Case Report by Ali Romanos

Wishart v Murray and Others [2013] 3 NZLR 246; [2013] NZHC 540

(Interlocutory decision – HC Auckland)

Issues: Meanings (as question of law) – Publication by third-party publishers via social media – Pleadings oppressive, unduly prolix and contain irrelevant material – security for costs.

Judgment date: 19 March 2013

Facts: W published a book about the 2006 deaths of the three-month-old Kahui twins, written in collaboration with Macsyna King, the twins' mother. M created a Facebook page called "*Boycott the Macsyna King Book*". On the page, and on Twitter, M published comments to which W took exception. But relevant to this particular interlocutory application was the fact that W sued M for comments written by other, unidentified people on the Facebook page.

M sought to have the statement of claim struck out on the bases that: the statements in issue were not capable of bearing the defamatory meanings pleaded; that the statement of claim was prolix and oppressive, and contained scandalous and/or irrelevant material; and that M was not, as a matter of law, a publisher of the unidentified Facebook users' comments. M also sought security for costs against W.

Held: (Courtney J) The Court culled W's pleadings, including several of W's pleaded meanings. However, W's claim was left firmly intact. The Judge rejected M's security-for-costs application. Most significantly, the Court held that M *was* a publisher of others' comments on the Facebook page.

Discussion: This Judgment was a keen subject of media-law commentators in 2013. It is even recorded in the latest addition of *Gatley on Libel and Slander* (Sweet and Maxwell, London, 2013).

- **Publication:** Courtney J's ruling that the host of a Facebook page is a prima facie publisher of others Facebook users' comments on the page, is a landmark ruling in this burgeoning area of the law. It would seemingly apply also to other such social-media platforms. See [122]. I have written further about this aspect of the decision elsewhere.

- **Meanings:** Courtney J's rulings on meanings context should not be overlooked. The decision is essentially precedent for the principle that cross-references between Twitter and Facebook accounts can each be regarded as permissible context in which allegedly defamatory words are to be assessed. Further, the Judge's acceptance of W's argument, that

the various strands of the Facebook page should be viewed collectively – the Info section and a selection of postings – amounts to precedent that a Facebook page (or other similar social-media construction) is to be considered *in its entirety* when assessing the context in which words are published. This approach is consistent with the existing law: that a publication is to be viewed as a whole, and that a jury cannot be asked to proceed on the basis that different groups of readers may have read different parts of an article and taken different meanings from them (*Charleston v News Group Newspapers Limited* [1995] 2 AC 65).

On the other hand, in the social-media realm, it seems unrealistic that a member of a Facebook page can be expected to have read every single post published to the page, particularly in situations like this case, where M's page reached 50,000 'likes'. This is plainly a different situation from the expectation that a reader of a newspaper has read both the headline and the full article. It seems there is scope for argument on this point.