



Summary of Judgment

Martha Tsamis v State of Victoria (No 7)

[2019] VSC 826

18 December 2019

The Hon. Justice John Dixon has awarded damages in the sum of \$90,000 to Martha Tsamis for defamatory statements made about her by a former officer of Victoria Police. This decision follows a trial that was heard and decided by a jury of six in August of this year, who found that Victoria Police had defamed Ms Tsamis.

Background

The plaintiff is the manager of Inflation Nightclub.

In October 2013, Victoria Police made an application under the *Liquor Control Reform Act 1998* (Vic) to reduce the trading hours of Inflation, in response to a perceived increase in the use of illicit drugs at and around the venue.

On 30 January 2014, Brett Guerin (who was then a Superintendent of Victoria Police) spoke with a journalist at the Herald Sun about the application. Mr Guerin's statements formed the basis of articles published online and on the front page of the Herald Sun on 6 and 7 February 2014 respectively. On 7 February 2014, Mr Guerin also participated in an interview on radio station 3AW, and discussed the nightclub and the application.

In this proceeding, Ms Tsamis alleged that Mr Guerin's comments to the Herald Sun journalist and on 3AW were each a 'publication' and were defamatory of her in eight particular respects.

Victoria Police largely admitted that the publications conveyed the imputations alleged, however relied on the defences of truth, justification and fair comment/honest opinion to assert that they were not liable to Ms Tsamis in defamation.

The proceeding was tried before a jury of six over sixteen days in August this year.

Verdict

The jury found that three of the eight alleged imputations conveyed false meanings regarding the manner in which Ms Tsamis had run Inflation, including that she allowed minors to enter the venue and had jeopardised the health of patrons.

In respect of four allegations, the jury found that Victoria Police had successfully established the defence of substantial truth. These imputations each related to drug dealing and drug use at Inflation.

The jury's verdict in respect of each of the imputations can be found in the annexure to this summary.

Damages

Justice John Dixon found that, prior to the publications, the plaintiff enjoyed a positive professional reputation within the nightclub industry, particularly in respect of the active role she had taken toward nightclubs achieving compliance with appropriate regulatory standards.

The effect of the verdict of the jury was that Victoria Police had falsely conveyed that Ms Tsamis had operated Inflation in a manner that was inconsistent with her good reputation as a nightclub manager. Justice John Dixon considered that these were the most damaging of the imputations conveyed in the publications.

In respect of the drug-related imputations, which were found by the jury to be true, Justice John Dixon determined that although the meanings had a detrimental effect on the plaintiff's reputation, they did not go to the core of her professional reputation as a nightclub manager. Rather, they identified characteristics of a nightclub as a venue. His Honour accepted that these imputations had a mitigating effect overall on the plaintiff's reputation, which warranted a discount to the award of damages.

Having regard to the gravity of the sting of the false imputations and their widespread dissemination, the effect that they had on the plaintiff's reputation and the hurt and distress experienced by Ms Tsamis, his Honour has awarded Ms Tsamis the sum of \$90,000 in damages. This award included a modest allowance for aggravated damages, owing to the manner in which Mr Guerin had caused the imputations to be widely disseminated, in order to maximise the impact of the police case to restrict the operation of Inflation.

NOTE: This summary is necessarily incomplete. It is not intended as a substitute for the court's reasons or to be used in any later consideration of the court's reasons. The only authoritative pronouncement of the court's reasons and conclusions is that contained in the published reasons for judgment.

ANNEXURE

The jury found that Ms Tsamis had been defamed as a result of the publications falsely conveying that she:

- had allowed minors to enter the venue in breach of the provisions of the Liquor Control Reform Act 1998;
- had operated Inflation in a way that jeopardised her patrons' health and resulted in many hospital admissions; and
- managed the venue in a manner that was conducive to drug trafficking, drunkenness and violence.

Additionally, the jury found that Mr Guerin had conveyed to the Herald Sun journalist that Ms Tsamis had approached and cross-examined witnesses in the LCRA proceeding in a manner that was improper, inappropriate and unlawful. Victoria Police did not argue that this imputation was substantially true.

The jury found that Victoria Police had established the defence of substantial truth, and was therefore not liable in defamation to Ms Tsamis, in respect of the imputations that she:

- was operating Inflation in a manner that resulted in drug dealing in and around the venue;
- was operating Inflation as a 'honey pot' (meaning a source of attraction) for drug dealers;
- operated the venue in a manner that resulted in drug overdoses in and around the venue; and
- operated the venue in a manner that allowed drugs to be sold and consumed in and around the venue.