



HIGH COURT OF AUSTRALIA

13 June 2018

MILORAD TRKULJA (AKA MICHAEL TRKULJA) v GOOGLE LLC
[2018] HCA 25

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria that summarily dismissed a defamation proceeding brought by the appellant against the respondent.

The appellant claimed that the respondent defamed him by publishing certain search results in response to particular searches made using the Google search engine, for example, "melbourne underworld crime". Those search results included images of the appellant mixed with images of convicted Melbourne criminals, text referring to the appellant, and predictions generated by Google's autocomplete functionality. The search results allegedly conveyed that the appellant was a "hardened and serious criminal in Melbourne", someone in the same league as, or an associate of, other named criminals, and "such a significant figure in the Melbourne criminal underworld that events involving him are recorded on a website that chronicles crime".

The respondent brought an application seeking to set aside the proceeding and its service outside jurisdiction on three bases: first, that it had not published the allegedly defamatory search results; second, that the search results in issue were not defamatory of the appellant; and third, that it was entitled to immunity from suit. The primary judge rejected the application. On appeal, the Court of Appeal considered the first ground but ultimately found it unnecessary to decide that ground, and rejected the third ground. The Court of Appeal upheld the second ground on the basis that the search results were not capable of bearing the defamatory imputations pleaded. The Court of Appeal accordingly held that the appellant's proceeding had no real prospect of success and ordered that the proceeding, and its service, be set aside.

By grant of special leave, the appellant appealed to the High Court. The Court held that it was evident that at least some of the search results complained of had the capacity to convey to an ordinary reasonable person viewing the search results that the appellant was somehow associated with the Melbourne criminal underworld, and, therefore, that the search results had the capacity to convey one or more of the defamatory imputations alleged. The Court of Appeal had therefore erred in concluding that the proceeding had no real prospect of success. The High Court also observed that the Court of Appeal had erred in making a purportedly determinative finding of mixed fact and law that a search engine proprietor, like the respondent, is a publisher of search results, but that an innocent dissemination defence will almost always be maintainable in a period before notification of an alleged defamation. Given the nature of the proceeding, there should not have been a summary determination of issues relating to publication or possible defences, at least until after discovery, and possibly at all. Accordingly, the appeal was allowed.

- *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.*