

GUTNICK V DOW JONES & CO INC [2001] VSC 305

Supreme Court of VIC– 28 August 2001

FACTS

An article headed “Unholy Gains” was published in Barrons Magazine and also placed on the Defendant’s website located in New Jersey USA. Dow Jones operated this as a subscriber site and had 1700 subscribers in Australia.

The claim was that the Defendant published words and pictures, including a photo of Mr. Gutnick along with an imputation that the Plaintiff “was masquerading as a reputable citizen when he was a tax evader who had laundered large amounts of money...”

ISSUES

The Court was required to determine jurisdiction on the basis of where the online article was published and forum non-convenience (was Victoria clearly an inappropriate forum).

FINDING

The Court found that publication takes place where and when the contents of the publication are seen and heard. On the facts here, that was when subscribers in Victoria downloaded the article and the State of Victoria has jurisdiction to entertain the proceedings.

The Court considered a number of factors including where the article was published, the plaintiff’s residence and business, seeking to vindicate his Victorian reputation and an undertaking not to sue in no other place in concluding that Victoria is both the appropriate and convenient forum.

QUOTE

Hedigan J

“...the critical issue is where and by whom it was published for the purposes of the law of defamation...publication takes place where and when the contents of the publication, oral or spoken, are seen and heard...and comprehended by the reader or hearer.”

IMPACT

Placing of articles on a website may amount to publication in the state where a subscriber views the article, under the law of defamation.

Further, anyone running a web site should be very careful in relation to defamation, particularly if users of the site can lodge materials published by owners of the web site.