



Friday, 11 October 2024

Weekly Defamation Law

A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Defamation Law

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Executive Summary (One Minute Read)

Gayed v Virgin Mary & St Markorious Coptic Orthodox Church (NSWSC) - defamation - a concerns notice had sufficiently particularised the serious harm alleged - the irregular naming of unincorporated associations as defendants sufficed to bring those behind the unincorporated associations within the limitation period, when the plaintiff later sought to add them as defendants



HABEAS CANEM

Before the puppy ears finally dropped

Summaries With Link (Five Minute Read)

Gayed v Virgin Mary & St Markorious Coptic Orthodox Church [2024] NSWSC 1232

Supreme Court of New South Wales

Rothman J

Defamation - the plaintiff alleged that he attended a Coptic Orthodox Church, and that the defendants, on behalf of the Church, sent an email to about 2000 parishioners which imputed the plaintiff was involved in serious criminal conduct such as money laundering, murder, fraud and theft from parishioners, the creation of false donation receipts, insurance fraud, and taking covert photos of women using Church cameras, and that his family had purchased numerous properties with stolen funds - the plaintiff sought to file a Second Further Amended Statement of Claim which changed the parties to the proceedings by deleting the Church, and substituting Bishop Angelos of London, and inserting a number of named clerics said to be the management of the Church - the defendants said the newly-named parties could not be sued as the limitation period set by the *Defamation Act 2005* (NSW) had expired - they also sought summary judgment on the basis that the plaintiff had not served a valid concerns notice - held: a document entitled "Concerns Notice" was sent, and it contained the imputations upon which the plaintiff now relied - the issue was whether the Concerns Notice sufficiently set out the serious harm alleged - when a defamatory publication that a person is a murderer, a thief and a fraudster is published to all or most of the persons with whom the aggrieved person attends Church, it is difficult to imagine what further particulars would be necessary to plead "serious harm" - a Concerns Notice needs only to comply substantially with the requirements of the Act - the allegation in the Concerns Notice that "considerable harm" sufficed to allege "serious harm" was caused - further, the defendants had not shown that the plaintiff was exercising his right to sue in defamation for a purpose other than the achievement of the litigation, and so the proceedings were not an abuse of process - the naming of unincorporated associations as the original defendants was not a nullity, and the party receiving the originating process must go behind the name and consider whether the juristic persons who constitute the unincorporated association were intended to be named, and, if so, s65 of the *Civil Procedure Act 2005* (NSW) allowed an amendment to be made - the naming of the unincorporated associations was sufficient to bring the later inclusion of those who controlled the unincorporated associations within the limitation period - application for summary judgment dismissed and leave granted to file a Second Further Amended Statement of Claim.

[View Decision](#)

[From Benchmark Friday, 11 October 2024]

Benchmark

INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Paki Nikora v Tamati Kruger (NZSC) - The Maori Land Court had jurisdiction to review the election of trustees to the Tuhoe - Te Uru Tamatua Trust inasmuch as the Trust, among other functions, held land as a post-settlement governance entity

Summaries With Link (Five Minute Read)

Paki Nikora v Tamati Kruger [2024] NZSC 130

Supreme Court of New Zealand

Winkelmann, CJ, Glazebrook, Williams, O'Regan, & Collins JJ

Paki Nikora contended that two of the trustees of the Tuhoe - Te Uru Taumatua Trust (TUT) had not been selected in accordance with the terms of the trust. Nikora commenced proceedings in the Maori Land Court and the Court ordered fresh elections. TUT refused to acknowledge the jurisdiction of the Land Court and declined to participate in the proceedings. The matter was appealed to the Maori Appellate Court that upheld the decision of the Land Court. However on subsequent review by the Court of Appeal, the decisions of the Maori Land Court and Appellate Court were overturned. The Court of Appeal found that, inasmuch as TUT had authority over a wide range of matters and was not constituted in respect of land and its primary purpose did not relate to land, the Maori Land Court lacked jurisdiction with respect to trust activities. On further review, the Supreme Court determined that the Court of Appeal was in error and concluded that the Maori Land Court had jurisdiction to hear the matter because, from its outset, TUT was established to hold parcels of land regardless of its holdings at the time of its inception. The Court also noted that the Maori Land Court by long experience was sensitive to the challenges of communal asset management and that Maori Land Court judges had special knowledge and expertise and had proceeded with due care to resolve the issues despite the lack of participation by one of the parties.

[Paki Nikora](#)

Poem for Friday

Risk

By Anaïs Nin (1903-1977)

And then the day came,
when the risk
to remain tight
in a bud
was more painful
than the risk
it took
to blossom.

Anaïs Nin, (Angela Anaïs Juana Antolina Rosa Edelmira Nin y Culmell), was born in 1903, outside Paris, of Cuban parents. Her father was the composer, Joaquin Nin. Nin was a French Cuban American who wrote essays, novels and short stories. *The Diary of Anaïs Nin* was written initially as a letter to her father, who had left the family some years before Anaïs Nin wrote, starting at the age of 11 in 1914. The diary of Anaïs Nin was published over 7 volumes, in expurgated and unexpurgated volumes. She was a close friend of Henry Miller. She died in Los Angeles, USA, of cancer.

Reading by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

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Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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