

\$50,000 for trespass to land by media

TCN Channel Nine Pty Ltd v Anning (2002) 54 NSWLR 333

The ancient tort of trespass to land was given new life by the New South Wales Court of Appeal when it awarded damages of \$50,000 in a case in which no physical damage to property was alleged and no personal injury was proved. The award, for vindication and aggravation, reflected the unanimous court's view of the media intrusion onto private property where the plaintiff, Anning, lived in a caravan and conducted his business.

THE FACTS

Anning had accumulated on his property 70,000 second-hand tyres. He sold some and used others to construct a motorbike racetrack. He was raided by the Environmental Protection Authority (EPA) and prosecuted, although the charges were dismissed.¹ A reporter and cameramen from *A Current Affair* attended and filmed the raid. Channel Nine broadcast the film and a 'media blitz' ensued.²

THE DECISION

The Court of Appeal affirmed the trial judge's finding of liability for trespass, but reassessed Her Honour's award after rejecting Anning's claims for psychiatric injury and exemplary damages.

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PSYCHIATRIC INJURY AND TRESPASS

Anning's claim for anxiety and depressive illness failed on appeal for reasons of remoteness, although he was awarded \$25,000 for vindication and a further \$25,000 aggravated damages.³

'Humiliation, injured feelings and affront to dignity may be a natural and probable consequence of intrusion by the media... Filming on premises..., even with a view to broadcasting, does not, in the normal course, result in personal injury of any kind, including mental trauma, in a person of normal fortitude. Such damage is of a qualitatively different kind to what would normally result, for example, distress, worry, anger, shame, anxiety.'⁴

VINDICATION

The Court of Appeal relied on an obiter comment by a High Court minority⁵ to the effect that a plaintiff is entitled to 'substantial' damages to vindicate the 'right of property' following a trespass by police officers, for 'distress' and 'aggravation' and because 'if the courts...do not uphold the rights of individuals...they invite anarchy'.

Spigelman CJ, with whom the other justices in *Anning* agreed, extended these comments to a media trespass: 'Although the law has been particularly protective of persons from intrusion on the part of the organs of government, it should be no less protective in the case of other powerful sections of society [including] the mass media.'⁶

AGGRAVATION

Spigelman CJ held that 'embarrass-

ment and outrage...is recoverable in an action for trespass to land by way of aggravated damages'⁷ and that the 'hurt to feelings, humiliation and affront to dignity experienced by [Anning] was aggravated by the way in which [Channel Nine] acted'.⁸

EXEMPLARY DAMAGES

Exemplary damages were refused on the court's reassessment of damages. There was no invasion of 'personal' privacy or any evidence that the Channel Nine employees failed to leave the property when asked to do so, and there was a 'genuine public interest' in the raid.⁹

COMMENT

Aggravated damages are variously described as being for 'anger', 'anxiety', 'disappointment', 'distress', 'humiliation', 'inconvenience', 'vexation' and 'worry'. Recently, they have been attached to property damage in negligence¹⁰ and false imprisonment.¹¹ They are largely discretionary in nature and difficult to test or challenge, prompting parliaments to curtail their availability.¹²

If nominal damages fail to do justice where no physical or psychiatric injury is proved, a neater basis for vindicating a successful plaintiff may simply be to permit the recovery of his or her solicitor-client costs. **PL**

Endnotes: 1 at 336, 339. 2 at 356-358. 3 at 365. 4 at 354. 5 *Plenty v Dillon* (1991) 171 CLR 635 at 654-655. 6 at 346. 7 at 355. 8 at 365. 9 at 366. 10 *Campbelltown City Council v Mackay* (1988) 15 NSWLR 501; *Rentokil Pty Ltd v Channon* (1990) 19 NSWLR 417. 11 *Myer Stores Ltd v Soo* [1991] 2 VR 597. 12 See for example *Civil Liability Act 2002* (NSW), s 21.