

## Defamation: The Necessary Sting

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The recent decision of ***Accommodation West Pty Ltd v Aikman*** [2017] WASC 157 highlights how a narrow scope of circulation and spontaneous and ambiguous communication can be fatal to the success of defamation actions.

In this action, Accommodation West Pty Ltd (AW Co), Paul King (sole director for AW Co) and Brian Rakich (sole employee of AW Co) alleged that they suffered reputational injury due to the conduct of the strata lot owner of Seashells Mandurah, Susan Aikman (Mrs Aikman).

Mrs Aikman sent four emails to a limited number of recipients outlining her concerns regarding the management of AW Co and the relationship between AW Co and the resort manager, Seashells Hospitality Group. She also forwarded by email a forensic accountant's report at the request of one of her email recipients, and verbally expressed her opinions to certain strata lot owners present at the 10<sup>th</sup> Annual General Meeting of Seashells Mandurah ('Publications').

In considering whether the Publications were defamatory, the Court had regard to the narrow scope of circulation, and the spontaneity and ambiguity prevailing in the circumstances.

The number of recipients of the emails was between one and four. The words spoken at the AGM were in front of the minority of strata lot owners (40 of 100). The Court considered that as strata lot owners, the persons to whom the publications were made fell within the 'community of interest' and were therefore entitled to be fully informed as to the matters the subject of Mrs Aikman's publications. Accordingly, the Court found the resulting capacity of the Publications to injure the plaintiffs' reputations was negligible.

Further, the Court had regard to the fact that Mrs Aikman's communications were in fact responses to emails or requests. This, the Court found, evidenced a spontaneous reply and militating against a finding of pre-meditated communication of malice. Additionally, many of the imputed remarks were considered inherently vague, ambiguous and speculative in that they did not refer to a specific subject matter. The Court considered that such ambiguity could not produce the necessary defamatory sting for the plaintiffs' action to succeed.

These findings held true for all but two of the defamatory imputations alleged by the plaintiffs, and Mrs Aikman asserted the defence of qualified privilege in respect of the impugned statements. In considering the availability of the defence, the Court had regard to the fact that Mrs Aikman had been previously accused by one of the plaintiffs of contemptuous behaviour, slanderous and defamatory actions, and misleading and deceptive conduct, and considered that the Publications were made in response to this prior attack or for the purposes of seeking financial and moral support from like-minded strata lot owners to advance steps for the future. On that basis, the Court upheld the defence of qualified privilege in Mrs Aikman's favour and declined to make a finding of malice, noting that proof of ill will alone is insufficient to prove malice.

This case provides a useful reminder for defamation litigants that allegedly defamatory publications will be viewed in the context in which they were made. In particular, it highlights the difficulty in establishing liability where the scope of the publication is relatively narrow and the publications were not made in isolation.