

Sex lies and videotape:

Grosse v Purvis [2003] QDC 151

With plaintiff lawyers fighting the erosion of individuals' rights on every front and the decisions of Australian courts exhibiting a growing trend against plaintiffs in personal injury claims, the Queensland District Court's decision in *Grosse v Purvis* is certainly a welcome one.

Grosse could signal the beginning of the development of an important area of law in relation to the rights of the individual - tortious claims for invasion of privacy.

It should be noted that the plaintiff was represented in this very important case by Garry Scott of Klooger Phillips Scott, in yet another example of the readiness of APLA members to confront challenging areas of litigation in innovative ways.

Photo by Lana Vshivkoff.

BACKGROUND

The plaintiff, Alison Grosse, was (and is) the Mayor of the Maroochy Shire on Queensland's Sunshine Coast. The defendant, Robert Purvis, worked with the plaintiff, and the pair were engaged in a sexual relationship for six months.

Between 1993 and 2002, relations between the parties deteriorated, and in

April 2002 the plaintiff commenced proceedings in the District Court, claiming damages, including aggravated and exemplary damages for invasion of privacy, harassment, intentional infliction of physical harm, nuisance, trespass, assault, battery and negligence.

The action was heard before the Brisbane District Court because of the potential for a perceived conflict of

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interest if it was heard in the local District Court.

SPECIFIC ALLEGATIONS

The judgment in *Grosse* runs to over 100 pages, much of which is taken up by the judge's analysis of the various specific allegations made by the parties in relation to the alleged conduct of both the defendant and the plaintiff.

The trial ran to 13 days and attracted great media and public interest, with salacious allegations, such as prostitution and sexual escapades with politicians.

Skoien DCJ acknowledged the unusual nature of the case, including the fact that much evidence was admitted that might otherwise have been thought inadmissible as hearsay.

The plaintiff claimed the defendant stalked her for six years. Seventy particular instances were alleged and evidence was led in relation to each such allegation.

In fact, the plaintiff had made over

100 allegations, but the trial judge indicated in the course of an earlier directions hearing that she should select 'representative' examples of such conduct.

His Honour conceded that he was taking a 'bold step' in holding that an individual has a civil cause of action for damages based upon the right to privacy.

Some of the allegations included:

- The defendant loitering outside the plaintiff's residence (and elsewhere) for lengthy periods of time and, on occasion, calling out to her and

other persons.

- The defendant advising the plaintiff on numerous occasions that she was 'being watched'.
- The defendant breaking into the plaintiff's residence.
- The defendant confronting the plaintiff with, and accusing her of, improper sexual conduct, including prostitution-type activities.
- The defendant following the plaintiff to social and business functions.
- The defendant assaulting the plaintiff's male friends.
- The defendant constantly telephoning the plaintiff, her family and friends, and on two occasions leaving death threats on the plaintiff's answering machine.

The trial judge found that most of the evidence favoured the plaintiff's credibility and undermined that of the defendant. He found that the defendant had 'developed an extraordinary infatuation with the plaintiff'.



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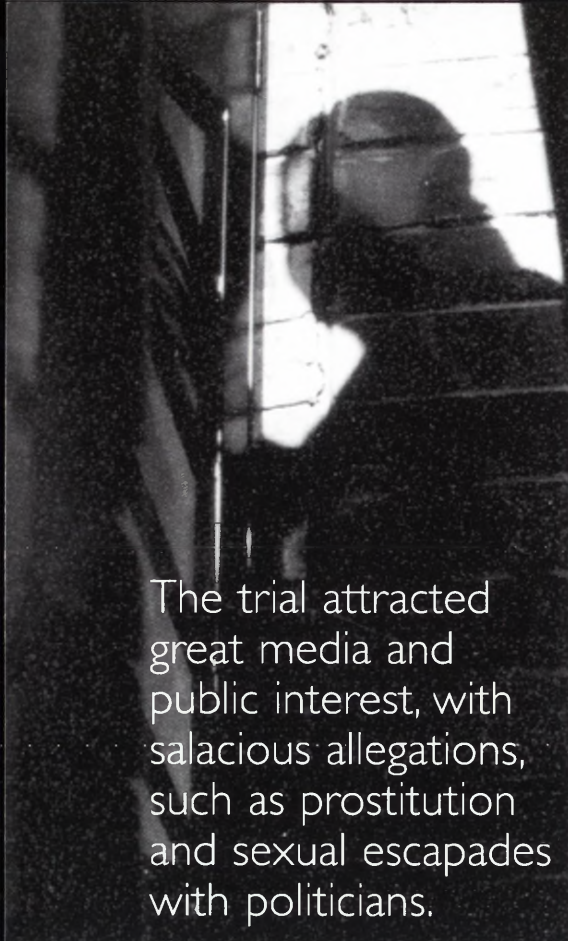
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-Sun Tzu, 300BC



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The trial attracted great media and public interest, with salacious allegations, such as prostitution and sexual escapades with politicians.

Interestingly, the trial judge also noted that the defendant had allied himself 'with political opponents of the plaintiff and those who, for good reasons or bad, disapproved of her business or personal activities'.

THE PLAINTIFF'S INJURY

The trial judge found that the plaintiff had developed a post-traumatic stress disorder (PTSD) as a result of the defendant's conduct. Purvis sought to defend the claim for psychiatric injury on the basis of the three-year limitation period for personal injury claims under the *Limitation of Actions Act 1974* (Qld).

The trial judge rejected this defence on the basis that the PTSD condition did not develop, and hence the cause of action did not accrue, until a date less than three years before the filing of the proceedings. This date was, in fact, the date the plaintiff made a suicide attempt. The plaintiff's emotional distress experienced before the development of the PTSD condition was governed by the six-year limitation period pursuant to section 10 of the Act.

INVASION OF PRIVACY

The trial judge found that the defendant's conduct amounted to 'stalking' within the meaning of that term under section 359B of the Queensland Criminal Code.

The trial judge considered the High Court's decision in *Australian Broadcasting Corporation v Lenah Game Meat Pty Ltd.*¹ His Honour considered that certain critical propositions could be identified from the High Court's various judgements 'to found the existence of a common law cause of action for invasion of privacy'.²

He considered that the High Court had evinced in *Lenah* a clear belief that the time had come to consider the nature and extent of the preservation of the right of privacy by the common law in Australia.

His Honour conceded that he was taking a 'bold step' in holding that an individual has a civil cause of action for damages based upon the right to privacy.

He identified what he considered to be the essential elements of the cause of action for invasion of privacy:

- A willed act by the defendant,
- which intrudes upon the privacy or seclusion of the plaintiff
- in a manner which would be considered highly offensive to a reasonable person of ordinary sensibilities
- and which causes the plaintiff detriment in the form of mental, psychological or emotional harm or distress or which prevents or hinders the plaintiff from doing an act which she is lawfully entitled to do.

The trial judge made no findings in relation to negligent acts on the basis that the defendant's actions had been willed. His Honour found that a defence of public interest could be raised to a tortious claim for invasion of privacy, but not on the facts of the present case.

OTHER FINDINGS

The trial judge observed that in *Lenah* the court recognised harassment as a possible further developing tort. His

Honour declined to make specific findings in this regard, although he found that harassment was synonymous with stalking.

However, he found that the plaintiff had made out claims for intentional infliction of harm, trespass, nuisance, and battery.

DAMAGES

The trial judge assessed the plaintiff's damages as follows:

PTSD	\$50,000
Wounded feelings	\$20,000
Vindictory damages	\$25,000
Future economic loss	\$10,000
Future treatment	\$3000
Aggravated damages	\$50,000
Exemplary damages	\$20,000
TOTAL	\$178,000

Damages awarded for intentional infliction of harm, trespass and nuisance were found to partly duplicate the damages awarded for the invasion of privacy.

CONCLUSION

As the trial judge noted, the decision in *Grosse* is a bold step. The defendant has appealed the decision and the media has worked itself into a lather over the potential impact of the decision. A number of prominent media lawyers have expressed serious concern that press freedom could be significantly curtailed if the decision is upheld on appeal. One imagines, however, that there is not a great deal of sympathy, publicly or within government, for the paparazzi and the tabloid media. In a climate of ongoing tort reform, we may be seeing the start of the development of a substantially new area of law protecting the rights of the individual. Indeed, the decision and the inevitable public debate may result in the legislature taking steps to ensure that the individual's right to privacy is properly protected. ■

Endnotes: 1 (2002) 208 CLR 199. 2 para 423.