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Sia Lagos

Registrar

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Rule 16.33

REPLY

VID 1023 of 2023

Federal Court of Australia
District Registry: Victoria
Division: General

MOIRA DEEMING

Applicant

JOHN PESUTTO

Respondent

In answer to the Respondent's Defence filed on 29 January 2024 (**Defence**), the Applicant (**Deeming**) adopts the same defined terms used in her Statement of Claim filed on 5 December 2023 (**SOC**) and relies upon the following facts and matters:

Joinder of issue

1. Save and except insofar as it contains admissions, including deemed admissions, or as otherwise expressly pleaded in this Reply, Deeming:
 - 1.1 joins issue with the matters pleaded in the Defence; and
 - 1.2 relies upon the matters pleaded in the SOC.

Honest Opinion

2. In answer to the allegations in paragraphs 44-48 of the Defence, Deeming:
 - 2.1 denies that each of the Media Release, 3AW Interview, ABC Interview, Press Conference, and Expulsion Motion and Dossier (collectively, **Publications**) was an expression of Pesutto's opinion;
 - 2.2 admits that each of the Publications related to a matter of public interest;
 - 2.3 if (which is denied) any of the Publications were an expression of Pesutto's opinion:

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- a. denies that any such opinions were based on proper material;
- b. denies that the alleged proper material was referred to, or adequately referred to in specific or general terms, in the Publications; and
- c. says that any such opinions were not honestly held by Pesutto at the time of the Publications; and

2.4 otherwise denies the allegations in paragraphs 44-48 of the Defence.

Particulars of defeasance

At the time of the Publications, Pesutto did not believe that any of the imputations, being denied in the Defence as carried, were true by reason of his knowledge of the following matters:

- (i) The neo-Nazis did not 'attend' or participate in the Let Women Speak rally (**LWS Rally**), but were present on the steps of Parliament House for a Protect the Children rally (**PC Rally**) being held in front of Parliament House at or about the same time as the LWS Rally.
- (ii) The neo-Nazis did not speak or display their banner or make their Nazi salute in respect of the LWS Rally, but spoke and displayed their banner and made their Nazi salute in respect of the PC Rally.
- (iii) The PC Rally was not associated with the LWS Rally but was promoted and held in Melbourne in association with a PC Rally being held in Sydney on the same day 18 March 2023.
- (iv) The LWS was granted a permit to conduct the LWA Rally on 18 March 2023 by Parliament House authorities but was specifically not permitted to conduct it from or stand on the steps of Parliament House.
- (v) Deeming and the organisers of and speakers at the LWS Rally did not know that the PC Rally was scheduled to be held at or about the same time as the LWS Rally or whether it had any permission from relevant authorities to be held at or be present in front of Parliament House at that time.
- (vi) The PC Rally was held at the northern end of the front of Parliament House while the LWS Rally was held a reasonable distance away at the southern end.

- (vii) The neo-Nazis did not support, listen or pay attention to the speakers at the LWS Rally.
- (viii) The neo-Nazis left the PC Rally area from the northern end of Parliament House under police supervision in the 'buffer zone', separated from protesters by a police cordon, and moved toward the southern end and beyond to the streets of Melbourne CBD at least 45 minutes before the LWS Rally finished and without any acknowledgement of the LWS Rally.
- (ix) The police supervised the movements of the neo-Nazis at all relevant times, allowing their entry into the cordoned off area in front of Parliament House, prior to and during the PC Rally, and escorted their exit from the Parliament House area.
- (x) There was livestream footage on YouTube of the events of 18 March 2023 showing the matters referred to at sub-paragraphs (i)-(ix) above. Deeming told Pesutto, during her meeting with the Leadership Team on 19 March 2023, that there was livestream footage of the events of 18 March 2023 and invited him to review it.
- (xi) On 18 March 2023, the leader of the neo-Nazis, Thomas Sewell, said on 'Telegram' *'Today in Melbourne, the National Socialist Network acted as a vanguard for a protest against the constant paedophilic agenda being forced upon our children and our people. Paedophiles deserve destruction, and the only solution to this sickness is White Revolution! DESTROY PAEDOPHILE FREAKS!'*
- (xii) On 20 March 2023, Sewell stated in a public interview on Odysee.com titled 'The Vanguard – Anti-Paedo protest with Tom Sewell' *'...there was a Liberal Party MP that went to the Let Women Speak Rally which was a rally that was going on simultaneously to ours, and she's being removed from the Liberal Party right now, because she wanted to let women speak and have their say...'*
- (xiii) Kellie-Jay Keen had no association with the neo-Nazis and did not know of their group, or invite or approve of their presence in front of Parliament House at or about the same time as the LWS Rally.
- (xiv) Keen has, and has had, no 'association' with neo-Nazis or right wing extremists or white supremacists (where an 'association' by definition

means a mutual understanding, connection, or relationship for mutual benefit and mutual support for each others' views).

- (xv) Keen abhors and has publicly expressed her abhorrence of Nazis, neo-Nazis, Nazi sympathisers, far right extremists and white supremacists; indeed, she finds Nazism so repugnant that she uses it as a comparative benchmark for state sanctioned evil.
- (xvi) Angela Jones has, and has had, no 'association' with neo-Nazis or right wing extremists or white supremacists; indeed, she finds Nazism so repugnant that she uses it publicly as a comparative benchmark for evil.
- (xvii) Jones had an exchange of tweets with a person, 'Lilah They PG' (@LilahRPGtt), on Twitter (as it then was) on 18 March 2023 in which she confirmed the LWS Rally's objective was to give women a platform to speak and that the Nazis were not part of the LWS Rally and responded to a Tweet by 'Kenji the Orthodox Heretic' (@kwardenclyffe) in rhetorical terms and not in terms of endorsement of Nazi views.
- (xviii) Deeming had no knowledge of the alleged associations of Keen or Jones with Nazis, neo-Nazis, far right extremists and white supremacists or the tweet in the preceding sub-paragraph before Pesutto made the allegations to her at the meeting with the Leadership Team on 19 March 2023.
- (xix) Deeming abhors and has repeatedly expressed her abhorrence of Nazis, neo-Nazis, Nazi sympathisers, far right extremists and white supremacists.
- (xx) Deeming did not leave the LWS Rally when (it is alleged) the Nazis attended because they did not attend or participate in the LWS Rally.
- (xxi) Deeming participated in a YouTube video with Keen and Jones in the evening of the LWS Rally and celebrated the success of the LWS Rally; at that time, the participants in the video questioned the presence of the men in black who had appeared at Parliament House but did not know the reason for their presence as those men were not present to support the LWS Rally or support Keen or any of the organisers of the LWS Rally.
- (xxii) Deeming facilitated Keen's presence at the LWS Rally by seeking and obtaining permission from the Parliament House authorities to escort

Keen from the secured carpark of Parliament House to the front of Parliament House for the LWS Rally.

Contextual Truth

3. In answer to the allegations in paragraphs 49-65 of the Defence, Deeming:
 - 3.1 denies that any of the contextual imputations pleaded in the Defence was true or substantially true at the time of the Publications;
 - 3.2 says that the plea of contextual truth fails on the particulars by the fact that they are incapable, at their highest, of proving substantially true any of the contextual imputations, or being more harmful to Deeming's reputation than the imputations complained of in the SOC as carried;
 - 3.3 says that the contextual imputations are incapable of giving rise to a defence under s 26 of the *Defamation Act 2005*;
 - 3.4 relies on and repeats the matters of defeasance particularised in paragraph 2 above; and
 - 3.5 otherwise denies the allegations in paragraphs 49-65 of the Defence.

Public Interest

4. In answer to the allegations in paragraph 66 of the Defence, Deeming:
 - 4.1 admits that each of the Publications concerned an issue of public interest;
 - 4.2 denies that Pesutto reasonably believed that the Publications were in the public interest; and
 - 4.3 otherwise denies the allegations in paragraph 66 of the Defence.
5. In the alternative to paragraph 4 above, if it is found that Pesutto reasonably believed that the publication of the Publications (or any of them) were in the public interest and that Pesutto had a defence under s 29A at the time of initial publication (which is denied), any such defence was thereafter lost once Pesutto was put on notice of the falsity of the imputations and could no longer reasonably believe that the publication of the Publications (or any of them) were in the public interest.

Particulars

- 5.1 Pesutto could not reasonably have believed that the publication of the Publications

(or any of them) were in the public interest in circumstances when he had the knowledge particularised in paragraph 2 above:

- a. At the time of initial publication of the Publications; or
- b. Alternatively, very shortly afterwards, from at least from 20 or 21 March 2023, when he received emails from members of the public who had attended the LWS Rally or witnessed it and who told Pesutto that the neo-Nazis did not 'attend' or participate in the LWS Rally; or
- c. Alternatively, from 11 May 2023 when he received Deeming's Concerns Notice.

Common law qualified privilege (*Lange*)

6. In answer to the allegations in paragraph 67 of the Defence, Deeming:

- 6.1 admits that each of the Publications concerned governmental and political matters;
- 6.2 says that Pesutto was actuated by malice in publishing each of the Publications; and
- 6.3 otherwise denies the allegations in paragraph 67 of the Defence.

Particulars of malice

- a. On 19 March 2023, Deeming told Pesutto, and he knew prior to making the Publications, that the neo-Nazis to whom he referred in the Publications did not 'attend' or participate in the LWS Rally.
- b. Deeming repeats the particulars of defeasance in paragraph 2 above and says that Pesutto knew that the imputations were untrue and/or was recklessly indifferent to their truth to the point of willful blindness without any, or any reasonable inquiry, before proceeding to make the Publications within a 24 hour period initiated by the publication of the Media Release.
- c. Deeming repeats the matters particularised at paragraph 5 above.
- d. Pesutto made the Publications to convince the public and the world at large that Deeming should be expelled from the Parliamentary Liberal Party and her political career destroyed by misrepresenting that she had direct or indirect 'associations' with Nazism, when his true purpose was to expel her for her advocacy of sex based rights (with the Leadership Team saying to

her on 19 March 2023 that this was her ‘third strike’ and she ‘could not be rehabilitated’). Pesutto has falsely denied that this was his true purpose, knowing that this was not a proper basis for her expulsion or for the publication of the Publications.

- e. In relation to the Expulsion Motion and Dossier, Pesutto released the Expulsion Motion and Dossier to the media for an improper purpose in that he did so notwithstanding that Clause 55(d) of the Victorian Parliamentary Liberal Party Constitution (and long-standing convention) requires members of the Parliamentary Party to maintain confidence in all documents exchanged within the party room.
- f. Deeming will provide further particulars of malice in the course of the proceedings.

Mitigation

7. In answer to paragraph 68 of the Defence, Deeming says that the matters pleaded in paragraph 68 are embarrassing, ambiguous and disclose no reasonable ground of mitigation.

Aggravation

8. Further to the particulars of aggravated damages pleaded at paragraph 38 of the SOC, Deeming also relies upon the following additional conduct of Pesutto which is known to Deeming and which was lacking in good faith, improper and unjustifiable and has increased the harm suffered by Deeming so as to warrant an award of aggravated damages:
 - 8.1 Pesutto has still not apologised to Deeming despite admitting, in his Defence, that each of the Publications was defamatory of Deeming.
 - 8.2 Pesutto’s denial, in his Defence, that each of the Publications has caused or is likely to cause serious harm to her reputation.
 - 8.3 In Pesutto’s November 2023 media statement, Pesutto falsely stated:
 - a. *Mrs Deeming’s suspension and subsequent expulsion were never about her views on women’s issues.*
 - b. *I have never called Mrs Deeming a neo-Nazi or sympathiser.*

- c. *The issues in this matter have never concerned freedom of speech.*
- d. *The issue has always been whether Mrs Deeming called out or distanced herself from neo-Nazi protestors and references when asked to do so by senior Liberals.*

8.4 Pesutto's statement during an interview with Tom Elliott of 3AW Melbourne on 2 February 2024 that: "*There was an outcome last year that, had it been observed, would have seen [Deeming] returned to the party room*". This statement was disingenuous and false, since Pesutto had himself reneged on the agreement which had been reached on 27 March 2023 (as pleaded at sub-paragraph 38.7(g) of the SOC.

8.5 Despite his knowledge of the matters particularised in paragraph 2 above, especially that the neo-Nazis did not 'attend' or participate in the LWS Rally, Pesutto has asserted from 19 March 2023 and continued to assert that the neo-Nazis 'attended' the LWS Rally – for example: in his Defence and through his Counsel at the case management hearing on 2 February 2024 (when it was said on Pesutto's behalf that the LWS Rally "*involved*" neo-Nazi protestors and that the neo-Nazis "*engaged*" with the LWS Rally and that "*the only reason the Neo-Nazis were there was because the [LWS Rally] was taking place*").

Date: 12 February 2024



Signed by Patrick George
Solicitor for the Applicant

This pleading was settled by Sue Chrysanthou SC and Barry Dean of Counsel.

Certificate of lawyer

I, Patrick George, certify to the Court that, in relation to the Reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 12 February 2024

A handwritten signature in black ink, appearing to be 'P. George', written over a light grey rectangular background.

Signed by Patrick George
Solicitor for the Applicant