Nibbs v Australian Broadcasting Corporation [2011] NTSC 32

PARTIES:	STEPHEN NIBBS
	v
	AUSTRALIAN BROADCASTING CORPORATION
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	AS 8 OF 2009 (20922593)
DELIVERED:	19 APRIL 2011
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JUDGMENT OF:	MASTER LUPPINO

CATCHWORDS:

Practice and Procedure – Application for strike out of Statement of Claim – Whether a pleading is embarrassing – Extent of specificity required in pleadings in defamation cases – Requirements generally of pleadings in defamation claims.

Supreme Court Rules O 23.02
Supreme Court Rules (NSW) 1970, Part 67, r 11(3)

Morosi v Mirror Newspapers Limited (1977) 2 NSWLR 749.
Singleton v John Fairfax & Sons Hunt J, Supreme Court of New South Wales, 20 February 1980.
Herald & Weekly Times Limited v Popovic [2003] VSCA 161.
Greek Herald Pty Ltd v Nikolopoulos & Ors (2001) 54 NSWLR 165.
Drummoyne Municipal Council v Australian Broadcasting Corporation (1990) 21 NSWLR 135.
Whelan v John Fairfax & Sons Ltd (1988) 12 NSWLR 148.

Lewis v Daily Telegraph Ltd [1964] AC 234.
Saint v John Fairfax Publications Pty Ltd [2002] NSWSC 312.
Amalgamated Television Services v Marsden (1998) 43 NSWLR 158.

REPRESENTATION:

Counsel:

Plaintiff:	Mr Molomby SC
Defendant:	Mr Roper

Solicitors:

Plaintiff:	Povey Stirk
Defendant:	Cridlands MB

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Nibbs v Australian Broadcasting Corporation [2020] NTSC 32
No. AS 8 OF 2009 (20922593)

BETWEEN:

STEPHEN NIBBS
Plaintiff

AND:

AUSTRALIAN BROADCASTING CORPORATION
Defendant

CORAM: MASTER LUPPINO

REASONS FOR DECISION

(Delivered 19 April 2020)

[1] The Defendant has applied for an order striking out the Plaintiff's Amended Statement of Claim pursuant to Order 23.02 of the *Supreme Court Rules* ("the Rules"). That rule provides as follows:-

> **23.02 Striking out pleading**
>
> Where an endorsement of claim on a writ or originating motion or a pleading or a part of an endorsement of claim or pleading:
>
> (a) does not disclose a cause of action or defence;
>
> (b) is scandalous, frivolous or vexatious;
>
> (c) may prejudice, embarrass or delay the fair trial of the proceeding; or
>
> (d) is otherwise an abuse of the process of the Court,

> the Court may order that the whole or part of the endorsement or pleading be struck out or amended.

[2] On 2 November 2010 I published my reasons in this matter on the Defendant's application for summary judgment ("the First Decision"). In that application the Defendant sought the striking out the Statement of Claim in the alternative.

[3] In the First Decision, in respect of the summary judgment application I found that three of the four imputations pleaded were capable of being conveyed. I also found that the Statement of Claim was deficient in pleading terms for the reasons set out there. I gave leave to the Plaintiff to file and serve an Amended Statement of Claim. The Plaintiff then filed an Amended Statement of Claim on 6 December 2010.

[4] The evidence relied upon by the Defendant in support of the current application comprises the affidavit of Hugh Bennett sworn 14 January 2011 and the affidavit of Jonathon Duhs sworn 30 June 2010. The former simply annexes some routine correspondence and otherwise serves no useful purpose. The latter is the same affidavit that was relied upon by the Defendant in respect of the first application.

[5] The factual background was set out in the First Decision and I will not repeat that here. No additional or materially relevant facts have been presented to the Court in respect of this application. As with the initial Statement of Claim, the Defendant takes issue with paragraph 6 of the Amended Statement of Claim. To enable a comparison, I first set out, from

paragraph 6 of the initial Statement of Claim, the imputations which the Plaintiff claimed to arise namely:-

(1) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists.

(2) As an art dealer the Plaintiff is exploitive in his dealings with aboriginal artists.

(3) As an art dealer the Plaintiff exploits aboriginal artists by paying them inadequately for paintings done under oppressive conditions.

(4) As an art dealer the Plaintiff allowed aboriginal artists who were producing works for him to be locked inside a property so that one of them who needed dialysis was unable to be taken for treatment.

[6] Paragraph 6 of the Amended Statement of Claim now alleges the following imputations:-

(a) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists, in that he makes large profits from selling their works for many times the price which he has paid for them.

(b) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists, in that he takes advantage of their lack of experience with the art market to pay them much smaller amounts for their works than the prices he receives on reselling them.

(c) As an art dealer the Plaintiff is unscrupulous in his dealing with aboriginal artists, in that he takes advantage of their ignorance of their rights to pay them much smaller amounts for their works than the prices he receives on reselling them.

(d) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists, in that he provides inadequate premises for them to work in.

(e) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists, in that he will resist the adoption of a

code of conduct for aboriginal art dealing so that he can continue to over-ride the right of aboriginal artists.

(f) As an art dealer the Plaintiff is unscrupulous in his dealings with aboriginal artists, in that without the obligation to follow a code of conduct he cannot be trusted to respect the rights of aboriginal artists.

[7] Mr Roper, counsel for the Defendant had three separate bases for his application. They are firstly the lack of precision or clarity, secondly, repetition and thirdly, capacity. In summary he submits that sub-paragraphs 6(a)–6(d) inclusive apply to the first basis, that sub-paragraphs 6(a)–6(c) inclusive are repetitious and that sub-paragraphs 6(e) and 6(f) are incapable of arising from the matter complained of.

[8] I will deal with the repetition argument first. In pleading terms, the complaint of repetition is that the repetition renders the offending parts embarrassing. The argument is based on the principle that any imputation which is pleaded must be taken to include all other imputations which do not differ in substance. Mr Roper relies on *Morosi v Mirror Newspapers Limited.*[1] That authority provides that each pleaded imputation bears some distinct meaning and is not substantially the same as any other pleaded imputation. Mr Roper also relied on the unreported decision of Hunt J in *Singleton v John Fairfax & Sons*[2] where his Honour considered that one test to determine whether a pleading is bad for repetition is to consider what must be proved by the Defendant by way of justification. His Honour said

[1] (1977) 2 NSWLR 749 at 771
[2] Unreported, Hunt J, Supreme Court of New South Wales, 20 February 1980

that if justification can be proved by establishing the same matters, that suggests that the imputations do not sufficiently differ in substance.

[9] Those authorities were decided based on the law as it then applied in New South Wales where, rather uniquely and curiously, the imputation itself was the cause of action. I query the extent that played in the requirements for particularity described in those authorities. Moreover it is acknowledged that at the relevant time there was a specific rule in New South Wales concerning repetitious pleading of imputations in defamation cases. Specifically, the rule provided:-

> "A plaintiff shall not rely on two or more imputations alleged to be made by the defendant by means of the same publication of the same report, article, letter, note, picture, oral utterance or thing, unless the imputations differ in substance."[3]

There is no similar rule in the Northern Territory. Mr Roper acknowledged this and confirmed that his argument was based on the pleading principle set out in Order 23.02(c), and then mostly that the pleading is embarrassing.

[10] Mr Roper argued that the relevant consideration to determine repetition, and therefore embarrassment, is not the literal words used but the defamatory sting of the imputations under consideration. For this proposition he relied on *Herald & Weekly Times Limited v Popovic*.[4] The thrust of Mr Roper's argument starts with the observation that each of sub-paragraphs 6(a)-6(c) of the Amended Statement of Claim are prefaced with the words "*As an art*

[3] *Supreme Court Rules (NSW)* 1970, Part 67, rule 11(3)
[4] [2003] VSCA 161

dealer the Plaintiff is unscrupulous in his dealings with Aboriginal artists...". He argues therefore that the fundamental condition attributed to the Plaintiff in each of the imputations is identical namely, that he is "*unscrupulous in his dealings with Aboriginal artists*", notwithstanding that different conduct is said to give rise to the fundamental condition. He submits that it is the condition, not the differing conduct, by which the essential nature of the sting is to be assessed. He draws support from the particulars provided by the Plaintiff which indicate that the relevant parts of the transcript of the program relied on for each of the allegedly separate imputations are largely the same.

[11] Mr Molomby, for the Plaintiff, complains of the obvious contradiction in the Defendant's position in the current application compared to the former application. The Defendant's complaint on the first occasion was that it was not clear what the Plaintiff alleged to be intended by the use of the adjectival term "*unscrupulous*". There Mr Roper had submitted, and I agreed, that the Plaintiff had to articulate precisely what the Plaintiff alleged was meant by the adjectival term "*unscrupulous*" by setting out the relevant specific instances and that it is insufficient simply to rely on the use of that term in the matter complained of. The result is the additional detail that is contained in the amended paragraph 6. Mr Molomby points out, correctly in my view, that whereas in the former application the Defendant complained of the lack of specifics and detail, having now been provided

with that, the Defendant now challenges the pleading on the grounds that it is repetitious.

[12] To the extent that the Defendant's argument relies on the identical prefacing words used in each of sub-paragraphs 6(a)-6(c), it is relevant to note that sub-paragraphs 6(d)-6(f) contain the same prefacing words, yet those sub-paragraphs are not challenged as being repetitious. Implicitly that acknowledges that there are differences in those imputations notwithstanding the use of the same prefacing words.

[13] In the same way I consider that there are sufficient differences between the three imputations to enable them to stand as separate imputations without being embarrassing. The challenged sub-paragraphs also plead specific instances in each of the sub-paragraphs namely, the reference to making large profits and the reference to mark ups in subparagraph 6(a), the reference to taking advantage of the artists' lack of experience in subparagraph 6(b) and the reference to taking advantage of the ignorance of their rights in subparagraph 6(c).

[14] Mr Molomby also submits that the imputations are to be assessed in the overall context on authority of *Greek Herald Pty Ltd v Nikolopoulos & Ors*[5] (*"Greek Herald"*). There it was held that imputations must be construed in the context of the whole matter complained of. Mr Molomby submitted that it is unmistakably clear from the publication as a whole that there is a sharp

[5] (2001) 54 NSWLR 165

critical sting to what is said on this issue from the very start of the broadcast where it was said "*…the trade in indigenous art is as ripe for exploitation as it ever was.*". It is illustrative at this point to repeat pertinent parts of the First Decision, namely:-

> Looking at the Broadcast as a whole, it commences with a narrative referring to "exploitation" in the trade in indigenous art. There is reference to "big profits going to the dealers". The Plaintiff is identified as a dealer. In the course of the Broadcast the Plaintiff is asked questions which tend to compare gallery prices to the payment made to the artist. There is reference to a Senate investigation "designed to clean up the industry". Immediately thereafter the Plaintiff is told that other people in the industry refer to people "like yourself" as carpetbaggers.
>
> Later in the Broadcast a person identified as Sarah Brown is interviewed. She is described as a person involved in a kidney dialysis clinic and the presenter says:-
>
> > "It's run by Sarah Brown who has witnessed the exploitation of her patients at the hands of unscrupulous dealers."
>
> Ms Brown then comments:-
>
> > "Lots of people are really successful artists but they can't paint for their community art centres anymore because they're in town and so they're easy pickings for carpetbaggers, for dodgy art dealers."
>
> The Broadcast goes on and the presenter questions Sarah Brown about the extent of carpetbagging and she replies that it is "huge". The connection is then made with the need for kidney treatment and the connection with the Plaintiff comes about as the Broadcast turns to a discussion of people missing out on necessary dialysis treatment. The association with the Plaintiff is that Ms Brown then says "there's one property where it's a particular problem" and it is identified as

> associated with the Plaintiff as he is the lessee. Ms Brown then introduces the term "deprivation of liberty".[6]

[15] In my view the differences set out in paragraph 14 above at least are sufficient to refute the argument of repetition and consequently that the pleading is embarrassing.

[16] Dealing next with the basis of precision or clarity relative to sub-paragraphs 6(a)–6(d) inclusive, Mr Roper pointed out that where imputations are pleaded other than in the express words of the matter complained of, the imputations must be clearly and precisely pleaded on authority of *Drummoyne Municipal Council v ABC*[7] ("*Drummoyne*") amongst others. He also submitted that *Whelan v John Fairfax & Sons Ltd*[8] requires that where an alleged imputation contains an assertion that the impugned conduct falls within a particular adjectival term, it will fall to be struck out unless the application of that term is made out on the pleading. That proposition is a two edged sword in the current case. It was relied on also in the first application for summary judgment and was a major factor in my decision to require greater detail of the allegation relevant to the adjectival term "*unscrupulous*" which has resulted in the elaboration contained within the amended paragraph 6.

[17] Notwithstanding Mr Roper's submissions there are limits to what the Plaintiff can and must do in pleading terms. It must be recalled that what

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[6] [2010] NTSC 52 at 24-27
[7] (1990) 21 NSWLR 135
[8] (1988) 12 NSWLR 148

must be proved in the end is what the audience understood to be conveyed by the alleged imputation. Mr Molomby relied on *Drummoyne*, in particular where Gleeson CJ said:-

> "Almost any attribution of an act or condition to a person is capable of both further refinement and further generalisation. In any given case a judgment needs to be made as to the degree of particularity or generality which is appropriate to the occasion, and as to what constitutes the necessary specificity. If a problem arises, the solution will usually be found in considerations of practical justice rather the philology. In John Fairfax & Sons Limited v Foord (1988) 12 NSWLR 706, this Court approved of Hunt J's leaving to the jury an imputation that the Plaintiff was a criminal associate of drug dealers. No one suggested that it was necessary to identify with particularity the crime or crimes alleged to have been committed by the Plaintiff, even though it was always theoretically possible to be more specific about an allegation that a person is a criminal.
>
> Furthermore, whilst the principles relevant to the Plaintiff's obligation remain constant their practical application may depend upon the facts and circumstances of the given case, and the relevant circumstances may include the manner in which the Defendant, or the author of the defamatory matter, has expressed the defamatory matter. Defamation may come in the form of snide insinuation or robust denunciation, or something in between those two extremes. The attribution to a person of an act or condition may be done with a high degree of particularity or it may take the form of the most generalised and non-specific abuse. It is a feature of certain forms of defamation that one can read or hear matter published concerning a person and be left with the powerful impression that the person is a scoundrel, but find it very difficult to discern exactly what it is that the person is said or suggested to have done wrong. The requirement on a Plaintiff cannot go beyond doing the best that can reasonably be done in the circumstances."[9]

[18] In my view, that applies directly in the current case and consistent with what Gleeson CJ said in *Drummoyne*, I consider that the imputations pleaded in sub-paragraphs 6(a)-6(c) are sufficient.

[9] (1990) 21 NSWLR 135 at 137

[19] Mr Roper also argues that the term "*inadequate premises*" in sub-paragraph 6(d) is also unclear for different reasons. He also argues that it is not defamatory of a person to suggest that the person provides inadequate premises. As to the first concern, the fault with the submission is that again the Defendant looks at the term in isolation which is neither instructive nor appropriate. As I said in the First Decision when dealing with various complaints about individual or isolated aspects of the pleadings, the program must be looked at as a whole and in the context of the most damaging meaning possible.[10] I dealt with this in the First Decision where I said:-

> Dealing first with the capacity question, the Broadcast as a whole needs to be considered for the purpose of determining whether the alleged imputations are capable of being conveyed. The authorities acknowledge that defamatory statements are rarely made expressly. Often defamatory statements are in the form of insinuation or innuendo. Even in the case of an express statement, considering it in isolation may convey an entirely different meaning. The current case contains a good example. The Plaintiff seems to admit that he is a "carpetbagger". If the particular comment was looked at on a stand alone basis, it would sound like an admission. However when the comment is considered in context it is clear that, rather than admitting to being a carpetbagger, the Plaintiff is merely acknowledging that others have called him a carpetbagger.[11]

[20] A similar concern was raised in *Greek Herald*. In that case, Mason P, with whom Wood CJ at CL agreed, said:-

> "The defendants wish to have the imputation removed from the context of the article as a whole so that the jury can be invited to debate the moral issue whether lying is always wrong, and whether (if it is not) it is defamatory of a person to say he or she lied. Such matters may be befit a philosophy seminar. But they are so divorced

[10] Following *Lewis v Daily Telegraph Ltd* [1964] AC 234
[11] [2010] NTSC 52 at 23

from the reality of the true dispute between the litigants as to be a wasteful perversion of justice."[12]

[21] As to the clarity aspect, I think the following extract from *Greek Herald*, which relies in part on *Drummoyne*, neatly and appropriately summarises the position namely:-

> "The pleader's task is to capture the essence of the specific matters imputed in relation to the plaintiff. Necessarily there will be questions of degree and "if a problem arises, the solution will usually be found in considerations of practical justice rather than philology" (per Gleeson CJ in [*Drummoyne*]. In this as in other areas, pleadings serve the ends of justice: they must not be permitted to assume an independent self-referential function. The pleaded imputation remains "the statement which, as the plaintiff alleges, the publication gives the reader or viewer to understand" (per Mahoney JA in *Singleton v Ffrench* (1986) 5 NSWLR 425 at 428). It is not a straightjacket, although the rules of procedural fairness place limits upon judge and jury's capacity to enlarge the issues.
>
> .....
>
> The pleaded imputation is itself a statement extrapolating something from the matter complained of. The statement will seldom be found in the very words used (sometimes the matter complained of is only a picture). The imputation will often be implicit in the text (see generally *Petritsis v Hellenic Herald Pty Ltd* [1978] 2 NSWLR 174 at 195-196)."[13]

[22] Applying this to the current case Mr Molomby submits that the Plaintiff cannot be required to be any more specific than the offending publication allows. Further, that the Plaintiff cannot provide specific detail that is not contained in the matter complained of. This has direct application in the

[12] (2001) 54 NSWLR 165 at 173
[13] (2001) 54 NSWLR 165 at 172

current case. The presenter of the program himself used very imprecise terms when referring to the subject premises, namely "*It's a pretty rough and ready set up there, though isn't it?*" (see paragraph 27 below). I add that it is necessary to consider the offending broadcast as a whole and in the overall context. It does not convey the precise position to simply consider the transcript as there is a visual impact to the broadcast as well. The visual aspect is relevant. I consider also that sub-paragraph 6(d) has been pleaded with sufficient precision.

[23] The third basis of the challenge to the pleadings is another capacity argument. Subparagraphs 6(e) and 6(f) derive from the allegation that the Plaintiff has been labelled a carpetbagger. The Defendant submits that those imputations are incapable of being conveyed as, firstly in the case of sub-paragraph 6(e), the Plaintiff has not expressed his views on a code of conduct and no view is attributed to him. Although I agree with that premise, that is hardly relevant. The imputation does need to arise from the precise words used. The submission again fails to have regard to the program as a whole and also fails to consider what the most damaging meaning possible is. I refer to what I said in the First Decision, commencing with the passage reproduced at paragraph 19 above, followed by the passage reproduced at paragraph 14 above. Applying the foregoing to the current case, for the same reasons, in my view that imputation is capable of being conveyed.

[24] As to the imputation pleaded in sub-paragraph 6(d), the argument is two fold. Firstly, that as it derives from a general statement about the need for regulation in the art industry, it cannot be construed as capable of conveying anything about the practices or future conduct of the Plaintiff. In relation to this the comments I made in the First Decision which remain relevant are:-

> Later in the Broadcast, the presenter introduces a discussion about a proposed code of conduct. At this point Tamara Winikoff from the National Association for the Visual Arts says:-
>
> > "The kinds of dealings that occur between Indigenous artists and those who have commercial relationships with them are often quite troubled and sometimes downright dishonest. And so the necessity for a code is to try regularise those relationships and ensure that artists in particular get appropriate recompense." (Emphasis added)
>
> This then is again associated with the Plaintiff by the presenter's next question, "Carpetbaggers aren't going to sign up to the code of conduct are they?".
>
> The Plaintiff also relies on a comment made by the presenter to the Plaintiff shortly after (proximate to the discussion set out in paragraph 34), namely, "Others in the art industry refer to people like yourself as carpetbaggers". Mr Molomby for the Plaintiff submits that as a result the viewer has no choice but to understand the exchange about prices referred to above as being related to carpetbagging. He submits that the viewer is then forced to conclude the suggestion being made by citing the prices is that the Plaintiff is the person who pockets the difference between them. He further submits that this naturally follows as there is no other obvious explanation for their appearance in this part of the programme.
>
> In my view, looking at the Broadcast as a whole and in particular having regard to the narrative at the commencement (see paragraph 24), making due allowances for the transient nature of the publication and looking for the most damaging meanings open to an

ordinary reasonable viewer, it is possible for the imputation to be conveyed.[14]

[25] For similar reasons as I have given in respect of the complaint concerning the imputation in sub-paragraph 6(e), I likewise am of the view that the imputation pleaded in sub-paragraph 6(f) is capable of being conveyed.

[26] The second part of Mr Roper's complaint concerning subparagraph 6(f) is that it falls foul of the principle derived from *Saint v John Fairfax Publications Pty Ltd*[15] where Kirby J approved of the following passage from *Marsden v Amalgamated Television Services Pty Ltd*[16] namely:-

> "An inference is drawn from an inference when the reader, listener or viewer draws and inference which is available in the matter complained of and then uses that inference as a basis (at least in part) for which a further inference is drawn. The publisher is held responsible for the first of those inferences but not for the second because – as I have already said – it is unreasonable for the publisher to be held so responsible. In *Mirror Newspapers Limited v Harrison* (1982) 149 CLR 293 (at 300), the High Court illustrated the process which leads to an inference upon an inference in the case where the matter complained of states that the Plaintiff had been charged with an offence. The first inference available from that statement (for which the publisher *is* held responsible) is that the police believed the Plaintiff to be guilty or had a ground for charging him. (The phrase 'reasonable cause' is submitted for 'ground' at page 301.) The second inference, which is based at least in part upon that first inference (and thus is *not* one for which the publisher is held responsible because it is unreasonable to do so), is that the Plaintiff is in fact guilty of the offence charged." (emphasis in original)

[27] Mr Roper argues that the permissible inference in the current case is that the Plaintiff is a carpetbagger. He says the impermissible inference is that the

[14] [2010] NTSC 52 at 35-38
[15] [2002] NSWSC 312
[16] (1998) 43 NSWLR 158 at 167

viewer would need to take the next step and infer that the Plaintiff is the carpetbagger who would be reluctant to enter into or abide by legislation or code of conduct. I disagree. The comments by the presenter leave little to inference in painting the Plaintiff as the carpetbagger referred to. I referred to this in the First Decision where I said:-

> That is not the case on the facts. Although it can be said that the Plaintiff denies the allegation (of carpetbagging), the overall effect of the Broadcast is to show the Plaintiff as a carpetbagger following the theme and context of the Broadcast, his denial notwithstanding. Very relevant to this is that the remark is repeated after that denial. This occurs when the presenter is interviewing Adam Knight and the relevant part of the Transcript is set out in paragraph 39 hereof. Therefore, having regard to the transient nature of the Broadcast, the ordinary reasonable viewer might miss the significance of the earlier qualification, especially in light of the adverse connotations from the remainder of the Broadcast.
>
> The second limb of that imputation is that the Plaintiff forces artists to paint under "oppressive conditions". Mr Roper submits that the imputation is not capable of being conveyed. He says that the only direct reference in the Broadcast to the conditions under which artists worked on the Plaintiff's property was in response to a question from the reporter to an Adam Knight where he asked "It's a pretty rough and ready set up there, though isn't it?". Again this must be looked at in context. The relevant part of the transcript follows the introduction into the program of Adam Knight, apparently an art dealer and is as follows:-
>
> > ADAM KNIGHT, ARANDA ABORIGINAL ART: Steve was one of the first two or three aboriginal art dealers in Alice Springs and played a pretty significant role in the establishment and growth of the industry in the early days. So he uses it for conducting Aboriginal art business.
> >
> > QUINTON MCDERMONT (to Adam Knight): He's told us he's a carpetbagger.
> >
> > ADAM KNIGHT, ARANDA ABORIGINAL ART: Yeah, he would. He's an unusual man, but, and he has funny methods and

> he's a rough, ready sort of a chap. But at the end of the day, as I said to you originally, I only support people I believe treat their artists well and respect Indigenous people and culture and he's certainly one of those. And there's quite a few of them.
>
> QUINTON MCDERMONT (to Adam Knight): It's a pretty rough and ready set up there, though isn't it?
>
> ADAM KNIGHT, ARANDA ABORIGINAL ART: Well, its better then the Mount Nancy Hotel, a hell of a lot better.[17]

[28] As can be seen, the presenter specifically, and dishonestly, says that the Plaintiff has admitted that he is a carpetbagger, when it is clear from the context that all the Plaintiff is acknowledging is that others accuse him of being a carpetbagger. The Plaintiff goes on to effectively refute that. The program by that stage sufficiently identified the Plaintiff as the carpetbagger referred to. It is only then that an inference is required to be drawn. In essence therefore I do not consider that it is a case of inference upon inference. What Mr Roper describes as the impermissible inference is in my view the only inference that is made in the circumstances. There is therefore only the one inference.

[29] Accordingly, I consider that all of the imputations pleaded in paragraph 6 of the Amended Statement of Claim are properly pleaded. I dismiss the Defendant's application.

[17] [2010] NTSC 52 at 31 and 39

[30] There will need to be consequential orders in relation to the Defence. The Defence filed to date will require amendment and I give leave for that purpose and allow a period of 14 days to comply.

[31] I will hear the parties as to costs.