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OWNERS CORPORATION: OVERREACTION EQUALS DEFAMATION

Written by Victor Hamit

A request for advice, made us reflect on recent decisions for defamation such as *Raynor v Murray [2019] NSWDC 189 (17 May 2019)* (Raynor's case) and *Bolton v Stoltenberg [2018] NSWSC 1518 (15 October 2018)* (Bolton's case).

For a refresher, see our previous article on Bolton's case titled "Like with caution: social media defamation".

Raynor's case also involved a successful action for defamation involving a residential apartment's Body Corporate in the case.

Mr Raynor was the chair of the Body Corporate and lived in the apartment complex. Ms Murray was a tenant in the apartment complex who had circulated an unfavourable email about Mr Raynor to a number of owners of the apartment complex. Mr Raynor successfully sued for defamation and was awarded $120,000 ($90,000 in damages plus an additional $30,000 in aggravated damages).

As an aside, the decision considered many earlier cases including those successfully argued by actors Rebel Wilson and Geoffrey Rush.

From mole hills to mountains

The apartment complex had a bank of letter boxes outside the complex which were accessible from the street. Ms Murray left her mailbox unlocked "most if not all of the time after she moved in". Mr Raynor, in his capacity as chair of the Body Corporate, sent an email to Ms Murray noting Ms Murray's letterbox was unlocked. About 8 months later there were media reports of mail being stolen from letterboxes in the area. Mr Raynor again emailed Ms Murray about her letterbox being unlocked. Subsequently, the letterboxes at the apartment were broken into.

Mr Raynor emailed all residents requesting that they secure the letterboxes and attached a local newspaper article containing warnings and advice for local residents. Ms Murray replied to this email in derisive terms. Several weeks later, the mailboxes

were broken into again, prompting Mr Raynor to forward a second email warning to all residents and asking them to keep their mailboxes locked. Subsequently, Mr Raynor sent an email to Ms Murray (after noting that her letterbox was open) asking whether it had been left unlocked or had been broken into?

This resulted in Ms Murray responding as noted in the judgement where she:-

> *" complained of being harassed by "many emails" from the plaintiff, of which "the latest topic" was the open letterbox, asked the plaintiff [Mr Raynor] directly if he had opened the box himself as part of his "months of campaigning to have all residents comply with your demands", derided the "Mission Impossible" scenario that her unlocked mailbox played any contributing role to the break-ins and complained the plaintiff had "never asked why we keep the letterbox open". The email concluded with the complaint that the plaintiff's "consistent attempt to shame me publicly is cowardly" and that it was "offensive, harassing and menacing through the use of technology to menace me". "*

Mr Raynor took action in defamation with Ms Murray pleading the defences of justification (pursuant to section 25 Defamation Act 2005 NSW), the defence of honest opinion (pursuant to section 31 Defamation Act 2005 NSW), triviality (pursuant to section 33 Defamation Act 2005 NSW), and at common law qualified privilege. In a lengthy judgement the Court rejected all of these defences.

Lessons

It is observed that many environments such as Body Corporates / Owners Corporations, neighbours generally, clubs and charitable institutions are resulting in an increasing trend to seek resolution of matters through the courts.

Given the number of cases that have appeared in courts across Australia including the many unreported cases, it is trite to say that more measured responses are required in our digital age. In the past perhaps the effort and time taken to write a letter acted as a "circuit breaker". Whereas, the immediate gratification without proper reflection of the consequences of an email, tweet, or Instagram creates considerable potential difficulties.

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