT Quotes were published, by reason of the matters particularised immediately below.

Particulars

- i. By reason of the matters pleaded in paragraph 64(g) of the Defence, Mr Latham understood that Mr Greenwich had attended a single high school, Sydney Boys High School, to address senior high school students.
- ii. It can be inferred from the matters pleaded in paragraph 64(g) of the Defence that Mr Latham must have understood that: (A) arrangements had been made with Sydney Boys High School for Mr Greenwich to attend on the school to address students; (B) Mr Greenwich did not enter the school to address senior high school students without prior arrangement; and (C) the subject of the address was as agreed with and acceptable to the school.
- iii. The DT Quotes were based on homophobic prejudices of Mr Latham, as opposed to any proper material upon which to base an opinion, and were calculated by Mr Latham to carry the baseless and disgraceful imputation that Mr Greenwich goes to schools to groom children to become homosexual in circumstances where no rational person, knowing the matters in paragraphs (i) and (ii) above, would or could honestly hold such a view.

Date: 5 September 2023

Signed by Nicholas Stewart

Lawyer for the Applicant

This pleading was prepared by Nicholas Stewart, solicitor for Mr Alex Greenwich and Ms Sophie Jeliba, counsel for Mr Alex Greenwich, and settled by Dr Matthew Collins AM KC, senior counsel for Mr Alex Greenwich.

Certificate of lawyer

I Nicholas Stewart certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 5 September 2023



Signed by Nicholas Stewart

Lawyer for the Applicant

NOTICE OF FILING

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

Registrar

Important Information

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