

## **CHANNEL 7 ADELAIDE PTY LTD v MANOCK (A21/2007)**

Court appealed from: Full Court of the Supreme Court of South Australia

Date of judgment: 18 October 2006

Date special leave granted: 25 May 2007

The respondent ("Manock") is a forensic pathologist who gave evidence for the prosecution in the murder trial (and re-trial) of Henry Keogh. On 5 March 2004 the appellant ("Channel 7") broadcast a promotion for "Today Tonight", which consisted of the host saying, "The new Keogh facts. The evidence they kept to themselves. The data, date and documents that don't add up. The evidence changes from one Court to the next." These words were spoken as a picture of Manock was displayed in the background.

In March 2004 Manock issued proceedings against Channel 7 in the District Court of South Australia, claiming damages in respect of the promotion, alleging that in its ordinary and natural meaning it meant, and was understood to mean, that Manock had deliberately concealed evidence from Keogh's trials. Channel 7 pleaded, inter alia, fair comment. Manock applied to strike out the particulars of that plea, claiming that they addressed a different meaning or imputation from those alleged by him in his statement of claim and that such an approach was impermissible. A Master of the District Court ordered that certain paragraphs of the particulars be struck out. Both parties appealed.

Judge Muecke noted that as to the defence of comment in a defamation case, the defence is pleaded to the comment as so expressed or implied, not to the plaintiff's imputation; and it is a defence only to that comment, not to the material upon which the comment is based (citing *Hawke v Tamworth Newspaper Co* (1983) 1 NSWLR 699 at 704). His Honour considered that as long as the pleaded particulars had some connection with the murder investigation and the trials of Keogh, they should not be struck out.

Manock's appeal to the Full Court (Gray, White and Layton JJ) was allowed. His complaint on appeal was that the defence, when read with the particulars, did not address the defamatory imputation pleaded in the statement of claim and was therefore bad. He submitted that the defence of fair comment had to be directed to the imputation or meaning attributed to the promotion as pleaded by him. Channel 7 contended that the comment was based on facts that were not published in the promotional item but which were sufficiently identified by the impugned words as forming the substratum of facts supporting the comment.

The Court referred to various authorities and concluded that a plea of fair comment had to address the imputation pleaded by a plaintiff. Accordingly, the Court rejected Channel 7's proposition that the pleaded imputation did not need to be addressed by the comment or that there was a sufficient connection between the defence of fair comment and the imputation alleged by Manock if both relied on the same words. The Court concluded that the

substratum of facts relied on by Channel 7 to support the defence of fair comment had to be capable of supporting the comment substantially in the sense pleaded by Manock, and if it was incapable of doing so then the particulars should be struck out. None of the particulars pleaded by Channel 7 were capable of founding as fair comment the imputations complained of, that is, that Manock had deliberately concealed evidence from the murder trials of Keogh.

The grounds of appeal include:

The Full Court erred in holding:

- that "a plea of fair comment must address the imputation pleaded by the plaintiff", such that to be defensible as fair comment "the substance of the comment cannot have a substantially different or more serious meaning than the imputation alleged by the plaintiff";
- that it is not sufficient, to establish the requisite connection between the plaintiff's imputation and the defence of fair comment, that the defamatory imputation alleged and the comment rely upon the same words; and
- that it is necessary that the facts relied upon in support of the comment be capable of supporting the comment in the sense pleaded by the plaintiff and hence address (and, it seems, be capable of establishing as true) the imputation of deliberate concealment of evidence.