

DEFAMATION CASE AGAINST GOOGLE INC.: GOOGLE LOSES APPEAL

In our Article published 10 November 2015 titled Defamation Case Against Google Inc. ("Google") [click [here](#)] we reported on a successful action against Google for defamation under South Australian law for publishing and republishing (via hyperlinks) materials about Janice Duffy ("Duffy") being, amongst other things, a psychic stalker. [[Duffy v Google Inc \[2015\] SASC 170](#)]. At the time it was uncertain whether Google would appeal the decision.

The decision was appealed by Google to the Full Court of the South Australian Supreme Court in [Google Inc v Duffy \[2017\] SASCFC 130](#) with a decision handed down on 4 October 2017. Google was unsuccessful.

To briefly recap, Duffy had entered into a relationship with a person located in North America and paid for and received psychic readings over the internet regarding her prospects for success in the relationship. Those readings were false. Duffy engaged in online conflict with the psychics resulting in articles about her being "a psychic stalker". Those comments were published on a website known as "Ripoff Report". These comments which were established as defamatory were hyperlinked to Duffy's name through the Google search engine. Further, the Google search engine produced an alternative search term "Janice Duffy Psychic Stalker".

In September 2009 Duffy requested that Google remove the paragraphs. Google did not take any steps to remove the paragraphs until March 2011. The judge found at first instant:-

"that the appellant [Google] was a secondary publisher of some of the paragraphs from the time that the respondent [Duffy] had notified it that the search engine was producing the paragraphs. The judge found that no relevant defence had been established. In a later trial, the Judge awarded to the respondent [Duffy] \$115,000 inclusive of interest in general damages but did not make an award for loss of earning capacity."

In this appeal by Google against the findings of liability, Duffy cross appealed on the quantum of damages seeking a higher award.

The Full Court dismissed Google's appeal and declined to increase the award of damages to Duffy.

This is a comprehensive decision and whilst it rests on South Australian law, there are general principles that can be drawn.

One of which is putting Google on notice as soon as possible is important and probably fundamental.

This case highlights a number of difficulties including the expense of suing a US domiciled company and the jurisdictional complexities that arise. It has now taken over 7 years to reach this point and whilst it is accepted that there will always be some tension between freedom of expression and an individual's rights, the costs, time and complexity of resolving this matter is considered undesirable.

The persistence of Duffy is to be admired. However, we believe that protocols or legislation should be developed to strike a reasonable balance between the rights of individuals and such a powerful vehicle as Google. There have already been developments in Europe to try and redress this imbalance. We watch with interest for developments within the Australian jurisdiction.

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