



Judgment Summary
Supreme Court
New South Wales
Court of Appeal

Fairfax Media Publications; Nationwide News Pty Ltd; Australian News Channel Pty Ltd v Voller [2020] NSWCA 102

Basten JA, Meagher JA, Simpson AJA

The Court of Appeal has dismissed an appeal which sought to challenge a finding that operators of Facebook pages may be publishers of defamatory comments made by third-party Facebook users on news items posted on those pages.

Fairfax Media Publications, Nationwide News Pty Ltd, and Australian News Channel Pty Ltd (“the applicants”) are each mass media publishers of newspapers circulating in NSW and/or the operator of television stations. Each operates Facebook pages, on which they post news articles with an accompanying comment, image and headline. In December 2016 - February 2017, the applicants posted news items concerning the incarceration of the respondent, Mr Dylan Voller, in a juvenile justice detention centre in the Northern Territory. Third parties posted comments critical of the respondent. The respondent commenced defamation proceedings against the applicants claiming that particular comments posted by third parties conveyed imputations that were defamatory of him, and that the applicants were liable as publishers of the third party comments. The primary judge found that they could be liable as publishers of those comments.

The applicants contended in the Court of Appeal that the primary judge was incorrect in finding that they were the publishers of defamatory comments made on their news items by third parties. The Court rejected this argument. The Court’s reasons for doing so included that each of the applicants accepted responsibility for the use of their Facebook pages for the publication of comments, including defamatory comments, and the applicants actively invited the making of those comments. This meant that they could be publishers of third-party defamatory comments.

The Court was required only to address this question of law. No other issue was determined. The substantive defamation proceedings have been remitted to a judge of the Supreme Court for hearing of the trial.