



HIGH COURT OF AUSTRALIA

Public Information Officer

14 June 2007

JOHN FAIRFAX PUBLICATIONS PTY LTD AND MATTHEW EVANS v ALEKSANDRA GACIC, LJILJANA GACIC AND BRANISLAV CIRIC

The jury in proceedings in a defamation action found that a newspaper had published in a review of the Coco Roco restaurant that its food was unpalatable and the service sometimes bad. However the jury found that the review did not have the tendency to injure the restaurant owners' business reputation. The NSW Court of Appeal found that the jury's decision was unreasonable and directed an answer in favour of the restaurant owners on the question put to the jury. The High Court of Australia today upheld the Court of Appeal's decision.

The Coco Roco restaurant complex – comprising the fine dining Coco and the Roco bistro – opened at King Street Wharf at Darling Harbour in Sydney in 2003 after a \$3 million fitout. After two dinners at Coco, Sydney Morning Herald restaurant critic Matthew Evans gave it a score of nine out of 20 and said Coco was expensive, with many unpalatable flavours, a menu flawed in concept and execution, and good and bad service, and that the best thing was the view. Coco Roco subsequently closed. The owners sued The Sydney Morning Herald's publisher, John Fairfax Publications, and Mr Evans for defamation. Before the trial of any issue by a jury, the NSW Supreme Court ruled that four imputations could be drawn from the review and they were reasonable capable of bearing a defamatory meaning: (a) Coco Roco's owners sell unpalatable food; (b) they charge excessive prices; (c) they provide some bad service; and (d) they are incompetent as restaurant owners because they employ a chef who makes poor-quality food.

At the trial, the jury found that imputations (a) and (c) were conveyed but were not defamatory and (b) and (d) were not conveyed. The restaurant owners appealed to the Court of Appeal in respect of the findings on imputations (a), (c) and (d), arguing that the jury's answers were unreasonable. The Court of Appeal upheld the appeal, finding for the owners on (a) and (c) and remitting (d) for reconsideration by a jury. Fairfax and Mr Evans appealed to the High Court in relation to imputations (a) and (c), arguing that the Court of Appeal exceeded its powers under section 108(3) of the *Supreme Court Act*. This provides that where it appears to the Court of Appeal that upon the evidence a party is entitled as a matter of law to a verdict in the proceedings the Court may direct a verdict and give judgment accordingly. The Court of Appeal concluded that no reasonable jury, properly instructed, could find that imputations (a) and (c) were not defamatory.

The High Court, by a 6-1 majority, dismissed the appeal and upheld the decision of the Court of Appeal. It held that the Court of Appeal properly exercised the power conferred by section 108(3) of the Act to correct unreasonable jury verdicts.

As well as the defamatory nature of imputation (d), further litigation will determine any defences available to Fairfax and Mr Evans and questions of damages.

- *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.*