

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



PARK V KIM [2019] NSWDC 609

New South Wales District Court, Gibson DCJ, 31 October 2019

Successful application for the summary dismissal of a defamation action involving church members.

Key words: Church, New South Wales, Defamation, Elder, Innuendo, Summary Dismissal

1. This matter involved the summary dismissal of proceedings for defamation after the pleadings were filed. In only the clearest of cases will a court strike out summarily the whole of the proceedings as being incapable of defamatory meaning, and this was such a case.
2. The matter complained of was an extract from a church bulletin of the Sydney Full Gospel Church which was headed "Today's Sermon". It was published in the Korean language, but the agreed translation was:

1	10. Appeal regarding to Senior Elder Hee Yeul Park's Management Authority.
2	For the last year, there has been an intensive discussion regarding the legitimacy of Hee Yeul Park's management authority.
3	In order to finalise this discussion, church committees have decided to hold a joint meeting.
4	Under our Constitution (Part 3 Chapter 8 Article 47 Section 1), in order to be admitted for the board of elders, there must be a 2/3 consensus of the whole vote.

3. The plaintiff was not referred to in any other entries in the bulletin, either before or after the matter complained of.
4. The imputations pleaded to arise were:
 - a. The plaintiff was not an Elder of the Church.
 - b. The plaintiff never was an Elder of the Church.
 - c. The plaintiff had been exercising an invalid authority in breach of Church rules.
 - d. There were a number of people who agreed that the plaintiff was not an Elder of the Church.

- e. There were a number of people who agreed that the plaintiff never was an Elder of the Church.
 - f. There were a number of people who agreed that the plaintiff had been exercising an invalid authority in breach of Church rules.
5. The court considered each of the imputations was not reasonably capable of being conveyed, either in its natural and ordinary meaning, or by reason of the true innuendo plea. The court further noted that (at [55]-[56]):
6. [A]pplications to strike out the statement of claim on the basis of lack of defamatory meaning are rare and are still more rarely successful. However, this is one of those rare cases where the text of the matter complained of speaks for itself. It is a simple summary of the issues to be discussed at a church meeting, without taking sides one way or the other. What is recorded is that there is a subject which has created intensive discussion, namely whether the plaintiff can continue to sit in circumstances where it is asserted that there is some problem with the two-thirds consensus of the whole vote, this is going to be finalised by the church committees holding a joint meeting. There is no suggestion that one side is in the right (or wrong). There is no suggestion of any conduct on the part of the plaintiff warranting criticism, in that the “intensive discussions” clearly involved both parties. Nor is the language used excessive; it falls well short even of the “catastrophic” costs referred to in *Barrow v Herald & Weekly Times Ltd*.
7. The claim was struck out and dismissed.

IMPLICATIONS



It is not uncommon in nonprofit organisation internal disputes for one party to attempt to stifle the debate by issuing defamation proceedings. This usually has a chilling effect on many participants who do not wish the expense and emotional anguish of court proceedings. Many do not proceed any further than the initial stages which can take several months or years and then are withdrawn. In this case a proactive strategy was followed, and the claim struck out by an application to the court.

VIEW THE CASE



This case may be viewed at https://www-westlaw-com-au.ezp01.library.qut.edu.au/maf/wlau/ext/app/document?docguid=I6d8849a0fbed11e9a18be9fe4d8c34f5&tocDs=ANZ_CASES_TOC&isTocNav=true&startChunk=1&endChunk=1

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