

Defamation in Action

***Rush v Nationwide News* (2019) Federal Court of Australia**

Facts

On 30 November 2017, the *Telegraph* reproduced a promotional portrait of Mr Geoffrey Rush on their front page. Mr Rush was made up as the deranged Lear from his Sydney stage show, above the headline "KING LEER". The accompanying story, headlined "STAR'S BARD BEHAVIOUR", stated that Mr Rush had been accused of, among other things, engaging in "inappropriate behaviour" during the STC's production of *King Lear*. The article also notes that Mr Rush denies these claims.

The following day's edition of the *Telegraph* claimed that two STC actors had "spoke[n]" out in support of the actress who has accused Oscar winner Geoffrey Rush of touching her inappropriately during the stage production of *King Lear*". Unnamed sources were said to have told the *Telegraph* that they "believed the woman's claims" and that the STC would not work with Mr Rush again.

Both *Telegraph* articles appeared, directly or indirectly, to link the accusations allegedly made against Mr Rush to other Australian and international cases where prominent movie executives, actors and "show business" personalities had been accused of sexual harassment or misconduct.

Mr Rush sued the *Telegraph's* publisher, Nationwide News Pty Limited, and the main author of the stories, Mr Jonathon Moran. Mr Rush alleged that the publications conveyed a number of defamatory imputations, including that:

- he had engaged in scandalously inappropriate behaviour in the theatre;
- he had engaged in inappropriate behaviour of a sexual nature in the theatre;
- he had committed sexual assault in the theatre;
- he was a pervert; and
- he had behaved as a sexual predator, and had inappropriately touched an actor while working on the STC's production of *King Lear*.

Mr Rush claimed that the articles published by Nationwide and Mr Moran had brought him into "hatred, ridicule and contempt"; that he had been "gravely injured in his character and reputation as an actor" and that he had "suffered hurt and embarrassment and ha[d] suffered and will continue to suffer loss and damage".

He claimed damages, including aggravated damages and economic loss running into the millions of dollars.

Nationwide and Mr Moran have defended the proceeding.

Courts

The matter was heard in the Federal Court of Australia by a judge sitting alone. Prior to the court hearing, there could have been attempts made by the parties to negotiate a solution or an attempt could have been made to reach a resolution by mediation. The Federal Court found in favour of the plaintiff.

Remedies

Within a defamation claim, there are essentially two kinds of remedies: injunction and damages. An injunction is a court order requiring an act to be done or to be stopped. Damages are a monetary payment and may be compensatory, aggravated, exemplary, or contemptuous. In this case, the court ordered the defendants to pay the plaintiff \$850,000 plus \$42,302 in interest in non-economic or general damages.

Following an agreement between the parties, the court awarded the plaintiff a further \$1.98 million for past and future economic loss.

The plaintiff's barrister, Sue Chrysanthou, said Rush had offered in early 2018 to settle in exchange for an apology and \$50,000 plus costs but Nationwide News didn't respond.

Appeals

An appeal was lodged in the Federal Court and was heard by the Full Court, a bench of three judges, in November 2019. The publisher said the trial miscarried, because the conduct of the proceedings by Federal Court Justice Michael Wigney "gave rise to an apprehension of bias". They did not accuse Justice Wigney of actual bias, but stated the way he conducted the hearings created an appearance of bias. The judges deferred their decision to a later date which has not yet been decided.



Principles of Justice

The trial was **fair** as it was conducted before an independent judge, although that is the subject of an appeal (see above). The court functions in accordance with the principles of natural justice and requires the parties to abide by the rules of evidence and procedure. Parties have the right to appeal judgments on questions of fact or law. The trial was conducted in a timely manner.

As to **equality**, both the plaintiff and defendant were represented by expert counsel. Each party was entitled to call witnesses. There were no cultural or language issues.

The plaintiff and the defendant had **access** to the court and to professional counsel to present their submissions. Both parties were able to afford appropriate representation.