

FEDERAL COURT OF AUSTRALIA

V'landys v Australian Broadcasting Corporation (No 3) [2021] FCA 500

SUMMARY

In accordance with the practice of the Federal Court in cases of public interest, the following summary has been prepared to accompany the orders made today. This summary is intended to assist in understanding the outcome of this proceeding and is not a complete statement of the conclusions reached by the Court. The only authoritative statement of the Court's reasons is that contained in the published reasons for judgment which will be available on the internet on the Court's website. This summary is also available there.

Mr Peter V'landys AM is a prominent and well-respected sports administrator and regulator. He is, amongst many other things, the Chief Executive Officer and member of the Board of Racing NSW, the regulating body for thoroughbred horse racing in New South Wales.

On 17 October 2019, the Australian Broadcasting Corporation broadcast a report of a "special investigation" into the horse racing industry in Australia during an episode of its flagship news and current affairs program, 7.30. The report was also made available for viewing on the internet, as was a transcript of the report. The report, titled "The Final Race: The dark side of the horse racing industry", was authored and presented by the well-known investigative journalist, Ms Caro Meldrum-Hanna.

The report was introduced as being a report which challenged the public assurance given by the racing industry that it "cares for the racehorses in its charge" and which "reveal[ed] what really goes on when racehorses' lives end in knackeries and abattoirs". The report itself included graphic and confronting video footage of the mistreatment and slaughter of former thoroughbred racehorses in an abattoir in Queensland. It also included footage of cruelty to racehorses as they were transported to knackeries for slaughter and commentary by prominent campaigners against cruelty to racehorses who had been interviewed by Ms Meldrum-Hanna.

Insofar as Mr V'landys was concerned, the report contained extracts from an interview that Ms Meldrum-Hanna had conducted with him in his capacity as Chief Executive Officer of Racing NSW. Mr V'landys was essentially the only representative of the thoroughbred racing industry

who was prepared to be interviewed for the report. During the interview, Mr V'landys was questioned, amongst other things, about whether racehorses bred or trained in New South Wales were being slaughtered in abattoirs or knackereries when they retired from racing. In response to those questions, Mr V'landys expressed confidence in the rules that Racing NSW had put in place in an endeavor to prevent that from occurring. Mr V'landys was not aware at the time of the interview, or at any time before the broadcast of the report, that the ABC and Ms Meldrum-Hanna had evidence, including video footage, which suggested that racehorses were in fact ending up in abattoirs and knackereries.

Needless to say, the report did not reflect well on the thoroughbred racing industry, or at least elements of the industry. It would also be fair to say that the juxtaposition of extracts from the interview with Mr V'landys and the graphic images of the mistreatment of former thoroughbred horses did not portray Mr V'landys in a favourable light.

Mr V'landys commenced these proceedings against the ABC and Ms Meldrum-Hanna alleging that he had been defamed by the report. He claimed that the report conveyed four defamatory imputations: first, that in his position of Chief Executive Officer of Racing NSW, he "callously permitted the wholesale slaughter of thoroughbred horses"; second, that he "ignored the cruelty to which thoroughbred horses were subjected to in a Queensland abattoir"; third, that he "dishonestly asserted that no racehorses were sent to knackereries for slaughter in New South Wales when he knew that was untrue"; and fourth, that he "dishonestly asserted that Racing New South Wales cared about the welfare of thoroughbred horses and took adequate steps to protect their welfare when he knew that was untrue".

Mr V'landys claimed compensatory damages for the damage to his reputation and the hurt to his feelings caused by the report. He also claimed aggravated damages on the basis, so he alleged, that the ABC and Ms Meldrum-Hanna acted with malice; that the report was actuated by an improper motive. The central allegation that founded the claim for aggravated damages was that the ABC and Ms Meldrum-Hanna had acted dishonestly and deceitfully because they concealed from Mr V'landys that they had obtained graphic video footage of cruelty to racehorses at the abattoir in Queensland. It was also alleged that it was dishonest in the circumstances to deploy that footage in the report in the way it was deployed.

The ABC and Ms Meldrum-Hanna defended the proceeding. They denied that the report was defamatory or conveyed any of the imputations alleged by Mr V'landys, or any imputations not differing in substance from them. They also denied that Mr V'landys had suffered any loss

or damage arising from the publications and denied the allegations that underpinned Mr V'landys' claim for aggravated damages.

The main issue for consideration and determination by the Court was whether the report published by the ABC conveyed any of the imputations that Mr V'landys claimed it did, or any imputations that did not differ in substance from them.

For the reasons fully explained in the judgment, I was not persuaded that the report conveyed any of the imputations alleged by Mr V'landys, or any imputations that did not differ in substance from them.

In summary, a central element in each of the imputations as pleaded was that the report conveyed to the ordinary reasonable viewer, in one way or another, that Mr V'landys knew that thoroughbred horses were being slaughtered in abattoirs and knackeries and that his denials that that was occurring were untrue and dishonest. I was not persuaded that the report conveyed any such thing.

Rather, the overall impression and message that was conveyed by the report was that the slaughter of racehorses at abattoirs and knackeries was occurring, not because Racing NSW and the other horseracing regulators knowingly permitted it to occur, but because the rules that had supposedly been put in place to stop it from occurring were inadequate and ineffective and were not being effectively policed by the regulators themselves. That allowed unscrupulous elements of the industry, and unscrupulous operators of some abattoirs and knackeries, to exploit the system. The result was that the regulators, including Mr V'landys, did not know that the slaughter of thoroughbreds was occurring; that they were, to put it in colloquial terms, asleep at the wheel.

As I have already noted, it may be accepted that the report did not portray Mr V'landys in a positive light. The ordinary reasonable viewer was likely to have been disturbed and even angered by the graphic footage of cruelty to racehorses. The juxtaposition of that footage and Mr V'landys' confident assertions about the effectiveness of Racing NSW's rules made his assertions look rather foolish. It also tended to convey that the regulators, including Mr V'landys, were ineffective if not incompetent when it came to dealing with the problem of "wastage" in the racing industry. It did not, however, convey that Mr V'landys actually knew that racehorses were being slaughtered and that his denials were callous and dishonest. Nor

did it convey that Mr V'landys permitted the slaughter to occur, or ignored the cruelty to which thoroughbred horses were subjected to in the abattoir in Queensland.

This is only a short summary of the reasoning that led me to conclude that the published report did not convey any of the four imputations pleaded by Mr V'landys. Detailed reasons in respect of each of the four imputations are contained in the judgment.

Given that Mr V'landys was a prominent figure in, and a staunch defender of, the thoroughbred racing industry, there could be no doubt that he would have been and was upset and embarrassed by the report. To succeed in this action, however, it was necessary for him to establish that the report conveyed one or more of the four defamatory imputations that he alleged it conveyed. He failed to do so. As a result, Mr V'landys' application must be dismissed with costs. Those are the orders that will be made.

It was, in those circumstances, strictly unnecessary for me to address Mr V'landys' allegations that the ABC and Ms Meldrum-Hanna acted with malice or an improper motive. Those allegations are relevant only to the question of aggravated damages and that question does not arise in circumstances where the ABC and Ms Meldrum-Hanna have been found not to be liable. Given the seriousness of the allegations and the time spent at the hearing dealing with them, however, it was only fair that I address them.

I have found that the evidence relied on by Mr V'landys does not support the allegation that the ABC and Ms Meldrum-Hanna acted dishonestly and deceitfully in not telling Mr V'landys about the footage taken at the Queensland abattoir, or in deploying that footage in the report in the way it was. Nor does the evidence support the contention that the report was actuated by an improper motive or malice on the part of the ABC or Ms Meldrum-Hanna.

One can perhaps understand why Mr V'landys felt aggrieved that he was not shown the footage from the abattoir, or even made aware of its existence. There could be little doubt that he, like any fair and right-minded person, would have roundly condemned the cruelty depicted in the footage. He was not afforded the opportunity to do so.

It is also not difficult to see why Mr V'landys may have been upset about the way that footage was deployed in the report. The juxtaposition of the footage and the extracts from Mr V'landys' interview meant that the material was presented in a, perhaps, overly dramatic and sensationalist way. It also had the overall effect of conveying a negative impression of Mr V'landys.

On the whole of the evidence, however, I was not persuaded that the ABC and Ms Meldrum-Hanna acted dishonestly, deceitfully or with malice in the way they compiled the report. Again, my full reasons for so finding may be found in the judgment.

JUSTICE MICHAEL WIGNEY

14 May 2021