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[Working Paper]

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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.



Abdulrazaq v Ul Hassan [2021] EWHC 3252 (QB)

High Court of Justice, Queen's Bench Division, Jay J, 2 December 2021

Application to strike out a defamation claim made by three members of a Mosque after their expulsion by the Mosque.

Key words: Defamation, England, Mosque, Members, Expulsion, Qualified Privilege, Malice

1. Five trustees of the Exeter Mosque and Cultural Centre (Mosque), an unincorporated association, were sued by the claimants (a father and two brothers), all Mosque members, for defamation.
2. In 2014 the Mosque received five cash payments totalling £50,000 from Al-Ghariani, the Grand Mufti of Libya, a person with alleged extremist links. The claimants had questioned the propriety of these payments. The Mosque responded that the payments were to fund building work in the community as Mr Al-Ghariani was a former PhD student at Exeter University.
3. The Mosque alleged that one of the claimants was really motivated in making the allegations of impropriety because of an unsuccessful attempt to become secretary to the executive committee of the Mosque in 2015.
4. In 2019 the claimants were expelled from membership, and simultaneously excluded from the Mosque. The Mosque published a notice about the reasons for their actions on a noticeboard at the Mosque and online. It also handed out a similarly worded leaflet to members of the community as they left Friday prayers.
5. The notice referred to the unacceptable behaviour and malicious actions of the claimants. It claimed that they had shattered the peace, harmony and sanctity of the masjid, wasted resources, both financial and personal, and had caused non-Muslims to believe that the Mosque condoned terrorism.
6. The claimants complained that the words in the notice caused them serious harm, and aggravated damages were sought. They also noted that the Mosque constitution did not confer express power on the executive committee or trustees to promulgate the reasons for their expulsion decision.
7. The Mosque claimed that the notice of reasons was in response to the attacks previously published by the claimants on the trustees claiming privilege as a 'social or moral duty'.

8. The Court found that (at [44]):

[...] I consider that the great mass of right-minded or right-thinking people would believe that those responsible for running this Mosque were under a duty to explain to the congregation why they were taking this somewhat draconian action ...

9. The Court also considered a claim of privilege known as “reply to attack”. A defamatory attack made publicly gives its victim a right to reply publicly. In doing so, the victim is entitled to make statements defamatory of his attacker, including statements impugning the attacker's credibility and motives. Provided that such statements are fairly relevant to a rebuttal of the attack and that the ambit of their dissemination does not significantly exceed that of the original attack, their publication will be the subject of qualified privilege.

10. The claimants argued that reply to attack privilege did not apply as the Mosque was in fact justifying its expulsion decision rather than replying to any attack.

11. The Court relied upon *Bhatt v Chelsea and Westminster NHS Trust* (unreported, 16th October 1997) that the principle did cover anticipated attacks. It should be confined to cases where the defamatory statement was: (a) in reasonable anticipation of an imminent attack on the conduct of the maker of the statement, and (b) limited to a proportionate rebuttal of such an attack. This was the situation in this case. Therefore, the privilege was upheld.

12. However, if the Mosque had been wrong (in which case qualified privilege would still apply) and acted maliciously, the privilege would be disapplied.

13. The Court, after examining the evidence and pleadings, came to the view that the claimants would have no real prospect at trial of proving that the Mosque knew that the allegations were untrue.

14. The Court struck out the matter as the defence of qualified privilege has been made out and the reply of malice had not been.

IMPLICATIONS



There was evidence that this was a long running dispute between the parties that had deteriorated to such an extent that mediation or compromise was not a viable option in the circumstances. Thus, the parties resorted to defamation claims against each other.

The main issue was qualified privilege as a defence to defamation. The right to reply privilege, a subset of the duty/interest privilege in the UK, allows a person to reply to perceived defamatory statements in good faith and without malice.

Note that the uniform defamation law in Australia has recently been amended in several respects, including a one publication rule, a compulsory concerns notice requirement (a form of mediation), a requirement to show serious harm, a cap on non-economic loss damages, the removal of the triviality defence (no longer required because of the serious harm threshold requirement), and the introduction of two new defences, public interest and academic publication. The amendments came into force in Queensland, New South Wales, Victoria and South Australia on 1 July 2021.

The effect of these amendments is to make bringing a defamation action a serious step, so that internecine disagreements in associations and other organisations should not be exacerbated by unnecessary defamatory claims.

VIEW THE CASE



This case may be viewed at <https://www.bailii.org/ew/cases/EWHC/QB/2021/3252.html>

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