



G Vijay Kumar
Partner
T: +603 6208 5870
E: vkq@lh-ag.com

11 OCTOBER 2019

Cyber Libel: Is One Liable for the Words of Others?

Recently, the Supreme Court of New South Wales found certain news agencies liable as the primary publishers of defamatory comments that social media users had posted on the public Facebook pages of those agencies. Although the controversial ruling in *Voller*^[1] has since garnered attention internationally, the decision to hold a party liable for defamatory statements made by others online is in fact not without precedent in Malaysia.

In *Stem Life*,^[2] the High Court held the first defendant (“Company”) responsible for not only the publication of defamatory posts originally made by third parties in a forum on the Company’s website (“Website”), but also for the re-publication *via* hyperlink of defamatory material found on a third party’s blog.

Background

The Company is part of an international group of companies which had established itself worldwide in the infant nutrition industry. Upon accessing the Company’s Website, visitors from Malaysia would be met with hyperlinks directing them to content across the Website including the “Asian Mom Network”, a page providing access to 11 internet forums.

In order to participate in any of the discussions unfolding in these forums, registration was required. Upon registration, a user was deemed to be bound by the terms of the Company’s Conditions of Use, one of which provided that the Company possessed the sole discretion to edit or completely remove any posting in a forum without notice or explanation.

Problems arose when the plaintiff discovered a number of popular posts created in one of the forums which allegedly defamed the plaintiff’s trade and business. Following the discovery, the plaintiff among other things issued a letter *via* its solicitors to the Company demanding that it remove the allegedly defamatory posts and prohibit any further posting in the relevant forum. The posts were eventually removed but only after they had remained on the Company’s Website for about 2.5 months.

Decision

The plaintiff instituted a claim for defamation and after full trial, the court expressed the view that the words complained of in the posts were injurious to the plaintiff's reputation in both a general and professional sense. The more difficult question, therefore, was whether liability could be imputed to the Company for the publication of the defamatory material, given that:

- (a) all of the posts in question had been created by third party users;
- (b) in one notable instance, the words complained of assumed the form of a hyperlink, which had been copied and pasted into a few of the posts; and
- (c) when clicked on, the hyperlink redirected readers to an article on an external blog which was also defamatory of the plaintiff.

Publication of defamatory posts of third parties

The court observed that an action for cyber libel may lie against various parties, particularly in light of the operation of s 114A of the Evidence Act 1950, according to which certain persons are presumed in fact to be the publisher or re-publisher of material. In this instance, the court found that the Company had failed to rebut the presumption in s 114A and was to be regarded as the publisher of the defamatory posts, being at all times the Website's host, official service provider, producer and, most significantly, editor. Pursuant to the terms of its own Conditions of Use, the Company possessed the sole discretion to edit or completely remove any post in a forum without notice or explanation. There was, therefore, an ongoing obligation on the part of the Company to monitor and remove any offensive posts from its Website.

Defamation via Hyperlink

The court found that the particular hyperlink which had featured in a number of posts was in itself capable of defaming the plaintiff as, among other things, it contained a deliberate misspelling of the plaintiff's name that was calculated to cast doubt on the trustworthiness of the plaintiff's business. For the same reasons set out above, the Company was also to be considered the publisher of the hyperlink.

Re-publication of defamatory blog

The court also found that in permitting the hyperlink (which was itself defamatory) to be posted, the Company had actively encouraged and led viewers of the relevant posts to access and read the defamatory article on the external blog. Such an act was tantamount to publishing the defamatory contents of the article on its own Website.

Impact

In both *Voller* and *Stem Life*, liability was essentially imposed due to the level of control exercisable by the relevant parties over the contents of their public pages. While in *Stem Life*, the Company was likened to an editor of a newspaper who wielded absolute editorial control over the posts made in the forums on its Website, in *Voller*, the Supreme Court of New South Wales emphasised the ability of the

liable news agencies to pre-emptively filter and hide comments before those were approved for posting on their respective public Facebook pages.

Indeed, in light of the Supreme Court's conclusion that with a public website, as opposed to a public Facebook page, there is no possibility of preventing defamatory comments from being made, except after the fact, it may be queried whether *Stem Life*, a case concerning a public website, would have been decided differently now in the wake of *Voller*. Be that as it may, the common thread clearly emerging from both cases is that moving forward, companies and individuals who operate public pages would certainly do well to practise regular monitoring of comments and to remain vigilant about the risk of incurring liability for defamation, an area of law which continues to evolve in pace with technological advancements.

Jasper Tan Li Jen (tlj@lh-ag.com)

Shona Rukmini Dutta Yean (Paralegal)

If you have any queries, please contact associate **Jasper Tan Li Jen** or his team partner, **G Vijay Kumar** (vkg@lh-ag.com).

Lee Hishammuddin Allen & Gledhill

Level 6, Menara 1 Dutamas
Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur
Malaysia

T +603 6208 5888
F +603 6201 0122/0136
E enquiry@lh-ag.com
W www.lh-ag.com

Published by the TMT Practice

© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.

[Feedback](#)

[Unsubscribe](#)

^[1] *Voller v Nationwide News Pty Ltd and Ors* [2019] NSWSC 766 (“*Voller*”)

^[2] *Stem Life Berhad v Mead Johnson Nutrition (Malaysia) Sdn Bhd & Anor* [2013] 1 LNS 1446 (“*Stem Life*”)