

FEDERAL COURT OF AUSTRALIA

Al Muderis v Nine Network Australia Pty Limited (Trial Judgment) [2025] FCA 909

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 made available on the internet at the Court's website. This summary is also available there.

Dr Munjed Al Muderis, an orthopaedic surgeon, has brought an action in this Court for defamation against Nine Network Australia Pty Limited, Fairfax Media Publications Pty Limited, The Age Company Pty Limited and journalists, Ms Charlotte Grieve, Mr Tom Steinfort and Ms Natalie Clancy, in relation to television, video and newspaper (print and online) publications published in September 2022.

There are seven matters sued on:

- (1) a promotion for the then upcoming episode of 60 Minutes entitled “Sneak Peek: Cut to the Point”, published on 8 September 2022;
- (2) an episode of 60 Minutes entitled “Cut to the Point”, broadcasted on 18 September 2022;
- (3) a print article in the Sydney Morning Herald newspaper entitled “Surgeon ‘botched amputee aftercare’”, published on 19 September 2022;
- (4) an article on the Sydney Morning Herald’s website entitled “Oozing and maggots: The stories one of Australia’s most celebrated surgeons doesn’t want you to hear”, published on 18 September 2022;
- (5) a print article in The Age newspaper entitled “Celebrity Surgeon ‘left patients in pain, to rot’”, published on 19 September 2022;

- (6) an article on The Age’s website entitled “Oozing and maggots: The stories one of Australia’s most celebrated surgeons doesn’t want you to hear”, published on 18 September 2022; and
- (7) a video on The Age’s website entitled “Oozing and maggots: The stories one of Australia’s most celebrated surgeons doesn’t want you to hear”, published on 18 September 2022.

Together, these matters are referred to as the Publications.

It is not disputed that at the time of publication, Dr Al Muderis had a high profile. He had featured on the television programs 60 Minutes (a separate episode to the subject of these proceedings), Foreign Correspondent, Inside Story and Anh’s Brush with Fame. On his own account he was one of the busiest orthopaedic surgeons in Sydney. He is known particularly for his work in osseointegration surgery. He held several clinical, consultant, academic and other professional appointments. He is a prolific author, accomplished public speaker (including at significant forums), the recipient of many awards for his medical and humanitarian achievements and was the 2020 NSW Australian of the Year. His fame was also because of his backstory; from escaping Iraq as a refugee, to holding various positions and obtaining various achievements. The respondents described his reputation as “glittering”.

The matters published stemmed from a joint investigation conducted from May 2022 until the date of publication, between 60 Minutes, The Age and the Sydney Morning Herald, into information that had been obtained that portrayed a different picture of Dr Al Muderis. Although the respondents’ accepted Dr Al Muderis is, to many, an Australian hero who has devoted much of his life’s work to helping amputees walk again, they contended their investigation revealed there is a significant cohort of patients who are unhappy and negatively impacted by Dr Al Muderis’ services. The journalists were of the belief the information then available to the public of Dr Al Muderis’ practice was critically incomplete.

The applicant alleges the 7 matters convey 75 defamatory imputations. It is unnecessary to repeat them, and they are annexed to the judgment.

The first issue is whether the imputations alleged by the applicant were conveyed to the ordinary reasonable reader or viewer. The respondents denied two imputations were carried. I have found neither of the denied imputations are carried. An issue also arose in relation to 18 imputations, where the meaning was disputed by the respondents such that if the respondents

were correct as to how the applicant conducted his case, they contended those imputations were also not conveyed (the Disputed Imputations). That issue in the first instance turned on whether the applicant, by his imputations using such terms as surgery, relied on a meaning of that term in the narrow sense, that is, confined to what occurred in the operating theatre which is described by the applicant as involving taking a scalpel to a patient (as compared to its meaning in the broader context which includes conduct encompassing pre-operative and post-operative consultations, considerations and care). I accept the respondents' submission that the applicant conducted his case on the basis of the meaning of the terms in the Disputed Imputations as surgery in the narrow sense. I have found those Disputed Imputations have not been conveyed. The ordinary reasonable viewers/readers would have understood the Publications as conveying that Dr Al Muderis has engaged in negligence (understood in the manner I will describe in a moment) or other discreditable conduct in his practice as a surgeon generally, and particularly in relation to the disclosure of risks and complications, patient selection and post-operative care. The remaining imputations were conceded to have been conveyed.

Given my findings as to the imputations conveyed, it has not been established that any of the imputations relied on by the applicant as to the Sneak Peek are carried.

I turn to the defences relied on by the respondents. The defences relate to the remaining publications, in which many imputations were conveyed. The respondents bear the onus of establishing any defence.

They are the defences of justification (substantial truth) to most of the imputations, contextual truth, public interest and honest opinion, relying on ss 25, 26, 29A and 31 of the *Defamation Act 2005* (NSW). With respect to the defence of justification or substantial truth, as the respondents did not plead this defence for four imputations, and as it is a complete defence only where all the imputations are substantially true, it cannot succeed. The respondents submitted in closing, that on justification, this is a case of contextual truth.

It is appropriate to address the defence of contextual truth first. Before considering this defence, it is important to note this is not a medical negligence case and the relevant issues are determined based on the principles applicable in defamation proceedings.

The pleaded imputations fall to be considered by reference to the ordinary meaning of terms, not their legal meanings, because it is the way the terms would be understood by ordinary reasonable people, not lawyers, and not taken to have a detailed knowledge of the law. One

term pleaded in the imputations was negligence, although that term does not appear in the Publications. I accept the respondents' submission that in so far as the Publications conveyed meanings that Dr Al Muderis had acted "negligently", they would have been understood by ordinary reasonable viewers and readers as amounting to an allegation that Dr Al Muderis had acted with neglect, by failing to conduct himself with the level of care, skill and attention that an ordinary person in the position of his patients would have expected. Another term pleaded is unethical. I accept the respondents' submission that in the context of the Publications, "unethical" meant conduct that fell short of the standards of honesty, integrity, candour, morality or propriety an ordinary person in the position of Dr Al Muderis' patients would have expected.

As already mentioned, there were a significant number of imputations pleaded, some in general terms, and others specific to a patient. There was much overlap. The Publications convey that for a cohort of patients, Dr Al Muderis similarly did or failed to do certain things (e.g. failing to explain or downplaying the risks and complications, failing to provide adequate post-operative care). What is conveyed is that there is a cohort of patients negatively impacted by Dr Al Muderis' services and that the conduct occurred with sufficient frequency such that the patients' experiences are more than a coincidence. As the respondents described, the patients are not outliers or anomalies. This is in a context where it is also conveyed that there are many patients who have had positive experiences. My findings must be understood in that light.

Noting the number of imputations, and overlap, I consider that the Publications would have been understood by ordinary viewers and readers to convey defamatory stings covering conduct in relation to various aspects of Dr Al Muderis' practice including using improper sales tactics; misleading osseointegration patients (e.g. providing false promises, downplaying the risks and complications of osseointegration surgery to patients); engaging in poor patient selection for osseointegration surgery (including by performing inadequate assessments); providing negligent post-operative care; performing surgery illegally in the United States; prioritising money, fame, reputation and numbers over his patients; and engaging in unethical conduct.

The respondents presented their case on this defence by reference to patient case studies, being 22 patient case studies in relation to osseointegration patients spanning from 2013 to shortly before the Publications (with some patients still consulting Dr Al Muderis then). In addition, there are four principal case studies in relation to the orthopaedic patients, with the others being

more limited (where I have considered discrete aspects of their experiences with Dr Al Muderis). The orthopaedic cases span from 2011 to 2021 (the four principal cases from 2011 to 2020). As will be apparent, this involves a consideration of patient case studies broader than that presented in the Publications.

In considering whether the substantial truth of the contextual imputations has been established, I have considered the evidence in the patient case studies, in the context of the relevant evidence more generally. I have also considered the submissions advanced by the parties. It is not practical for me to summarise the evidence and my findings and conclusions, which are set out in the reasons. Suffice to say, as will have been apparent from the consideration of each case study, there are similarities between what the patients said had occurred. As will also be apparent from my discussion in the patient case studies, much of their evidence is supported by other evidence.

A defence of contextual truth, by its nature, admits of some factual errors in a publication. The Court determines whether the matters relied on as contextual imputations have been established to be substantially true. I have found that the respondents have established the substantial truth of many of the contextual truth imputations, including imputations which carry stings of: using improper sales tactics; misleading osseointegration patients (including downplaying the risks and complications of osseointegration surgery to patients); engaging in poor patient selection for osseointegration surgery; providing negligent post-operative care; prioritising money, fame, reputation and numbers over his patients and engaging in unethical conduct.

The Court then assessed whether as a result of the substantial truth of the contextual imputations, the defamatory imputations (those not established to be substantially true) do not further harm the reputation of an applicant. In determining that, the Court considers the facts, matters and circumstances relied upon to support the substantial truth of the contextual imputations rather than the terms of the imputations themselves. It is the combined effect of all the contextual imputations which is considered. The nature of the defamatory imputations is relevant. Not all imputations are equal.

Having conducted the weighing process in respect to each publication in which imputations have been conveyed, being the Broadcast, the Articles and the Grieve Video, in the context of the findings made and having regard to the facts, matters and circumstances relied upon to support the findings of the contextual imputations I have found to be established, I am satisfied

no further harm is caused by the defamatory imputations in respect to each of the publications. That is because the imputations found to be substantially true, having regard to the facts, matters and circumstances which I have accepted, are of such seriousness, that no further harm is caused by the residual defamatory imputations.

I have found that the respondents have established the contextual truth defence in respect to the Broadcast, the Articles and the Grieve Video (noting that it was not established that the imputations as relied on by the applicant were conveyed in the Sneak Peek).

Turning to the defence of public interest in s 29A of the *Defamation Act*. This requires three elements to be satisfied. *First*, the matter concerns an issue of public interest. *Second*, that the respondent believed the publication of the matter was in the public interest, being concerned with their subjective belief. *Third*, that the respondent's subjective belief that the publication of the matter was in the public interest was objectively reasonable. Given the topic of the Publications, there can be no real issue that the topic concerns an issue of public interest. The focus is on the belief. Flaws in a matter will not necessarily preclude the application of the defence.

I accept the evidence of the journalists, Ms Grieve, Mr Steinfort and Ms Clancy that they each held a subjective belief that the Publications were in the public interest. The journalists' descriptions of the public interest centred around a belief that the information then available to the public of Dr Al Muderis' practice was critically incomplete. The positive media coverage his practice had enjoyed needed correcting, and the investigation revealed another side of his practice. That a number of Dr Al Muderis' patients had negative experiences with significant similarities was something the public, especially prospective patients, needed to be informed of given the nature of his practice and osseointegration surgery. Patients should be making their decisions with both sides of the story. Having considered the evidence, including the information before them (and the submissions advanced by the parties), I am also satisfied that the respondents have established that the beliefs they held were objectively reasonable.

Accordingly, I have found that in relation to the relevant publications, the respondents' public interest defence has been established.

Given my findings in respect to contextual truth and public interest, I did not consider it necessary to address the honest opinion defence.

Accordingly, the application is dismissed.

ABRAHAM J

8 AUGUST 2025

SYDNEY