

MEDIA RELEASE – 1 JUNE 2020

APPEAL COURT FINDS THAT MEDIA COMPANIES ARE PUBLISHERS OF THIRD PARTY FACEBOOK COMMENTS

The NSW Supreme Court, Court of Appeal, today released its decision in the matter of Fairfax, Nationwide News and Australian News Channel v Voller.

In July 2017, Dylan Voller commenced proceedings against three media companies claiming damages for defamation, based on the content of third party comments on their Facebook pages.

The media companies had created Facebook pages, posted links to articles about Mr. Voller on them and invited comments on those articles. Some of those comments stated that Mr. Voller had committed certain serious crimes (which, in fact, he had not). The media companies had argued that they were not responsible for the publication of the comments as they had been written by third parties.

The Court of Appeal found that the media companies subscribe to Facebook for a specific Page and encourage and facilitate the making of comments by third parties which when posted on the Page are made available to Facebook users generally. As a result, they had participated in and were instrumental in bringing about the publication of the defamatory matter.

“This is a common-sense decision that accords with longstanding law on the issue of publication”, said Voller’s lawyer Peter O’Brien of O’Brien Criminal & Civil Solicitors. “The law on publication in Australia has been clear since the 1920’s, anyone who intentionally lends assistance to the existence of a publication for the purpose of publication is a publisher”.

Social media and marketing expert, Ryan Shelley, gave evidence in the matter that the use of Facebook encourages and facilitates ‘visits’ by Facebook users to a media outlet’s own websites. The number of such visits is measured for the purpose of aiding negotiations with potential advertisers. Mr. Shelley said, “For this reason, it is common for administrators of Facebook Pages to typically do what they can to encourage increased engagement on their posts so that their content is seen by a larger audience”.

“With this strong commercial imperative driving them, it really is a no-brainer that the media companies lent their assistance to the publication of third party comments. They did everything they can to encourage the same and it is disingenuous of them to then turn around and say they played no role in publication of the same” said Mr. O’Brien.

“This is a great step forward in achieving Justice for Dylan. He is happy with the decision, but he also understands that it is not the end of the fight but an important step in the right direction” said Mr. O’Brien.

Please contact Peter O’Brien on (02) 9261 4281 for further comment or clarification.