



Summary of Judgment

WILSON v BAUER MEDIA PTY LTD

[2017] VSC 521

13 September 2017

The Hon. Justice John Dixon has awarded Rebel Wilson a total of \$4,567,472 in damages against Bauer Media Pty Ltd and Bauer Media Australia Pty Ltd for defamatory articles published by Bauer Media about Ms Wilson. His Honour's judgment follows the jury's verdict on 15 June 2017 that Bauer Media's publications had branded Ms Wilson 'a serial liar' who had 'fabricated almost every aspect of her life'. Nothing she said about herself could be taken as truth. The jury rejected defences that the imputations were substantially true or that their publication was in circumstances of triviality. The judge rejected the defences that publication was on an occasion protected by qualified privilege.

The damages award consists of:

- (a) \$650,000 in general damages, including aggravated damages; and
- (b) \$3,917,472 in special damages for Ms Wilson's opportunity for new screen roles lost by reason of the defendant's publications.

General damages

Justice Dixon concluded that a large award of damages was necessary to vindicate Ms Wilson:

Only a substantial sum in damages could convince the public that Ms Wilson is not a dishonest person and bring home the gravity of the reputational injury established before the jury. In the full media glare, Bauer Media's defence of this case attempted to characterise its articles as true or as trivial or not likely to be taken seriously. Unless substantial damages are awarded there is a real risk that the public will not be convinced of the seriousness of the defamation, but will rather wrongly conclude that the articles were trivial or not that serious. The jury comprehensively rejected the defences and only a substantial damages award can now vindicate the plaintiff.

Justice Dixon found that the conduct of the defendants in the circumstances of the publication entitled Ms Wilson to an award of aggravated damages. For that reason, the cap on general damages in defamation proceedings (currently \$389,500) imposed by the *Defamation Act 2005* (Vic) did not apply.

Justice Dixon found that three particular features of Bauer Media's conduct warranted that finding of aggravation. First, Bauer Media failed to properly investigate the allegations made against Ms Wilson, and published them in *Women's Day* knowing them to be false. The

allegations were based on information from a source who required payment and anonymity and whom the editor considered 'had an axe to grind'. Secondly, they repeated the offending allegations when they knew or foresaw that their defamatory slurs would be repeated in the entertainment and celebrity media. Thirdly, their conduct was orchestrated. It was a campaign that was designed to cast a slur on Ms Wilson that would attract interest in its publications. Bauer Media published to advance its own corporate interests, to improve its circulation, or increase views/hits, in the expectation of higher profits. Bauer Media appreciated the risk of reputational damage to the plaintiff and did not care whether Ms Wilson suffered that damage as it pursued its own corporate objective.

His Honour said:

I am satisfied that Bauer Media so acted in its own corporate interests to secure improved circulation, or increased views/hits, in the expectation of higher profits. Bauer Media had, I infer, sufficient appreciation of the risk of reputational damage to the plaintiff and I am satisfied that it did not care whether the plaintiff suffered reputational damage as it pursued its own corporate interests. This recklessness as to the consequences of publication is a state of mind, a corporate motive or purpose that is relevant to the assessment of the degree of aggravation of the plaintiff's damage.

His Honour also found that the publications had a long lasting and profound impact on Wilson, both physically and psychologically, and caused her significant distress.

The extent of the publication of the defamatory imputations against Ms Wilson was unprecedented in defamation litigation in this country, because of instantaneous distribution across the world wide web precisely at the time when the media worldwide, but particularly in the USA, was focussed on her success in the just released *Pitch Perfect 2*.

Special damages

Justice Dixon was satisfied that but for the repetition of the defamatory stings over the grapevine into US entertainment and celebrity media, Ms Wilson would have been cast in lead or co-lead roles in feature films during the 18 month period following the media fire storm that the publications caused and that some of those film projects would have been completed. This did not happen and his Honour concluded that the defamatory publications inflicted substantial financial loss on Ms Wilson. This loss was valued by substantially discounting the gross value of the opportunity that she had in mid-2015 of offers of new screen roles following the success of *Pitch Perfect 2* by an assessment of the probabilities that such opportunities would actually have come about. In this way, the loss actually suffered by Ms Wilson caused by the defendant's tortious conduct was assessed.

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.