



HIGH COURT OF AUSTRALIA

10 August 2011

AMANDA CUSH v MERYL LURLINE DILLON

LESLIE FRANCIS BOLAND v MERYL LURLINE DILLON

[2011] HCA 30

Today the High Court dismissed two appeals from the Court of Appeal of the Supreme Court of New South Wales. The appeals were brought by Ms Amanda Cush and Mr Leslie Boland, who claimed to have been defamed by Mrs Meryl Dillon. The Court of Appeal had held that the common law defence of qualified privilege applied to a defamatory statement made by Mrs Dillon unless it could be shown in a new trial that her statement was actuated by malice.

At the time of the defamatory statement, Mr James Croft was the Chairperson of the Board of the Border Rivers-Gwydir Catchment Management Authority ("the CMA"), Ms Cush was the General Manager and Mrs Dillon and Mr Boland were Board members. The defamatory statement was made at a meeting on 8 April 2005 between Mr Croft and Mrs Dillon concerning the management of the CMA. Mrs Dillon said to Mr Croft "it is common knowledge among people in the CMA that Les and Amanda are having an affair". In actions brought by Ms Cush and Mr Boland in the District Court of New South Wales, a jury found that Mrs Dillon had defamed Ms Cush and Mr Boland. The jury found that the defamatory imputations conveyed by the statement were that Mr Boland and Ms Cush were acting unprofessionally in their roles at the CMA, that Mr Boland was unfaithful to his wife and that Ms Cush was undermining Mr Boland's marriage. Mrs Dillon accepted that the content of the statement was not true and said that she did not believe the allegations to be true when she made the statement. Mrs Dillon pleaded in defence that the statement had been made on an occasion of qualified privilege.

The trial judge did not determine whether the occasion for the making of the statement was a privileged one. He held that any privilege which may have attached to the making of the statement had been lost by malice on the part of Mrs Dillon. This conclusion was based upon findings that Mrs Dillon had previously spread the rumour and her belief that the statement was not true. On appeal, the Court of Appeal held that the trial judge had erred in failing to find that the publication had occurred on a privileged occasion. It ordered a new trial on the defence of qualified privilege at common law. Ms Cush and Mr Boland appealed, by special leave, to the High Court of Australia.

The High Court held that the publication had occurred on a privileged occasion. Mrs Dillon had a duty to disclose, and Mr Croft an interest in receiving, information concerning the nature of the relationship between members of the Board and members of staff. The Court held that, in the context in which Mrs Dillon spoke to Mr Croft, there was no relevant distinction in relation to the operation of the privilege between publication of a rumour or the fact of an affair conveyed by the expression "common knowledge". The Court also held that the words used by Mrs Dillon were not extraneous or irrelevant to the occasion of qualified privilege, which can only be destroyed by evidence that the statement was actuated by improper motive, lack of belief in the truth of a statement being insufficient. Accordingly, the Court dismissed the appeals. There will be a new

trial confined to the issue whether qualified privilege at common law was destroyed by malice on the part of Mrs Dillon.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*