



Summary of Judgment

BAUER MEDIA PTY LTD v WILSON [NO 2]

[2018] VSCA 154

14 June 2018

Today, the Court of Appeal (Justice Tate, Justice Beach and Justice Ashley) allowed an appeal by Bauer Media Pty Ltd and Bauer Media Australia Pty Ltd ('Bauer') against an award of \$4,749,920.60 in damages awarded to Ms Rebel Wilson ('Ms Wilson' or 'the plaintiff') at her defamation trial against Bauer. The award was made up of damages for non-economic loss (including aggravated damages) of \$650,000, damages for economic loss of \$3,917,472, and damages in the nature of interest in the sum of \$182,448.61. The Court of Appeal has set aside the award for economic loss and substituted an amount of damages for non-economic loss of \$600,000.

On 18, 19 and 20 May 2015, Bauer published an article in the print edition of Woman's Day magazine and seven further articles on Bauer websites. The articles remained on the websites for about a year. The articles were published at a time close to the release of the film, *Pitch Perfect 2*, in which the plaintiff played a co-lead role. The jury found that Ms Wilson had been defamed by those articles, most of which carried the meaning that Ms Wilson was a serial liar, who had lied about many aspects of her private life in order to further her Hollywood career. One article carried the further meaning that Ms Wilson was so untrustworthy that nothing she said about herself could be taken to be true.

Not only did the jury find that Ms Wilson had been defamed by the articles in the manner just mentioned, it rejected all defences raised by Bauer.

The jury's findings were not challenged by Bauer on the appeal.

The appeal was restricted to the award of damages which, as required by the *Defamation Act 2005*, were assessed by the trial judge after the jury had delivered its verdict.

Bauer challenged the judge's award of damages on three bases:

- (1) the judge had committed a number of errors in assessing damages for non-economic loss in some of the findings he made about aggravating circumstances;
- (2) under s 35 of the *Defamation Act*, a cap is imposed on damages for non-economic loss. The judge misconstrued the relevant legislation when deciding how the cap operated;
- (3) the judge had erred in awarding the plaintiff \$3,917,472 for economic loss. No award at all should have been made; or else, an award in a much smaller amount.

With respect to the award of damages for non-economic loss, Bauer challenged some, but by no means all, the circumstances which the judge found had aggravated Ms Wilson's distress and

anguish, and bore upon the need for vindication of her reputation. Bauer did not challenge the most serious circumstances of aggravation found by the judge – that is, that the articles had been published without there having been any proper investigation; that Bauer knew the meanings conveyed by the articles were false and published anyway; that the articles were a campaign to ‘take down’ the plaintiff, to maximise Bauer’s commercial opportunities, and to neutralise Ms Wilson’s response.

However, the Court of Appeal upheld Bauer’s challenge to the judge’s findings about other aggravating circumstances, which principally related to the way in which Bauer’s case had been conducted at trial.

The Court rejected the challenge by Bauer to the way in which the judge had construed the operation of the statutory cap on damages for non-economic loss. It held that the interpretation of s 35 of the *Defamation Act* adopted by the judge was correct.

It was in all those circumstances, and in view of the seriousness of the defamation and the hurt and distress it has caused Ms Wilson, that the Court reassessed her damages for non-economic loss, including aggravated compensatory damages, at \$600,000.

With respect to her claim for economic loss, Ms Wilson contended at the outset that she had suffered damage of two kinds as a result of the defamation. First, a lost opportunity to be offered and then cast in lead or co-lead roles in Hollywood movies at basic remuneration of US\$5 million or more in the period which commenced with publication of the articles and ended in December 2016; and second, that contracts to perform two roles had been terminated after publication of the articles, such termination being attributable to the publication of the articles.

Late in the trial, Ms Wilson abandoned the second aspect of her claim for economic loss. That left her claim for lost opportunity damages. The judge found that there had been an opportunity such as the plaintiff described, and that publication of the articles was a cause of the opportunity being lost.

Critically, the judge’s findings depended upon inferences which he drew from the evidence of Ms Wilson and other witnesses called by her. The judge reasoned that, although the articles had not been published in the United States, the ‘grapevine effect’ had caused their content to spread to the United States and had influenced Hollywood decision makers. The judge relied upon evidence of Ms Wilson, and upon evidence of her principal United States agent and another independent Hollywood agent as to what they expected, hoped and assumed would have occurred after Ms Wilson’s success with *Pitch Perfect 2*. He relied also upon his assessment of the trajectory of Ms Wilson’s career.

The Court of Appeal held that, for a considerable number of reasons, the critical inferences drawn by the judge could not be upheld. It followed that the judge’s award of damages for economic loss had to be set aside. Further, there was no basis in the evidence for making any award of damages for economic loss. The Court is yet to determine the issues of interest and costs.

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.