

Geoffrey Rush defamation case: Australian judge dismisses newspaper's latest defence

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23 April 2018

Australian Federal Court Justice Michael Wigney on April 20 rejected the Murdoch-owned *Daily Telegraph's* modified “defence” to a defamation suit by actor Geoffrey Rush. The judge described it as a “desperate” attempt to subpoena the Sydney Theatre Company (STC) for documents to assist the tabloid’s case.

Wigney also dismissed the newspaper’s lawyers attempt to “cross-claim” against the STC—i.e., to force the theatre company to contribute to paying damages if the *Telegraph* is found to have defamed Rush.

Rush is suing Nationwide News, which owns the *Telegraph*, and journalist Jonathon Moran. Late last year the newspaper published stories alleging that the actor engaged in “inappropriate behaviour” toward a female cast member two years ago while starring in the STC’s production of *King Lear* in January 2016. The newspaper claimed that Rush’s actions were so serious that the STC had decided to “never work” with him again.

Rush immediately rejected the unsubstantiated and anonymous allegations, and a week later launched the law suit. Rush, who is probably the most internationally-celebrated Australian stage and screen actor, accused the newspaper of falsely portraying him as a “pervert” and “sexual predator.”

Friday’s ruling follows a March 20 hearing in which Wigney struck out the entirety of the newspaper’s “truth” defence and several paragraphs of its “qualified privilege” defence (see: “Geoffrey Rush lawsuit strikes blow against anti-democratic #MeToo campaign”).

In a summary of last Friday’s ruling, Wigney acknowledged the impact on the actor. Rush, he said, had continued to “suffer tremendous emotional and social hardship” since the *Telegraph's* initial articles and “ongoing coverage” of the legal case.

Telegraph's days allegations, the pressured to stand down as president of the Australian Academy of Cinema and Television Arts (AACTA), the peak drama body he helped establish. His pre-recorded video message to AACTA’s annual awards ceremony was dumped after pressure from television executives.

Earlier this month, Rush’s lawyer, Nicholas Pullen, told the Federal Court that his 66-year-old client was “virtually housebound.” Rush was taking medication for lack of sleep and anxiety, and believed that “his worth to the theatre and film industry and the community at large is now irreparably damaged.” Pullen documented the damage to Rush’s career, citing scores of national and international news articles that repeated the *Telegraph's* scurrilous accusations.

On Friday, Wigney said Rush was “entitled to expect that his claim” would be resolved as “quickly, inexpensively and efficiently as possible.”

“Regrettably, the approach that Nationwide and Mr Moran have taken to their defence of Mr Rush’s claim threatens to stymie or frustrate the achievement of that overarching objective of the court’s civil practice and procedure. It would be fair to say that while Nationwide and Mr Moran were quick to publish, they have been slow to defend.”

Changes to Nationwide News’s defence, Wigney declared, were not “justified or justifiable” and were an attempt to reintroduce paragraphs struck out in the previous hearing.

These paragraphs, he said, “comprise little more than hearsay statements about allegations that have been made about Mr Rush, or rumour or innuendo, or facts about things that do not bear at all on Mr Rush’s reputation. None of the facts in the relevant paragraphs, if proved, could rationally diminish the harm to Mr

Rush's reputation from the alleged defamatory imputations ...

"[D]espite what their solicitor has said, there are at least reasonable grounds to suspect that the real reason for Nationwide and Mr Moran's zealous, if not desperate, pursuit of these amendments was to justify a further subpoena to the Sydney Theatre Company in the hope that documents produced pursuant to that subpoena might support a defence of justification."

Wigney tersely dismissed Nationwide News's "cross-claim" against the STC, rejecting arguments that the theatre company was "an accessory" to the newspaper's publications. "The notion of a major media organisation and one of its journalists joining [in a cross-claim] one of its sources for a story is, to say the least, unusual." If the cross-claim were accepted it would "almost inevitably result in further delay and prejudice to Mr Rush" and the trial might not commence until 2019.

Wigney noted that Nationwide News's lawyers had previously decided not to enjoin the STC. "They have now changed their mind, largely because of the findings in my earlier judgment. That is hardly an acceptable explanation ...

"I also consider that Nationwide and Mr Moran's change of mind in relation to the cross-claim is again very much connected with their intent to obtain documents from the STC which might provide them with a justification defence to Mr Rush's claim."

In March, Wigney rejected the newspaper's previous attempts to subpoena the STC, describing it as an abuse of court processes. "The publisher is not permitted to undertake what is referred to colloquially as a 'fishing expedition' in the hope of finding something in support of its plea," he said.

Wigney has listed the defamation trial to begin on September 3. Nationwide News and Moran can appeal against Wigney's 151-paragraph, tightly-argued ruling, however. Any appeal must be lodged within the next week.

It is not yet clear whether the newspaper will challenge Wigney's rejection of its legal arguments. The multi-billion dollar media corporation has deep pockets and has played a key role in promoting the toxic and anti-democratic #MeToo movement and its reactionary attacks on the presumption of innocence and other basic legal rights.



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