

1 MR GILBERTSON: If Your Honour pleases, I appear with my
2 learned friend Ms Porter for the plaintiffs in the
3 contract proceeding and the defendants in the defamation
4 proceeding.

5 HIS HONOUR: Thank you, Mr Gilbertson.

6 MR DIBB: If the court pleases, Christopher Dibb. I appear for
7 Mr Cripps, the plaintiff in the defamation proceeding and
8 the defendant in the contract proceeding, and also for
9 Redleg Services, which is the second plaintiff and second
10 defendant.

11 MR GILBERTSON: Just two housekeeping matters, Your Honour.
12 There is an amended statement of claim which I'm
13 instructed was filed in the contract proceeding. I
14 notice from the email correspondence from late last week
15 that the - and for simplicity I'll call them the
16 plaintiffs.

17 The plaintiffs solicitors have forwarded the
18 original statement of claim as I think the second last
19 document in their court book. There was an amended
20 statement of claim which was filed on my instructions
21 which all it did was amend one of the figures downwards.
22 I don't know whether Your Honour has a copy of that
23 amended statement of claim but I have a spare.

24 HIS HONOUR: If you do that might be the easiest course. We
25 can check the file later to see whether it's there.

26 MR GILBERTSON: If I could hand up a copy of the amended
27 statement of claim.

28 HIS HONOUR: I think I have seen this but we'll check the file
29 later.

30 MR GILBERTSON: Thank you, Your Honour. You will see there is
31 an amendment and it should be on the third last page

1 under the particulars, Paragraph 9.

2 HIS HONOUR: Yes.

3 MR GILBERTSON: That's the only change.

4 HIS HONOUR: Yes, thank you.

5 MR GILBERTSON: The other housekeeping matter, Your Honour, is
6 that there's been some correspondence in relation to who
7 should go first and it's been agreed between the parties,
8 if it's convenient to Your Honour, that I will go first
9 on all issues.

10 HIS HONOUR: That's fine.

11 MR GILBERTSON: My learned friend wants to raise a matter,
12 Your Honour.

13 HIS HONOUR: Yes, thank you.

14 MR DIBB: There's just one. Most of the arguments between us
15 can wait til the end of the evidence in my submission,
16 Your Honour, but there's one matter that I think might be
17 conveniently dealt with first. The defendants, as I
18 think we're agreeing to call them, the first defendant in
19 his second further amended defence pleads that the first
20 Vakras article - - -

21 HIS HONOUR: Do I need to look at this document?

22 MR DIBB: If you don't mind.

23 HIS HONOUR: Where is it in the court book?

24 MR DIBB: It's Paragraph 5 of the document.

25 HIS HONOUR: Sorry, which page?

26 MR DIBB: Of the second further amended defence of the first
27 defendant.

28 MR GILBERTSON: It should be Document 4 in your court book.

29 HIS HONOUR: Document 4 in?

30 MR GILBERTSON: The plaintiff's book.

31 HIS HONOUR: Sorry, what paragraph is it?

1 MR DIBB: Paragraph 5, Your Honour. Your Honour will see that
2 the first defendant says he admits the allegations made
3 in Paragraph 5, and Paragraph 5 of the further amended
4 statement of claim Your Honour will see is in about
5 August 2009 the first defendant wrote and first uploaded
6 the words, first Vakras article reproduced and accessible
7 from (indistinct 10.36.03) is also at www.vakras.com,
8 Guildford Lane Gallery, which is Annexure A to the
9 statement of claim.

10 Incidentally I have for Your Honour's benefit, the
11 annexures to the statement of claim are not terribly
12 clear. I've made an A3 blow-up of the matters complained
13 of, A, B and C, which Your Honour might find more useful.
14 The lack of clarity isn't improved but it is at least
15 bigger and easier to read.

16 MR GILBERTSON: There was a difficulty, Your Honour, in that
17 the copy that has been provided to Your Honour is marked,
18 and I see, if I have a cursory look at this, this hasn't
19 been marked.

20 HIS HONOUR: Thank you very much. Yes, I'll receive that,
21 thank you. If you're not proposing to tender this as an
22 exhibit I'll just mark it for identification.

23 MR DIBB: I'll tender it when I open my case, Your Honour, yes.

24 HIS HONOUR: Thank you.

25 MR DIBB: For the time being it's marked for identification 1
26 is it, Your Honour?

27
28 EXHIBIT 1 - (For identification) A3 version of
29 Annexures A, B, C to further amended
30 statement of claim.

31 MR DIBB: To return to the second further amended defence of
32 the first defendant, Your Honour will see that in
33 Paragraph 5 he admits the allegation, that is, that he

1 wrote and uploaded those words, but after the comma
2 there, together with the hyperlinks referred to in the
3 words, all of which the defendants will rely upon a
4 trial. Earlier in these proceedings there was an
5 interlocutory application before Justice Beach to strike
6 out those words, and the argument made at that time was
7 that the defendant could not unilaterally expand the
8 matter complained of to bring in other matters that the
9 plaintiff wasn't pleading, and there are separate
10 publications.

11 His Honour decided that it wasn't appropriate to
12 strike it out at that time, that he would leave it to the
13 trial judge, and that of course is now Your Honour. It
14 goes to the meanings conveyed and it may - I'm not quite
15 sure of my learned friend's plan to make use of this
16 material for, but it may go also to matters of defence,
17 in particular to the defensive comment which requires, as
18 Your Honour no doubt knows, that there be proper material
19 for comment, which is facts truly stated in the matter
20 complained of.

21 I don't know and my learned friend hasn't told me
22 whether he proposes to rely on some facts in these
23 extraneous documents as supporting that defence. I don't
24 know if he plans to argue that in the light of this
25 additional material the matter complained of doesn't
26 convey any of the meanings that we say it conveys or
27 whether he will have recourse to it to support the
28 meanings that he says are conveyed, his Polly Peck type
29 nuance meanings and so forth.

30 It seems to me that it's a very clear matter and it
31 might make the trial just a bit more straight forward if

1 Your Honour rules on that issue at this stage.

2 HIS HONOUR: As to whether the words - - -

3 MR DIBB: As to whether the hyperlink material forms part of
4 the matter complained of.

5 HIS HONOUR: You say your clients don't rely on it, it's not
6 part of what your clients complain about?

7 MR DIBB: It's a separate publication, Your Honour, and I will
8 take Your Honour - I'm seeking Your Honour's indication
9 whether Your Honour wishes to hear that argument now as I
10 may propose or whether - - -

11 HIS HONOUR: Yes. What do you say about the appropriateness of
12 doing that now?

13 MR GILBERTSON: In our submission it's more appropriate later.
14 I can take Your Honour to the relevant authorities but it
15 will ultimately, in our submission, be a question of
16 whether Your Honour is satisfied that they hyperlinks
17 make the publication a single composite article or not.
18 In our submission that can be done later. It should not
19 affect the evidence to any significant degree, and rather
20 than have part of the final address now, in our
21 submission it would be more convenient to deal with it
22 later.

23 HIS HONOUR: Is there any specific authority on this?

24 MR GILBERTSON: There is.

25 HIS HONOUR: The substance of the issue, that is, where an item
26 is placed on the internet with hyperlinks, whether the
27 hyperlinks are treated as forming part of what is
28 published on the occasion?

29 MR GILBERTSON: There are, Your Honour, and I have copies of
30 these authorities but I'll give you the citations now.
31 They're well down in my pile but I'll grab them.

1 HIS HONOUR: What do you say the authorities say?

2 MR GILBERTSON: They say that the question for Your Honour is
3 whether you're satisfied it's a single composite article
4 or not.

5 HIS HONOUR: So it really depends on the context and text and
6 layout and so on of the article published and there's no
7 automatic rule one way or the other, is that - - -

8 MR GILBERTSON: That's so, and it depends upon where the page
9 is located; is it located on the same server, is it part
10 of the same web page as it were, all these types of
11 factors.

12 HIS HONOUR: You say that this issue does not need to be
13 decided now because contrary to what's been put against
14 you it will not change the scope or direction of the
15 evidence or the trial as a whole, is that - - -

16 MR GILBERTSON: Not to a material degree.

17 HIS HONOUR: All right. I think at this stage I'm inclined to
18 just learn a bit more about the case and defer the issue.
19 As to the point at which it becomes appropriate to
20 determine it, I don't know at the moment. It may be that
21 it's not right at the end but I think I just want to hear
22 the opening and just get my mind around the documents.
23 Regrettably I haven't been able to do as much reading
24 about the case as I had intended, partly because I was
25 the duty judge and I was called in on the weekend to deal
26 with an urgent matter so that eroded the time that I had.

27 MR GILBERTSON: I intended to take Your Honour through a lot of
28 the documents in my opening.

29 HIS HONOUR: Yes, all right. We'll come back to this issue.
30 Thank you.

31 MR DIBB: Thank you, Your Honour. I would say that it will be

1 my contention that the authorities say that the plaintiff
2 can set out the field of battle. I don't cavil with
3 Your Honour's ruling, I just indicate that I don't say
4 the authorities (indistinct) defence.

5 HIS HONOUR: Yes. I didn't think that you would agree with
6 him, having made the application in the first place.
7 Right, thank you.

8 MR GILBERTSON: Is it convenient to start, Your Honour?

9 HIS HONOUR: Yes, it is, thank you.

10 MR GILBERTSON: Your Honour, Demetrious Vakras and Lee-Anne
11 Raymond are surrealist artists. They met in 1983 while
12 Mr Vakras was enrolled in Arts at Universal and
13 Ms Raymond was training to become a nurse. They have
14 continued to paint, draw and produce digital art ever
15 since. If I could say something generally about
16 surrealism. Surrealism is a provocative and confronting
17 literary and art form. It began, so far as my historical
18 researchers can tell, as a literary art form in the early
19 20th century in Paris.

20 The word was apparently first coined by the French
21 poet and playwright Guillaume Apollinaire, that's
22 A-p-o-l-l-i-n-a-i-r-e, in a play of his called Les
23 mamelles de Tiresias, that's T-i-r-e-s-i-a-s. Tiresias
24 was a character in Greek mythology who was a clairvoyant
25 who had been turned into a woman for seven years. After
26 Apollinaire the interest of several artists became more
27 involved in surrealism.

28 During the First World War there was a movement
29 known as Dada, D-a-d-a, which was avant garde European
30 literary and art movement. Although there's a lot of
31 conjecture about the proper limits of surrealism, if

1 there are proper limits, at the time many of those who
2 were involved in Dada believed that excessive rational
3 thought and conservative values had brought the conflict
4 of the war upon the world.

5 There were several anti art gatherings in Paris
6 where anti art is used as a loosely defined term that's
7 applied to concepts and attitudes that reject prior
8 definitions of art and question art in general. During
9 the First World War Andre Breton, B-r-e-t-o-n, who was a
10 French writer and poet had joined in these Dada
11 activities and he experimented in what became known as
12 automatic writing which is spontaneously writing without
13 censoring of thoughts.

14 Just to end this general excursus of surrealism,
15 Breton described this literary movement as an expression
16 of the psyche without control, that ideas and words were
17 expressed as they come to the writer and poet, and the
18 visual form of surrealism such as painting and drawing
19 arose sometime later mainly by the works of a man called
20 Giorgio de Chirico, C-h-i-r-i-c-o, and grew to include
21 people like Salvador Dali and the French poet, Jacques
22 Prevert, P-r-e-v-e-r-t.

23 If I could move from general surrealism to the first
24 meeting or the first time the defendants came across
25 Mr Cripps. In August 2008 Demetrious Vakras and Lee-Anne
26 Raymond went to an exhibition at the Guildford Lane
27 Gallery which is in the Melbourne CBD. It runs east from
28 Queen Street between Little Lonsdale and Latrobe Streets.
29 The defendants went to an exhibition of the work of an
30 artist by the name of Nina Sellars, S-e-l-l-a-r-s.

31 She produced an exhibition to showcase the works of

1 a Greek Cypriot Australian performance artist by the name
2 of Stelarc, S-t-e-l-a-r-c, whose work focused on
3 extending the capabilities of the human body. His most
4 famous work, Your Honour, is called The Third Ear, which
5 involved a cell cultivated ear being surgically attached
6 to his arm. It was photographed by Sellars and this is
7 what formed the subject of the exhibition in August 2008
8 at the Guildford Lane Gallery.

9 Mr Cripps gave a speech at the exhibition and so did
10 Stelarc. Following that exhibition in September 2008 the
11 defendants put in an application to the Guildford Lane
12 Gallery. Does Your Honour have a copy of the defendant's
13 court book?

14 HIS HONOUR: Yes, I do.

15 MR GILBERTSON: I'll take Your Honour through a number of the
16 documents.

17 HIS HONOUR: Yes, I've got that.

18 MR GILBERTSON: Document 1, Your Honour, in the defendant's
19 court book is the application put in by Ms Raymond to the
20 Guildford Lane Gallery on 21 September 2008. You will
21 see it provides for name, Raymond, Lee-Anne, it gives the
22 address, email, web, preferred duration two to three
23 weeks, first preferred month June 2009, from the 16th if
24 possible. Then it says in the box towards the bottom,
25 "Painting oils on canvas, unframed digital prints framed,
26 hung, delivery access required for one tonne van for
27 delivery during installation and take down of art works."

28 That was hand delivered to the Guildford Lane
29 Gallery on that day. The next month in October 2008
30 Ms Raymond received an email from Stacy Jewell at the
31 Guildford Lane Gallery, which is the document behind Tab

1 2. The email is from Stacy Jewell, date 29 October 2008,
2 re Guildford Lane Gallery exhibition proposal. "Lee-Anne
3 Raymond, we are pleased to inform you that we have
4 accepted your proposal for Guildford Lane Gallery.
5 Please find attached a formal letter of offer."

6 The letter of offer, Your Honour, is in the next tab
7 to Lee-Anne Raymon, R-a-y-m-o-n. Your Honour will see it
8 says, "Dear Lee-Anne, we're delighted to approve your
9 exhibition proposal ...(reads)... exhibition agreement
10 will be sent out to you". Your Honour will see it
11 provides, although it's blank for a signature by
12 Yolande Pickett, exhibitions manager. On 11 December
13 2008 Ms Raymond sent an email to Yolande Pickett which
14 appears behind Tab 4, 12 December 2008. It's the email
15 towards the bottom of the page, Your Honour.

16 HIS HONOUR: Yes.

17 MR GILERTSON: "Hello, Yolande, just wondering if the gallery
18 uses a preferred ...(reads)... Many thanks, Lee-Anne
19 Raymond". Ms Pickett then responds in the email above it
20 on 12 December 2008, "Hi, Lee-Anne, as a new gallery and
21 one that doesn't generally ...(reads)... do it next
22 week". Then, Your Honour, if I could take the court to a
23 meeting that took place at the Guildford Lane Gallery on
24 23 January 2009.

25 This was prompted by firstly, an email on
26 29 December 2008 from Ms Raymond to Yolande Pickett which
27 is behind Tab 5. The first page of Tab 5 towards the
28 bottom it says on 29 December 2008 at 3.56 p.m., "Hi
29 Yolande, seasons greeting and happy New Year in advance
30 ...(reads)... to go towards this". Then Ms Pickett
31 replies on 2 January which is on the next page in an

1 email from manager@guildfordlanegallery.org to
2 leanneart@iinet.net.au, "Dear Lee-Anne, thank you for
3 your email and happy New Year to you ...(reads)...
4 opening 6 p.m. Thursday, 18 June".

5 Your Honour will see that it says, "Space, the
6 entire first floor less the open studio. Please see
7 attached floor plan". If Your Honour goes back one page
8 there's a copy of the Guildford Lane Gallery first floor
9 and in the bottom right of the square box there's another
10 smaller square box that's labelled "Artist studio".

11 HIS HONOUR: Yes, I see that.

12 MR GILERTSON: And it's given then back on the next page, in
13 the paragraph under Space, below that, "The cost to hire
14 these areas of the first floor for three weeks is \$3465
15 including GST". On 21 January Ms Raymond sent an email
16 to Yolande Pickett which appears in Tab 6. Towards the
17 middle of the page Your Honour will see on 21 January
18 2009, "Hi Yolande, I can't get away early from work so
19 just confirming Demetrious and I will see you this Friday
20 at 4 p.m.".

21 What happened on 23 January was the defendants went
22 to the Guildford Lane Gallery and they met Ms Pickett who
23 took them to the first floor where Mr Cripps came in
24 shortly thereafter and there was some discussions,
25 although the evidence will be that Mr Cripps did not say
26 very much during this initial meeting and I'm going to
27 refer to a number of conversations in this opening, Your
28 Honour, and although I might use direct speech, what's
29 intended to be for the purposes of an opening is that I
30 will be going through what the substance of what was
31 said. The evidence naturally may vary from what I put as

1 the direct speech.

2 The discussions were about what the defendants
3 intended to do at the exhibition and that included having
4 a catalogue. Ms Raymond said it would be a challenging
5 exhibition and in relation to the catalogue Mr Cripps
6 asked if it would be like the one for the art visionary
7 exhibition at the Orange Gallery in New South Wales and
8 Mr Vakros responded not really. He said ours is a
9 surrealist show, the art visionary one was mystical and
10 religious. He said, that's Mr Vakras, that their
11 exhibition will be a challenge to religion.

12 Mr Vakras spoke about what they proposed and that is
13 that their exhibition was to restore the historic
14 understanding of surrealism as an art form borne out of
15 the literary movement. Mr Cripps made a comment about a
16 fellow by the Alan Sisley, S-i-s-l-e-y, who was the
17 director of the Orange Gallery that I've just referred, a
18 reference about that man fried his brains on drugs in the
19 1970's. So it gives the context that Mr Cripps had some
20 knowledge of Ms Sisley and had some knowledge of the art
21 visionary exhibition at Orange in New South Wales.

22 Ms Raymond said that a significant point for the
23 defendants was to hold their exhibition at this time
24 reaffirming surrealisms origin because at the same time
25 there was an exhibition by Salvador Dali at the National
26 Gallery of Victoria and Ms Raymond said that their
27 exhibition was in part to provide a counterpart to the
28 Dali exhibition. It was discussed at this meeting that
29 the defendants would be producing an artist's manifesto
30 as part of the catalogue and Mr Vakras brought along
31 copies of a publication of his from a book called

1 Carnivora, C-a-r-n-i-v-o-r-a which is not - there was
2 some confusion in the later discussions about whether
3 this document Carnivora would be the defendant's
4 catalogue.

5 It wasn't intended to be and I think that confusion
6 was ultimately resolved between the parties by their
7 discussions. But Ms Pickett said that they would have
8 this document Carnivora available for sale downstairs and
9 Ms Raymond asked or said that they could source the
10 copies of the documents and Ms Pickett responded, no,
11 that they would go directly to the publisher.

12 If I could then take the court to discussions about
13 the open studio. The defendants, Ms Pickett and
14 Mr Cripps, were standing near the area of the first floor
15 known as the open studio and Ms Raymond said words to the
16 effect that they would have to include that area in their
17 exhibitions. She said they didn't want other artists
18 work distracting or intruding on their exhibition and
19 Ms Raymond asked Ms Pickett have we got this section as
20 well and Ms Pickett responded, no, that's a separate hire
21 and Ms Raymond said that it was their intention to hire
22 the whole floor, it would be a disturbance and asked how
23 much that space would be and Ms Pickett responded that
24 she'd have to check, it's already been booked.

25 Mr Vakras said that they would be producing, that is
26 the defendants, would be producing invitation cards and
27 Mr Cripps said that the defendants should have those
28 invitation cards available for the Dali exhibition and
29 that his volunteers would stand outside the National
30 Gallery and hand them out and Ms Pickett said, well,
31 that's what our volunteers are for.

1 There was also a discussion, Your Honour, as to
2 whether the gallery looks after sales. Ms Raymond said
3 that they had a swipe machine and one or both of Yolande
4 Pickett or Mr Cripps said the gallery had banking
5 facilities and could take care of sales and Ms Pickett
6 said that they had letters of support. This discussion
7 it will be submitted later, Your Honour, is relevant not
8 only to the contract claim but also to the justification
9 defences by both defendants.

10 There was some email correspondence then in relation
11 to the open studio. If I could take Your Honour to Tab 7
12 of the defendants court book. On 24 January 2009
13 Ms Raymond sent an email to Yolande Pickett which is the
14 first document behind Tab 7. "Hi Yolande, good to meet
15 you yesterday and to catch Robert ...(reads)... could we
16 do so though", and you'll see that email ends, "At our
17 meeting I forgot to request a letter of support
18 ...(reads)... would be fine too".

19 Ms Raymond received a response from Yolande Pickett
20 on 10 February which is the next document in the same
21 tab. "Hi Lee-Anne, please find attached your exhibition
22 agreement ...(reads)... \$3960 including GST". The
23 document that was attached, Your Honour, is the document
24 behind Tab 8. You'll see it provides for the hirer Lee-
25 Anne Raymond, the gallery is Guildford Lane Gallery and
26 on 17 March 2009 the defendants signed the exhibition
27 agreement but before they signed Mr Vakras's name was
28 included as the hirer and the letters IST were added
29 after the word "human".

30 Your Honour will see in Paragraph 1(b) in the
31 document we're looking at at the moment it says, "The

1 gallery will hire the gallery space to the ...(reads)...
2 exhibition Human - trans humanist". The final version of
3 the written document is at Tab 16 where Your Honour will
4 see the hirer is now Lee-Anne Raymond and Demetrious
5 Vakras and the word human has added the letters "ist" at
6 the end. If Your Honour goes to the end of that document
7 it's signed by the defendants on 17 March 2009 and
8 there's a signature next to the name Yolande Pickett on
9 25 May 2009.

10 HIS HONOUR: Is that the best copy of the signed version
11 because it's very difficult to read? It seems to be a
12 scanned version with very small reduced writing.

13 MR GILERTSON: The copy I have is legible. I'll ask my
14 instructor if she has a version that might be - - -

15 HIS HONOUR: The one behind Tab 8 is very legible and very
16 clear. It's perhaps easier if I show you what mine looks
17 like. If you look at the second page the writing's very
18 small.

19 MR GILERTSON: I'll hand that copy back to Your Honour and I'll
20 just see what this copy's like.

21 HIS HONOUR: I'm happy to proceed if the only changes are the
22 ones that you've identified, the additional hirer plus
23 the change from human to humanist, I can just simply read
24 the text in 8.

25 MR GILERTSON: That's my understanding are the only changes,
26 Your Honour.

27 HIS HONOUR: Yes, all right. Look, if there's a better copy,
28 fine, if not then I'll proceed on that basis.

29 MR GILERTSON: Thank you. I'll endeavour to find over the
30 luncheon adjournment if we can get a better copy.

31 HIS HONOUR: Yes.

1 MR GILERTSON: So the document was signed on the 17 March and
2 that day in an email from Mr Cripps the defendants
3 received the invoice for the deposit which is behind an
4 email behind Tab 10 which notes that. On 1 May 2009
5 Ms Raymond sent an email to Ms Pickett in relation to the
6 posting of online events which is the document behind Tab
7 11. Your Honour, you will see it says, "Hi Yolande, hope
8 you and all are well. Just make you aware ...(reads)...
9 they're free as you probably know", and there's a
10 reference to three websites.

11 If Your Honour looks at the screen print behind Tab
12 12 that is an example of the postings to which those
13 links referred. Behind Tab 12 there is a screen print of
14 Humanist - Transhumanist, an umbrella and two surrealists
15 and under description there are three paragraphs and in
16 the third paragraph down it says, "It will be an
17 unapologetic display of the surreal, the fantastic and
18 symbolic with accompanying illustrated catalogue -
19 manifest".

20 Ms Pickett then responded four days later on 4 May
21 2009, the document behind Tab 13, and this contains a
22 reference to the document Carnivora that had been
23 discussed at the meeting on 23 January. In the email of
24 4 May Ms Pickett says, "Hi Lee-Anne, thank you for
25 sending the links. It's great to see you beginning work
26 on promotion already". Three further paragraphs down it
27 says, "In terms of the publication Demetrious mentioned,
28 unfortunately I do not ...(reads)... up to you to
29 organise it".

30 Then on 5 May Mr Cripps sent two emails to
31 Ms Raymond in relation to the surety of \$500 and the

1 remaining balance of the hire fee which was due and they
2 are the documents behind Tab 14 and the remaining balance
3 of \$1980 was paid on 6 May 2009 and the surety of \$500
4 was paid on 8 May 2009, both through internet banking.
5 Now if I could take Your Honour to a meeting that was
6 planned but never took place on 1 June 2009. On 29 May
7 2009 Sarah Webb who it appears was publicity coordinator
8 at the Guildford Lane Gallery sent an email to the
9 defendants in relation to their press release.

10 This document, Your Honour, appears behind Tab 17.
11 "Hi Lee-Anne and Demetrious, I've just put your text into
12 a ...(reads)... make sure you're happy". If Your Honour
13 looks at the next page - sorry, two pages over which is a
14 draft of the press release, in the paragraph at the top
15 which commences with the words, "Attract attention for
16 their art", I'll just take the court to the last three
17 lines where it says, "It will be an unapologetic display
18 of the surreal, the fantastic ...(reads)... accompanying
19 catalogue - manifesto", the same words that appeared in
20 the posting that I took Your Honour to earlier.

21 On 30 May 2009 the defendants were informed that
22 Yolande Pickett was on holidays for three weeks and that
23 Lian Low, that's L-i-a-n L-o-w would be in her place. If
24 Your Honour goes to Tab 18. This is a series of emails
25 which I have to work backwards. If Your Honour goes to
26 the last of the pages in that page it should have the
27 Number 4 at the bottom.

28 HIS HONOUR: Yes.

29 MR GILERTSON: In the middle of the page it says Saturday, May
30 30, 8.48, an email from Yolande Pickett, "Hi Lee-Anne,
31 I'm now on holiday from ...(reads)... with all your

1 inquiries". So that's 30 May and on 1 June Ms Raymond
2 sent an email to Lian Low and Melanie Trojkovic, T-r-o-j-
3 k-o-v-i-c who's described as the installation coordinator
4 at the Guildford Lane Gallery. That email appears above
5 the one I've just taken Your Honour to. "Hi Lian and
6 Melanie, just letting you know that ...(reads)... best
7 wishes, Lee-Anne".

8 The defendants have some discussions amongst
9 themselves as to whether or not the gallery would be open
10 on this day because it was a Monday. The evidence will
11 be that Ms Raymond rang the Guildford Lane gallery from
12 her work and spoke to either Lian Low or Melanie
13 Trojkovic and whoever it was said that the time for the
14 meeting was fine and the meeting was confirmed and Lian
15 Low responded to that effect in an email at 2.29 p.m.
16 that day, which if Your Honour goes back to what's
17 Numbered 3 at the bottom there is an email towards the
18 bottom on 1 June 2009, "Hi Lee-Anne, that's fine. Look
19 forward to meeting you ...(reads)... as well. Cheer,
20 Lian".

21 What happened, Your Honour, is the defendants went t
22 the gallery at about dusk that day. They arrived
23 separately. Mr Vakras got there just after 5 p.m. The
24 gallery was locked. There were lights on in the ground
25 floor. Another woman arrived. She was banging on the
26 windows and the door trying to attract attention.
27 Ms Raymond arrives at about quarter past five that day.
28 Mr Vakras tells her that he and the other lady had been
29 trying to get in and the lady had been shouting out
30 hello.

31 The defendants could not see any telephone number

1 outside the premises and there was a sign about opening
2 hours, about liquor licence but nothing that contained a
3 telephone number. Ms Raymond took out her mobile phone,
4 rang the manager number for the gallery she used earlier
5 that day and the call rang out. The woman who was there
6 said she'd been trying to ring and Ms Raymond said oh
7 well, and they left.

8 At 6.23 p.m. that day Ms Raymond sent an email to
9 Lian Low which is in the same tab, that's Tab 18. It
10 commences at the bottom of what's numbered p.2. On 1
11 June 2009 at 6.37 p.m. - no, I've jumped one ahead.

12 HIS HONOUR: That's right.

13 MR GILERTSON: If Your Honour goes to p.3 above the email that
14 I just took Your Honour to before.

15 HIS HONOUR: Yes, I've got that.

16 MR GILERTSON: 1 June 2009, "Hi Lian, no-one was there to meet
17 us so we left. ...(reads)... to be met, Lee-Anne and
18 Demetrious". Then Lian Low responds at 6.37 p.m. at the
19 top of that p.3, "Hi Lee-Anne, we were waiting for you
20 but as the gallery is not officially open today
21 ...(reads)... of a better time". Then Ms Raymond
22 responds at 10.32 p.m. that night at the bottom of p.2 of
23 that tab, "Oh well, we seemed to be set with your last
24 message. The lady who was waiting ...(reads)... this
25 should be easier".

26 Lian Low responds on the next day, on 2 June in the
27 email above that, it says, "I just had a chat to Robert,
28 the gallery director ...(reads)... should be fine". At
29 that point Ms Raymond rang the Guildford Lane Gallery and
30 spoke either with Lian Low or Melanie Trojkovic and
31 Ms Raymond asked what they meant by they had no time and

1 she was told that they were entering a very busy period
2 and couldn't meet with the defendants.

3 Ms Raymond that all they want to do is view the
4 space, they don't really need to see anyone. What
5 happened next, Your Honour, is that Ms Vakras responds in
6 very strong in respect to which he later apologises and
7 if I could take Your Honour to two emails in that regard.
8 There's an email from Mr Vakras on 2 June at 12.43 p.m.
9 which commences at the last line on p.1 of that tab where
10 it says, "On 2 June 2009 at 12.43 p.m. Demetrious Vakras
11 wrote you are bona fide idiots. ...(reads)... I was there
12 at 5.20".

13 Lian Low replies on the next day, p.1 of that tab in
14 the middle of the page, 3 June 2009, "Dear Demetrious,
15 Robert and myself were waiting for you at ...(reads)...
16 didn't know you were downstairs". Then Mr Vakras
17 responds again in very strong terms, Your Honour, he
18 says, "Lian, you're a liar. There was no sign above the
19 ...(reads)... to serve alcohol", and it goes on.
20 Ms Raymond in the last of these emails in this tab then
21 says on 3 June - no, the next tab, I'm sorry, Your
22 Honour, Tab 19.

23 HIS HONOUR: Yes.

24 MR GILERTSON: "Hello Lian, I was there too. Demetrious might
25 seem strong ...(reads)... with each email". This, what I
26 might call the failed meeting, was a misunderstanding
27 that was ultimately resolved by a conversation between
28 Ms Raymond and Mr Cripps which took place on 5 June.
29 What happened was Ms Raymond went to the gallery on that
30 day after work at about 5.45 p.m. There'd be no contact
31 between the parties for two days and she had the

1 invitations with her.

2 She entered the building, went up to the first
3 level, spoke to Mr Cripps and Lian Low who were outside
4 the kitchenette. Mr Cripps said, pointing at Ms Raymond,
5 I want to talk to you. He said he was very unhappy with
6 the emails that Mr Vakras had sent and Ms Raymond said
7 she was there about the situation and where the parties
8 stood. Mr Cripps said he didn't like being spoken to
9 like that and Ms Raymond said she understood that but the
10 defendants didn't like being told they didn't turn up to
11 a meeting when they did.

12 Mr Cripps said that the defendants should have
13 called. There were further discussions about that.
14 Ms Raymond said she didn't want to take up too much of
15 his time. She said she had come directly from work in
16 the hope that they could come to an understanding. There
17 was some discussion about where Ms Raymond worked which
18 was at the museum and she asked Mr Cripps if they had an
19 exhibition and Mr Cripps said again he didn't like the
20 emails. He said you didn't come, you didn't call, we
21 were here and he said during the conversation that they
22 taped - that is, the gallery takes the telephone number
23 in from outside because of crank calls they get.

24 So the evidence will be from the defendants that
25 when they went there that afternoon on 1 June there was
26 no telephone number outside the premises. Ms Raymond
27 returned to the topic of the exhibition and asked do we
28 have an exhibition and Mr Cripps said yes, OK, you have
29 an exhibition. There was some discussion about the
30 invitations and as Ms Raymond was being escorted
31 downstairs and out of the building by Mr Cripps,

1 Mr Cripps said he wanted to show Ms Raymond where the
2 signs were and there were signs above the outside of the
3 premises and on an A4 page inserted into a sleeve was the
4 telephone numbers that were capable of being pulled out,
5 presumably to avoid the crank calls at night.

6 After Ms Raymond left she spoke to Mr Vakras, told
7 him what had occurred and Mr Vakras then apologises in an
8 email behind Tab 20. I'll find the email I'm talking
9 about but what Mr Vakras said is, "Hi Lian and Robert, I
10 apologise for our misunderstanding".

11 HIS HONOUR: Yes, that's the first document in that Tab 20 down
12 the bottom, 5 June 2009 at 6.35 p.m.

13 MR GILERTSON: Yes, I apologise. I had the wrong tab number.
14 That's it there, Your Honour 5 June 2009, "Hi Lian and
15 Robert. Lee-Anne just called me and I apologise for our
16 misunderstanding". They're then, Your Honour, some more
17 emails in relation to the catalogue. On 8 June 2009
18 Ms Raymond sent an email to Melanie Trojkovic in relation
19 to the catalogue. It appears at p.3 at that Tab 21, an
20 email of 8 June, "Hi Melanie, I think we would like to
21 use two ...(reads)... to display this information as
22 well".

23 Ms Trojkovic then responds the next day, it first
24 appears at the bottom of what is the first page of that
25 tab. On Wednesday, 10 June Melanie Trojkovic sent, "Hi
26 Lee-Anne, that should be no problem about using
27 ...(reads)... for your use". Then on 11 June Ms Raymond
28 sends an email to Lian Low which is behind Tab 22.

29 HIS HONOUR: The versions that I have contain some underlining
30 and some descriptions of what the documents are. I'm
31 just proposing to ignore all that.

1 MR GILERTSON: Yes.

2 HIS HONOUR: There's nothing embarrassing so far that I've
3 seen.

4 MR GILERTSON: There's some underlining in the plaintiff's
5 court book of the publications as well but my learned
6 friend's now handed up the A3 which has that difficulty
7 removed and we would invite Your Honour to ignore the
8 markings in these documents.

9 HIS HONOUR: Yes.

10 MR DIBB: I think my learned friend may not have noticed but I
11 don't think the underlining has been removed in the
12 A3 copies but we don't say that the underlining was ever
13 published. That's people mishandling the evidence since
14 it was printed from the screen.

15 HIS HONOUR: Yes. There seems to be some faint underlining but
16 it's still visible.

17 MR DIBB: Yes, it's faint but visible.

18 HIS HONOUR: I just propose to ignore the underlining.

19 MR GILERTSON: If Your Honour pleases. I was taking
20 Your Honour to some of the emails in relation to the
21 catalogue and behind Tab 21 - - -

22 HIS HONOUR: I think you took me to 22.

23 MR GILERTSON: I have taken you to 22.

24 HIS HONOUR: Did you want me to go back to 21?

25 MR GILERTSON: Sorry, I just pause for a moment, Your Honour,
26 while I catch where I was at.

27 HIS HONOUR: Sure.

28 MR GILERTSON: Yes, if Your Honour does go to 22. It's an
29 email from Ms Raymond to Lian Low on 11 June at
30 11.23 p.m. which is the second page of that tab. At the
31 bottom of that page it says, "Hi Lian, as discussed could

1 you just confirm for me today ...(reads)... commence our
2 installation". Lian Low responds on 12 June also in that
3 Tab 22, commences at the bottom of the first page of that
4 tab and goes over, "Hi Lee-Anne, 1.30 p.m. is fine but we
5 will prefer you ...(reads)... Tuesday, 16 June".

6 Then there is an email on that day at - on 12 June,
7 I'm sorry, at 11.13 which appears at the top of the first
8 page of Tab 22, an email to Lee-Anne Raymond, "Dear
9 Lee-Anne, thanks for confirming your runtime with us
10 ...(reads)... to help you install", and this is the
11 paragraph I wish to emphasise, "Robert has advice that
12 there will be three exhibition openings ...(reads)... for
13 gallery personnel". So this is what the defendants will
14 say was the first red flag in relation to the Guildford
15 Lane Gallery making available the defendants catalogue
16 for sale during the exhibition.

17 On the 15th and 16 June of that year the defendants
18 firstly took the paintings to the gallery for the set up
19 and on 16 June the essays accompanying the paintings were
20 printed and were pinned next to the relevant paintings,
21 framed digital works and drawings. The exhibition opens
22 on 17 June, although the agreement provides for it to run
23 from 16 June 2009 to 6 July. The official opening was on
24 the 18th, which I'll come to in a moment. On the 17th
25 the defendants went to the gallery. Ms Raymond arrived
26 at the gallery with some office supplies to display the
27 catalogue and some of the defendants' promotional flyers.

28 Mr Vakras arrived and he had two boxes of catalogue
29 with him. Mr Cripps wasn't on site at the time and
30 Ms Raymond placed the catalogue and the flyers into
31 brochure holders and then they left. The official

1 opening was on Thursday, 18 June 2009 between six and 8
2 p.m. Ms Raymond went earlier to do a photo shoot and
3 they returned to the gallery, that is, the defendants at
4 about 6.15 p.m. on that Thursday.

5 Shortly after they arrived Mr Cripps approached
6 Ms Raymond and said that they'd sold one work already and
7 he said that he could handle the sale if the defendants
8 wished and Ms Raymond said OK. Mr Cripps asked if he
9 could give the purchaser a copy of the catalogue which
10 Ms Raymond said he could and at the opening there were
11 about 40 to 50 people present. On the first floor of the
12 Guildford Lane Gallery people were downstairs and came
13 upstairs and downstairs during the exhibition conducted
14 by the defendants and also another exhibition which was
15 occurring downstairs.

16 There was a speech given by Mr Cripps on the ground
17 level in front of the bar which is also located on the
18 ground floor. A poem was read out by the partner of one
19 of the other exhibitors unrelated to this case and
20 Mr Cripps mentioned the defendants' exhibition just by
21 the title, the artist and when it was located in the
22 building. All went well, Your Honour, the evidence will
23 disclose until about 8 p.m.

24 Ms Raymond saw Mr Cripps saw downstairs. Mr Vakras
25 went to shake his hand and a lady came between Mr Vakras
26 and Mr Cripps and said to Mr Cripps are you the artist
27 whose work is upstairs. Mr Vakras responded that he was.
28 She said that she was a relative of one of the artists
29 who was downstairs and she said that she'd read one of
30 Mr Vakras's essays and that she said I like what you've
31 written, it's about time someone gave it to the Muslims.

1 To which Mr Vakras responded that the paintings were not
2 necessarily criticism of Islam or the Muslims and
3 Mr Vakras turned to Mr Cripps and said you realise it
4 isn't as she suggests, intended as criticism solely of
5 Islam.

6 Mr Cripps then says, now, you see, that's why I have
7 a problem with you. Your writing shows a lack of
8 sensitivity to the delicate situation in Palestine.

9 Mr Vakras responds, "Palestine". Mr Cripps, "I have a
10 problem with your opinions on Islam. Your essays are
11 insensitive to what's happening in Palestine". Vakros,
12 "Palestine". Cripps, "Well, your opinions of Islam,
13 they're insensitive and racist". Vakras, "Racist, how
14 Robert? I don't criticise race". Cripps, "By
15 criticising Islam, your opinions on the Koran make what
16 you write racist". Vakras, "But how, I'm an atheist,
17 Robert, I'm criticising religion".

18 Then Ms Raymond says, "What's racist, where's that
19 suggested". Mr Cripps, "It's racist. You should hear
20 what they're saying about your show". Ms Raymond, "What
21 do you mean". Mr Cripps, "It is racist to criticise
22 Islam. The opinions on the Koran are racist because they
23 would mean that Jews are victims of Muslims". Vakras,
24 "Robert I quote the Koran which is not opinion. I
25 criticise Judaism and Christianity". Cripps,
26 "Criticising Islam is racist. Your opinion on the Koran
27 is unfair to Muslims. They are oppressed by the Jews.
28 Your opinions blame Muslims when they are forced into
29 reacting to what the Jews are doing to them. You're
30 insensitive to their suffering. I have a problem with
31 the Jews. I have a problem with what the Jews are doing.

1 I have a problem with Jews start in Palestine" - or he
2 said rather, "The Jews and their start in Palestine".

3 Ms Raymond, "Robert, there's no mention of that
4 conflict in the exhibition. How is criticism of Islam
5 racist and what you're saying about Jews not". Vakras,
6 "I don't write about Palestine". Cripps, "Muslims are
7 forced by the Jews to react. Muslims are the victims.
8 It's your opinion of the Koran". Vakras, "I'm actually
9 quoting the Koran so it's not opinion. I was very
10 careful with quotes and footnotes so that no-one could
11 claim what I wrote was uninformed bigotry. I took a lot
12 of care". Mr Cripps interjects, "You see, that's what I
13 mean, it reads like legalese, I don't understand it.
14 Vakras, "Legalese". Cripps, "It's legalese. You could
15 have expressed yourself more artistically".

16 The discussion goes on, Your Honour, and you'll hear
17 more evidence about it but it ends with this, Mr Vakras
18 towards the end says, "You're a man limited in your
19 erudition and of limited intellect", to which Mr Cripps
20 responds yelling, "You're racist. I do not racists or
21 your racism in my gallery. I want you out. I want you
22 and your racist art out of my gallery. I will not be
23 associated with racists and racism, I want you out".

24 So at that point the defendants start to leave the
25 building. Mr Cripps says, "I haven't finished with you",
26 and Ms Raymond says, "Robert, we're leaving". So at the
27 end of this opening night on 18 June 2009 the defendants
28 were left with these words by Mr Cripps, "I do not want
29 racists or your racism in my gallery. I want you out".
30 One week later, Your Honour, on, 25 June 2009 Ms Raymond
31 was working at Museum Victoria and her line manager asked

1 how did the exhibition go and Ms Raymond told her what
2 had occurred at the opening night and the line manager
3 said maybe it was him.

4 Ms Raymond said what do you mean. She said, well,
5 some older guy came up behind her at the opening night
6 while she was looking at one of Ms Raymond's works and
7 said is that your lovely bottom in the painting and I'll
8 take Your Honour to during the course of the trial an
9 interrogatory and an answer to interrogatory in relation
10 to this matter.

11 If I could go back to the day and the day following
12 that after the opening so we're back to the 19th and 20
13 June 2009. Nothing happens on the 19th but on the 20th
14 the defendants went to the gallery at around lunch time.
15 The exhibition was still in place. There were volunteers
16 but no visitors at the premises, no sign of Mr Cripps but
17 everything seemed to be still in place and importantly
18 there were no signs of disclaimants at the exhibition
19 which I'll take Your Honour to in a moment.

20 On the following Monday, 22 June 2009, Ms Raymond
21 was told by a work colleague that she and her husband had
22 attended the exhibition and that there were disclaimants
23 saying that the gallery accepted no responsibility for
24 the views expressed by the artist. The gallery being
25 closed on Mondays and Tuesdays and about 4.30 p.m. on
26 Wednesday, 24 June, of which there is another significant
27 conversation between the defendants and Mr Cripps, the
28 defendants went to the gallery in order to photograph
29 these disclaimants.

30 They introduced themselves to the receptionist and
31 Ms Raymond, the evidence will say, noticed the sign on

1 the first landing of the stairwell which said, "Warning",
2 and as the defendants went up to the first level
3 Mr Cripps appeared. He points at Mr Vakras and says,
4 "You, you, I want to speak with you. He said, "People
5 saw you attack me", referring to Mr Vakras, and Mr Vakras
6 the evidence will be, Your Honour, had not attacked him.

7 Mr Cripps said that the defendants were trespassing
8 illegally and he ordered them out of the gallery. He
9 said they were breaching the conditions because their
10 exhibition was racist and racism Mr Cripps said is
11 illegal and illegal material is forbidden in the
12 contract. Mr Cripps said, "You threatened me
13 Demetrious", and later, "You don't scare me, Demetrious.
14 I've come across wharfies and truckies that are much
15 scarier than you".

16 Mr Vakras says the defendants had a legal right to
17 be in the gallery and Mr Cripps said the police would be
18 called and they would be evicted. Mr Vakras responds
19 that neither he nor the police had a right to evict
20 someone who had a legal right to be there and Mr Cripps
21 that they had forfeited their rights because their racism
22 was illegal. Ms Raymond then says, "Where's the racism,
23 Robert", and he moved towards Ms Raymond, started
24 pointing at her and she said to him, "What was racist
25 Robert", and he said - she said rather, "You're against
26 Jews". He said, "Yes, and". And she said, "Your dislike
27 of Jews is racist".

28 Mr Cripps, the evidence will be disclosed, shrugged his
29 shoulders and said, "So". Ms Raymond says that that of
30 itself is racist and Mr Cripps says, yes, so what and
31 then Ms Raymond again asks what's racist. Mr Cripps

1 swung his arm around and said, "All of it". Ms Raymond
2 says, "It's surrealism, Robert, what were you expecting".
3 He says, "I wasn't expecting this, it's racist". While
4 this is going on Yolande Pickett who's from the gallery
5 was there during this conversation but said nothing.

6 Mr Cripps said that the defendants had to leave
7 because they had no contractual right to be there and he
8 said to Ms Raymond, "The sheriff knows about you", and
9 the defendants then leave and that's the last time the
10 defendants went to the gallery other than to take down
11 the works. So after 8 p.m. on the opening night
12 Thursday, 18 June, the defendants went back to the
13 gallery twice before taking down the works. That is, on
14 Saturday, the 20th to check whether everything was there
15 and then on Wednesday, the 24th when this last exchange
16 took place.

17 That brings me to, Your Honour, to emails of the
18 25th and 26 June. On 25 June Ms Raymond sent an email to
19 Mr Cripps which appears in Tab 24. Ms Raymond writes,
20 "The purpose of exhibiting work is for it to be seen
21 ...(reads)... in that space legitimately".

22 Mr Cripps responds the next day, also part of that
23 tab, p.3 of that Tab, 26 June, towards the bottom of that
24 page. "Hi Lee-Anne, thank you for your communication. I
25 disagree with your statements as per attached email."
26 This is the paragraph I wish to - this and the next
27 paragraph I wish to emphasise. "At this stage I think it
28 is best ...(reads)... responsible as the director of the
29 gallery."

30 Mr Vakras responds, two emails, and I don't need to
31 take Your Honour to the details of these at the moment,

1 at 12.54 p.m. on 26 June, which is also part of this tab,
2 and also at 6.30 p.m. that day. If I could then take
3 Your Honour to the removal of the works. Ms Raymond
4 receives an email from Mr Cripps on 3 July which is in
5 Tab 35 towards the foot of the first page. "Hee Lee-Anne,
6 I'm just confirming the de-install of your exhibition for
7 5-8 p.m. this Sunday. A new exhibition will begin
8 installing on Monday morning."

9 What then happens, on Sunday 5 July the defendants
10 go to the gallery to remove the works. When they've
11 removed the last of the works Ms Raymond asked Mr Cripps
12 if he was happy with the state of the space and would he
13 like them to remove the hanging wires. He said that all
14 was fine and to leave the wires up, and the defendants
15 leave.

16 Then the final part of this opening, Your Honour, is
17 in relation to what's referred to as the acquittal of the
18 business. On 7 July Ms Raymond sent an email to Yolande
19 Pickett, which is behind Tab 26, and it's the second page
20 of that tab. "Dear Yolande, can you please advise of the
21 timing for Guildford Lane Gallery's acquittal of business
22 with our exhibition." She says, "Our account does not
23 show ...(reads)... method for reimbursement."

24 Ms Pickett responds that day in the document before
25 that. "Hi Lee-Anne, we generally tell exhibitors that
26 the refund ...(reads)... cannot nominate a day for this
27 stage." Then she asks for details. Your Honour,
28 Ms Raymond waits two weeks, checks the account, no money
29 has been received. On 21 July she sends another email to
30 Yolande Pickett, which is behind Tab 27. "Hi Yolande,
31 there's still no progress?"

1 Ms Raymond sends another email on 28 July, which is
2 behind Tab 28, which at the bottom of that email says,
3 "You are overdue in reimbursing us for outstanding funds.
4 We request immediate reimbursement." Then Mr Vakras
5 sends an email on 4 August, behind Tab 29, to Mr Cripps,
6 copied to Lee-Anne Raymond and also it's addressed to
7 Yolande Pickett. The first paragraph, "Reimburse the
8 bond and the payment for the one work that was sold
9 immediately."

10 Two days later what that provoked was a response
11 from Mr Cripps, which is part of Tab 26 so I need to take
12 Your Honour back to Tab 26. It's the third page of that
13 Tab 26, an email at the foot of that page. On 6 August
14 2009 Mr Cripps wrote, "He Lee-Anne, I'm about to transfer
15 the funds for the of your painting and exhibition bond.
16 Please confirm that upon receipt of these funds," and
17 this is in bold, "there will be no issues outstanding
18 between yourselves and Guildford Lane Gallery," and then
19 the bolding ends. "We thank you in anticipation
20 ...(reads)... has been completed."

21 On that day Ms Raymond responds, as Your Honour will
22 see above that, at 7.13 p.m, "Mr Cripps," which she
23 quotes, "I'm about to transfer the funds for the sale of
24 the painting and exhibition bond." Ms Raymond says in
25 this email, "At the time of sending this email
26 ...(reads)... into our account." At 2.37 p.m, four days
27 later on 10 August, Ms Raymond sends another email which
28 appears - a number of emails in this tab.

29 HIS HONOUR: Which tab, sorry?

30 MR GILBERTSON: This is still Tab 26. It appears on p.6 of
31 that tab. At the top there is

1 www.guildfordlanegallery.org.

2 HIS HONOUR: I have that, thank you.

3 MR GILBERTSON: Thank you, Your Honour. It says, "Mr Cripps,

4 the issue is you have not reimbursed these amounts."

5 Mr Cripps then responds on the page previous to that,

6 "Dear Lee-Anne, sorry I have made a mistake ...(reads)...

7 funds transfer today." Ms Raymond then responds in the

8 email above that. After quoting part of Mr Cripps's

9 email Ms Raymond says, "We agree to this release

10 ...(reads)... without further delay."

11 On 13 August the defendants receive the \$950 by way

12 of bank transfer. Now if I could take Your Honour to the

13 articles, the subject of the defamation proceeding. This

14 might be easier if Your Honour makes reference to the A3

15 version. The first two, Attachment A, which is what's

16 described as the first Vakras article, this was uploaded

17 by Mr Vakras onto the internet on 20 August 2009.

18 The evidence will be that the website www.vakras.com

19 is a specialist website. This is relevant, it will be

20 submitted, to the qualified privilege defences which I'll

21 say something more about in a moment. The website is not

22 a news or media website and it's not likely to be

23 accessed by the casual web surfer it will be submitted.

24 The website, which Mr Vakras will give evidence

25 about, at least in April 2010, so that's 12 months prior

26 to the issue of the writ, contained these matters. It

27 contained an online art exhibition, Mr Vakras's

28 curriculum vitae as an artist, a paintings, drawings,

29 digital photo montages and digital 3D images,

30 explanations for many of his works, a biography section,

31 a review section, a history of exhibitions, exhibition

1 essays and general essays section.

2 I'll take Your Honour to the authorities in this
3 regard at the appropriate time. There are at least two
4 English authorities which deal with the question of
5 availability of qualified privilege in respect of
6 websites and whether they are specialist ones or more
7 general ones that the casual web surfer might come
8 across. I'll take Your Honour to those authorities in
9 due course.

10 HIS HONOUR: I'm just going to mention that I'll be writing on
11 this copy that I've been given so when it comes to
12 tendering we'll need another copy for the clean tendered
13 version. Thank you.

14 MR GILBERTSON: Mr Vakras, Your Honour, will give evidence that
15 what he wrote in this website he believed to be true.
16 Your Honour will see on the first page of what's
17 described as the first Vakras article it says, "Guildford
18 Lane Gallery is run by the toxic Robert Cripps," and in
19 capitals, "Avoid this gallery assiduously!" Mr Vakras
20 will give evidence that he believed that to be true.

21 The article goes on, "Had I been aware of him
22 ...(reads)... exhibiting at this gallery." Underneath
23 that, "There are several words with which I can describe
24 Cripps ...(reads)... stupid." Mr Vakras will give
25 evidence that he believed each of those adjectives to be
26 true. It goes on, "Cripps also runs Redleg, a
27 transporter of art. Can you trust Cripps's Redleg?"
28 Mr Vakras will say he believed that that was a legitimate
29 question to ask.

30 It goes over on the next page underneath the
31 reference to Redleg, it says, "Much money was spent

1 ... (reads) ... renders this agreement legally voidable."
2 Mr Vakras will say he believed that paragraph to be true,
3 as with the next paragraph. "During the course of the
4 exhibition ... (reads) ... made a profit on it." Then it
5 says below there's a photograph of some of the works, and
6 down the bottom there are these words. "Cripps is a self
7 confessed racist," and there's a hyperlink, the New Left
8 Nazis, which is a hyperlink to another page on
9 Mr Vakras's website.

10 It goes on, "He's a manifestation of the new left
11 ... (reads) ... justifiable one." And there's another
12 reference to the hyperlink New Left Nazis. Mr Vakras
13 will say that he believed that to be true and what he
14 meant by the sentiments Hitler expressed in Mein Kampf is
15 essentially the sentiment of anti-Semitism, and he will
16 say that he chose his words carefully in the construction
17 of that part of this website and the remainder.

18 It goes on, "Cripps took exception to my explanatory
19 essays." I don't wish to take Your Honour in detail to
20 what appears on this page. There will be more evidence
21 about that. If Your Honour goes over one more page,
22 there's a reference, although at least in the copy I have
23 it's illegible, to the 26 June 2009 email that I've taken
24 Your Honour to. Underneath that - - -

25 HIS HONOUR: Is that in the box?

26 MR GILBERTSON: That's in the box.

27 HIS HONOUR: I can't read that either.

28 MR GILBERTSON: Underneath that box it says this. "The above
29 email was Cripps's response ... (reads) ... Cripps's
30 conduct throughout was thoroughly disgraceful."

31 Mr Vakras will say he believed that to be true. There

1 are some other passages in this first article which I
2 don't need to take Your Honour to at the moment.

3 HIS HONOUR: So this version of the posting was not the
4 original version because it's got the bracketed statement
5 since refunded or since payment six weeks later, is that
6 right?

7 MR GILBERTSON: That's right. Your Honour will see that there
8 is an addendum dated 7 November 2009.

9 HIS HONOUR: Yes, in the box, I see that.

10 MR GILBERTSON: In the box. Then what's described as addenda
11 amendments 11 November 2009 on the next page.

12 HIS HONOUR: Yes, I see.

13 MR GILBERTSON: There was a further addendum which Mr Vakras
14 uploaded on 2 April 2011 and this is what forms what's
15 described as the second Vakras article, that is, the
16 version that appears as the first Vakras article with an
17 addendum made on 2 April 2011. If I can take Your Honour
18 to Annexure B, which is the second Vakras article. It
19 should be p.5 of 7. There's a reference at the bottom of
20 that p.5 of 7 to, "What are the experiences of others?"
21 Does Your Honour have that?

22 HIS HONOUR: Yes, I do.

23 MR GILBERTSON: It says, "The experience of my co-exhibitor and
24 I ...(reads)... suffered in their dealings with Cripps."
25 It goes on to quote a small portion from this email,
26 "Just stumbled upon your website and read the reviews
27 about Guildford," and then it says "Lang (sic) Lane
28 Gallery ...(reads)... save poor girls who are
29 volunteering for gallery assistant."

30 Mr Vakras will say, Your Honour, that this addendum
31 was on the website for between 24 and 36 hours after

1 being posted on 2 April 2011, and he will say that he
2 believed what's said in that addendum to be true. Then
3 what's described as the Raymond article, which is
4 Annexure C, it was uploaded by Ms Raymond onto her
5 website www.leeanneart.com, and it will be submitted that
6 it is also a specialist website and is not likely to be
7 encountered by the casual web surfer.

8 This website, Ms Raymond will say, presents her
9 surrealist artwork spanning over 20 years, it presents
10 her paintings, drawings, digital and project work grouped
11 into developmental periods. It also contains
12 Ms Raymond's commentary on the arts, surrealism, art she
13 admires and artists she admires and other art related
14 activities.

15 This article was edited on 26 September 2010. Your
16 Honour will see towards the top of the first page of the
17 article it says, "Last updated 26 September 2010," and
18 under the heading, "Robert Cripps of Guildford Lane
19 Gallery is at it again and again and again." It's also
20 then edited on 6 June 2010, that's prior to that, and
21 prior to that again on 26 May 2010. It was last edited,
22 the evidence will show, by Ms Raymond on 17 September
23 2011 to include a reference to how defamation laws chill,
24 but I'll come to that evidence later.

25 Ms Raymond will say, Your Honour, that she believed
26 what she wrote in this article to be true. If I could
27 turn to the broad structure of the defences. Without
28 going into detail of the documents, which I'll do later,
29 but the broad structure of the defences is, firstly, the
30 defendants deny that several of the plaintiff's
31 imputations arise. The authorities make clear that

1 whether those meanings are conveyed is a question of
2 whether they are conveyed to the ordinary reasonable
3 reader who has certain characteristics, which I'll take
4 Your Honour to later.

5 The test for what's defamatory was stated by Chief
6 Justice French and Justices Gummow, Kiefel and Bell, and
7 I have these authorities, Radio 2UE Sydney Pty Ltd v.
8 Chesterton (2009) 238 CLR 460 at 3-7 and especially at
9 Paragraph 5, where Their Honours say, "The general test
10 stated ...(reads)... Justices Callinan and Hayne in a
11 case called Gatchick." I'll take Your Honour to that
12 authority later.

13 The second general structure of the defences is that
14 the defendants say that certain of the meanings are true
15 at common law, that is, they're true in substance and in
16 fact, and that a number of those meanings are also
17 substantially true under s.25 of the Defamation Act.
18 There are Polly Peck meanings which I'll take the court
19 to, Polly Peck meanings which rely on David Syme & Co Ltd
20 v. Hore-Lacy (2001) VR 667, in particular at Paragraphs
21 23 in the judgment of Justice Ormiston and at paragraphs
22 52 to 53 in the judgment of Justice Charles.

23 It will be submitted, Your Honour, that the
24 Polly Peck meanings meet the Hore-Lacy test because they
25 are not substantially different from and are no more
26 injurious than the plaintiff's meanings. The third
27 structure of the defences is that there are pleas of fair
28 comment at common law and honest opinion under s.31 of
29 the Defamation Act.

30 I'll take Your Honour through the elements of fair
31 comment and, should it arise, some of the differences

1 between fair comment and honest opinion under the Act.
2 The fourth element of the defences is that there are
3 pleas of qualified privilege at common law and reply to
4 attack which, it's submitted, is a subset of qualified
5 privilege at common law.

6 Without taking Your Honour to the authorities at the
7 moment suffice as to say for present purposes that it
8 will be submitted that there's a broad approach taken to
9 qualified privilege in respect of internet publications
10 and especially where the evidence discloses that they are
11 specialist websites. It will also be submitted that
12 there's a broad approach taken to what's described as the
13 same audience requirement in relation to reply to attack,
14 and I'll take Your Honour to the relevant authority in
15 that regard.

16 The plaintiff's replies dated 8 February plead,
17 among things, that the defendants were actuated by malice
18 and that the opinions were not honestly held. Malice, it
19 will be submitted, has particular meanings in relation to
20 both fair comment and qualified privilege and that that
21 those meanings are not the same. For the purposes of
22 fair comment the plaintiffs must show and they have the
23 burden that the defendants did not at the time of
24 publication honestly hold the opinions they expressed.

25 Section 31.4 of the Defamation Act in relation to
26 the honest opinion defence is to the same effect. It
27 will be submitted that defendants are not actuated by
28 malice simply because they hold irrational beliefs so
29 long as those beliefs are genuinely held and that they're
30 not actuated by malice for the purposes of a defence of
31 fair comment solely by reason of the fact that they have

1 expressed opinions with a dominant malicious motive such
2 as to injure the plaintiff.

3 So it will be submitted that even if on the evidence
4 Your Honour is satisfied the defendants had a dominant
5 malicious motive to injure the plaintiffs that that is
6 not of itself, the authorities say, sufficient to
7 establish malice in relation to fair comment.

8 HIS HONOUR: They also say it's a good step towards doing so,
9 that they are different conceptually.

10 MR GILBERTSON: That's so, Your Honour, they are, and in
11 particular in that regard that it might be an indication
12 that the opinion is not honestly held.

13 HIS HONOUR: Correct.

14 MR GILBERTSON: Yes. Whereas for the purposes of common law
15 qualified privilege the plaintiffs must show that a
16 dominant motive of the defendants which actuated the
17 publication was a motive foreign to the occasion of the
18 privilege, and I'll take Your Honour to Roberts v. Bass.
19 There are two matters pleaded by way of mitigation.
20 Firstly, that the publications were provoked by
21 Mr Cripps, and I'll take Your Honour to the authorities
22 in that regard and, secondly, the defendants rely upon
23 bad reputation.

24 If I could conclude this opening, Your Honour, with
25 the contract claims. The defendants say that there was a
26 contract between them and the corporate entity Redleg
27 Museum Services Pty Ltd, that the contract consisted of
28 the written document at Defendant's Court Book 16, and
29 also the emails and conversations referred to in the
30 amended statement of claim. It will be submitted that
31 those emails and conversations are not excluded by the

1 entire agreement provision agreement in Clause 11 of the
2 written document.

3 It will also be submitted that there is an implied
4 term of good faith or, alternatively, a duty to
5 cooperate. We accept that an obligation of good faith is
6 not applied indiscriminately in all commercial contracts
7 but it will be submitted that at least in the case of a
8 written agreement entered into between persons of equal
9 bargaining power - and I might have more to say about
10 that later - that at least in respect of parties of equal
11 bargaining power a condition will be implied if it meets
12 the ad hoc BP Refinery Westernport v. Hastings Shire
13 Council criteria.

14 The defendants' case, Your Honour, is that the
15 corporate entity breached the term relating to access to
16 the gallery by what occurred on 18 June, "I do not want
17 racists or your racism in my gallery," by what occurred
18 on 24 June in relation to the circumstances when the
19 defendants came to photograph the disclaimers and also by
20 the 26 June 2009 email.

21 It will be submitted that the corporate entity
22 failed to provide the defendants with the use of the Opal
23 Studio and failed to make available for sale the
24 defendants' catalogue of their artworks. In relation to
25 the damages claim I have prepared an aide memoire, Your
26 Honour, in an attempt to do this more efficiently, which
27 I'll hand to Your Honour and my learned friend.

28 It lists the expenditure claimed in the amended
29 statement of claim by reference to the tab numbers in the
30 defendant's court book. Your Honour will see the items
31 are set out, tab numbers and a total of \$13,448.80 down

1 the bottom. Unless some issue arises as to the detail I
2 would intend to rely upon that summary document, although
3 I will be taking Ms Raymond through the relevant tabs in
4 the defendant's court book.

5 There is one error I have found in Tab 32 of the
6 defendant's court book, that's our court book. I take
7 Your Honour to Tab 32. This is relied upon in support of
8 an amount claimed of \$407 for the promotion of the
9 defendant's exhibition. The second document in that tab,
10 or at least in the copy I have, is a Commonwealth Bank
11 receipt. That document is in error. I wish to hand to
12 Your Honour and my learned friend, and I'll, if
13 necessary, take Ms Raymond to this. The second document
14 should not be that Commonwealth Bank receipt but should
15 be the document that I'm just handing up.

16 HIS HONOUR: Do you want to replace the existing page with the
17 one that is just about to be handed to me, is that
18 correct?

19 MR GILBERTSON: Yes, please, Your Honour. So there are in fact
20 two invoices for the amount of \$203.50 and they are paid
21 on different days.

22 HIS HONOUR: So you totalled them up to get to the component of
23 your claim, is that correct?

24 MR GILBERTSON: \$407.

25 HIS HONOUR: Yes, I understand.

26 MR GILBERTSON: The defendants will also claim for loss of a
27 chance to sell more of the works at the exhibition, and
28 I'll be taking both defendants through their history of
29 art sales that they have done. Finally, there is an
30 inducing breach of contract claim in respect of which it
31 will be said that Mr Cripps by his conduct procured the

1 corporate entity to breach the contract, and the
2 defendants persist with a claim for exemplary damages in
3 respect of the inducing breach of contract claim.

4 HIS HONOUR: Is there any prospect of these items or some of
5 them being agreed? I'd hate to think we're going to have
6 huge evidentiary contests in respect of amounts of \$37
7 and so on. Has there been any dialogue between the
8 parties?

9 MR GILBERTSON: I haven't spoken to my learned friend about it,
10 Your Honour; I propose to.

11 HIS HONOUR: Yes, I think sometimes it's best to get a move on
12 rather than waste time on relatively small amounts
13 without jeopardising principle or forensic advantage in
14 any way. I'll say no more. I'd expect the parties to be
15 sensible. All right, thank you.

16 MR GILBERTSON: I'll speak to my learned friend about that,
17 Your Honour.

18 HIS HONOUR: Thank you.

19 MR GILBERTSON: They're the matters I wish to raise by way of
20 opening.

21 HIS HONOUR: Yes, thank you. Mr Dibb, were you proposing to
22 give me an opening at this stage or an outline of any
23 sort or do you want to keep your powder dry?

24 MR DIBB: No, I don't propose to open at this stage,
25 Your Honour. I will say that the opening - we're getting
26 a transcript? My note taking is not as quick perhaps as
27 it might be. I will say that certain aspects of the
28 opening take me by surprise and I might have a think
29 about what I want to do about that.

30 HIS HONOUR: All right. You can tell me later if there's any
31 issue you want to raise. Are we ready to go into

1 evidence?

2 MR GILBERTSON: Yes, we are, Your Honour. I call Lee-Anne
3 Raymond. Can we just have a very short break,
4 Your Honour?

5 HIS HONOUR: Yes, of course. I'll stand the matter down
6 temporarily. My associates will let me know when you're
7 ready.

8 (Short adjournment.)

9 MR GILBERTSON: Thank you, Your Honour. I call Lee-Anne
10 Raymond.

1 <LEE-ANNE RAYMOND, affirmed and examined:

2 MR GILBERTSON: Is your full name Lee-Anne Raymond?---Yes.

3 HIS HONOUR: Ms Raymond, sorry to interrupt. You'll need to
4 keep your voice up a bit; you have a very soft voice?

5 ---How is that?

6 The transcript is being recorded remotely so you need to - - -?

7 ---Sorry, I do, and I'm a bit nervous.

8 You don't need to hold the microphone so close if it's

9 uncomfortable but just keep your voice up and at a steady
10 level please, thank you?---OK.

11 MR GILBERTSON: Is your address [REDACTED] in
12 Kensington?---Yes.

13 Are you an artist?---I am.

14 Do you work as the senior coordinator MV Images at Museum
15 Victoria?---I do.

16 When did you leave school, Ms Raymond?---1979.

17 Would you tell the court just in brief terms what your work
18 history was after leaving school?---I was part time at
19 Safeway. I was targeted for the management program but I
20 declined that and I thought I should leave so I could
21 work out what I wanted to be for the rest of my life. I
22 did - I wasn't employed for a short period of time and I
23 went to a couple of nurse assistant positions and I was
24 working at Kinross Nursing Home for around - it was over
25 a year before I decided I should do my training as a
26 nurse. So I then went on to be a state enrolled nurse at
27 Mount Royal Hospital. I completed my training at that
28 hospital and I worked a number of general medical
29 positions at various hospitals throughout Melbourne and
30 ended up specialising in advanced care for dementia and
31 Alzheimer's patients.

1 What about your involvement with art, when did it commence?

2 ---At around 1987 I decided to do my HSC. I'd never
3 completed my HSC; it had always bothered me. So I did
4 that as an adult student over two years part-time.

5 Nursing allowed for that. Part of the inspiration for my
6 artistic concentration or focus on surrealism commenced
7 when I met, first met Demetrious Vakras back in - - -

8 Just stopping you there. When did you meet him?---Back in
9 1982-83, and we've been - not been apart ever since. So
10 there was an interest in surrealism instantly. I saw it
11 as an awakening of sorts. I'd never encountered it
12 before meeting Mr Vakras, Demetrious, and it was an art
13 form that I had not encountered. I had always been
14 interested in art. I had always been a bit flaky about
15 it prior to that meeting. When I was doing my HSC I
16 concentrated on the art component of that particular
17 course. My artwork that I produce, which were amongst
18 the first paintings I'd ever done, were exhibited in the
19 HSC art show of that year. Following this I became much
20 more focused on producing and exhibiting my work and
21 joining the Contemporary Art Society.

22 Just stopping you there. When did you join the Contemporary
23 Art Society?---It was in around 1991.

24 What is that?---The Contemporary Art Society of Victoria is an
25 artists run for artists group. They met - at the time
26 that I joined they met at a centre called the Olga Koln
27 Centre and she was - - -

28 I beg your pardon, sorry, I couldn't hear that?---Olga Koln,
29 it's K-o-l-n, Centre, which was an estate that was gifted
30 by that artist upon her death for the purposes of, you
31 know, art groups meeting and advancing their art in a

1 setting which was conducive to the fact that artists
2 don't have a lot of money and a lot of opportunity for
3 exhibiting.

4 What did you do at the Contemporary Art Society of Victoria?

5 ---I was the treasurer for a short time over 93 to 95 and
6 I coordinated and curated some group shows. One group
7 show - at a lot of group - we had a lot of group shows.
8 There were several group shows each year to allow for
9 artists to have the experience of exhibiting in a setting
10 that was professional and develop skills and opportunity.
11 The art organisation did have a committee, it was all
12 volunteer based, all volunteer run and, as I said, I was
13 their treasurer for a number of years and coordinated
14 exhibitions during that time.

15 What did you do after your involvement with the Contemporary
16 Art Society?---Well, I joined Roar Studios, followed
17 Demetrious into that organisation because they - - -

18 What's Raw Studios?---Roar Studios was a more progressive, more
19 modern group of artists who were operating out of a
20 funded location in Fitzroy.

21 How do you spell roar?---R-o-a-r Studios. And it was less
22 restrictive in terms of - the situation with Contemporary
23 Art Society was that it was quite formulaic to a certain
24 point and very guided by committee and did have a little
25 bit of a suffocating effect. We joined Roar Studios
26 because it was much more progressive and modern, as I
27 say, and artists were free to be much more self
28 expressive within the group.

29 What did you do at Roar?---I had my first solo exhibition at
30 Roar.

31 When was that?---99.

1 Yes, go on?---It was a great experience. The paintings I was
2 producing at the time had come together in a cohesive way
3 and it had a series effect so it was worth making the
4 announcement that I was an artist, this is my first solo,
5 and we've self produced every show that we've ever
6 conducted. Roar did not represent us, we followed their
7 guides, their agreements and installed an exhibition into
8 their premises. The premises - - -

9 What exhibitions did you do after Roar?---I had group shows
10 with Roar as well similar to the Contemporary Art
11 Society. They ran group shows as well. There were - a
12 charity auction for instance as well. I had a second
13 solo exhibition.

14 Where was that?---That was at Intrude and we - I co-exhibited
15 with Demetrious Vakras later at 4 Cats.

16 When was this?---4 Cats was 2004 or 6. I'm getting myself
17 mixed up. The exhibition - - -

18 HIS HONOUR: Take your time and reflect if you need to?---Yeah.
19 Don't feel as though you've got to burst out with all your
20 answers. It's your evidence so you need to be sure of
21 what you say?---The exhibition that Intrude was - that's
22 my second solo, sorry, and the 4 Cats exhibition was a
23 joint exhibition with Demetrious Vakras. It was reviewed
24 in the local news. This gallery 4 Cats was a for hire
25 gallery as well and the show went for around three weeks.

26 MR GILERTSON: Where did the 4 Cats exhibition occur?---It was
27 in Collingwood.

28 What about exhibitions after this 4 Cats exhibition?---I had -
29 I was picked up for a very short period of time by
30 Delshan Gallery who showed interest in my work. They're
31 in Armadale.

1 HIS HONOUR: Can you spell that, sorry, just for the

2 transcript?---Delshan, D-e-l-s-h-a-n.

3 Thank you?---And - - -

4 You said they showed an interest in your work and they'd picked
5 up your work?---No, I was - it was a very brief
6 experience. The woman running the gallery who her name
7 escapes me now, was interested in my - the theatricalness
8 of my work and she represented the work in her stock
9 room, what she called her stock room. I left work with
10 her on consignment for a short period of time, well,
11 relatively short period of time, eight months or so, and
12 it was a very informal matter. I had subsequent
13 exhibitions with the director of Intrude 2 where I had my
14 solo exhibition and that was in her Malvern gallery and
15 they were director's choice group shows out of the stock
16 room and all of other artists in her stable. In about
17 2004 at work I was at Museum Victoria then for a while, I
18 conceived and curated what was known as the Staff Art
19 exhibition.

20 Which sorry?---Staff Art.

21 MR GILERTSON: Staff Art, S-t-a-f-f?---Yes, so it was Museum
22 Victoria staff exhibiting work in an exhibition which we
23 dubbed or I dubbed Staff Art. A number of artists at the
24 museum and sculptors and other makers of things took part
25 in that exhibition and I have also produced a charity, an
26 exhibition for a charity auction at the Royal Melbourne
27 Hospital which was called Vignette's and I also designed
28 the catalogue for that. I have not exhibited since
29 Guildford Lane Gallery - I have, that's actually a bit of
30 a fib. I had lined an exhibition at Brunswick Street
31 Gallery which I had to complete work for and follow

1 through on my commitment with and that was in 2010.

2 If I could take you now to Mr Cripps, when did you first come
3 across Mr Cripps?---At the opening, the inaugural opening
4 of the Guildford Lane Gallery exhibition in 2008.

5 Sorry, I've cut you off unnecessarily, go on?---Yeah. Where a
6 co-worker who was a friend of Nina Sellers who formed the
7 presentation which was to be at Guildford Lane Gallery
8 told me about this particular gallery. She was aware
9 that I was interested and my partner Demetrious were
10 artists and that we were interested in creating a joint
11 solo exhibition. I had noted that the Dali Liquid
12 Desire's exhibition was going to be coming up in 2009,
13 the end of 2009. I suggested to Demetrious perhaps we
14 should have our exhibition around that time, it seemed
15 like a very good conflation of events. We hadn't decided
16 on any gallery. My friend at work Karen told me about
17 this gallery opening and would I like to come. She said
18 it should be big, it should be good because her friend is
19 Nina who is the partner of Stelarc and it would be a
20 presentation of her work which showcased his particular
21 performance piece, the Third Ear and the surgery that
22 went on around that. We were very - well, I was very
23 interested to go along. We went along to the exhibition.
24 It was a very large affair. The building itself was
25 impressive. The number of attendees at the exhibition
26 understandably with Stelarc being - calling a showcased
27 component meant that there was a large crowd. It was
28 vibrant. There was music being played by live musicians
29 and there was a speech of course opening the gallery as
30 well as the exhibition that formed the inaugural gallery
31 opening presentation. Robert Cripps gave a fairly short

1 introduction and invited Stelarc to speak. We enjoyed
2 the night. We actually got to meet Stelarc, he's a
3 lovely chap and that was through my friend as well and
4 then - - -

5 Did you speak to Mr Cripps on that occasion?---No, no, no. We
6 never did Mr Cripps at that point. We left that gallery
7 thinking yeah, that looks like the sort of gallery that -
8 and space that had the tone that we were looking for. It
9 was the presentation ensured that there was this idea of
10 a different type of exhibition paradigm. We were always
11 looking for something that was less conformist and more
12 advanced and expressive and allowed for free development
13 of artistic expression.

14 Before I move on to another topic would you just in general
15 terms describe to the court your art?---Well, it's
16 surrealist in inspiration. I don't think it's
17 particularly surrealist overall. There are elements of
18 symbolism which is a personal and/or one developed out of
19 known symbols, a pose that a figure may have is
20 definitely a known symbol either deference or worship.
21 My art attempts to elucidate the imagination, an idea
22 through the imagination. I don't attempt to paint what
23 is there. I attempt to create attention by pointing at
24 some underlying issue that might exist in reality and
25 therefore my work is designed to create that tension in
26 the viewer. Whether it be on a personal level or a more
27 broad understanding of the images, the image may upset
28 me, the image may impress me, the image may provoke an
29 emotion or no emotion. The intention it has to convey an
30 idea successfully and use the imagination to do so. I
31 think that surrealism is the best genre for allowing us

1 to remark on our ideas and share those ideas. It's
2 intended to inform. It's intended to upset and it is
3 intended to convey meaning.

4 I'm going to stop you there. Your Honour, I notice the time.

5 I am going to start taking Ms Raymond through a number of
6 documents. I appreciate it's a little bit early but is
7 that a convenient time?

8 HIS HONOUR: It is very convenient for me because I was going
9 to stop the evidence in any event. I have an internal
10 meeting. I just want to raise a couple of things if I
11 may. You may step down if you wish from the witness box,
12 thank you very much.

13 <(THE WITNESS WITHDREW)

1 HIS HONOUR: These two proceedings are being heard together,
2 presumably an order has been made in the past to
3 facilitate that. Did the order expressly provide that
4 evidence in one proceeding is evidence in the other?

5 MR GILERTSON: My recollection is no, it did not.

6 HIS HONOUR: I think that's necessary, is it not, because the
7 proceedings overlap?

8 MR GILERTSON: It is in our submission necessary, yes.

9 HIS HONOUR: Do you have anything to say about that, Mr Dibb?

10 MR DIBB: No, Your Honour, I think that's convenient. It was
11 the basis on which we asked for the matter to be remitted
12 from the Civil and Administrative Tribunal.

13 HIS HONOUR: Yes. The two proceedings have not been
14 consolidated I take it?

15 MR DIBB: No, they haven't.

16 HIS HONOUR: They're just being concurrently, is that right?

17 MR DIBB: That's so, yes.

18 HIS HONOUR: Yes, all right. In both proceedings I make an
19 order that evidence in one shall be evidence in the
20 other. I don't know whether an order for witnesses out
21 of court will be sought in due course and I don't know
22 whether there are any non party witnesses in court. It's
23 a matter for the parties.

24 I normally make those orders if sought but that can
25 be considered if necessary. So I don't recognise the
26 persons in court other than obviously the witness who's
27 just given evidence. Unless there's anything else we
28 will resume at 2.15.

29 MR GILERTSON: If Your Honour please.

30 HIS HONOUR: Thank you, we will adjourn until 2.15.

31 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.13 P.M.:

MR GILERTSON: Your Honour, before Ms Raymond returns to the witness box I seek an order for witnesses out of court?

HIS HONOUR: Is that opposed?

MR DIBB: No, it's not opposed.

HIS HONOUR: Thank you. I order that all witnesses other than the parties leave the court until called please.

(At the request of Mr Gilbertson all witnesses ordered out of court.)

MR GILERTSON: If Ms Raymond could back into the witness box?

HIS HONOUR: Yes, thank you.

<LEE-ANNE RAYMOND, recalled:

MR GILERTSON: Your Honour, I'm going to hand to Ms Raymond a copy of the defendants' court book. Ms Raymond, if I could ask you to open Tab 1 of that court book. Do you recognise that document?---It's the exhibition proposal that we submitted to the gallery.

HIS HONOUR: Sorry, you need to speak up?---It's the exhibition proposal we submitted to Guildford Lane Gallery.

MR GILERTSON: When did you submit that?---I submitted it on - this is where the dates get me.

Just roughly?---Roughly in 2008, September.

And how did you submit it?---It was an online form that we downloaded but I delivered it by hand to the gallery.

Who completed what's in that form?---Myself and Demetrios Vakras.

Your Honour, before I move on I raised with my learned friend before the break as to whether there was a need to separately tender all these documents.

HIS HONOUR: Yes.

1 MR GILERTSON: What we would propose is that rather than doing
2 that in order to make the trial more efficient that any
3 document that we refer to we seek to tender, subject to
4 any objection.

5 HIS HONOUR: Yes, I am content with that course and I should
6 just say that my practice is to ignore any document in a
7 court book unless it is tendered so that puts the onus on
8 you to make sure that you and your instructor or your
9 junior really takes note of what it is that will be
10 tendered later. At the end whenever you're ready at the
11 close of the evidence or before that, you can do it in
12 stages if you want, I will assign separate numbers to
13 each document. I won't assign exhibit numbers to bundles
14 of documents.

15 MR GILERTSON: Yes, Your Honour.

16 HIS HONOUR: So that the best way to manage that aspect is
17 again if your junior or your instructor can prepare an
18 ongoing list with the documents listed separately and
19 I'll then just go through and assign a number rather than
20 reading the documents so I just basically assign a number
21 administratively in my chambers. I'll then provide a
22 document to the parties and if you're content with that
23 then we'll just send it to the transcript writers and it
24 will be incorporated as part of the transcript, otherwise
25 I'll spend ten minutes reading the list.

26 MR GILERTSON: As Your Honour pleases. (To witness) After that
27 document was submitted to the Guildford Lane Gallery if I
28 could take you next, please, to Tab 2, what is that
29 document?---It's an acceptance of our application. We
30 had a - there was attached to it a formal letter of
31 offer.

1 Just before we go on - sorry, no, going on, if you go to Tab 3,
2 please, what is that?---That is Stacy Jewell emailing
3 myself and Demetrios Vakras - - -

4 I think you might still be in Tab 2.

5 HIS HONOUR: Tab 3 you should go to?---I'm in Tab 3. Sorry,
6 it's - no, that's it, sorry. Tab 4.

7 Some documents are on top of the tab rather than after the tab,
8 is that right?

9 MR GILERTSON: Perhaps if I could have the folder handed back?

10 HIS HONOUR: Yes.

11 MR GILERTSON: Your Honour, can I just have a moment to peruse
12 this?

13 HIS HONOUR: Of course. But I can say, Mr Gilbertson, that
14 your documents in your folder that you opened with are
15 exactly the same. I have no difficulty following if it's
16 in the same sequence here.

17 MR GILERTSON: Thank you, Your Honour. I just want to check
18 for a moment this folder.

19 HIS HONOUR: Ms Raymond, if you need a break in the afternoon,
20 I'm not sure how long your evidence will be, but if it's
21 going to until 4.15 and you need a break at about 3.15
22 just to check your stretch your legs or for any other
23 reason just let me know?---Yes.

24 It's important that you remain comfortable while you're giving
25 evidence?---Thank you.

26 And that applies obviously to all the witnesses?---Yes,
27 absolutely.

28 Can we just inquire of counsel whether the temperature in the
29 court room is acceptable?

30 MR GILERTSON: It is a little warm for me.

31 HIS HONOUR: Yes. Madam Associate, can you do something about

1 the temperature, please.

2 MR GILERTSON: I have another copy, Your Honour, of the court
3 book which without going through all of it I have a much
4 greater degree of confidence is correct.

5 HIS HONOUR: Yes.

6 MR GILERTSON: Can I take you, Ms Raymond, please, to Tab 3.
7 What is that document?---It's an email from Guildford
8 Lane Gallery by Yolande Pickett, "We're delighted to
9 approve your exhibition proposal for Human -
10 Transhumanist".

11 HIS HONOUR: I'm sorry, you described it as an email, is it an
12 email?---Sorry, it's a letter. It's the attachment to
13 the email that was accepting our proposal.

14 MR GILERTSON: That's the email you were - - -?---This is a
15 letter of offer I suppose. It doesn't announce itself as
16 such but.

17 This document was attached to the email you've just referred
18 to, was it?---Correct.

19 Now if you could go, please, to Tab 4 and towards the foot of
20 the page or just below the middle, there's an entry on 11
21 December 2008, do you see that?---Yes.

22 What is that?---I was asking Ms Pickett if the gallery used a
23 preferred printer. We were looking to produce a
24 catalogue in time for the exhibition the following year
25 and, yeah, looking for recommendations from the gallery.

26 What is that above that entry?---That's Ms Pickett's answer.
27 She is saying that the gallery doesn't generally getting
28 any printing done as they're new, happy to chase it up
29 with some recent exhibitors and they're busy - - -

30 MR DIBB: Can I suggest, Your Honour, that these documents
31 speak for themselves.

1 HIS HONOUR: Yes, I was thinking that.

2 MR GILERTSON: I'll just get you to identify the document.

3 HIS HONOUR: Yes, an email from/to I think because the content
4 does speak for itself.

5 MR GILERTSON: Thank you, Your Honour.

6 HIS HONOUR: And I think you can probably expedite it as well.
7 I mean you've opened with them and there was no objection
8 to them. I don't think there's any dispute that they
9 were received back and forward, is there?

10 MR DIBB: No, Your Honour.

11 HIS HONOUR: No, so we might just go through this a bit
12 quicker.

13 MR GILERTSON: I will, Your Honour. (To witness) If you could
14 go, please, to Tab 5, if you look at the first page what
15 is that towards the bottom of that first page in Tab 5?
16 ---I was requesting a letter of recommendation. We were
17 applying for a grant.
18 If you could just identify what that is, is that an email, is
19 that a letter, what is it?---It's an email from myself to
20 Yolande Pickett.

21 HIS HONOUR: You might lead I think to expedite the situation.

22 MR GILERTSON: I will, Your Honour, yes. (To witness) And if
23 you look over the page is that a copy of the floor plan
24 that you were provided with at the time?

25 HIS HONOUR: I think there's a problem with the documents, is
26 there?----Sorry, yes.

27 MR GILERTSON: I'm still, Ms Raymond, in 5?---In 5.
28 The second page of 5?---Yes, it is.

29 HIS HONOUR: Yes, the witness has got them?---Yeah.

30 MR GILERTSON: I beg your pardon, what did you say that was?
31 ---It is the first floor plan.

1 Then if you look at Tab 6 - sorry, before I go to Tab 6, the
2 third page of Tab 5 what is that document? Is that an
3 email from - - -?---From Yolande Pickett to myself.

4 To you dated 2 January?---Correct.

5 Now if you'd please go to Tab 6, towards the middle of the
6 page. Is that an email from you to Yolande Pickett on
7 21 January 2009?---Yes, it is.

8 What happened later in January after that email?---Later in
9 January, we met with Mr Cripps and Ms Pickett at the
10 gallery and we were going to meet with them in order to
11 discuss more detailed outline of the show.

12 Yes. When you went to the gallery tell the court what
13 happened?---I arrived - - -

14 HIS HONOUR: What date, I think that's missing?

15 MR GILERTSON: Yes, thank you, Your Honour?---23 January.

16 HIS HONOUR: 23 January?---2009.

17 MR GILERTSON: And when you went to the gallery what happened?

18 ---We went up - we met with Yolande Pickett in the ground
19 floor section and we went upstairs with her. We had a
20 short discussion about Demetrios' injuries from a bike
21 accident that he had had on New Year's Eve and returning
22 from work he was so - - -

23 MR DIBB: Sorry, I didn't catch that?---He had a bike accident
24 returning from work New Year's Eve so the reason we
25 discussed it was because he was covered in Zinc cream and
26 I had emailed the gallery to outline his injuries may
27 affect his ability to paint. It was - - -

28 HIS HONOUR: Sorry, can I just get the timing? When is this
29 meeting?---23 January.

30 I thought you said New Year's Eve?---And New Years - 23 January
31 was the first meeting with the gallery people proper.

1 You're describing what occurred at this meeting?---And our
2 discussions from meeting Ms Pickett included talking
3 about Demetrious' bike accident injury. The bike
4 accident had occurred that New Year's Eve prior.

5 The prior New Year's Eve, I see?---Yeah.

6 MR GILERTSON: And after the discussion about the bike accident
7 what happened?---We were taken upstairs to Level 1 which
8 is the gallery space in which we were hiring - which we
9 were hiring from the gallery. Mr Cripps joined us
10 shortly after and we began some - outlining our plans for
11 the exhibition.

12 Could you just describe to the court what was said in that
13 regard and by whom?---We said that - - -

14 When you say we said, who are you referring to when you say
15 that?---Yeah, I said that we would be hoping to align the
16 exhibition with the Dali exhibition in order to provide a
17 counterpoint of our surrealism with the Dali presentation
18 at the NGV. We discussed the space. We admired the
19 vastness of it. We thought that this would be an ideal
20 space in order to showcase a large amount of our work.
21 We described how we'd still be producing paintings for it
22 and digital artwork, getting it framed, producing - or
23 framing already produced drawings and that we'd be
24 producing our catalogue.

25 Just stopping you there, what discussions were there in
26 relation to a catalogue at this meeting?---The catalogue
27 was discussed in terms of - I think you need to ask me
28 that question again.

29 Could you just say if you could as best you can who said what?
30 ---It was pointed out by me that we would be producing a
31 catalogue.

1 Yes?---And that it would be challenging, that it would have our
2 art manifesto and it would have the paintings depicted in
3 the show, drawings and digital artwork. It would be -
4 quality publication is what I was trying to convey.

5 HIS HONOUR: Sorry, just to make sure that we're all on the
6 same page, you said that that's what you were trying to
7 convey. The questions you're being asked though are not
8 what you were trying to do but actually what you've said
9 and what other people said and what you heard?---Yeah.

10 So you need to have that discipline in your mind. It's not a
11 conclusion from what you've heard or said but as best you
12 can trying to remember obviously?---Yeah.

13 What actually people said because that's the way we receive
14 evidence, you see?---M'mm.

15 I then decide what conclusions to draw upon it. It's a fine
16 line but it's very important to focus on as best as
17 possible the precise words, who said what and what
18 happened next, hopefully in a chronological order so that
19 it's in sequence?---I'll attempt to do that Your Honour.

20 Yes, if you could?---The discussion did start on the outline of
21 the show and we were - there was multiple conversation
22 going on. It is difficult for me to pick out exactly
23 what was said by whom in that context with regards the
24 catalogue I introduced that we would be producing a
25 catalogue and there was some interest from Mr Cripps at
26 that point.

27 MR GILERTSON: Just stopping you there, what did Mr Cripps say
28 about a catalogue?---He said would it be like the one at
29 the Orange Gallery and that's a significant thing to say
30 because the Orange Gallery exhibition which was the Art
31 Visionary exhibition is a fairly obscure and we were

1 impressed that - well, I was impressed that he actually
2 knew about that exhibition. I said - I actually looked
3 at Demetrious, he looked at me and I said no and we
4 either both or I said no, not really and then Demetrious
5 said it would be a counter that type of exhibition, that
6 Art Visionary was showcasing art that was mystical,
7 spiritual, attempting to elevate a religious point of
8 view utilising art of the imagination or surrealism to -
9 and with regards our publication it would be the
10 opposite. Our publication would be to counteract that
11 view and I said yes, that the Dali exhibition, that
12 presentation is what we're hoping to counteract as well.
13 We're trying to present an historical, as close to as we
14 could, a more historical presentation of surrealism and
15 it would be challenging and in the true context of art
16 manifestos of a surrealist style.

17 Did Mr Cripps say anything else to the Orange Gallery?---He was
18 very enthused by the prospect. He visually conveyed this
19 by smiling, grinning, clasping his hands together and he
20 said something along the lines of Alan Sisley fried his
21 brains in the 70's and which I thought was - - -

22 HIS HONOUR: I didn't catch that, what did you say?---Alan
23 Sisley fried his brains in the 70's.

24 I see?---Alan Sisley is the director of Orange Gallery then and
25 now. I thought it was odd. I didn't put much more into
26 it. I figured Mr Cripps knew the man more than - or
27 better than I. We didn't engage any more on that.

28 MR GILERTSON: If I can go on, was there any discussion in
29 relation to a manifesto?---The manifesto, nothing further
30 to than it would be in the tradition, the historic
31 tradition of a surrealist.

1 Sorry, I need to cut you off. Who is saying these words that
2 you're now referring to?---Demetrious.

3 Yes, go on?---Demetrious pointed out that it would be a
4 polemical manifesto, that it would be critical rather
5 than positive of religion and that it would be
6 challenging. We said that a few times. I said,
7 Demetrious said it that it would be challenging to the
8 viewer and obviously it was to some.

9 What about Mr Vakras's work Carnivora, were there any
10 discussions about that?---Well, in the context of
11 Carnivora Demetrious brought that along to show his work
12 had been reproduced in other catalogues and that he would
13 be utilising that to impress upon the viewer that there
14 was a wider appreciation of the art. He showed it to
15 Mr Cripps and Ms Pickett and they discussed - he said how
16 he would get, just get large print ups of the pages on
17 which he appears.

18 Who is the he?---Demetrious.

19 Yes, go on?---And then he would post them alongside our
20 catalogue, the posters of our catalogue. Then Ms Pickett
21 said we should get them in and support them alongside
22 your catalogue downstairs. And we said really?

23 We should get them in?---We should get them in, the Carnivora.

24 HIS HONOUR: Did you say have them alongside your catalogue?

25 ---Yes, said, "Really? Can you do that?" And she said,
26 "Yes, we do that all the time." Now, that meant that you
27 would have to go to a publisher. Demetrios offered to
28 source the publications and that's when she said no, we
29 do that all the time.

30 MR DIBB: I'm sorry, which publication is being - - -?

31 ---Carnivora.

1 Carnivora?---Yes. Carnivora is - - -

2 HIS HONOUR: I think you should direct any questions through
3 Mr Gilbertson?---That's OK, I'm happy to answer.

4 MR DIBB: Yes. I'm just struggling to follow the evidence,
5 Your Honour, I beg your pardon.

6 HIS HONOUR: Is it the acoustics? Because I can hear the
7 witness quite well from here.

8 MR DIBB: I can hear the witness quite well now, yes.

9 MR GILBERTSON: (To witness) Where were you standing when this
10 discussion was taking place?---We were standing towards
11 the front of the building inside the Level 1 space and
12 near the space that's referred to as the artist or open
13 studio.

14 Were there any discussions in relation to the open studio at
15 this meeting?---I looked at it and noted to Yolande
16 Pickett that we would have to have that space as well and
17 we don't want any other artists work intruding on the
18 exhibition. It was intended to be a singular conveyance
19 of surrealism. We didn't - if it was a non surrealistic
20 exhibiting in that space it would have clashed. She said
21 that the exhibition - that the space is an extra cost,
22 and I said no, we'd have to have the entire floor as
23 requested, and she said that to check the email that she
24 had sent me. I said I would, which I did so and it did
25 exclude that area.

26 Just before you go to the emails. Was there any other
27 discussion between you or Mr Vakras and Ms Pickett about
28 the open studio?---The open studio she explained was an
29 area for an artist to present, demonstrate their work, so
30 they were in situ with the artwork and they were
31 developing their artwork. Demetrios said, well, I could

1 set up an A frame easel and do some drawing, I could set
2 up a computer and demonstrate the digital art creation,
3 because that's quite a distinct process in itself, and I
4 could help sell the catalogue out of that area and engage
5 visitors.

6 Were there any discussions in relation to card invitations?

7 ---There were. The invitation I said was something that
8 we would be having printed. I asked would the gallery
9 provide us with their mailing list and I asked that
10 question of Yolande Pickett and she - and Mr Cripps, I
11 can't remember which one, stated that they don't have a
12 physical mailing list, they only email. I have to say
13 both Demetrios and I particularly maybe, I don't know,
14 but we were both disappointed with that and perhaps
15 visibly so. It was quickly stated to us by Mr Cripps at
16 that point we would - he can post his volunteers outside
17 the NGV and hand them out so capturing that audience and
18 bringing them to the Guildford Lane Gallery, and I was
19 delighted with this and I said, "Really?" I say really a
20 lot. "That would be great because we wouldn't have time,
21 you would do that." And Ms Pickett said, "That's what
22 our volunteers are for." I then asked, "Well, how many
23 volunteers do you have?" And either one or both of them
24 said lots. I can't remember who.

25 Was there any discussion about sales?---We checked with them
26 about banking details, do they have facilities for taking
27 sales from - I asked Ms Pickett do you have facilities
28 for taking sales from prospective buyers? And they have
29 those facilities I was assured and they would handle
30 that.

31 What about, was there any discussion in relation to letters of

1 support?---In context with the catalogue and because of
2 the increased cost that this exhibition represented I
3 told - I said to Yolande - and we mainly discussed these
4 things with Yolande Pickett - that we'd be going for an
5 artist's grant and one of the requirements of a grant is
6 that you gather documents and one of those documents is a
7 letter of support from the gallery in which you're going
8 to be exhibiting and would they be able to provide this?
9 And Ms Pickett said, "Yes, of course."

10 If I could take you now to Tab 7 in that folder. Is that an
11 email from you to Yolande Pickett on 24 January 2009?

12 ---Yes.

13 If you go over one page, is that an email from Yolande Pickett
14 to you of 10 February 2009?---Yes.

15 You'll see it says, "Hi Lee-Anne, please find attached your
16 exhibition agreement." If you go one further page, is
17 that the copy of the exhibition agreement that you were
18 provided with as part of that email?---Yes, it is.

19 If you go back to the first page of that you'll see it has you
20 as the hirer and not Mr Vakras as well; do you see that?

21 ---Yes.

22 There's a misdescription of your proposed exhibition in
23 Paragraph 1(b); do you see that, of the word human?

24 ---Yes.

25 What happened with that exhibition agreement after you received
26 it?---We both, I and Demetrios signed it. Demetrios
27 adjusted, as we were invited to do so, to add his name.
28 He adjusted the document and just adding ist to the
29 title.

30 Yes. What did you then do with it?---I hand delivered our
31 signed agreement to the Guildford Lane Gallery

1 premises.

2 Could you just look over to Tab 16. Is that a copy of the
3 document that was amended as you've described and that
4 you and Demetrios signed?---It is.

5 HIS HONOUR: Sorry, I'm a bit confused. Does your evidence
6 mean that the amendments were made on your computer?

7 ---Correct.

8 Thank you.

9 MR GILBERTSON: Now if you go back please, Ms Raymond, to
10 Tab 9. Is that an invoice that you received from
11 Mr Cripps via email of the deposit of \$1980?---Yes.

12 Did you pay that deposit by internet bank transfer?---Yes, I
13 did.

14 When did you pay that?---Pardon me?

15 When did you pay that?---On or around 17 March 2009.

16 If you look please at Tab 12. Before I get to that I should
17 ask you about Tab 10. Is that a copy of your email

18 indicating that the deposit had been paid?---Sorry, I'm -
19 here we are. Yes.

20 And Tab 11, is that an email you sent to Yolande Pickett on 1
21 May?---Yes, it is.

22 Now if I could move please to Tab 12. What is that document at
23 Tab 12?---It's an example of the posting I made to That's
24 Melbourne. It's an online resource for free where you
25 can post events.

26 Now Tab 13. Is that an email from Yolande Pickett to you of 4
27 May 2009?---Yes, it is.

28 You'll see it says in the second last paragraph, "In terms of
29 the publication Demetrios mentioned unfortunately I do
30 not have enough hours in the day to arrange for
31 appropriate publications to be in Stop Reach exhibition

1 so if you wish to make it available I will have to leave
2 that up to you to organise it." Did you understand that
3 to be a reference to Carnivora or your - - -

4 MR DIBB: I object to that question, Your Honour. The document
5 speaks for itself.

6 HIS HONOUR: What do you say about the admissibility of that
7 question?

8 MR GILBERTSON: It goes to all the circumstances of the
9 dealings in relation to the catalogue as to what
10 Ms Raymond's understanding as to what Yolande Pickett was
11 here referring to.

12 HIS HONOUR: Is that going to be followed up by further
13 questions about what this witness did or didn't do in
14 response to that understanding?

15 MR GILBERTSON: Yes.

16 HIS HONOUR: I'll allow the question on that basis.

17 MR GILBERTSON: (To witness) Did you understand the question,
18 Ms Raymond? Did you understand that second last
19 paragraph to be a reference to Carnivora or to the
20 catalogue that you and Mr Vakras were proposing to
21 produce?

22 HIS HONOUR: I think the question is; how did you understand
23 that reference?---I initially worried that it was our
24 catalogue and I rang Demetrios to cover the content of
25 that email and he assured me, no, no, no, Yolande Pickett
26 is actually referring to Carnivora.

27 MR DIBB: I object to that answer, Your Honour.

28 HIS HONOUR: You can't object to the answer. The witness,
29 Mr Vakras, is here, he can be asked that question as
30 well.

31 MR DIBB: Yes, Your Honour.

1 MR GILBERTSON: I'll move on, Ms Raymond. If you could have a
2 look please at Tab 14. Are they emails you received from
3 Mr Cripps in relation to the surety and the remaining
4 balance that was outstanding?---Yes.

5 Tab 15, is that a receipt for the payment of the surety?---Yes,
6 it is.

7 HIS HONOUR: Sorry, can I just ask in relation to the document
8 in Tab 15, there's a little box there, "Gallery bond
9 moneys returned." Is that part of the original document
10 or is that superimposed by someone?---No, that's added as
11 a note to - mainly for our benefit, Demetrios and my own,
12 so that we knew that that was what that was just at a
13 glance.

14 Who inserted that?---I think I did.

15 MR GILBERTSON: The remaining balance of \$1980 was paid by you
16 wasn't it?---Yes.

17 If we go now, Ms Raymond, to late May 2009. Did you make any
18 arrangements in relation to transport?---I did. I booked
19 a Ford Transit van for the transportation of our artworks
20 to the gallery.

21 What about, did you make any arrangements in relation to
22 invitations?---They had been designed by Demetrios and
23 with my involvement. The invitation file was sent to a
24 printer and they were with the printer and I picked them
25 up and made payment for them.

26 Did you do anything with those invitations?---The invitation
27 was either - I electronically mailed some of the - the
28 resulting design was electronically mailed to journalists
29 and the hard copy was collected for bringing to the
30 gallery.

31 Would you go now please to Tab 17. Is that an email, the first

1 page, is that an email from Sarah Webb to you and
2 Mr Vakras of 29 May 2009?---Yes.
3 The document that follows it, is that a copy of the draft press
4 release that you received?---Yes, it is.
5 Now if you could go please to Tab 18, and I need to deal with
6 these in reverse order. If you go to the last page
7 please of Tab 18, you see it's got a Number 4 at the
8 bottom; do you have that?---Yes.
9 Is that email at the bottom an email from Yolande Pickett to
10 you of Saturday 30 May?---It's missing the sign off but I
11 recognise it and that she's advising Lian Low will be in
12 contact.
13 Yes. On 1 June above it do you see; is that an email from you
14 to Lian Low and Melanie Trojkovic?---Yes.
15 Then before I move on, you will see that email, that last email
16 I've taken you to, "Just letting you know that Demetrios
17 and I will visit the gallery for a brief look at the
18 space (if we won't be in the way of installs, et cetera)
19 and to drop off invitation postcards to you. We should
20 see you by five to 5.30-ish today. Best wishes, Lee-
21 Anne." Did you have any discussions with anyone at the
22 gallery in relation to seeing you at five to 5.30-ish
23 today?---I did. After a quick discussion with Demetrios
24 we thought best to check in with the gallery to make sure
25 that they were actually open because it was as Monday,
26 which is traditionally a closed day for the gallery to
27 the public, and I did call and I spoke with either Lian
28 or Melanie and they confirmed that that would be OK for
29 us to arrive at that time. I followed up with an email
30 to Ms Low and she confirmed later that the meeting was
31 confirmed.

1 Is that email that you're now referring to, if you go back a
2 page please to what has 3 at the bottom, do you see
3 there's an email towards the foot on 1 June 2009?---Yes.
4 Is that an email from Lian Low to you?---It is.
5 Would you tell the court please what happened after you
6 received that email on that day?---Demetrios and I met at
7 the gallery. I arrived from work a little late.
8 Roughly what time did you get there?---Around about 5.15, 5.20.
9 As I rounded the corner into the laneway that the gallery
10 is Demetrios was walking towards me and he said the
11 gallery was locked, closed up, and that they'd been
12 trying to attract attention. There was a lady there as
13 well who had driven in her car for a meeting, a similarly
14 arranged meeting. I looked at the gallery myself. It
15 had a light on in the ground floor, you could see the
16 reception desk. I could see that there was a liquor
17 licence application form in the window to the left of the
18 main door. I checked the door for any signage. There
19 was just an hours of opening signage. The lady was
20 telling me that she had tried calling, she had rung up
21 Telstra directory and get the landline and it rang
22 through. She was in the process of banging on the
23 windows and doors very loudly and calling out hello,
24 hello. And I then tried my mobile, I took out my mobile
25 and tried the number that I had used to call the gallery
26 that day and other times and it rang through. We kind of
27 stood around for a little while and the lady decided that
28 she had to get moving. We decided we may as well go, so
29 we went and we went down to the station and took
30 ourselves home.
31 Did you see any telephone number posted outside the premises?

1 ---There was no number.

2 Would you have a look please at Tab 18, p.3 which I took you to

3 before; see towards the middle of the page, "On 1 June

4 2009 at 6.23 p.m," do you see that?---I do.

5 Is that an email you sent to Lian Low at that time?---Yes.

6 Would you have a look now please at the email which appears -

7 it starts at the bottom of p.2 and goes over onto p.3.

8 Is that an email from Lian Low to you at 6.37 p.m. on 1

9 June?---Yes.

10 You'll see it says, "Hi Lee-Anne, we were waiting for you but

11 as the gallery is not officially open today I was

12 expecting you to call." Did you then send an email to

13 Lian Low, back on p.2 please of that bundle, at

14 10.32 p.m. that night?---Yes.

15 And above that on 2 June did Lian Low send that email to you?

16 ---Yes.

17 You'll see it says, "I just had a chat to Robert, the gallery

18 director, and it looks like this week is out as we

19 prepare to have the Kesselskramer exhibition installed,

20 that's K-e-s-s-e-l-s-k-r-a-m-e-r. I'm really sorry about

21 that. Next week Wednesday 10 June or Friday 12 June is

22 great, from 12 p.m. onwards should be fine." Did you

23 read that in the email when you received it?---Yes, I

24 did.

25 What did you do after you read that?---I called the gallery. I

26 called Demetrios first and said that's odd. I called the

27 gallery subsequently. I advised him that I would do so

28 and I was told by either Melanie or Lian that they were

29 too busy and that it was just the gallery was entering a

30 very busy time and they wouldn't have time to meet with

31 us. And I said, well, we don't really need to meet with

1 anyone, we're happy to go in and just assess the space
2 during the public open hours, that would be fine wouldn't
3 it? And I was told no, that they were too busy to deal
4 with us. And I left it at that with whoever I was
5 talking to. I rang Demetrios and we had a discussion
6 which did include comment about this is how unusual this
7 was, they don't seem to want us there, they don't have
8 time for us, this is a bit idiotic, we don't need to see
9 them.

10 All right, I'll stop you there. Because if you then look
11 please at the bottom of p.1, it says, "On 2 June 2009 at
12 12.43 p.m. Demetrios Vakras wrote," and it goes over the
13 page, "you are bona fide idiots." Did you see that email
14 at the time?---I did.

15 If you look above it, that's back on p.1, there's an email,
16 "Dear Demetrios, Robert and myself were waiting for you
17 at the gallery until 6.30 p.m." Do you see that?---Yes.

18 Did you see that email at the time?---Yes.

19 And an email again above that one from Mr Vakras to manager,
20 Guildford Lane Gallery, copy to Stacy Jewell, Robert
21 Cripps and you. Did you receive that email?---Yes.

22 Then if you go please to Tab 19, is that an email from you to
23 Mr Vakras copied to other including Mr Cripps of 3 June
24 2009?---Yes, and to Lian Low by the manager, email.

25 After this email of 3 June what happened?---Nothing. We had no
26 response from the gallery to know what was happening with
27 the exhibition. It seemed to me that did we have - there
28 was a question hanging over the whole exhibition at this
29 point. I decided myself, I still had the invitations at
30 work that I intended to bring to the last meeting, I'd go
31 into the gallery and see what was what basically. And I

1 went into the gallery on 5 June myself, I just left work
2 a little early and I introduced myself at reception,
3 which the gallery was open, so I walked in. I asked was
4 Mr Cripps in and/or Lian, and they directed me to go to
5 the Level 1 gallery space which Demetrios and I had
6 hired. I came upon Mr Cripps and Lian Low discussing -
7 they were in deep discussion outside the kitchenette
8 there just at the top of the stairs. I waited until I
9 could - I didn't want to interrupt them so I just waited
10 until it looked like there was a spot to get their
11 attention. Mr Cripps suddenly recognised there was
12 somebody standing there and looked up, looked at me and
13 said, "You, I want to talk to you," very cross, pretty
14 cranky, crossing his arms in front of him. I said, "Yes,
15 that's why I'm here. I'm here to see if we've got an
16 exhibition." Lian Low and I had never met. She may not
17 have realised who I was at that point, and I said, "I'm
18 here to see if we've still got an exhibition. I have the
19 invitations." And he said to me angrily that he didn't
20 like being spoken to that way by Vakras, and I said I
21 understand but we didn't like being told that we had not
22 turned up for a meeting we had turned up to, and that I
23 was here to see if we could come to some agreement. We
24 have everything ready for the show I encouraged, and I'd
25 come from work to see if we could make a discussion. I
26 could come back, I could see that they were very busy.
27 It looked like they were preparing for an install or some
28 other event. And Ms Low at that point said to me along
29 the lines of, oh, did you have far to come? And I said,
30 "No, I just work at the museum and it didn't take me long
31 to walk down, the Melbourne Museum up in Carlton

1 Gardens." Mr Cripps scowled at me basically. It put me
2 on the spot because he said at one point, "The Museum,
3 they're idiots, they wouldn't know a good tender if it
4 fell on them," something to that - words to that effect.
5 I didn't know what he was talking about. I said, "I'm
6 sorry?" And he said, "You know, when they move the
7 collections they didn't choose me." And I said, "Well,
8 that's probably before my time. I'm pretty low down in
9 the hierarchy, I wouldn't be involved in any of those
10 sorts of managerial decisions. Perhaps they needed a
11 larger company to move the collections." I mean, the
12 museum has state collections of millions of items. He
13 scoffed at that. He actually looked at me as if I was an
14 idiot and I just - - -

15 Sorry, if I could cut you off and take you back to the
16 discussions about Mr Vakras's emails. What else was said
17 about them?---That they were unacceptable, he didn't like
18 being talked to like that. And he appeared to want me to
19 apologise for them and I didn't feel that I should
20 apologise for them because there was still the
21 disagreement as to us not turning up. So I said, "I'm
22 not here to apologise for someone else's communication
23 style, I am here to see if we've got an exhibition and
24 can come to an agreement." I did have to keep returning
25 the discussion to that point. He pretty much didn't like
26 being spoken to that way, disagree with.

27 Spoken to by whom, you or Mr Vakras? What are you referring to
28 when you say that?---The email that was sent. He didn't
29 specify which email or exactly what, just that he didn't
30 like being spoken to that way.

31 Was there any discussion about a telephone number outside the

1 premises?---I was told by Mr Cripps that there was - the
2 number was outside the door and anyway you should have
3 called and there was no call to the gallery, Mr Cripps
4 said to me. And I said yes, there - well, we did try.
5 There was no number outside the gallery door when we
6 arrived. Mr Cripps said, "Well, we take it in at night
7 when we close the gallery." I said so I couldn't have
8 seen a number to - maybe he intended to convey there was
9 a different number is what my thinking was. I said,
10 "Well, I couldn't have seen a number to have called it.
11 Anyway I had the number in my phone and it rang through."
12 And I said, "The lady who had arrived for the meeting as
13 well she had tried as well and the call had rung
14 through."

15 Did Mr Cripps say why the number was taken in at night?

16 ---Because of repeated prank callers. I don't exactly
17 remember why but he did go into a long explanation of
18 being prank called a lot, and I attempted to be
19 understanding about that, that's fair enough, but I said,
20 "Yes, that we still did try to call," and was told again,
21 "There was no call to the gallery. We would have heard
22 it wouldn't we, Lian?" He asked Lian, Ms Low, and Ms Low
23 nodded and she didn't say much. She basically confirmed
24 what Mr Cripps was saying, that they were there waiting
25 for us. So I said, "There was no one, we could not see
26 any movement. We were making a lot of noise to attract
27 attention and we also attempted to call the two lines to
28 the gallery, the two phone numbers to the gallery that
29 had been successful in the past."

30 Was there any further discussion as to whether you had an

31 exhibition or not?---I asked did we have an exhibition

1 and her said he didn't know at that point, he would have
2 to think about it, Mr Vakras's emails have upset him.
3 And at that point I said, "Well, we've got everything
4 ready, we're all paid up, what more can I do to assist
5 the situation?" And I showed - no, that was a bit later.
6 Suddenly Mr Cripps decided that the conversation had
7 probably gone on too long and he was actually needing to
8 get on with whatever was happening that evening, and he
9 said to me, "Oh, well, OK, you've got an exhibition."
10 And I said, "OK," with some relief, "thank you." And I
11 extended my hand to shake his and he called me in to kiss
12 me, and kissed me, and it made me a bit weirded out.

13 If I could just move you on. What happened after that?---He
14 decided that I should come downstairs, he would take me
15 downstairs to put the invitations down in the reception
16 and he wanted to show me the hours, the signage. I said,
17 "That's fine, here's the invitation." He admired it, he
18 said, "I like the design, who did it?" And I said,
19 "Well, we did, Demetrios and I," and I told him the name
20 of the printer and encouraged that the catalogue would be
21 of similar quality. He didn't acknowledge that, he just
22 wanted to show me the signage. So I followed him
23 downstairs. We went outside and he pointed to above the
24 high part of the doors where the signage was, and I
25 nodded yes, it's there, because the gallery's open. I
26 didn't say this but I thought yes, the gallery's open.
27 And it was evident that the signage could be removed from
28 the plastic sleeves which were probably to protect it
29 from the weather, and I left.

30 You left. If you look please at Tab 20, do you see at the
31 bottom of that first page of the Tab, do you recognise

1 that as an email that Mr Vakras sent to Lian Low and
2 Mr Cripps on 5 June?---Yes.
3 Now if you could go please to Tab 21 on the third page of that
4 tab. Is that an email you sent to Melanie Trojkovic on
5 8 June 2009?---Yes.
6 If you go back two pages please at the bottom of the first page
7 of the tab you'll see it says, "On Wednesday 10 June at
8 12.56," and it goes over onto the next page. Is that an
9 email from Melanie Trojkovic to you of 10 June?---It is.
10 Next if you could go, Ms Raymond, to Tab 22?---Tab 22, sorry?
11 Yes, 22. The second page of that tab towards the bottom, is
12 that an email from you to Lian Low of 11 June?---Yes.
13 Above that but going back one page to identify it from the
14 bottom, is that an email from Lian Low to you of 11
15 June?---Yes.
16 Now if you go please to the top of the first page of that tab,
17 is that also an email from Lian Low to you of 12 June?
18 ---Yes.
19 You'll see it says in the second paragraph of that last email
20 that I've referred you to, "Robert has advised that there
21 will be three exhibition openings on 18 June. This will
22 mean that we will need our volunteers to make sure
23 everything is operating smoothly. You are welcome to
24 sell your catalogue on the opening night, however we
25 advise that you have someone responsible to be handling
26 the sale of the catalogue as 18 June will be a very busy
27 night for gallery personnel." Just pausing there. What
28 did you do after you read that?---I rang Demetrios and I
29 said they're not going to support the catalogue, and we
30 discussed it for a short time and decided that we'll just
31 have to support it ourselves, and I emailed confirming

1 that fact to Ms Low.

2 Before we get to that. When did you take the paintings to the
3 gallery?---On the Monday, which was 15 June. We had
4 always thought that this was the date because of the
5 advice in the exhibitor's pack which emphasised that we
6 had to be there on the Monday at 10 a.m, and I was
7 letting them know that we had the van sorted but it
8 always took us a long time to pack so - - -

9 What did you mean by the exhibitor's pack, what are you
10 referring to?---It was instructions that the exhibitors
11 must do this, this and this for installation and that
12 they should come into the gallery and be able to be
13 oriented to all of the equipment. I think Melanie
14 Trojkovic sent that through. She was the installation
15 coordinator.

16 After the paintings were taken on 15 June what was done in
17 relation to the essays?---We printed them off - after
18 installing the show - we installed the show proper on the
19 16th, we just got time to drop our paintings off on the
20 15th, which I had to negotiate, because that's the
21 booking we had. And on the 16th we returned to the
22 gallery and laid out and arranged all of the work and
23 hung it. After that we printed extracts from the
24 publication and pinned them beside the relevant works and
25 at one point - we'd had to supply our price list and
26 Ms Jewell said that she would attach the price list to a
27 better backing and make it look more professional, and
28 she pinned this as well to a prominent place in the
29 gallery near where we pinned our promotional posters of
30 the publication.

31 Just pausing there. If you would flick please forward to Tab

1 40 in that book, which is the last tab. Just hold your
2 hand - we'll come back to the other tabs in a moment. If
3 you can go please to the last tab?---I didn't hold it.
4 Yes.

5 What is that?---That's our price list.

6 Now if you could go please to - before I come to that.

7 Wednesday 17 June did you attend at the gallery?---Yes.
8 We would attend at the gallery to bring the catalogue
9 into the gallery. I had gone - we'd gone our separate
10 ways. Demetrios went to pick up the catalogue from the
11 printer, I went to a stationers and I purchased brochure
12 holders with the intention of putting the gallery copy of
13 the publication for people visiting the gallery just to
14 flick through and assess if they wanted to purchase it.
15 We also had promotional flyers which were freebies that
16 were giveaways, so two brochure holders for each
17 promotional flyer for each of us.

18 Would you look please at Tab 23.

19 HIS HONOUR: Sorry, just before move on. Ms Raymond, you're
20 still at that last tab, is that right?---I am.

21 Top right hand corner there's a little picture, little drawing.

22 Is that what the gallery building looks like?---I suppose
23 it is, yes. It's a graphic of the - it is a four storey.

24 It is a four storey building?---Yes.

25 Does the gallery occupy each of those floors?---In our time,
26 no. It was, as far as we knew, the first level, the
27 ground level. I'm not certain about what would be the
28 second level which is like the third set of windows. I'm
29 not sure about that space.

30 Just to get a visual concept in my mind, We're talking about
31 the first level which is the subject of the agreement?

1 ---Yes.

2 The ground floor level where presumably one enters the

3 building?---Yes.

4 There's a space there for exhibitions, is that correct?---There

5 is and the reception.

6 The reception area?---And the bar.

7 Does that ground floor permit more than one exhibition to occur

8 simultaneously?---Yes. The spaces are broken up into

9 smaller components or you can hire all of them as a pack.

10 I see, all right. Thank you very much.

11 MR GILERTSON: Now if I could take you, please, to Tab 23,

12 Ms Raymond. Is that a copy of the catalogue?---Yes, it

13 is.

14 Who put this catalogue together?---Demetrios and I.

15 If you'd just go, please, to p.5, you'll see on the left hand

16 column towards the foot it says, "The works"?---Yes.

17 What is it that appears after that, what are these?---Titles

18 and text that were parts that I extracted from the

19 catalogue to pin beside my works so the text underneath

20 the title identifies with the title of that work. In

21 some cases I bunched it. There's Implant with a

22 paragraph of text.

23 Who wrote that text?---I did.

24 Yes, go on?---And then the next one down has three titles and

25 underneath that is the text that would have appeared

26 beside each of those paintings.

27 Again did you write that text?---Yes, and so on.

28 If you go over to the next page, p.6, is that again works?|

29 ---Correct.

30 And text written by you?---It is.

31 And commencing on p.7 through to 14, whose works are they?

1 ---They're all my works and it's actually through to p.15
2 and 16.
3 What is it on 15 and 16, what are they?---They're drawings
4 which were framed and hung. Some of the - - -
5 They're drawings that - - -?---Yeah, sorry.
6 Drawings that were what, sorry?---They're drawings which were
7 framed and hung.
8 Framed, thank you?---Some of the drawings are paintings that
9 were in the exhibition.
10 And commencing on p.17 it says, "An essay by Demetrios Vakras",
11 do you recognise that as an essay written by him?---It
12 is.
13 Would you go, please, to p.22 of the catalogue. Just tell the
14 court in relation to the work at the top of p.22, was
15 that part of the exhibition?---No, the text was used and
16 an image was - so this page was extracted and posted
17 alongside Secular Muse, we call it that for short, and it
18 was an explanation to the creation of the Muse.
19 Were there any other works other than what's on p.22 that were
20 not in the exhibition?---Yes.
21 Would you identify others that were not in the exhibition?
22 ---Not in the exhibition, no, I don't think so. They
23 were not essayed, is more I should point out.
24 So this text on p.22, who wrote that?---Demetrios.
25 Starting then from p.23 through to the rest of the catalogue
26 including the back cover, whose works are they?
27 ---Demetrios.
28 I was asking you about Wednesday, 17 June at the gallery.
29 Would you tell the court what else happened that day at
30 the gallery?---Upon my arrival I encountered Stacy Jewell
31 and I asked her what she thought of the show and she said

1 "It looks great". I said, "What do you think Robert
2 thinks", and she said to me, "Oh Robert will love all the
3 flesh", and she also to me at that point, "You can't sell
4 your catalogue or store your catalogue on site because
5 we've had issues with others", and I said, "No, no, no,
6 we've been given permission to sell the catalogue. We
7 have to bring it in to sell it". "No, you're not allowed
8 to", and about the same time Demetrios turned up with
9 boxes of the catalogue and I said to him, "Apparently we
10 can't store the catalogue either", and he said, "Well,
11 that's too bad, I'm going to put them there", indicating
12 that he was going to put them in the area in our hired
13 space. I think it was called Ruby's Corner so it was in
14 the same level but it was off to the side and not part of
15 the exhibition. There was a big table there.

16 Did you have any conversation with Mr Cripps on Wednesday, the
17 17th?---No, I got the impression he wasn't in the
18 building.

19 If I could now take you to the next day, the 18th, what
20 happened that day in relation to the gallery?---I went
21 back in and took some photographs of the space, returned
22 home and Demetrios and I arrived back at the gallery for
23 the opening at about 6.15 that evening. We'd been there
24 about approximately ten minutes. I was talking to a
25 couple who were looking at one of Demetrios' works and
26 Mr Cripps came up and said to me that a work had sold and
27 would I like him to handle the transaction and I said
28 yes, please, and he asked, "Could I provide the purchaser
29 with a copy of the catalogue or should I charge them",
30 and I said, "No, they can have two if they want", and he
31 smiled and went off and he did that.

1 So roughly how many people were present?---Between 40 to 50
2 people at any one time. People from below mingled with
3 people from our direct invitation list from below. There
4 was the two other openings were occurring as well and so
5 people were coming up and down the stairs all night.
6 Were there any speeches?---There were speeches held on the
7 ground level. I was there for those. Mr Cripps
8 introduced all of the exhibitions. He talked about Salt
9 and the Dress which was Lesley Dickman's exhibition and
10 mentioned that our exhibition was upstairs, mentioned it
11 by title, said who the artists were and described it as
12 surrealism and then Ms Dickman's partner I think it was,
13 was introduced to deliver a poem. Mr Cripps had
14 mentioned the other exhibition as well and the poem was
15 delivered, people applauded and then I went back
16 upstairs. It started to quieten down at that point.
17 People milled about for a bit longer and started to
18 disburse from our area. We said our goodbyes to a few
19 last people. Upstairs we noticed no-one else that we
20 knew so we thought let's make our escape because we find
21 exhibition openings to be a bit traumatic and we left.
22 We went downstairs. We were attempting to seek out
23 Mr Cripps and thank him so we thought that the evening
24 had gone relatively well. We were attempting to do so.
25 Demetrios sighted Mr Cripps and was walking over to him
26 to shake his hand. In the interim and elderly lady had
27 intervened, asked Demetrios was he the artist upstairs
28 and said she liked what he wrote and it was about time
29 someone gave it to the Muslims and Demetrios immediately
30 reassured her that it's not about critiquing Muslims or
31 Islam particularly, it's about critiquing religiously

1 derived values and he noticed Mr Cripps observing this
2 and he said to Robert, "I hope you understand that it's
3 not about attacking Island Muslims, that that's not what
4 the shows about", and attempted to say the same thing and
5 Mr Cripps interjected with, "See, that's why I've got a
6 problem with you. What you say, what you write is
7 insensitive to the delicate situation in Palestine", and
8 that confused Demetrios, Palestine, and I came into the
9 conversation about that time and Mr Cripps explained that
10 yes, to critique Islam was racist because it was
11 insensitive to Muslims and the problems that Israel
12 caused in Palestine. And I said, "Racism, what racism,
13 where? Where is it racist?" I was not really addressed.
14 Demetrios pointed out or commented that as well, that
15 that conflict isn't mentioned in our exhibition and what
16 did he mean, I don't understand it, it reads like
17 legalese.

18 Sorry, who's saying this?---Mr Cripps.

19 Yes, go on?---Demetrios said, "Legalese, I don't understand
20 what you mean and I was careful with what I wrote". He
21 said, "Well, it wasn't - it's not artistic. It's not
22 simple enough. It's not poetic enough", and Demetrios
23 said, "Well, I was careful, that's why I included the
24 quotes to prevent people thinking that I was critiquing
25 out an informed bigotry", and I said, "Yeah, how is it
26 racist", and he said, "It just read like legalese".
27 Demetrios said something about do you mean the footnotes
28 and the references to the Koran and the quotes from the
29 Koran and I think Mr Cripps confirmed that that's indeed
30 what the problem was. I said, "But how is that racist
31 and we critique Judaism, Christianity and Islam". I

1 critique in a minor way the treatment of women by
2 Hinduism. I didn't say that, sorry, I'm interjecting
3 myself. But I told Mr Cripps that, you know, the
4 exhibition critiques the four major mega religions and
5 Demetrios interjected at that point I think on - "And
6 where's Palestine mentioned", and Cripps said, "It's
7 because of what the Jews are doing in Israel" - in
8 Palestine rather, "that forces the Muslims to act". And
9 Demetrios said, "So what, suicide bombers on a bus in
10 Israel while school children are going to school, that's
11 because they're forced to act", and Mr Cripps said,
12 "Yeah". And I said, "But that's racist". I said,
13 "There's school children on a bus". Mr Cripps then said,
14 "So", and Demetrios then said that I've heard what you
15 were saying before, this has been something that was
16 propounded by Hitler and I can't talk to exactly how it
17 was put but the meaning was that what Mr Cripps was
18 saying was reconfirming that Hitler said that the Jews
19 should not be in Palestine. He said, "No, well, the Jews
20 should not be in Palestine, they're the cause of the
21 conflict". I said, "Well, this conflict is not even
22 mentioned in our exhibition and I don't understand how
23 it's racist", and "The Jews caused the problem", was the
24 response and then Demetrios, "Well, I've heard what
25 you've said before", or I've read what you've said before
26 and in the Mein Kampf in the Second World War the Nazis
27 and - he went on to talk about how the history of the
28 region is known that prior to World War II the history of
29 the region is - - -

30 Sorry, I am going to cut you off because I just want to confine
31 you back to the conversation that's going on?---OK.

1 I want to take you back to you've mentioned already that

2 Mr Cripps had once said in this conversation that your
3 exhibition was racist. Did Mr Cripps say anything else
4 in that regard during this conversation?---He did.

5 Yes, what did he say?---He said a lot. I'm trying to be
6 polite. There is - - -

7 HIS HONOUR: Sorry, it's not about being polite, it's a matter
8 of being accurate?---He said, "Your exhibition is racist
9 and it's the Jews that caused the problem", something
10 along those lines. Demetrios said at that point,
11 "Robert, you're a man of limited erudition and limited in
12 your intellect". Mr Cripps exploded at that point and
13 directed us to get out of the gallery, get our racism,
14 our racist art - - -

15 MR GILERTSON: What did he say?---He said, "I want you out. I
16 want your racism, I want your racist art out of my
17 gallery. I don't want racism in my gallery". We went to
18 leave of course and as we were living Mr Cripps called
19 out, "I'm not finished with you", and I turned around and
20 I took a couple of steps back and I said, "Robert, we're
21 leaving", very firmly and we left and we could hear he
22 was still yelling at us as we entered the laneway.

23 When this discussion was taking place you said in the
24 downstairs area, were there any other people around while
25 this was taking place?---Yes, there was about 30 or 40
26 people still in that milling around the bar area which we
27 were nearby and the back door had been opened and there
28 was a fire so I could see through that there were people
29 peppered throughout. We noticed - I noticed, sorry, I
30 noticed people observing this exchange.

31 That's Thursday, the 18th, after you leave what happens the

1 next day, Friday, the 19th?

2 HIS HONOUR: Sorry, just before you move on. I just want to
3 make clear that I understand this conversation. Is it
4 part of your evidence that Mr Vakras mentioned Hitler
5 during this conversation, so all that you said was
6 recounting the conversation, is that correct?---Correct.

7 Thank you.

8 MR GILERTSON: If I take you to the next day, Friday, the 19th,
9 what did you do that day?---We were pretty much in shock.
10 We didn't - we waited. We waited for written
11 confirmation from the gallery that our exhibition was now
12 defunct, it was dissolved and we were to remove our
13 works. That's what we figured we'd been told and we
14 waited and heard nothing. We didn't go into the gallery,
15 challenge anyone to know exactly what to do after such an
16 event.

17 And on the next day, Saturday, the 20th, what did you do?---We
18 thought we better go and check on our works. To fill in
19 a bit of time we went to Art Stretchers which is an art
20 supplier that we had been going to for the last 25 years
21 and because the gallery didn't open until midday so we
22 wanted to - we did need to get some supplies and we
23 filled in time doing that. Upon entering we saw Steven,
24 the normal shop assistant in - - -

25 MR DIBB: Is this something else, suppliers of the art?---Yes.

26 HIS HONOUR: The art suppliers shop, is that correct?---The art
27 supplier is Art Stretchers and they've been around for
28 yonks. They're no longer in that location.

29 MR GILERTSON: What happened when you saw Steven?---We were
30 greeted by Steven who said very directly, "So how are you
31 handling Mr Cripps", and I said to him, "Why do you ask",

1 because I know that Steven had not been at our opening,
2 and he said, "Well, he's universally despised", and I
3 said, "Why, what do you mean", and he explained that many
4 artists over the years had experienced issues with him.

5 MR DIBB: I object to the hearsay aspects of this, Your Honour.

6 HIS HONOUR: Is this gentleman being called?

7 MR GILERTSON: No, but this goes to the question of bad
8 reputation, Your Honour.

9 HIS HONOUR: I know that but still got to prove it. There's an
10 objection to the hearsay element of it.

11 MR GILERTSON: In our submission that objection is respectfully
12 without foundation because like good reputation, bad
13 reputation can be established by hearsay and in
14 particular how people talk about the plaintiff. So it
15 doesn't have to come from the person who speaks the words
16 but rather those to whom the words are spoken. So in my
17 submission this is direct evidence of Mr Cripps bad
18 reputation.

19 HIS HONOUR: Anything further from you, Mr Dibb?

20 MR DIBB: Your Honour, I understood the evidence to be what the
21 witness was saying Steven had said about what other
22 people had said about Mr Cripps and in my submission
23 that's just getting too remote to be admissible as
24 evidence of - - -

25 HIS HONOUR: So do you accept that this art supplier fellow,
26 Steven sorry, that what he said about his view of
27 Mr Cripps is admissible even though it's hearsay because
28 he's not attending but you're objecting to this witness
29 giving evidence of what Steven said about what other
30 people said?

31 MR DIBB: Yes, Your Honour. To some extent one's reputation is

1 what the world is saying about one.

2 HIS HONOUR: Yes.

3 MR DIBB: I accept what my learned friend says as

4 necessarily - - -

5 HIS HONOUR: As a matter of principle but you're saying this

6 goes one step too far.

7 MR DIBB: Yes, it goes too far.

8 HIS HONOUR: I understand. Anything further?

9 MR GILERTSON: Yes, Your Honour, in my submission it doesn't

10 because that's the very nature of this type of evidence

11 that it's not only what Steven says but what other people

12 - what he says about what other people have said to him

13 concerning Mr Cripps.

14 HIS HONOUR: Yes, I'll allow the evidence, thank you. What's

15 this Steven fellow's surname, do you know?---Anderson.

16 Steven Anderson?---No, Andrews.

17 Sorry, I beg your pardon. Sorry, Ms Raymond?---No.

18 When you said no were you looking at Mr Vakras to get

19 guidance?---Sorry, I was.

20 No, you can't do that?---No, I know.

21 I'm sorry, this is your evidence?---I apologise.

22 It's very improper for there to be any communication with you

23 and any person in the body of the court?---I apologise.

24 I accept that Mr Vakras may not know that because he may not

25 have been in court before but if it happens again, even

26 though Mr Vakras is entitled to be in court, I will send

27 him out?---OK.

28 MR GILERTSON: As Your Honour pleases. (To witness) Did you

29 and Mr Vakras go to the gallery that day, that Saturday,

30 20 June?---Yes, after we had purchased our items we went

31 down to the gallery to check on our - we knew the gallery

1 would be open then so it was public hours. We wanted to
2 make sure our paintings were still there. We had no idea
3 that they could be. They could be taken down. We went
4 in. We used - if we encountered Mr Cripps we were going
5 to inform him that we were just there to pick up the
6 catalogues boxes that had been ordered.

7 Just confine yourself if you could to what occurred rather than
8 what you intended?---Sure. We went in and checked that
9 the show was all in situ. There were no lights on that
10 area. No lights came on when we entered the area. We
11 had simply introduced ourselves to reception and said
12 hello, we're the artists upstairs. We went upstairs.
13 Everything was in order. We found the boxes for the
14 catalogue and removed three and left leaving one.

15 HIS HONOUR: Three boxes or three catalogues?---Three boxes and
16 left one box of catalogues. We didn't observe that there
17 were any disclaimer notices or anything else in the space
18 and we left.

19 MR GILERTSON: After the 20th, the Saturday, the gallery's
20 closed on the following Monday and Tuesday, wasn't it?
21 ---That's correct.

22 What happened on the Wednesday - I withdraw that. What
23 happened on the Monday at work?---On Monday at work in
24 the work kitchenette a colleague, Lisa Dow Howlett said
25 to me was I aware that there were disclaimers pinned up
26 in the space and I said no, I had no idea. I rang
27 Demetrios and informed him about the disclaimers, do you
28 know what he's done now, he's put disclaimers up. So we
29 realised in our conversation that the gallery would be
30 closed to the public hours. Considering what had gone
31 prior we didn't feel comfortable attempting to make an

1 appointment to view these disclaimers. We had not been
2 contacted by the gallery about these disclaimers which
3 might have been normal protocol and we decided, OK, we'll
4 just have to go during public hours on the following
5 Wednesday when I could get away from work. I was back at
6 work full time. Demetrios works - at that time he was
7 working at night and so he had a lot of time during the
8 day, or he had a component of time during the day and so
9 he met me at the gallery. I left work at bit earlier.
10 We arrived at the gallery on Wednesday.

11 Roughly what time?---It was near to 5 o'clock - no, sorry,
12 4.15ish and we introduced ourselves at reception, just
13 politely said hello and Demetrios had brought along our
14 camera and he had the camera equipment around his neck
15 and in a backpack and we went upstairs. As we were going
16 upstairs I noticed a big title case, huge warning sign
17 and I pointed that out to Demetrios, look at this, and we
18 just kind of went huh and then more quickly went into the
19 space and arrived in the space and we could see that
20 there were disclaimers in various locations. Nearer the
21 open studio section of the space we were just conversing
22 and preparing to set up - Demetrios was preparing the
23 camera equipment and Mr Cripps appeared from the other
24 end of the space.

25 Before you go on I want to stop you there, where were the
26 disclaimers and roughly how many were there?---There was
27 on the main pillar in the space. There was one against
28 one of the digital works which I could point out which
29 work it was. There was one deeper inside the main
30 gallery area. There's a larger space. We didn't get to
31 see the other areas of the space properly but I figured

1 there was four.

2 HIS HONOUR: Four that you saw or four that you guessed were
3 there?---I saw at least three and assumed that there
4 would be another one in the section that was - it's hard
5 to describe. There's a floating wall that separated the
6 section that went - led to a stairwell that led upstairs.
7 We didn't get to go and view that section.

8 Thank you.

9 MR GILERTSON: Just excuse me a moment, Your Honour.

10 HIS HONOUR: Sure. I might just a question to clarify. When
11 you mentioned the conversation previously about racism
12 and Hitler and comments being made that's why I'm quoting
13 from the Koran, et cetera, this is all about essays, is
14 that right?---It's about what was written and pinned up.
15 Where is that document or one of them - - -?---In the
16 catalogue.

17 Sorry, are you going to take me to - - -

18 MR GILERTSON: I can take - - -

19 HIS HONOUR: Were you proposing to because I just want to see
20 what the context or the subject matter that that sort of
21 drew those comments, I'm not clear at the moment?

22 MR GILERTSON: Yes, Your Honour. I'll take Ms Raymond back to
23 Tab 23, to the catalogue.

24 HIS HONOUR: Yes.

25 MR GILERTSON: If I take you, Ms Raymond, to what you gave
26 evidence were the essays written by Mr Vakras which start
27 on p.17, do you have those?---Yes.

28 Are you able just as you go through from p.17, identify for the
29 court essays that were pinned next to the works?---It's
30 actually from p.22 that the essay from that point.
31 Yes?---And the essay on p.25 were pinned either side of

1 Attempting the Destruction of the Secular Muse which is
2 depicted on p.25.

3 Yes?---And the following page, Incubating the Islam Proof Post
4 Industrial Foetus, that was alongside and a part of those
5 essays and then De-Emphasis had the essay that you see
6 appearing from p.27.

7 And p.28?---And 28, yes, 28 and p.30 which is Pithia.

8 HIS HONOUR: I'm confused, sorry. On p.28 you say that that's
9 an essay starting up the top with - - -?---The text at
10 the top.

11 What painting did that accompany?---The one below.

12 The one below?---Yes, Islam Proofing.

13 MR GILERTSON: And the text on p.30, is that an essay?---Yes,
14 and that goes against that pictured - - -

15 HIS HONOUR: The same?---Yeah, the Pithia and it flows through
16 onto p.31 that essay.

17 So p.30/31 the text in those pages is a single essay?---Yes.

18 Which was meant to accompany the painting on p.30, is that
19 right?---Correct, and the last essay was against Medusa
20 Gamadion.

21 MR GILERTSON: This is on p.32, is that where you're looking
22 at?---It's 32, yes. The image below is not part of the
23 essay.

24 HIS HONOUR: And the image on p.31 did not accompany the
25 essay?---The one at the top did.

26 The one at the top. So just working back if I may so that I
27 can understand this, on p.32, we have the essay and the
28 accompanying painting on the same page?---On 32?

29 Yes?---Yes.

30 So just one second, I just want to make sure that I have this
31 correct. On pp.30 and 31 we have the essay spanning two

1 pages and that they relate to the painting on p.30?

2 ---Pithia, correct.

3 On p.28 there is an essay which relates to the painting below
4 it?---Yes.

5 And the ones on the right on p.29 are not relevant to that, is
6 that correct?---No.

7 Then on pp.26 and 27 is that an essay on p.26?---Those I'm
8 actually - no, that's part of the essay. They're the
9 Koranic passages paraphrased so p.25 is the essay
10 that - - -

11 The essay starts at p.25?---Yes, yes.

12 So essay - - -?---And then that Post Industrialised Foetus on
13 26 is hung in the group, that is, Attempting the
14 Destruction of the Secular Muse essay.

15 Sorry, I'm a bit slow, I beg your pardon?---It's not your fault

16 So the essay starts at p.25?---The essay is - - -

17 Continues on p.26?---Yes.

18 And on p.27, is that right?---27 is a separate essay for that
19 painting on 27.

20 So 25 and 26 is an essay, so p.25 and 26 and the essay that
21 those two pages relates to is the one on page?---25. The
22 p.22 is a description of the Development of Industrial
23 Muses.

24 So is that an essay?---That's an essay.

25 And it finishes on that page?---Yes.

26 What does that relate to, what painting?---That relates to
27 describing the Creation of the Muse that's depicted on
28 p.25.

29 Page 25, Creation of the Muse?---It's Creative Development.

30 So the painting on p.25 has two separate essays that relate to
31 it, is that right, the essay on p.25 and 26 and also the

1 essay on p.22?---Yes.

2 MR GILERTSON: And you gave evidence that that work on p.22 was
3 not part of the exhibition, is that right?---That's
4 correct, just the page appeared.

5 HIS HONOUR: Yes, thank you. I'm sorry to divert but I was not
6 clear.

7 MR GILERTSON: It's been of assistance, Your Honour.

8 (To witness) You were giving evidence, Ms Raymond, about
9 Mr Cripps appearing when you and Mr Vakras went to the
10 gallery on Wednesday, 24 June?---Yes.

11 And what happened?---He appeared at the other side of the room.

12 He'd come from - I was facing that way, he'd come from
13 the upper level. He saw us and charged over, racing
14 across the floor, very angry, calling out, "You and you,
15 I want to talk to you. People saw you attack me,
16 Demetrios and I told you to call me", he said to me. He
17 was working his way either side of us. We just were a
18 bit stunned. We just stood there and I stepped back a
19 little but didn't say anything at that point until he
20 said, "I told you to call me", when he was looking at me
21 and I said, "When did you do that, was that before or
22 after you kicked us out of the gallery and called our
23 work and our exhibition racist". And he said to me at
24 that point, "You are a sarcastic woman", and then he told
25 Demetrios that we were trespassing and that he called the
26 police to evict us.

27 MR DIBB: I object to this evidence on the basis that this is a
28 part of the case that was never particularised in
29 relation to either matter. I'll take Your Honour to the
30 pleadings.

31 HIS HONOUR: Yes.

1 MR DIBB: Because it would appear that my learned friend is
2 making a case breach of contract based on a complete
3 exclusion from the - I don't know if this is a debate we
4 should have with the witness here.

5 HIS HONOUR: It's a matter for you, it's your call. If you
6 want the witness out I'm happy for the witness to be out.
7 Why don't you go out of the court, Ms Raymond, and
8 stretch your legs. It might be a convenient for you to
9 have a break anyway.

10 <(THE WITNESS WITHDREW)

1 HIS HONOUR: Yes.

2 MR DIBB: The statement of claim in relation to the contract
3 matter at Paragraph 5 sets out - - -

4 HIS HONOUR: Sorry, what tab is that? I'm looking at the
5 plaintiff's court book pleadings folder.

6 MR DIBB: In the plaintiff's court book it's Document 19 my
7 solicitor tells me, Your Honour.

8 HIS HONOUR: Document 19.

9 MR GILERTSON: Your Honour, I'm loath to interrupt my learned
10 friend but it's actually relevant to the defamation
11 claim, not the contract claim because it's pleaded in the
12 particulars that in relation to this meeting on 24 June
13 "The first plaintiff then without lawful justification
14 ordered the defendants to leave the gallery".

15 HIS HONOUR: Mr Dibb, do you want to take the objection any
16 further?

17 MR DIBB: I do, Your Honour.

18 HIS HONOUR: Yes.

19 MR DIBB: If you would just give me a moment.

20 HIS HONOUR: Yes, just take your time.

21 MR DIBB: The particular you're referring to?

22 MR GILERTSON: The paragraph in the second further amended
23 defence of the first defendant, Paragraph 8A, under the
24 particulars to Paragraph 1(x) of the particulars. It
25 appears on p.5 of my copy.

26 MR DIBB: I withdraw the objection, Your Honour.

27 HIS HONOUR: Yes, thank you. Madam Associate, could we have
28 the witness back, please.

1 <LEE-ANNE RAYMOND, recalled:

2 HIS HONOUR: Thank you, Ms Raymond, you'll be asked the
3 question again so that you can get the context back.

4 MR GILERTSON: Yes. Ms Raymond, I was asking you before the
5 short break in relation to what Mr Cripps said after he
6 appeared when you and Mr Vakras were at the gallery on
7 24 June and you gave evidence that he said that you were
8 trespassing and that he was going to call the police. Do
9 you recall saying that?---He said he had called the
10 police and they would evict us.

11 Yes. Sorry, would you just speak up a little bit if you
12 could?---He said he had called the police to evict us,
13 they were going to arrive. I said to Mr Cripps, "Good,
14 we could use them right now." Mr Vakras, Demetrios said
15 to Mr Cripps that we had hired the space, we were
16 legitimately in the space, we have rights similar to that
17 of a tenant and that if he wanted we would remove the
18 show if he would refund our money, what money he'd owed.
19 Mr Cripps dismissed that, scoffing and saying, "You've
20 breached the contract, because you've breached the
21 contract I don't owe you anything. You've breached the
22 contract because of your racism," he said. And at that
23 point I got quite exasperated and said, "What racism,
24 where?" And he gestured to the entire exhibition,
25 "This." And I said, "Well, this," in a similar gesture,
26 "is surrealism, Robert. What were you expecting?" "Not
27 this. This is racist, I won't have it in my gallery."
28 And I said, "What is racist? Show me the racism, take me
29 to the racism." And he gestured over to, can I call it
30 for short Secular Muse. So he took me over there
31 and - - -

1 HIS HONOUR: Just you?---Just myself. And we had a discussion
2 about what he thought was racist. I said, "Show me which
3 part is racist." He said, "All of it. It's not poetic
4 enough, it's not artistic enough, it reads like
5 legalese." He was repeating pretty much what he said on
6 the opening night. And I said, "Well, what part, what
7 don't you get?" He said, "I don't understand any of it."
8 And I said, "Well, perhaps we can read it." And he
9 became angry and told me that it was indeed racist. And
10 I said, "Well, show me which part?" He said, "Well, the
11 quotes from the Koran." I said, "OK, the quotes from the
12 Koran are there as proofs, they're there to provide
13 context to the criticism made and what we have here is,"
14 and I described the visuals of what we were looking at.
15 We've got a bomb crated landscape, a muse, a secular muse
16 and that secular muse is being assailed by violence and
17 it's a religious violence, it's a criticism of religious
18 values, religiously derived values. He's dismissed that
19 said, "Look, I don't care, even the women," or the girls,
20 he interchanged either the women or the girls when
21 referencing his stuff, "don't understand it, their eyes
22 glaze over." I said, "Well, bring them here and I'll
23 talk to them, we'll talk to them about it." And he
24 didn't have a response to that.

25 MR GILBERTSON: Was that discussion in relation to the glazing
26 over of the eyes on this occasion or on the previous
27 occasion?---On the 24th.

28 Yes, go on?---And the next thing I remember is I observed that
29 there was a visitor who had entered the space, a young
30 woman. I think Mr Cripps may have observed her, I don't
31 know why, but he said, "Look, I've got things to do," and

1 he left quite abruptly. He returned - we were a bit
2 shaken, I was talking to Demetrios and I said to him,
3 "What an awful man." And Demetrios said, "Don't worry,
4 Lee, you did well." And we observed the visitor was
5 still in the space so I engaged her and I said, "I'm
6 sorry you had to hear that." She said, "Oh, is he the
7 director or gallery manager or owner?" And I said - we
8 both kind of, Demetrios and I said together, "Yeah," in a
9 dejected way. "I don't know what he's on about," she
10 said, "I've read everything and I don't understand. It's
11 excellent."

12 If I could take you back because you were sent out during a
13 part where you were going through your evidence of the
14 discussion between Mr Cripps and you and Mr Vakras and
15 you had given the evidence about trespassing and about
16 the police. Was there any discussion at that time about
17 truckies and wharfies?---Yeah. Mr Cripps made the
18 accusation to my partner that he was not frightened of
19 him, he'd known more serious people than him in the past
20 like wharfies and truckies, and we took that as a threat.

21 Yes, all right. After you spoke to the woman in the gallery at
22 the same time what happened?---She took one of the
23 flyers. We invited her to take a flyer, and she left the
24 area and Mr Cripps returned with Ms Pickett at that
25 point.

26 HIS HONOUR: I'm sorry to interrupt you. What do you
27 characterise as the flyer?---Sorry, as promotional
28 material that we produce a one page double sided blurb
29 about the artist. It's a takeaway, something that a
30 visitor can freely take, and we offered those to her.
31 People generally need to be encouraged to take things

1 because you're generally not allowed to take anything
2 that's not nailed down or - - -

3 This woman, did you learn her name at any stage?---No. No, we
4 did not. She did say she knew that her partner would
5 love this work and that she would return with him, and we
6 don't know if she ever did.

7 Thank you. I'm sorry to interrupt.

8 MR GILBERTSON: Thank you, Your Honour?---Ms Pickett came back
9 up with Mr Cripps at that point and, again, Mr Cripps
10 said, "Look, I don't have anything more to say to you, I
11 don't care. The exhibition is racist, the disclaimers
12 stay." And I said, "Well, that's the prerogative of
13 yourself and the gallery but it says more about the
14 gallery and you than the show." And I looked at Yolande
15 and said, "Yolande, do you think it's racist?" And she
16 wouldn't make eye contact with me, she wouldn't - she
17 looked at the floor, she wouldn't respond. Mr Cripps
18 said, "That doesn't matter anyway, I'm the director, I
19 say what goes into my gallery." And I said, "So,
20 Yolande, do you agree with this, you agree it's racist?"
21 And she didn't respond again. And he said, "Look, finish
22 what you're doing, I want you out of here and I want you
23 out now."

24 The following day, 25 June, and it was a Thursday, what
25 happened that day?---Sorry.

26 Perhaps if I could you to work at Museum Victoria. What
27 occurred that day when you were at work?---Yeah. Another
28 meeting in the kitchenette, this time with my line
29 manager. She asked me how was the exhibition going. I
30 hadn't actually had a chance to catch up with her. And I
31 explained to her what had happened and she said, "Oh,

1 maybe it was him." And I said, "What do you mean?" She
2 said that an older guy had come up to her when she was
3 viewing a painting, one of my paintings, and asked her is
4 that her lovely bottom in the painting. After everything
5 else I was just completely floored by this and I
6 apologised to her profusely as she was obviously
7 embarrassed.

8 MR DIBB: I object to the reference to the embarrassment. I
9 don't know if this witness is being called.

10 MR GILBERTSON: I don't press that.

11 HIS HONOUR: That's an opinion anyway, whether she was
12 embarrassed. I mean, you could say she went red for
13 example, that's an observation.

14 MR GILBERTSON: Yes. I don't persist with that.

15 HIS HONOUR: What is this lady's name?---Nancy Ladas,
16 L-a-d-a-s.

17 MR GILBERTSON: If I could take you, Ms Raymond, to Tab 24 of
18 the court book immediately after the catalogue.

19 Is that an email you sent to Mr Cripps on 25 June?---Yes,
20 that's correct.

21 Then please would you go two pages further on towards the foot
22 of the page. Is that an email from Mr Cripps to you of
23 26 June 2009?---Yes.

24 Did you read that email at the time?---I did.

25 Did you have any discussions with Mr Vakras after you read that
26 email?---We conversed on the email, on the substance in
27 the email.

28 If you look please at the email then at the top of that page,
29 is that an email from Mr Vakras to Mr Cripps and copied
30 to a number of people including you?---That's correct.

31 Then please there should be an email of - at 6.34 p.m. that

1 day. I'll just find it. Just bear with me a moment. Of
2 6.30. Do you see on there there's a document in this tab
3 six pages in with a Number 9 at the top right?

4 HIS HONOUR: There's no Number 9 visible on mine?---Not on
5 mine.

6 MR GILBERTSON: It's on mine. It has at the top Addenda to a
7 misrepresentation of our art rebuttal, 26/06/2009?---Yes,
8 I have that.

9 Do you have that?---Yes.

10 Those words at the top were they part of the original email or
11 were they added later?---They were added.

12 And immediately underneath that, is that an email from

13 Mr Vakras to Mr Cripps and copied to a number of other
14 people including you?---Yes.

15 At about 6.30 on 26 June 2009 at 6.30 p.m?---Yes.

16 Next if you could go forward a tab please, Ms Raymond, to
17 Tab 25. Towards the foot of that page is that an email
18 from Mr Cripps to you of 3 July 2009?---Yes.

19 "This Sunday," which that email says, was 5 July. Did you
20 attend the gallery that day?---Yes. We de-installed on
21 that day.

22 By de-install you mean take everything away?---Took everything
23 out, yep. I checked with Mr Cripps that the gallery was
24 in a proper order and we left, the quickest
25 de-installation of all time.

26 On 7 July did you send the email that appears in Tab 26 on the
27 second page of that tab, an email to Yolande Pickett on
28 7 July at 2.39 p.m?---Could you describe the email again,
29 sorry?

30 Yes. Tab 26, it should be the second page?---On the 7th of the
31 7th?

1 Yes?---Correct.

2 Did she respond, if you go back one page, on that same day, "Hi
3 Lee-Anne, we generally tell exhibitors"?---Yes.

4 Did you receive that email?---I did.

5 Two weeks from the closing date, which is what that email
6 describes, is 20 July. What did you do between this
7 date, the 7th and the 20th; did you do anything in this
8 regard?---I checked the account at the point that I was
9 told the amounts should appear. I think I checked the
10 account on the 20th or the 21st and there was no fund
11 transfer from the gallery.

12 Would you go to Tab 27 please. Is that an email you sent to
13 Yolande Pickett on 21 July?---Yes.

14 Then Tab 28, another email to Yolande Pickett, this time of 28
15 July?---Yes.

16 And Tab 29 please. Is that an email from Mr Vakras to
17 Mr Cripps and copied to - I withdraw that. An email from
18 Mr Vakras to Mr Cripps and Yolande copied to you and also
19 a blind copy to another address of Mr Vakras's?---Yes.

20 The please if I could take you back to Tab 26, and I have to do
21 it this way. If you count from the start of that tab
22 three pages, three pages from the start of that tab; do
23 you have that?---Yes.

24 Towards the second half of that page is there an email from
25 Mr Cripps to you of 6 August 2009?---Yes.

26 Above that is there an email from you to Mr Cripps copied to
27 Mr Vakras and Yolande of that same day at 7.13 p.m?
28 ---Yes.

29 If you go back one page please. No, I'm sorry, I'm not in
30 order. Would you go please to the last page of that tab.
31 Do you see at the top it says, "On 10 August 2009 at

1 2.37 p.m. leannart wrote Mr Cripps." Is that an email
2 from you to Mr Cripps on 10 August?---Yes.
3 Again I apologise for the way these are all collected, but if
4 you go back one page towards the middle, is that an email
5 from Mr Cripps to you of 10 August?---Yes, it is.
6 Then did you respond in the email which appears at the top of
7 that page on 11 August?---Yes.

8 When did you receive the sum of \$950?---A few days after that.

9 The sum of \$950 was made up of two components wasn't it?---It
10 was what's been termed the surety. It's the bond in my
11 understanding which is returned to an exhibitor should
12 there be no requirement for the gallery to withhold
13 anything for damage, and the sale of one artwork.

14 When you say the sale of one work, would you go to Tab 23
15 please, the catalogue, and have a look please. If you
16 can identify the work that was sold from the catalogue?
17 ---It's on p.31, it's title is Monument 5 2003.

18 Whose work was that, yours or Mr Vakras's?---Demetrios'.

19 I'm about to move to another topic, Your Honour. Is this a
20 convenient time?

21 HIS HONOUR: It's a convenient time, thank you. I'm just going
22 to monitor the situation as to when I will hear arguments
23 on the issue of the hyperlink. It hasn't yet arrived
24 because I'm finding the information useful from what
25 context, but we will look to deal with it. Madam
26 Associate, can you please adjourn until 10.30 tomorrow
27 morning.

28 <(THE WITNESS WITHDREW)

29 ADJOURNED UNTIL TUESDAY 18 MARCH 2014

30

31

1 HIS HONOUR: Just before we commence I just wanted to raise the
2 issue of the video conference. Registry have informed my
3 associate that that has been booked for 4 p.m. on
4 Thursday. Are both parties in agreement with that
5 arrangement?

6 MR GILERTSON: We are, Your Honour.

7 MR DIBB: Yes, Your Honour. I had initially thought that that
8 might be after the close of evidence but I'm no longer of
9 that view. I wonder if I could seek from my learned
10 friend an indication of how long he expects the matter to
11 run?

12 HIS HONOUR: Yes, that would be helpful.

13 MR DIBB: Just I'm asking in relation to scheduling of my own
14 witnesses.

15 HIS HONOUR: Yes.

16 MR GILERTSON: I anticipate that we will finish the defendants
17 evidence by about lunch time today given some discussions
18 I've had with my learned friend, perhaps shortly after
19 lunch.

20 HIS HONOUR: You mean all of the defendants' witnesses?

21 MR GILERTSON: No, all of Lee-Anne and Demetrios Vakras by
22 early afternoon.

23 HIS HONOUR: Yes.

24 MR GILERTSON: There are seven other witnesses for the
25 defendants. One is the video conference, one is
26 problematical so that leaves five but they are all of, I
27 anticipate, very short duration.

28 HIS HONOUR: Right.

29 MR GILERTSON: So on that basis I would think subject to the
30 video conference the defendants would finish their case
31 if not by the end of today, by some time tomorrow

1 morning. I understand the plaintiff has five witnesses.
2 I notoriously under estimate these things but I would
3 anticipate that we might even finish by the end of the
4 week.

5 HIS HONOUR: Yes, thank you very much.

6 MR DIBB: I'd just like to indicate that I have a witness who's
7 quite important to the case for whom it's very difficult
8 to give evidence before next Monday.

9 HIS HONOUR: Yes.

10 MR DIBB: I just foreshadow that as I don't know quite how we
11 can deal with that, whether - we obviously wouldn't wish
12 to start addresses.

13 HIS HONOUR: Yes. Let's see how we go. It may be that we
14 don't see on Friday or some arrangement of that nature.
15 I certainly have a lot of work to do.

16 MR DIBB: I mean presumably we couldn't start addresses until
17 after the evidence on Thursday evening anyway.

18 HIS HONOUR: I don't think you should but if the parties agree
19 to then I'm amenable to consent arrangements, Mr Dibb.
20 So have a chat to Mr Gilbertson. Let's see how we go but
21 one option is that if you cannot have this witness give
22 evidence by Monday and the parties agree that it's not
23 sensible to commence addresses until after all the
24 evidence closes which obviously would be the normal
25 arrangement, then one option is for us not to sit on
26 Friday. The parties can use that time to prepare their
27 addresses and I can usefully use that time just to catch
28 up on the reading that I otherwise would have done on the
29 weekend.

30 MR GILBERTSON: Yes, I don't doubt Your Honour.

31 HIS HONOUR: all right. We'll see how we go in any event and

1 revisit that.

2 MR GILERTSON: Thank, Your Honour. Could I mention just two

3 minor transcript matters?

4 HIS HONOUR: Yes.

5 MR GILERTSON: Page 85 of yesterday's transcript.

6 HIS HONOUR: Just one second. Page 85?

7 MR GILERTSON: 85, yes.

8 HIS HONOUR: I have that.

9 MR GILERTSON: In line 3, the words are in the transcript, "Not

10 about attacking Island Muslims".

11 HIS HONOUR: Yes.

12 MR GILERTSON: My recollection of the evidence was that was,

13 "Not about attacking Islam, Muslims".

14 HIS HONOUR: Yes, that's my recollection too. Mr Dibb, do you

15 have anything to say about that?

16 MR DIBB: No, Your Honour.

17 HIS HONOUR: I just direct the transcript writers to amend

18 Line 3, p.85 of yesterday's transcript substitute the

19 word "Islam" for "Island".

20 MR GILERTSON: And the second, Your Honour, on p.91.

21 HIS HONOUR: Yes.

22 MR GILERTSON: Line 24 and this was a mistake of mine by not

23 spelling a name. I understood Ms Raymond to say this

24 person's was Lisa Dale Hallet, so D-a-l-e H-a-l-l-e-t.

25 HIS HONOUR: I presume you have nothing to say about that,

26 Mr Dibb?

27 MR DIBB: No, Your Honour.

28 HIS HONOUR: All right. I direct the transcript writers to

29 amend the name Dow Howlett being a middle and surname on

30 Line 24 on p.91 of yesterday's transcript to Dale,

31 D-a-l-e Hallet, H-a-l-l-e-t.

1 MR GILERTSON: Thank you, Your Honour.

2 HIS HONOUR: Any other preliminary matters before we resume the
3 evidence?

4 MR GILERTSON: No, Your Honour. Could Ms Raymond go back into
5 the witness box?

6 HIS HONOUR: Yes, thank you.

1 <LEE-ANNE RAYMOND, recalled:

2 MR GILERTSON: Ms Raymond, before I move to a new topic I want
3 to ask you some more questions about the meeting at the
4 Guildford Lane Gallery on Wednesday, 24 June 2009 which
5 you gave evidence about yesterday. I want to ask you,
6 was there any discussion at that meeting in relation to
7 the Jews?---There was.

8 Could you tell the court what that discussion was?---In the
9 exchange that I had with the Mr Cripps I asked him to
10 show me where the racism was and he took me over to an
11 area in the gallery where Secular Muse was hung with the
12 accompanying information from the catalogue, the essays,
13 and he seemed to be indicating and I checked with him,
14 "Do you mean this painting", and I described the painting
15 to him, the visuals, and he said, "Yes, but it's what it
16 says about the Muslims, they're the problem. It's the
17 Jews that are the problem. The Jews should not be in
18 Palestine". I said, "But where is that mentioned". And
19 he said, "It's racist. It is the" - I then said to him,
20 "What about that painting behind us", and it was the
21 painting is known as De-Emphasis. I said, "That" - - -
22 De-Emphasis?---De-Emphasis, and I said, "What about that
23 painting". That pretty harshly critiques Islam. It's a
24 comment on the Koran's - passages in the Koran about
25 woman, I said, "What about that painting, does that
26 bother you", and he shrugged and seemed to be quite
27 dismissive of it. I said, "Well, I don't understand,
28 where is the racism? This is about critiquing religious
29 doctrine", and he reiterated again and again that it was
30 racist, that it was because of the Jews that the Muslims
31 were reacting. I said, "But that in itself, Mr Cripps,

1 is - Robert, that in itself is racist, wouldn't you
2 agree", and he said, "Yes, so". And I said, "But how can
3 it be racist for us to critique or for these works to
4 critique the Koran and Islam but what you're saying, not
5 racist and about the Jews", and he said, "Well, they
6 deserve it". I said, "What, we critique Christianity, we
7 critique Judaism as well in the exhibition and it's only
8 racist to critique Islam", and he acknowledged that this
9 was the case and he said, "They deserve it. They invade
10 other people's lands and cause the conflict", and he
11 meant by that the Christians and the Jews.

12 HIS HONOUR: I didn't catch, they create the conflict, what did
13 you say before that? Don't worry, it will be on the
14 transcript?---Yeah, I forgot what I've said as soon as
15 I've said it.

16 MR DIBB: Can I object to the portion of the answer that says
17 "He meant by that".

18 MR GILERTSON: Yes?---I took it to mean, is that better?

19 HIS HONOUR: Not really?---Well, obviously - - -

20 MR GILERTSON: I don't persist with that, Your Honour.

21 HIS HONOUR: Yes?---I then - it was that point that Mr Cripps
22 observed the visitor. I had observed that there was a
23 visitor in the gallery space and he exited and then I was
24 speaking to Demetrios and that visitor subsequently - to
25 me it was another - - -

26 This is not part of your question, is it?

27 MR GILERTSON: No, it's not. (To witness) Were there any other
28 discussions in relation to the Jews at this meeting with
29 Mr Cripps?---Well, it was a reiteration of what occurred
30 on the 18th at the opening that it was the Jews and their
31 state in Palestine that were cause of the conflict.

1 Yes, thank you, I'll move on. I'm going to show, Ms Raymond,
2 Your Honour, a copy of the aide-memoire just to try and
3 expedite matters. Do you still have a copy of the
4 defendants' court book in the witness box, Ms Raymond,
5 that folder?---I do, yes.

6 Could I take you, please, to Tab 31. Unless my learned friend
7 has any objections, Your Honour, I propose to lead in
8 relation to this evidence.

9 HIS HONOUR: Yes, I think you should unless objection is taken.

10 MR DIBB: I have no objection.

11 MR GILERTSON: Are the documents in Tab 31 documents relating
12 to the purchase by you and Mr Vakras of art materials?

13 ---Yes.

14 If you look at the document I also had handed to you, do the
15 amounts of those invoices total \$2384.26?---Yes.

16 Were those invoices all paid?---They were.

17 Would you go, please, to Tab 32. You possibly have the wrong
18 document as the second document. Is the first document
19 in that tab an Art Almanac tax invoice in which there's
20 handwriting paid 8 August 09?---Yes.

21 What is the second document?---It's a receipt from my online
22 banking.

23 Your Honour, I seek to substitute for the folder in the witness
24 box the document which was substituted yesterday.

25 HIS HONOUR: Yes, so it will be another tax invoice from Art
26 Almanac?

27 MR GILERTSON: Yes.

28 HIS HONOUR: For \$203.50.

29 MR GILERTSON: Yes. Perhaps if you could place that document,
30 Ms Raymond, after the first and is that a second invoice
31 for Art Almanac?---Yes.

1 Dated 20 July 2009?---Yes.
2 Do those invoices total \$407?---Yes.
3 Were they paid? Were they paid?---They were.
4 Could you please to Tab 33. Is that a receipt in relation to a
5 payment by you and Mr Vakras for the printing of the
6 catalogue?---Yes.
7 Is that amount \$3740?---Yes.
8 Could you please go to Tab 34. Are the receipts in relation to
9 other printing?---Yes.
10 Organised by you and Mr Vakras?---Yes, they are.
11 Do those invoices total \$1054.53?---Yes.
12 Please go to Tab 35. Are they invoices and receipts in
13 relation to Artworks Framing?---They are.
14 Do they total \$1350?---I'd have to do my calculations.
15 Do you see towards the bottom of the aide-memoire that I've had
16 handed to you?---I'm sorry, yes, that's correct.
17 Those amounts were paid?---They were.
18 Could you please go to Tab 36. Are these invoices and receipts
19 in relation to transportation?---They are.
20 Do they total \$251.19?---Yes.
21 Would you go, please, to Tab 37. Are they miscellaneous
22 receipts in relation to expenditure incurred by you and
23 Mr Vakras in relation to the exhibition?---Yes.
24 Do they total \$301.82?---Yes.
25 Your Honour, I do propose to tender the aide-memoire.
26 HIS HONOUR: Is there any objection?
27 MR DIBB: No, Your Honour, no objection.
28 HIS HONOUR: Can I take it that you will not be cross-examining
29 on the accuracy of the invoices, the fact that they've
30 been incurred in connection with this exhibition?
31 MR DIBB: No.

1 HIS HONOUR: What is your position in relation to this?

2 MR DIBB: I might well raise that with the witness but I don't
3 object to the tender of the aide-memoire on the basis
4 that it accurately represents the totals of the amounts
5 for which the witness is claiming.

6 HIS HONOUR: And I can look at this aide-memoire and rely on it
7 in lieu of looking at the individual invoices? Let's
8 take it one step at a time, I won't pre-empt your
9 position.

10 MR DIBB: I'll be quite open with Your Honour.

11 HIS HONOUR: Yes.

12 MR DIBB: It's a relatively minor point perhaps but I will be
13 asking whether all this material was used in connection
14 with the exhibition and whether it has all been lost. I
15 mean, whether it's - - -

16 HIS HONOUR: I see.

17 MR DIBB: To what extent these amounts are actually damage on
18 any view.

19 HIS HONOUR: Yes, I understand.

20

21 EXHIBIT D1 - Aide-Memoire headed Exhibition
22 Expenditure Lee-Anne Raymond and
23 Demetrios Vakras.

24 HIS HONOUR: Do you have another copy, Mr Gilbertson?

25 MR GILERTSON: Yes, I do, Your Honour.

26 HIS HONOUR: That will become the formal exhibit. The one that
27 you gave me the other day I will use as my working copy.

28 MR GILERTSON: Thank you, Your Honour. Ms Raymond, if I could
29 take you now to sales of your artworks. Would you tell
30 the court starting roughly in the mid 1990's to the time
31 of the exhibition of the Guildford Lane Gallery what
32 artworks you have sold?---I sold a first painting in
33 around 94 and another a year later.

1 Do you recall the prices of those artworks?---Around \$1000 or
2 950 in the case of those two. The subsequent year I
3 don't think I sold in the year following that I - - -

4 HIS HONOUR: We're talking about 96 now?---No, it was more like
5 99 my first solo I sold two paintings in that year, one
6 at my solo exhibition and one later on.

7 MR GILERTSON: For how much, do you recall?---It's roughly 1200
8 for one and around a similar price for another.

9 The following two years after, 2001, I sold three works at my
10 second solo. One was close to \$2000, or maybe 1800, I'm
11 not sure.

12 HIS HONOUR: Sorry, you really have lowered your tone and I
13 can't hear you?---I am sorry. One was about \$1800, one
14 was about 1200, one was a similar, 1500, something like
15 that. I apologise, I do recall selling paintings. I
16 don't expressly keep in mind exactly what I've earned in
17 that sale.

18 MR GILERTSON: And after 2001 were there any sales?---As
19 smattering of smaller sales, maybe two in the intervening
20 years. I worked on a number of projects with other
21 artists where it was in kind and including a drawing for
22 a drawing type of thing and I donated one work to a
23 charity auction and I have participated with another
24 artist into what are known as - and again my nerves are
25 getting on me, my nerves.

26 HIS HONOUR: Just take your time. You're entitled to reflect
27 and answer accurately?---It's awful, this is awful.

28 MR GILBERTSON: Just doing the best you can?---I'm trying. I
29 don't know why I have to do this, this part of my
30 reaction at the moment. Exquisite Corpse is what I'm
31 trying to remember, which is something I know very well,

1 and anyway, I participated in with another artist in
2 creating Two Exquisite Corpse pieces and one of which is
3 published in a book that that artist produced, so they
4 were in kind exchanges as well. I still have The
5 Exquisite Corpse that he sent me to complete.

6 Roughly when was that?---2010.

7 After the Guildford Lane Gallery exhibition?---No, sorry, 2000
8 and - earlier in 2009.

9 Did you sell any works at the Guildford Lane Gallery
10 exhibition?---No, I didn't.

11 I'm going to take Ms Raymond, Your Honour, to the article.

12 There is a copy, Ms Raymond in the plaintiff's court book
13 but I wonder if she could be shown the document tendered
14 for identification. Would that be of assistance? Do you
15 only have one copy?

16 HIS HONOUR: I only have one copy.

17 MR GILBERTSON: What I might have to do - - -

18 MR DIBB: I think my solicitor can supply a copy.

19 MR GILBERTSON: I can hand Ms Raymond a copy of the plaintiff's
20 court book.

21 HIS HONOUR: That's probably more helpful so we're looking at
22 the same thing.

23 MR GILBERTSON: Have a look at this please, Ms Raymond.

24 HIS HONOUR: Will Ms Raymond still need the court book?

25 MR GILBERTSON: I don't think that she will. (To witness) You
26 can close that court book, Ms Raymond.

27 HIS HONOUR: Perhaps just take the folder and give it to the
28 instructor. It can be given back later if necessary.

29 MR GILBERTSON: Yes, and you can hand back the aide memoire as
30 well. Would you have a look through that A3 bundle;
31 towards the rear there should be a C in quotation marks.

1 HIS HONOUR: It's three pages in from the back.

2 MR GILBERTSON: (To witness) Do you recognise that?---I do. I
3 can't see - sorry, I can see the C.
4 What is it?---It's my, what is called the article from my
5 website.
6 When did you upload that onto the internet?---Just in late
7 September in 2009.
8 What website did you upload that article onto?---My website.
9 Which is what?---leanneart.com
10 Just bear with me a moment. What part of the website was that
11 article uploaded onto?---My events page.
12 Would you describe to the court what the structure and general
13 content of your website was in about mid 2010 to the best
14 of your recollection?---It contains a home page, a
15 directory from which you can go to several galleries
16 which are fairly thematically organised. You can also go
17 to what I call ancient works which takes you back to see
18 what I did in an early period. And my old site. I had
19 an older website which I still feature from my current
20 website. I have off the directory page a biography
21 section, an events section and about the site section and
22 a design section.
23 Can you just, sorry, keep your voice up?---And a design
24 section. From those entrances, portals, doorways, links
25 you can access more information by going into them and
26 you access a single page which features a painting, maybe
27 a blurb about it, maybe not. I have a section which
28 includes letters about art that I've written, or writings
29 about art. So you would have to link out from the
30 directory page to go to those. The directory page also
31 highlights the more current situation of the website

1 whilst off the left there's a margin which includes all
2 of the linking, linked off areas that I just mentioned.
3 So that's just home page, directory, and then you go
4 deeper into the site after that. You link into it off
5 each point, which is noted in text but it's also a
6 hyperlink.

7 So if someone accessed the website leannart.dot in about mid
8 2010 how would they get to this article?---They would
9 have needed to go through the home page to the directory
10 then from the directory my events section is down the
11 bottom in a section on the left and they would need to go
12 to my events page and they would needed to have scrolled
13 a bit to find that information and then they would have
14 linked to it from there.

15 Could you have a look please at the article. Do you see it's
16 headed Guildford Lane Gallery and underneath "Last
17 updated 26 September 2010," it says, "Robert Cripps of
18 Guildford Lane Gallery is at it again and again and
19 again." When was that placed by you on your website?
20 ---As stated on 26 September 2010.

21 Underneath that there is an entry for 26 September 2010 as well
22 where it says, "Another artist reports to me that they
23 were humiliated and embarrassed by Cripps's behaviour at
24 their opening and throughout the duration of the
25 exhibition." Where did you get that information from?
26 ---An artist contacted me with that information.

27 Who was that?---Josie Ward Elton.

28 The entry underneath that, "This is a pattern of behaviour.
29 Artists be warned and beware." Then it says, "6 June
30 2010. A life model reported to me how he found Cripps's
31 treatment was unbearable. This person had been wrongly

1 paid and dared to question Cripps and was victimised for
2 it." Where did you get that information from?---From the
3 life model.

4 Who was the life model?---Gavin Nicholson.

5 Underneath that it says, "26 May 2010. An artist reports her
6 reputation and exhibition were destroyed by Robert Cripps
7 and his bizarre unchecked antics." Where did you get
8 that information from?---The artist who had contacted
9 Demetrios and that was Courtney Kim.

10 What do you say as to your - - -

11 MR DIBB: I'm sorry, what was that name?

12 MR GILBERTSON: Courtney Kim?---Courtney Kim.

13 What do you say as to your belief as to these entries that you
14 have put on the website?---I believe them to be true.

15 Your website goes on, "When will any official arts reviewer, so
16 called arts support organisation or arts writer/publisher
17 have the guts to do anything about him? Arts law must
18 have volumes dedicated to complaints just about Cripps.
19 Like Demetrios Vakras and I you will get nothing but
20 useless mutterings, 'how awful.' Well, that isn't good
21 enough. In our case a review supporting the show and its
22 purpose or even critiquing it properly would have been
23 the expectation but no, what we received was much less
24 than nothing. We were left to hang. This will happen to
25 you too." What do you say about your belief into what
26 you wrote on that paragraph?---I believe it to be true.

27 The next paragraph, which I won't read out, but it starts,

28 "It's time to out Cripps for what he is." Do you see
29 that?---Yes.

30 Perhaps if you could just peruse that paragraph for a moment.

31 What do you say as to your belief in relation to that

1 paragraph?---It is true.

2 Further down the next paragraph commences, "In my own
3 experience let's see at my exhibition," and it goes on.
4 Perhaps if you could just look at that paragraph for a
5 moment. What do you say as to your belief as to that?
6 ---I believe it to be true.

7 Would you look please at the next paragraph commencing, "Anyone
8 who works or volunteers for him." What is your belief
9 about that?---I believe it to be true.

10 And the next, "How many people must he dishonour"?---It looks
11 to me like something's missing from - - -
12 There's something missing from the bottom of the first page?
13 ---There might be.

14 Is that what you believe?---I think it, I think it trails off
15 uncharacteristically. It might be missing something, I'm
16 not sure, but I believe that to be true.

17 Do you hold the same belief in relation to the balance of what
18 you have written in this article?---I do.

19 Does that also represent your beliefs as at about mid 2010?
20 ---Yes.

21 You're aware aren't you, Ms Raymond, that in this proceeding
22 you have filed a number of defences?---Yes.

23 In those defences there are set out meanings which are said to
24 be conveyed to the ordinary reader; you understand that?
25 ---Yes.

26 I'm going to ask you about several of those meanings. I'm
27 going to ask you firstly this. In relation to what's
28 said to be the meaning, that is, "As the operator of the
29 Guildford Lane Gallery Mr Cripps has repeatedly engaged
30 in behaviour that humiliates and embarrasses artists who
31 exhibit their works there." What was your belief as at

1 the time you uploaded this article on the internet in
2 relation to that?---That that was true.

3 As to the meaning, "As the operator of the Guildford Lane
4 Gallery Mr Cripps has repeatedly engaged in behaviour
5 that bullies and abuses artists who exhibit their works
6 there," what do you say as to your belief at about time
7 in relation to that meaning?---That is true.

8 "As the operator of the Guildford Lane Gallery Mr Cripps has
9 repeatedly engaged in behaviour that destroys the
10 exhibitions of the artists who exhibit their works
11 there," what was your belief as to that?---True.

12 "As the operator of the Guildford Lane Gallery Mr Cripps has
13 repeatedly engaged in behaviour that sullies the
14 reputations of the artists he represents," what was your
15 belief at about that time in relation to that meaning?
16 ---That that was true.

17 That, "Mr Cripps has failed to support and has sabotaged the
18 exhibitions of some of the artists who have exhibited
19 their works at the Guildford Lane Gallery," what is your
20 belief as to that?---Yes, that was true.

21 And that, "Mr Cripps is a person who is widely despised," what
22 do you say about that?---I believe that to be true.

23 As to the meaning that, "Redleg Museum Services Pty Ltd is a
24 company of questionable repute and should be avoided by
25 artists," what do you say as to your belief as to that
26 meaning in about mid 2010?---I believe that to be true.

27 Yes, thank you.

28 HIS HONOUR: Mr Dibb?

29 MR DIBB: Thank you, Your Honour.

30 <CROSS-EXAMINED BY MR DIBB:

31 Does the witness have the defendant's court book documents?

1 HIS HONOUR: She will in one second.

2 MR DIBB: I'm sorry?

3 HIS HONOUR: She will in one second.

4 MR DIBB: (To witness) Could I take you first to the exhibition
5 agreement. The signed copy is a bit difficult to read
6 but the clear copy which is acknowledged to be the same
7 is behind Tab 8. If you go to Paragraph 10 of that
8 agreement. You read this agreement before you signed it
9 didn't you?---Correct.

10 In fact it came through to you in electronic form and you did
11 amendments and changes to it?---I did not do the
12 amendments and changes.

13 Was it Mr Vakras did the amendments and changes?---Correct.

14 Change to include his name and words ist for humanist instead
15 of human?---Yes.

16 You see in Paragraph 10 that there is a procedure in regard to
17 any dispute about the agreement?---That's correct.

18 Did you follow any of the steps in that procedure? You didn't
19 did you?---Yes, we did.

20 MR GILBERTSON: I object to the question. It's not pleaded in
21 the defence to the contract claim by reason of Paragraph
22 10 of this document that there is a defence to the claim.

23 HIS HONOUR: What is the purpose of the question?

24 MR DIBB: The purpose of the question is to establish the
25 general approach of the defendants to the dispute with
26 Mr Cripps and it's relevant to the defamation claim and
27 indeed to the contract claim.

28 HIS HONOUR: Yes, I'll the question on that basis.

29 MR DIBB: Thank you. (To witness) Did you take any of those
30 steps?---We did.

31 Which ones did you take?---We put it in writing, we put the

1 dispute in writing to Mr Cripps and the response from
2 Mr Cripps was to deny that any of my statements in my
3 email were correct.

4 Did you then arrange for a representative or suggest a meeting
5 within 14 calendar days as set out in Paragraph B?---No.

6 Did you read Paragraph 11?---Yes.

7 So you were aware that you were just renting the space?

8 ---Absolutely.

9 All that was agreed was that the space would be available to
10 you?---In the context of a gallery for hire, correct.

11 They would not act as your agent for the sale of works nor for
12 the production, sale, administration, marketing or direct
13 agency?---Correct.

14 Your partner is an irascible man isn't he?---That is incorrect.

15 He's prone to be aggressive isn't he?---No.

16 So when you said at - I'll take you to Document 18. In

17 Document 18 there's an exchange of emails of which you're
18 aware and that exchange of emails was about the missed
19 meeting on, I think it's 5 January is it?---It's called
20 the failed meeting.

21 I'm sorry?---The failed meeting.

22 The failed meeting. Not 1 January, 1 June, the failed meeting
23 on 1 June. In the course of that exchange of emails
24 there are a couple of fairly strongly worded emails from
25 Mr Vakras aren't there?---Correct.

26 On Document 19 you remark, "Demetrios might seem strong," at
27 the beginning of that email?---The language that
28 Demetrios used in the email might seem strong to some and
29 therefore it's for emphasis. I don't think it describes
30 my partner's character according to your definition.

31 You knew that that was an overreaction on Mr Vakras's part

1 didn't you?---Not really. Our discussions, in our
2 discussions about what had happened we were discussing
3 that they were idiots. This, the woman had been banging
4 on the fucking windows. It was actually a little
5 embarrassing for us because we thought we were going to
6 get told off by other people that are residents in that
7 laneway.

8 After that exchange of emails you went to see Mr Cripps on your
9 own didn't you?---I did.

10 Did you do that because you knew that it would be inflammatory
11 if Mr Vakras came?---No.

12 Why did you go on your own?---We hadn't heard anything from the
13 gallery. I figured - one of my roles at work, if I may -
14 this isn't a digression - but one of my roles at work is
15 that I am part of a negotiating team which negotiates the
16 staff partnership agreement year - well, year or two
17 yearly or three yearly; it has been the case in the last
18 13 years that I've been employed there. I thought I
19 could reason with the gallery and considering that our
20 exhibition preparations had gone so far down the track,
21 still had the invitations that we wished to deliver so
22 that it could be utilised as in the context that
23 Mr Cripps had already promised to be handed out. So I
24 went there, I thought - it was spontaneous, it was almost
25 a spontaneous thought. I'm just going to - I haven't
26 heard from them, I'm just going to do this. So no, I did
27 not discuss it with Demetrios.

28 When you arrived Mr Cripps told you he was unhappy with the
29 language that had been used?---He was unhappy with being
30 spoken to that way. I said I understood.

31 What make you think before that that you no longer had an

1 exhibition?---Before that?

2 Yes. Did you think before you went to that meeting?---There

3 were elements prior where I thought I was worried about

4 the exhibition. I didn't think we did not have an

5 exhibition at that point.

6 I put it to you that when you went to see Mr Cripps on that

7 occasion he did not say to you that the sign was removed

8 because of prank calls on any occasion?---Am I meant to

9 respond?

10 HIS HONOUR: Yes. You've been asked to agree with that or

11 not?---I think that that's - I disagree with that.

12 MR DIBB: When you took out your mobile phone you gave evidence

13 that you tried a number that you'd used to call the

14 gallery that day and other times?---Correct.

15 And it rang through. You were asked did you see any telephone

16 number posted outside the premises and you said there was

17 no number?---There was no sign for the number to be

18 there.

19 I'm going to show you a photograph of the door. It's not a

20 very good photograph. I'm going to show you two

21 photographs.

22 HIS HONOUR: When were these said to be taken, Mr Dibb?

23 MR DIBB: I'm instructed they were taken just when the gallery

24 opened, which was shortly prior to this exhibition.

25 HIS HONOUR: Sorry, I didn't understand that. When the gallery

26 opened?

27 MR DIBB: When the gallery first opened, which was shortly

28 prior to this exhibition I'm told. It must have been at

29 least a year?---We went to the inaugural opening.

30 HIS HONOUR: Sorry, just wait please.

31 MR DIBB: I'm sorry, Your Honour. It may have been the year

1 before.

2 HIS HONOUR: Can I have a copy of the photos?

3 MR GILBERTSON: Your Honour, I object to the relevance of

4 these, and these documents have not been discovered.

5 MR DIBB: They haven't been discovered, Your Honour, no. In

6 fact we've only just dug them up.

7 HIS HONOUR: I understand the purpose of the photographs is to

8 test the witness's recollection of what she saw and what

9 was there, no more.

10 MR DIBB: Yes, Your Honour.

11 HIS HONOUR: Is that correct?

12 MR DIBB: Yes, it is.

13 HIS HONOUR: Do you still object?

14 MR GILBERTSON: No, I don't object.

15 HIS HONOUR: Yes, thank you. I've just got one.

16 MR DIBB: I only have that - I'll deal with that photograph

17 first.

18 HIS HONOUR: This is the photograph. So we're all looking at

19 the same page?

20 MR DIBB: Yes. (To witness) Would you look at that photograph

21 please, Ms Raymond?---This one?

22 Yes. You see that there are three signs on the door there?

23 ---Well, technically there's four but yes.

24 I mean affixed signs. Are you referring to the strictly no

25 admittance?---No. There's a double sign with gallery

26 hours in big font and presumably the gallery hours to the

27 right of that. There's a sign on the door on the left

28 which is higher up and another sign underneath it. I

29 can't make out exactly which, what's what, but I'm

30 presuming you're pointing out that that's the gallery

31 number.

1 Which one do you think might be the gallery number?---Not that
2 one.

3 No, not that one. Would it be the top one on the left?---I'll
4 have to take your word on that. It could be. It could
5 be either of the two signs that are on the left hand
6 side.

7 Yes, and it's not legible now. The evidence - - -?---I don't
8 dispute that there were signs showing a number.

9 Mr Cripps showed them to me when I went in for my
10 impromptu visit.

11 He showed you that sign at the top there?---Well, a similar
12 array of signs such as these.

13 He pointed out that sign and said that's the number?---"But we
14 take it in at night when we close the gallery."

15 That's what I'm going to suggest that your evidence is
16 incorrect, Ms Raymond?---I disagree with you. My
17 evidence is correct. Mr Cripps reiterated to me at great
18 length how prank callers forced them to pull the sign in
19 at night. I also said to him, or I suggested helpfully
20 perhaps an intercom would help, and he looked at me as if
21 I was an idiot and said, "Well, that would just assist
22 the prank callers to ring the bell". So I'm sorry,
23 Mr Dibb, your client's not telling you the truth.

24 HIS HONOUR: Just get the rules of engagement?---I beg your
25 pardon.

26 Just listen to the question?---Yes.

27 Answer the question. Avoid comments. Your barrister can make
28 comments later if that's necessary.

29 MR DIBB: Ms Raymond, I suggest to that the top sign on the
30 left was a fixed sign, fixed to the door with metal
31 fasteners, that that was the sign that Mr Cripps points

1 out to you and that he at no time said that it was ever
2 taken down for prank callers?---I disagree with the
3 second part of your statement.

4 That there was a sign, the lower sign on the left was a
5 removable sign that indicated when the gallery was open
6 and when it was closed, did you observe that?---They were
7 all removable, that's what I observed.

8 You have another photograph in front in which that lower sign
9 is not displayed, do you see that?---Correct.

10 MR GILERTSON: We don't have a copy.

11 MR DIBB: No, we don't, Your Honour.

12 HIS HONOUR: I don't have a copy either.

13 MR DIBB: No. I have a copy of a different picture in which
14 again the lower sign is not displayed.

15 HIS HONOUR: I think you need to show it to Mr Gilbertson.

16 MR DIBB: I don't know if that's of any assistance. The lower
17 one is removed.

18 HIS HONOUR: Sorry, have you asked your question?

19 MR DIBB: I put it to you that Mr Cripps did not - that
20 Mr Cripps indicated the fixed sign, said that there was
21 always a telephone number there and that he did not say
22 that it was ever taken down to avoid prank callers.
23 What's your response?---I disagree.

24 The logic of having a number on the door must be so that people
25 can contact you when you're not there when the door's
26 closed, mustn't it?---It must.

27 So the idea that you would take the number in when you weren't
28 there to avoid being called doesn't make any sense to
29 start with, does it?---It didn't.

30 I'll move on, Your Honour. (To witness) But you adhere to the
31 statement that he told that it was taken in sometimes to

1 avoid prank calls?---Correct.

2 And when you looked at it you couldn't see it was fastened

3 permanently to the door?---One of the things I observed

4 was that the plastic sleeves were fastened but that the

5 open end allowed for the contents to be removed.

6 There will be a number of witnesses give evidence that sign was

7 affixed to the door permanently and never removed?---OK.

8 HIS HONOUR: I'll just hand back this photograph.

9 MR DIBB: Thank you. I think I might tender that photograph

10 now if I may, Your Honour.

11 MR GILERTSON: I object to it being tendered through

12 Ms Raymond. Ms Raymond hasn't established the provenance

13 of that - - -

14 MR DIBB: If we have it marked?

15

16 EXHIBIT MF12 - (For identification) Photograph of a

17 doorway.

18 MR DIBB: When you saw that sign above the door about how far

19 would you estimate it was from ground level, the one to

20 which we've referred that's the top sign on the left?---I

21 had to crane my neck to view it. I would say I'm about

22 175/180 centimetres so 40 odd centimetres higher than

23 myself maybe. We stood back. I didn't stand right up -

24 I didn't align myself with the door and measure it,

25 sorry.

26 Could you have reached it?---I could have.

27 You say you could have reached it?---I could have touched it.

28 I am tall.

29 Sorry?---I am tall.

30 In the period following this exhibition both you and Mr Vakras

31 have put on the internet material including the items

32 that are matters complained of in this proceeding,

1 haven't you?---Yes.

2 And at various times you have had difficulty keeping those
3 matters displayed, haven't you?---Yes.

4 Can you describe that difficulty?---The pages were ordered to
5 be taken down off the internet. Our ISP and internet
6 providers were threatened with legal action. We were
7 ordered by them to take the pages down or they would. We
8 declined to do so and in a couple of cases pages were
9 taken down, my whole website was taken out. Our internet
10 was removed from - our internet was cut off rather and
11 our domains were hijacked following this.

12 This is your ISP's cut off your access to their services, is
13 that correct?---Our internet was cut off, yes.

14 And your internet was cut off.

15 HIS HONOUR: You said hijacked I think, is that right?---Our
16 domain names were hijacked after our internet access was
17 cut off. Hijacked, it's a criminal act. It basically
18 means that your domain names have been stolen by another
19 party.

20 I see.

21 MR DIBB: What do you mean by stolen by another party?

22 ---They're accessed and taken, they're stolen. We never
23 got a satisfactory explanation from Melbourne IT as to
24 what had happened.

25 So Melbourne IT was your internet service provider at the time,
26 was it?---No, they were the domain hosts.

27 What was the involvement of Melbourne IT?---They host the
28 domain. They secure it and it's accessed by your
29 internet provider in order to direct the traffic. It's
30 something you hire them to do. It's not my - I don't
31 make it up.

1 However you had difficulty keeping these pages displayed, you
2 were very keen to make sure that they kept getting out
3 there, weren't you?---Absolutely.

4 You were determined that you would publicise your critique of
5 Mr Cripps and his gallery as widely as you possibly
6 could?---Not necessarily, not as widely as I possibly
7 could. I disagreed with the censorship aspect of having
8 our pages removed and having my entire website removed it
9 and I thought it was oppressive considering that there
10 was a denial that anything at all had happened that
11 wasn't our fault entirely.

12 But you were keen, weren't you, to make sure that your message
13 kept getting out there?---According to the statements in
14 my article I think I've expressed that as much as
15 possible, I possibly can.

16 You were keen to the extent of pursuing Mr Cripps?---I haven't
17 pursued Mr Cripps.

18 I'll take you to a large number of - you would agree that you
19 have published a great deal of material on the internet
20 about this incident, about your relationship with
21 Mr Cripps?---In the context of critiquing defamation law,
22 in the context of critiquing the arts community in the
23 context of critiquing the fact that there's been a denial
24 in our view - my view of justice in our case, correct.

25 But you published a great deal of material. I mean it would be
26 fair to call it a great deal of material?---I don't know
27 about that. There's people that create a great deal more
28 of material in criticism form than I do. I have a
29 particular concern to convey and I've done so across a
30 number of articles.

31 You're aware that Mr Vakras has also produced a lot of material

1 that's not on the net?---Yes, correct.

2 He has, hasn't he?---I don't know about a lot. It's all

3 contextually according to our ability to argue when we've

4 learnt more. We've done a lot of self teaching in terms

5 of law, in terms of arguing and it's important to us that

6 the truth is what is communicated. It was one of the

7 points of our exhibition.

8 But you haven't left it really - you haven't left it with the

9 demise of the gallery itself, you haven't left this

10 behind, your critique of Mr Cripps, have you?---There's

11 been an impact, I would agree with you. There's no

12 resolution as far as we are concerned.

13 You have pursued him to his new venture, haven't you, to Ruby's

14 Music Room?---I pursue no-one.

15 I want to show you an email. I'll hand one up to Your Honour.

16 You have that, do you? I want you to ignore the first

17 two portions. The first portion is from Robert Cripps

18 sent to reception, you can see that, and then the second

19 portion is from Liz Paul sent to Robert Cripps, OK.

20 You'll see that's, "Hi, received this from Ruby's Music

21 Room. Have they accessed your site and email to do this?

22 I think you should forward this to your solicitor. I

23 can't imagine that this is legal". Do you see that

24 message there?---I see that.

25 Under that message?---The next page?

26 No, it's on the same page, on the front page?---Pardon me.

27 Under that message where it says, "Begin forwarded message",

28 about the beginning of the page. From beneath that line

29 to the end you will see that this is an email, in this

30 case addressed to liz@aemetal.com.au, subject, "The Ugly

31 Truth about Robert Cripps and why you shouldn't support

1 Ruby's Music Room", do you see that?---I do.
2 Have you any knowledge of how this email came to be sent to
3 Ms Paul?---No. I don't know Liz Paul. This is the first
4 I've seen of this.
5 Would you like to read the email, just take your time?---It's a
6 graphic, isn't it?
7 Yes?---"The reasons why you shouldn't support Robert Cripps and
8 his business fraud. For additional reading search Robert
9 Cripps Melbourne or visit", and there's three hyperlinks,
10 redlegvartis.com, fraud-addendum.html. The second one is
11 humanisttranshumanist.comvakras-raymond-vcap-claim.html.
12 The third one is
13 fantasart.comvakrasguildfordlane_gallery - - -
14 I didn't actually mean to read it aloud. I'd just like you to
15 look through it and read it to yourself?---Well, why
16 didn't you stop me earlier?
17 HIS HONOUR: You need to refrain from those comments, please,
18 Ms Raymond?---Yes.
19 MR DIBB: Have you looked through that?---I've looked at this
20 bit and basically - - -
21 And the subsequent pages?---Yeah.
22 You'll see that on the second page of this email that it's
23 reproduced in this way because the graphics come up on
24 individual pages but on the screen I ask you to accept
25 that it's continuous. You'll see that on the second page
26 you have this box, "redleg-v-Artists, Robert Raymond
27 Cripps sues artist for defamation"?---Yes.
28 And you'll see that towards the bottom of that it says, "We
29 have no real idea of what Cripps's claim really be for or
30 what he believes he is suing us for?---Correct.
31 You would accept that that would appear to be something written

1 by either you or Mr Vakras or both of you?---Correct.
2 And you will see that there are subsequently screen shots of
3 the Ruby's Music Room page?---Yes.
4 With comments?---Yes, it's the interns page.
5 You will see on that?---Yes, that's when changes were made to
6 Ruby's Music Room.
7 And the version you have on the fourth page you will see in the
8 middle between the two, Ruby's Music Room screen shots.
9 On 12 September the text for Cripps RMR, Ruby's Music
10 Room?---Yeah.
11 Was expanded below?---Yeah.
12 And then in the middle of the following page, "We are uncertain
13 as to what the threat might mean or what he believes it
14 to mean but we're concerned that whatever it is it will
15 likely be consistent with the vexatious claim he's
16 already making against us"?---Correct.
17 You say, do you, that you have no knowledge of the origin of
18 that email?---No, that's incorrect. I have no knowledge
19 of that and the reference Liz Paul is making.
20 And the reference to what, sorry?---The Liz Paul email.
21 HIS HONOUR: That Ms Paul is making?---Above it that implies
22 that we went to - invaded his site.
23 MR DIBB: I'm talking about and I'm sorry if I wasn't clear,
24 I'm talking about - - -?---Everything on p.1 - - -
25 - - - from everything past "Begin forwarded message" on p.1?
26 ---I've never seen - I've never seen that section. I
27 don't remember seeing that section I should say.
28 Everything else I've seen.
29 Everything else you've seen including the comments?---Correct.
30 The screen shots and the comments. Now, the question - - -
31 HIS HONOUR: Is that right, the screen shots and the comments?

1 ---Yes.

2 MR DIBB: My question to you, Ms Raymond, is what do you know
3 of the origin of this email, that is, the email that
4 commences, "The Ugly Truth About Robert Cripps and why
5 you shouldn't support Ruby's Music Room"?---I don't know
6 anything of it.

7 Do you say that you were not involved in sending out that
8 email?---I was not involved in sending out that email.

9 Are you aware of whether Mr Vakras - do you know if Mr Vakras
10 has been involved in sending out that email?---No.

11 Do you believe that you have a supporter who is sending out
12 emails of this kind pretending to be you?---I find that
13 very difficult to believe. I do not know.

14 I don't think any of us would be surprised by that. But you
15 say that you were not involved in sending out this
16 email?---Correct.

17 Does Mr Vakras keep secrets from you?---No, he doesn't.

18 It's inconceivable, isn't it, that one or other or both of you
19 are not the originators of this email?---I would disagree
20 with that.

21 I put it to you squarely that you either were involved in
22 putting it out yourself or you know what it's origin
23 was?---I have no idea of its origin.

24 Might that be marked as well, Your Honour?

25

26 EXHIBIT MFI3 - (For identification) Six A3 pages with
27 the first page commencing Reception.

28 MR DIBB: You can see that the date of that email is
29 yesterday?---Yes.

30 Sorry, is Saturday, the 15th?---Yes.

31 That's three days ago. I'll take you now to the plaintiff's
32 court book, do you have a copy of the plaintiff's court

1 book? Can the witness be shown the plaintiff's court
2 book?

3 HIS HONOUR: I've got a copy but if you want the witness to see
4 a copy you'll need to provide it.

5 MR DIBB: Excuse me a moment, Your Honour, I've mislaid that
6 piece of paper.

7 HIS HONOUR: Sure, take your time. Will you be taking the
8 witness back to the defendants' court book and the
9 article?

10 MR DIBB: Yes, I will eventually, Your Honour.

11 HIS HONOUR: Very well, that's fine. I just don't want the
12 witness to be unnecessarily cluttered but that's fine for
13 the moment.

14 MR DIBB: Could you turn to the tab marked FSAD24?---I'll have
15 to stand up, I'm sorry.

16 MR GILERTSON: Your Honour, we weren't provide with a copy with
17 tabs in it so perhaps my learned friend could assist us
18 in indicating where the this document might be located.

19 HIS HONOUR: Is this the volume headed Plaintiff's Court Book
20 Documents?

21 MR DIBB: Plaintiff's Court Book Documents, yes, that's right.

22 HIS HONOUR: I have tabs - which one was is, FSA?

23 MR DIBB: FSAD24.

24 HIS HONOUR: 24. You mean p.24 under that tab, is that right?

25 MR DIBB: The way the book is organised it refers to further
26 supplementary affidavit of discovery, FSAD, so we have
27 documents marked AD1, 2, 3, et cetera, and then
28 supplementary affidavit and discovery, SAD3, 4, 60 and
29 then further supplementary affidavit and discovery, FSAD.

30 HIS HONOUR: I'm just getting confused now I'm afraid. Let me
31 tell you what I've got. I've got a folder which is

1 headed Plaintiff's Court Book Documents. It has a Tab 1
2 and then an AD with Numbers 1 through to 3 and then SAD
3 3, 4, 5 - 3, 4, 60 and then a 3 and then FSAD. So I'm
4 now confused as to where you are taking the witness.

5 MR DIBB: Your Honour, does Your Honour not have a copy with
6 tabs?

7 HIS HONOUR: I've got some tabs.

8 MR DIBB: Does Your Honour see when we get to FSAD there are
9 FSAD3?

10 HIS HONOUR: You mean on the right hand side there's a marked
11 3, yes, I've got that.

12 MR DIBB: Yes. FSAD18, FSAD22. I'm taking the witness to
13 FSAD24.

14 HIS HONOUR: I see.

15 MR DIBB: Do you have that document, Ms Raymond?---I have
16 FSAD24, yes.

17 Can you tell the court what that document is?---It's
18 redlegvartists and it's a website that Demetrios and I
19 have posted to the internet. It's inspired by
20 gunns20.org.

21 By something?---Sorry, it was inspired by gunns20.org, a
22 website devoted to releasing the public information and
23 comment about a particular case that was held in
24 Tasmania.

25 The hyperlinks down the left hand side don't relate to
26 Tasmania, do they?---The site was inspired by gunns20,
27 that's correct. They're about our case.

28 On the second page of that you see a picture of the plaintiff
29 with a slash through his face?---Correct. It's a cancel
30 sign.

31 And you refer below that, "His application to run his dogs

1 venue, Ruby's Music Room, has been beset by legal
2 challenges"?---Correct.
3 That's nothing to do with this case, is it?---That's to do with
4 Ruby's Music Room and an application by Bennetts Lane
5 Jazz to complain that Ruby's Music Room should not be
6 setting up in the same precinct and calling itself Ruby's
7 Music Room on Bennetts Lane.
8 Absolutely nothing to do with you or with this case, is it?
9 ---Not to do with this case, no.
10 Included purely to continue to smear Mr Cripps for as long as
11 possible?---Not necessarily, no.
12 And there's a good deal of stuff there, isn't it, about Ruby's
13 Music Room. Well, not a good deal of stuff but a couple
14 of paragraphs there?---There's also a petition to change
15 defamation law.
16 Yes. You run that site with Mr Vakras, don't you?---Correct.
17 And you gave evidence earlier that your Lee-Anne Art site is
18 maintained by you?---Correct.
19 And you've hosted that on various internet service providers as
20 you've been cut off by other internet service providers.
21 You've got some understanding of how the internet works
22 and websites, haven't you?---Yes.
23 You do not, do you, prevent search engines from searching your
24 websites?---No.
25 Would you be surprised to know that this document or a document
26 very like it, FSAD24, is as of yesterday morning the
27 Number 1 hit if you search for Robert Cripps?---I would
28 be.
29 Have you ever done a search of that sort to see where your
30 material figures in a result on his name?---Once or twice
31 but not recently.

1 Do you take any steps to do what's called a search engine
2 optimisation?---I don't know what that is.

3 If you don't know what it is probably the answer is no. So the
4 evidence will be and there will be evidence that this
5 redlegvartists site is the Number 1 result and that sites
6 very similar to the matters complained of in these
7 proceedings are also prominent results. You do not for
8 the Lee-Anne Art site attempt to prevent search engines
9 from indexing that site?---No.

10 You're aware, aren't you, that people routinely Google, is the
11 verb that's currently used by - - -?---I do that myself,
12 yes.

13 So you knew perfectly well that your websites and the extensive
14 material you've published on the internet was likely to
15 be published to anyone who wanted to know what the world
16 was saying about Mr Cripps?---Or myself or my artwork, or
17 my exhibition.

18 Yes, indeed. Anyone who wanted to know about you would be led
19 to your site but anyone who was looking for Mr Cripps and
20 what was being said in the world about him would come to
21 your website?---Would come to my website?

22 Through Google or Bing or Yahoo?---To my website, possibly.

23 You say that you have done searches and you were aware that
24 these sites - - -?---There's a number of chilling effects
25 that are - - -

26 HIS HONOUR: Sorry, you need to answer questions. Finish your
27 question, please.

28 MR DIBB: You've done searches and you were aware that your
29 website that contains the third matter complained of
30 showed up in searches for Mr Cripps's name?---Not really
31 recently. There's a lot of chilling effects that prevent

1 that.

2 But you have at times done searches and seen that your website

3 shows up as being a result if you search for Mr Robert

4 Cripps?---Yeah. I'd have to say yes, yeah.

5 Do you ever Google people?---Not routinely.

6 Would you do sometimes?---I do.

7 Have you ever been aware of people Googling you?---I'm sure

8 they do.

9 It's commonplace as you're aware of modern life isn't it and

10 has been for some years?---It's part of the information

11 age.

12 If you turn to the next document in that bundle, this is an

13 article, "Artists exhibition critical of religion,

14 declared racist by gallery owner and then sued for

15 writing about it." Do you see that document, FSAD25?

16 ---I do.

17 Who wrote that article?---Demetrios and I. I don't recognise -

18 where's the hyperlink for this so that I can - - -

19 <http://artlinks.org> at the bottom?---Yes, yes.

20 That's an article that you and Mr Vakras wrote is it?---Yes.

21 Could you turn forward to FSAD40. What's that document?---It's

22 an essay called The SLAPP from my blog.

23 What's a slap?---Strategic Litigation Against Public

24 Participation.

25 What does that mean in your understanding?---Censorship.

26 Censorship in what way?---Use of the law to conceal information

27 to prevent the truth being known.

28 It's your position in that essay - you wrote this essay did

29 you?---I did.

30 Just you or you and Mr Vakras?---Only yourself.

31 It's on your leanneartblogspot.com.au?---Blogspot, correct.

1 You will have seen that a number of people have commented on
2 it?---Correct.
3 That next document called Australian Defamation Law Versus the
4 Muscular Citizen, that's you again is it?---Yes.
5 Anything from my blogspot is only me.
6 Turning forward. I won't take you to all of this material but
7 I'll take you to some of it. Turning forward to FFSAD2,
8 do you see that document?---From Redleg v. Artists, yes.
9 Again Redleg v. Artists. This is redlegvartist.com\cripps-
10 lies.html, yes?---Cripps-lies, yes.
11 When was that - are you aware of that?---I am.
12 Have you seen that before?---I have.
13 Did you put that together or did you and Mr Vakras put that
14 together or did he?---Mostly Mr Vakras.
15 When was that posted?---I actually couldn't tell you exactly.
16 Does it have a date that you could take me to?
17 The date at the bottom is the date it was printed?---You might
18 be best to ask Mr Vakras, he may remember better than I.
19 Indeed. This is another quite extensive discussion of your
20 dispute with Mr Cripps isn't it?---Correct.
21 It's partly about your feelings about Australian defamation law
22 but a good deal of it's devoted to Mr Cripps being a liar
23 and the things you said he has done, yes?---Correct. The
24 image is intended to convey evidence of truth.
25 The image?---Yes.
26 You mean that photograph on the front of that document?
27 ---Correct.
28 That's you and Mr Cripps?---Correct, from 24 June 2009.
29 What do you say that image tells us about you and Mr Cripps?
30 ---I was in conversation with Mr Cripps. If he knew
31 nothing you would see a woman and a male in conversation,

1 not necessarily a social conversation, and in - - -

2 You'd see you and Mr Cripps talking to one another wouldn't

3 you?---Yeah, and in the vicinity of paintings, a

4 stairwell and a disclaimer notice. A disclaimer notice.

5 I'm going to turn now to the main point of the dispute between

6 you and Mr Cripps.

7 HIS HONOUR: Ms Raymond, are you right to continue until one or

8 do you want a short break?---I'm doing OK, thank you.

9 MR DIBB: You've given evidence about what happened on 18 June

10 at the opening haven't you?---Yes.

11 That evidence has included saying that Mr Cripps was downstairs

12 when you spoke to him?---Upon leaving the gallery, yes.

13 I suggest to you that the conversation you had with Mr Cripps

14 happened upstairs?---Incorrect.

15 You said that it occurred at the end of the night?---As we were

16 leaving. It was the end of our night.

17 What time was that do you think?---Roughly 8 p.m. I don't need

18 this any more do I?

19 I'm sorry?---I don't need this?

20 No, not now, no.

21 HIS HONOUR: Just take the big folder away and return that.

22 MR DIBB: Before I get to that. You gave evidence about the

23 price list and His Honour asked some questions about the

24 price list. Did you prepare that price list?---In part,

25 yes, my section.

26 What do you mean by in part?---The price list includes two

27 sections, the front and a back, and I prepared the front

28 section which would have been of my work. When they were

29 displayed in the gallery they were displayed as a page

30 each. I prepared the titles and the prices for my work

31 that was exhibited in the exhibition.

1 Are you saying that you prepared the price list in respect of
2 your works and Mr Vakras prepared it in respect of his?
3 ---We jointly do a lot of things so jointly we prepared
4 each our own sections. I may have compiled it for
5 sending to the gallery.

6 How did it come to be on the gallery's letterhead?---The
7 gallery asks you to forward it to them and they put the
8 letterhead, or I put the letterhead on, or they - I think
9 they forwarded me a jpeg of the letterhead at one point,
10 Ms Pickett. I have an email from Ms Pickett to that
11 effect.

12 When was the price list prepared?---Well, shortly before
13 installation days. It was probably the week prior of the
14 installation which would have been 15 and 16 June, so in
15 the preceding week sometime when we were sure of
16 everything we were exhibiting.

17 Can I take you to Tab 40 in the defendants' court book
18 documents if you still have that?---I'm sorry, I don't.
19 It got taken away, sorry. Is it this one, the little
20 one?

21 HIS HONOUR: Does it say defendants?---Yes, sorry. They all
22 look the same. Page - sorry, Tab 40?

23 MR DIBB: Tab 40?---That's the price list.

24 Under Lee-Anne Raymond there are a number of works there?

25 ---Yes.

26 And they have dates and prices and sizes and so forth?

27 ---Correct.

28 Some at least of those works weren't new works at all were
29 they?---No. They were from the preceding portions of the
30 decade.

31 HIS HONOUR: I'm sorry to interrupt. We've got the folder

1 Defendants' Court Book, is that right?

2 MR DIBB: Yes, Your Honour. I'm dealing with Tab 40.

3 HIS HONOUR: I heard it at 14, that's why I was struggling. I
4 beg your pardon, 40.

5 MR DIBB: 40. It's the last tab.

6 HIS HONOUR: Yes, I have that.

7 MR DIBB: Your Honour alluded to the drawing of the gallery.

8 HIS HONOUR: I did indeed, yes. Your question was, some of
9 them are old works.

10 MR DIBB: Yes.

11 HIS HONOUR: And the witness said yes.

12 MR DIBB: (To witness) Do you say any of these works were
13 actually specifically done for this exhibition?

14 ---Everything that says 2009 against the year was created
15 within that year or may have been underway specifically
16 for the exhibition. I selected - in the arts industry
17 it's called curated. An artist can curate their own show
18 and that means that they make a specific selection of
19 works. So I specifically selected the works to appear in
20 Humanist Transhumanist.

21 Do you work all the time?---I work full time.

22 I don't mean in other work, I mean as an artist. Are you
23 working all the time?---I haven't painted since I've been
24 sued. I used to paint every weekend.

25 In the period before this exhibition?---Every weekend, every
26 holiday, every leave that I take is devoted to producing
27 the artwork and in my spare time.

28 So the answer is, before this exhibition you painted?

29 ---Regularly.

30 In a great deal of your spare time, a great deal of your non
31 employed time?---It had to ramp up for the exhibition but

1 yes.

2 And you curate an exhibition?---An artist may curate their own
3 exhibition or you have, or you could have a curator
4 select artworks for an exhibition.

5 So not everything you've ever done goes into an exhibition?

6 ---No.

7 And not everything even that you're currently doing might go
8 into the exhibition?---I'm not doing anything at the
9 moment.

10 No. But in the period before July, June-July 2009 you were
11 working you say in much of your free time, holidays,
12 breaks, weekends, you were producing a lot of material
13 presumably?---It's what I've done in the last 20 years,
14 25 years.

15 How many pictures a year would you produce in that period?

16 ---Not terribly a lot. The painting technique that I
17 employ is quite detailed, laborious. The preparation of
18 the canvas alone can take a week to two weeks. Coming up
19 with an idea doesn't just - you don't pull it out of a
20 hat. An idea may take months to resolve in terms of its
21 composition and whether it becomes a painting at all is
22 up to question as well. The painting is in oils on
23 canvas, they're not small, and they take a long time to
24 produce. I may take four to six weeks to produce one
25 canvas.

26 Four to six weeks to produce one. Are sometimes canvases
27 unfinished for some period of time as you work through
28 some concept in your own mind?---That's when I've got to
29 dash, which means that it transpose - it was - the
30 creation period for that canvas might take a couple of
31 months prior and a couple of months following to

1 complete.

2 I think in relation to some of Mr Vakras's work there's one
3 here, Number 30, The Fucking Press, Oil on Canvas, that's
4 dated 2004 to 2009 is it?---Correct.

5 So sometimes these things can extend over quite a period of
6 time?---You'll notice I have drawings underneath. Some
7 drawings may be - they're the ideas. So you can ask
8 Mr Vakras this. Just saying that yes, that's entirely
9 possible. It doesn't mean the painting was hanging
10 around unfinished. It means the idea was formed and
11 development started then and then was got back to.

12 So you're saying that contrary to the proposition I put to you,
13 you in fact work continuously, once you start you work
14 continuously until the end?---I don't understand the
15 question.

16 Once you start on a canvas you don't pause except insofar as
17 you don't have time to work on it, you just keep working
18 on that canvas until it's finished, it never gets put to
19 one side?---I don't say that. I don't understand why,
20 how any artist would do that.

21 So they do sometimes get put to one side, they do sometimes get
22 - you're sometimes working on more than one picture at
23 once?---Yes, sometimes completely just that's terrible
24 and you don't proceed to finish it at all. Sometimes the
25 idea is inspired by an event at a certain period of time
26 but the opportunity or the resolution of that idea
27 happens much later. That's what has happened in the case
28 of The Fucking Press.

29 You gave evidence before about your exhibitions - I'll just go
30 back to it - and your sales?---Correct.

31 Before this exhibition when was your previous exhibition, just

1 remind me?---A solo exhibition at Intrude Gallery 2 in
2 Fitzroy about 2007.

3 2007?---Or was it 2005? I'm sorry, the dates escape me
4 sometimes. You might want to tell me.

5 No, I'm afraid I don't know?---No, OK. Someone will.

6 Between two and four years earlier?---Correct.

7 Had you had an exhibition between the 2001 exhibition that you
8 referred to as your second solo and that exhibition
9 at - - -?---Yes.

10 You'd had other exhibitions?---Other exhibitions, yes.

11 Do you always have an exhibition coming up?---No.

12 When you don't have an exhibition coming up do you stop
13 working?---On my art?

14 Yes?---No, not necessarily. I'm producing ideas, drawings,
15 canvasses. I have canvasses that have not been
16 exhibited. I have canvasses that were exhibited shortly
17 after the Guildford Lane Gallery exhibition which were on
18 the hop.

19 Which were on the hop at the time of the gallery. They weren't
20 finished in time for the GLG exhibition?---At the time,
21 yeah, and there are the intervening years, if that's what
22 you're alluding to. We were renovating our house, paying
23 it off, working hard to pay it off, and with the capital
24 we had acquired we purchased a house in Sunshine to
25 renovate and we renovated it and we flicked it and we
26 made - we retired a lot of debt that way. So there
27 wasn't time to be artists, no.

28 No, but except insofar as it was interfered with by work or by
29 renovating an investment property you have tended to work
30 before this exhibition, you tended to work all the time.
31 And there were canvasses that were not finished in time

1 for this exhibition that were subsequently exhibited do
2 you say?---They weren't in - yeah, they weren't in - they
3 were ideas.

4 When you produce a picture you spend money on materials and
5 brushes and paints?---Yes.

6 How did you select - I'll come straight to the point. How did
7 you come to the view that all these materials were wasted
8 in this case?---Were wasted? The time and the effort
9 that one puts into producing a painting of four to six
10 weeks that may in my case mean more like two to three
11 months, is part of that complaint I suppose. That's the
12 wasted aspect. What have I literally said? Maybe you
13 should remind me.

14 My learned friend took you to a number of receipts for some
15 thousands of dollars worth of art materials?---Yes.

16 Your evidence is that it takes you about three months, two to
17 three months perhaps to produce a picture?---Yeah.

18 Many of these pictures can't have been produced with the
19 Guildford Lane Gallery even in prospect?---One of the
20 paintings that I was producing, for instance, there's a
21 lot of white, titanium white, I had to - I went through
22 about three tubes of titanium white.

23 Do you still have that picture?---I do.

24 When you did your earlier exhibitions you sold a picture in
25 your exhibition in 1994 but there was more than one
26 picture in the exhibition wasn't there?---Which
27 exhibition, sorry?

28 Your first exhibition in 1994?---There was a couple.

29 How about your first solo exhibition in 1999?---There was about
30 seven works.

31 And you sold one of them?---Yes, and one subsequent.

1 In 2001, your second solo exhibition, you sold three?---Yes.
2 How many works were in that exhibition?---About eight or nine.
3 So you're quite familiar with the idea that you don't sell
4 everything at an exhibition?---Absolutely. It's not my
5 primary aim.
6 Thank you. I'm sorry for that discursis. Now to return to the
7 conversations at the heart of this case. I'm going to
8 take you to the conversations of 18 June 2009 and 24 June
9 2009. I'll just find the section of your evidence. On
10 24 June we'd got to the point where I put it to you that
11 the conversation occurred on the first level, not the
12 ground floor?---That's incorrect.
13 You've rejected that proposition?---I have.
14 Could you be mistaken about that?---No.
15 I put it to you that this conversation insofar as it happened
16 at all happened on the first floor?---I disagree.
17 It happened with reference to, in particular, the labels and
18 the essays attached to the artworks which were present
19 there?---You'd have to ask Mr Cripps what it was to do
20 with exactly. He said the exhibition was racist because
21 of reference to Israel and Palestine and that the Jews
22 shouldn't be in Palestine. That conflict was not
23 mentioned in any of our material.
24 I put it to you that what - I don't suggest to you that
25 Mr Cripps says he remembers this conversation verbatim,
26 but I put it to you that he at no stage accused you or
27 Mr Vakras of being a racist?---He did on several
28 occasions very loudly, shouting in fact.
29 And that he never said your art was racist?---He did.
30 On 18 June?---"I want you and your racist selves and your
31 racist art out of my gallery. I will not have racism in

1 my gallery."

2 I put it to you that that line of conversation didn't happen?

3 ---I disagree.

4 That what happened was Mr Cripps said to Mr Vakras that he

5 couldn't understand the labels?---He did say that, he

6 couldn't understand the information.

7 And that he thought they were overly complex and should be

8 expressed in more plain language?---He said something

9 like that.

10 That enraged Mr Vakras didn't it?---No. Sorry, no.

11 Mr Vakras launched into a tirade including saying that he was

12 an ignorant man and of limited erudition and that sort of

13 thing?---He never called Mr Cripps an ignorant man.

14 Didn't you say that he said he was - - -?---Lacking in - - -

15 A man lacking in intelligence and erudition; is that

16 the - - -?---That's more similar to what Mr Vakras said,

17 yes.

18 But he didn't use the word ignorant?---No.

19 He didn't say ignorant of art?---That might have happened,

20 that's possible. I believe Mr Cripps is ignorant of art.

21 I suggest to you that Mr Vakras - you were a party to this

22 conversation?---Absolutely.

23 Who else was there?---An array of people that we did not

24 recognise including, we presume, his volunteers. We

25 didn't recognise anyone else there. There was, as I've

26 said, 30 to 40 people.

27 You've dealt with Yolande Pickett. Was she there?---I did not

28 see her.

29 How about Colin Reid, was he there?---I don't know the man. I

30 have no idea.

31 He was working. Lian Low?---I didn't see Lian. I didn't see

1 them. They could have been there.

2 HIS HONOUR: Can I just ask what date you're talking about
3 now?---18th.

4 MR DIBB: This is the 18th. This is the opening of the
5 exhibition.

6 HIS HONOUR: Thank you?---The only person I saw that I
7 recognised as part of the gallery was Mr Cripps.

8 MR DIBB: I put it to you that the discussion of Israel and
9 Palestine arose from Mr Vakras?---That's incorrect.
10 Mr Cripps raised it entirely of his own volition, if
11 that's the correct word. It was a shock to us and a
12 surprise.

13 I put squarely to you that he never called you racist or
14 Mr Vakras racist and he didn't describe your art as
15 racist?---He did.

16 I'm sorry, Your Honour, I'm just considering a question.

17 HIS HONOUR: Take your time.

18 MR DIBB: You gave evidence that things had quieted down and
19 there - - -?---In the upper level.

20 You said goodbye to your last few people?---The last person
21 that we knew there was William and we farewelled him and
22 then we went downstairs in our section of the gallery.
23 We actually thought we'd go too and catch him up and maybe go
24 for a drink. We never got there.

25 Catch who up?---William. He's an artist, if you want to know
26 his surname.

27 In your evidence about this conversation - I'll just find it.

28 In your evidence about this conversation you were asked a
29 question "When this discussion was taking place you said
30 in the downstairs area. Were there any other people
31 around while this was taking place?" You said, "Yes.

1 There was about 30 or 40 people still in that milling
2 around the bar area which we were nearby and the back
3 door had been opened and there was a fire so I could see
4 through that there were people peppered throughout. We
5 noticed," you said, "I noticed people observing this
6 exchange"?---People who are closer to us, yes.

7 You were concerned to point out that you had noticed people
8 observing this exchange?---Because it was embarrassing
9 and humiliating.

10 Is that because you have an eye to your defence of reply to
11 attack?---No. It's what I observed.

12 Is your intention to rely on reply to attack - I put it to you
13 that you were never called a racist, but is your
14 intention to rely on that the reason why you have moved
15 this conversation from upstairs to downstairs?---I didn't
16 move the conversation at all.

17 Has anyone suggested to you that you might need witnesses to
18 the conversation if you were to rely on that defence?
19 ---No, absolutely not

20 You've done a good deal of research yourselves haven't you
21 about defamation law?---Yes.

22 Have you developed a view about what would be in your interests
23 in relation to that defence?---No. I've educated myself.
24 I've never said anything different, Mr Dibb. The
25 conversation occurred in the ground level. It wasn't a
26 conversation, it was - I'll be quiet.

27 On 25 June - sorry, before that. You visited on the Saturday
28 didn't you?---correct.

29 But you didn't see Mr Cripps on that occasion?---No. Our visit
30 was quite brief.

31 Then you became alerted to the fact that there had been

1 disclaimers placed?---Yes.

2 You went on the Wednesday. "We arrived at roughly 5 o'clock,"

3 you say, 4.15-ish you say?---4.15, I corrected myself.

4 You corrected yourself?---Correct.

5 You introduced yourselves at this section. As you were going

6 upstairs the evidence as recorded in the transcript says,

7 "I noticed a big title case, a huge warning sign and I

8 pointed that out to Demetrios, 'Look at this'"?---Yes.

9 He had actually walked past it and I saw it and drew his

10 attention to it.

11 What did it say?---Warning.

12 Just warning?---That's all I saw at the time. I don't know if

13 it said anything else.

14 Where was it? It was on the stairs?---It was on the first

15 landing.

16 So you passed fairly close to it?---So you walk - well, you can

17 see it from the ground level as you look up

18 But you went up the stairs didn't you so you passed fairly

19 close to it?---Passed it fairly quickly, yes.

20 You pointed it out to Mr Vakras didn't you?---Yeah. I said,

21 "Look at this." And then we quickly moved on.

22 So what did it say?---Warning.

23 Did it say anything else?---I noticed an exclamation mark, and

24 I quickly moved upstairs. I wanted to see my artwork.

25 Ms Raymond, you were alarmed by this you say?---Yes.

26 But you didn't look at it?---What more could I look at?

27 Well, you say you didn't read it?---It said warning. The

28 letters were probably that high.

29 What colour?---Black.

30 HIS HONOUR: The transcript won't recognise that high?---Sorry.

31 Is that about 15 centimetres?---I have no idea.

1 Ten or 15 centimetres, the size of a cup, a plastic cup?

2 ---M'mm.

3 MR DIBB: You say there was no indication as to what the
4 warning referred to?---I connected it with the
5 disclaimers.

6 Which you have not yet seen?---Which I had not yet seen.

7 You didn't think it might be a loose floorboard?---It wasn't
8 there prior to my - our going in that we knew of.

9 At all events - - -?---I didn't make any assumption.

10 You passed quickly by it you say. Despite the fact that it
11 alarmed you and you thought it was a reference to your
12 exhibition you passed quickly by it without having a look
13 at it?---Why would I look at it more closely?

14 Mr Cripps joined you on Level 1 soon after you arrived, is that
15 correct? That was your evidence I think. Came in from
16 the other side, from upstairs?---He came across from - I
17 saw him come from the stairway across the floor. Sorry,
18 I'm stuck on your word joined. He didn't join us at all.
19 He raced across the floor yelling and striding across
20 angrily with his arm outstretched.

21 I think you gave evidence didn't you, and correct me if I'm
22 wrong. I am sometimes. I think you gave evidence that
23 Ms Pickett was there at this conversation?---She attended
24 the - he'd left for a while after the initial exchange,
25 he disappeared. When he returned Ms Pickett was with him.

26 So you say Mr Cripps came back with Ms Pickett, is that right?

27 ---Yes.

28 After Mr Cripps came back you gave evidence he said, "Look, I
29 don't have anything more to say to you, I don't care.
30 The exhibition is racist, the disclaimers stay"?---Yes,
31 something to that effect.

1 You asked Ms Pickett whether she thought the art, it was
2 racist?---I did.
3 She wouldn't make eye contact with you?---No.
4 And she looked at the floor and wouldn't respond?---Yes.
5 You tried on at least a couple of occasions to attract
6 Ms Pickett's opinion?---A second occasion, yeah.
7 And she wouldn't talk to you and she wouldn't respond. What
8 was the tone of that conversation after Mr Cripps came
9 back?---Well, they just simply left. We were told to
10 finish what we were doing and to leave immediately, which
11 is pretty much what we did.
12 Was Mr Cripps loud, aggressive?---He was angry.
13 Angry. Did that make him loud?---Earlier he was very loud. He
14 had not - he had come back - - -
15 I'm talking about the period after he came back with
16 Ms Pickett. What was his manner like? Was it relaxed
17 and jolly?---Of course not.
18 What was his manner like? Was it angry?---Angry.
19 Loud, aggressive?---Not shouting. Do you mean loud as in look,
20 I do not want to talk about it any more, something like
21 that?
22 Above a normal tone of voice?---Yes.
23 Aggressive?---He had been aggressive prior to that.
24 Was he aggressive at this stage?---I take being called a racist
25 aggressive, yes.
26 It's your evidence that Ms Pickett was there. Was anyone else
27 there?---Earlier I had observed others. I saw legs on
28 the stairs and I assumed that they were his - - -
29 When you say earlier do you mean before Mr Cripps came back
30 with Ms Pickett?---When he charged across the room at us
31 initially I saw that people were behind him.

1 That's in the first section of this conversation you say?

2 ---Yeah. In the second section I can say that I assumed
3 there were others in the building but I didn't see or
4 notice. I was concentrating on - - -

5 When you say in the building, you couldn't see them where you
6 were?---I was concentrating on Mr Cripps and Ms Pickett.

7 How far away was Ms Pickett from you at this stage?---Two feet.

8 You'd dealt with Ms Pickett before and you'd had conversations
9 with her?---Yes.

10 You couldn't be wrong about it being Yolande Pickett?---I
11 addressed her as Yolande.

12 You recognised her as Yolande; you've met her and you
13 recognised her?---I did. Unless she's got a twin.

14 I put it to you that what actually happened in that
15 conversation is that when Mr Cripps heard that you were
16 in the building he came to you and what he said to you
17 was, "I asked you to contact me. The staff don't want to
18 deal with you"?---"I asked you to contact me."

19 Yes. And he had done that hadn't he because - - -?---The
20 second part of what you said Mr Cripps did not say.

21 You agree he said, "I asked you to contact me"?---Yes.

22 I put it to you that he said, "The staff and volunteers don't
23 want to deal with you," and that Mr Vakras said, "They
24 actually, the volunteers want nothing to do with you."
25 He said specifically, "That's bullshit, you're just
26 making this up, the volunteers want to deal with you, not
27 me"?---No, he didn't say that.

28 And that provoked Mr Cripps to some degree I put it to you?

29 ---No, he didn't say that.

30 You had received an email asking you to contact him if you were
31 going to visit the gallery?---No.

1 He had asked you however to contact him if you were visiting
2 the gallery?---No.
3 You agree he said, "I asked you to contact me"?---He said that
4 on the 24th.
5 Yes, I'm talking about the 24th?---He was lying.
6 On the first floor. He was lying. But he said that?---He did
7 say it then, yeah.
8 I put it to you that he did not call you a racist on that
9 occasion?---He did.
10 I put it to you that you knew perfectly well that he was not
11 purporting to bar you from the gallery?---I disagree.
12 You know that he subsequently sent you an email saying, "It's
13 best if we just both go about our business and your
14 guests will feel welcome"?---That was absurd and it was
15 in response to a misrepresentation of our art email that
16 we first sent him.
17 A misrepresentation of you?---Our art.
18 I'm sorry, I don't understand.
19 HIS HONOUR: That was the email?---A misrepresentation. That
20 was our email.
21 MR DIBB: That was the heading of the email, sorry?---Yes.
22 HIS HONOUR: Yes, the subject of the email.
23 MR DIBB: Sorry, yes. (To witness) I put it to you that you
24 were never barred from the gallery, that you were always
25 able to visit your artworks?---Absolutely incorrect.
26 And that that was clear from the email correspondence between
27 you?---That was not to be trusted.
28 None of Mr Cripps's emails exhibit this aggression and anger
29 that you describe in person do they?---No.
30 The intemperate emails are from Mr Vakras aren't they?---And
31 myself. Intemperance is in defence of yourself.

1 So to be quite clear, when Ms Pickett was present you're sure
2 are you that Mr Cripps said words to the effect of,
3 "You're a racist, I don't want your racist art here"?---I
4 don't know what she was present. She may have heard it.
5 She just said - Mr Cripps just said in her presence that,
6 "I don't care, it's racist and I'm the director here and
7 I say what goes in my gallery," something to that effect.
8 Your evidence was, after he came back with Ms Pickett that he
9 said, "Look, I don't have anything more to say to you, I
10 don't care, the exhibition is racist, the disclaimers
11 stay"?---Yes. I thought that was odd. I hadn't asked
12 him to take them down.
13 You said, "Well, that's the prerogative of yourself and the
14 gallery but it says more about the gallery and you than
15 the show," and that you directly asked Ms Pickett on a
16 couple of occasions, "Do you think it's racist"?---Yes.
17 So if Ms Pickett were to give evidence that she was present at
18 only one conversation after the opening of the exhibition
19 between you and Mr Cripps and that it was a perfectly
20 civilised conversation in which racism wasn't mentioned,
21 that would surprise you would it?---Yes.
22 She couldn't have been unaware of this racist allegation in
23 your view?---At least not after that, no. I don't know
24 that she was at the opening, I can't attest to that.
25 No, I didn't suggest she was at the opening?---Sure.
26 I'll just return briefly to the issue of the phone number on
27 the door. I'm instructed that that sign is about three
28 metres off the ground. Do you think that could be
29 right?---I don't know.
30 Did it appear to you that it was - if it was three metres you
31 couldn't possibly reach it could you?---If it was three

1 metres.

2 That's the cross-examination.

3 HIS HONOUR: Thank you. Any re-examination?

4 MR GILBERTSON: Just briefly, Your Honour.

5 <RE-EXAMINED BY MR GILBERTSON:

6 Ms Raymond, you were shown two photographs which had not been
7 discovered and had only been produced today and of which
8 I only have one copy and it's this one. You recall being
9 shown those photographs. Have you and Mr Vakras ever
10 taken your own photographs of what appeared outside the
11 door of the Guildford Lane Gallery in June of 2009?---We
12 have. We have photographs.

13 Where are those photographs?---They're online.

14 Do you have access to them in court at the moment?---I think
15 so.

16 Do you have access to them in hard copy form so that we can
17 look at them?---Yes.

18 In court at the moment?---I believe so.

19 I'll just seek some instructions, Your Honour, but there is an
20 issue that might lead to Ms Raymond needing to be
21 recalled because we're endeavouring to try and find these
22 photographs. So I just flag that at the moment. I'll
23 seek some instructions as to whether we have them now.

24 (To witness) Without taking you to the documents, at Tab
25 31 of the defendants' court book in relation to the art
26 materials? You will recall I asked you some questions
27 about that?---Yes.

28 Are the dates of the invoices and receipts in that tab, are
29 they correct?---All of the invoices have a date on them
30 and that would be correct, yes.

31 All right, thank you. I have nothing further, Your Honour.

1 HIS HONOUR: The witness said that the photographs are in
2 court.

3 MR GILBERTSON: I'll just make a quick inquiry. They're not in
4 court at the moment, Your Honour. I might have to make
5 some inquiries.

6 HIS HONOUR: All right. Ms Raymond, thank you for your
7 evidence. There's a possibility you may have to come
8 back but at this stage you may leave the witness box.
9 Obviously as a party you're free to remain in court
10 throughout. Thank you.

11 (Witness excused.)

12 <(THE WITNESS WITHDREW)

1 MR GILBERTSON: Is it convenient to commence Mr Vakras's
2 evidence now, Your Honour?

3 HIS HONOUR: I think so.

4 MR GILBERTSON: I call Mr Vakras.

5 <DEMETRIOS VAKRAS, affirmed and examined:

6 MR GILBERTSON: Is your full name Demetrios Vakras?---Yes, it
7 is.

8 And is your address [REDACTED], Kensington?---Yes, it
9 is.

10 Are you an artist?---Yes, I am.

11 In particular you are a painter, is that right?---I am, yes.

12 How long have you been painting?---Since 1977 at the very
13 least. Earlier doing kiddie stuff, but yes, 1977.

14 Do you have any formal training as an artist?---I have no
15 formal training as an artist as such.

16 Would you describe just in very brief terms if you could,
17 Mr Vakras, your art?---My art is surrealism and it has
18 been surrealistic since at least 1977 and it's been
19 realistic ever since. It was for a long period of time
20 strictly surrealist which was incongruous where random
21 objects appear with one another. They came to - at
22 certain stages they became symbolic in what they
23 represented. Sometimes they were purely just visual
24 juxtapositions but yeah, that's pretty brief I think.

25 Who have been the principal influences on your art?---Well,
26 when I was younger Salvador Dali was pretty, very
27 impressive and there was Rene Magritte, Hans Bellmer.

28 How do you spell Bellmer?---B-e-l-l-m-e-r, although Bellmer's a
29 bit - anyway. And a number of other artists. The Vienne
30 School of Fantastic Realism more recently. There's the
31 symbolist, there's the romanticist. There's a whole

1 series of artists who do works of the imagination.
2 Is there a particular expression or description you have as to
3 what your art was like in June 2009?---Is there an
4 expression? I'm not sure what you mean. The description
5 is remained as fairly consonant. I elucidate the
6 imagination.

7 After you left school what did you do?---Well, I left school.
8 I applied for Melbourne University. I got into Melbourne
9 University and deferred for a year and worked at the
10 Commonwealth Bank at Box Hill.

11 Got into Melbourne University to do what?---Art which was at
12 that stage it was before, what's his name, John Dawkins
13 decided to amalgamate all the campuses so it was
14 Melbourne Uni proper. I did arts theory which is arts
15 theory in history, philosophy, psychology and English
16 literature.

17 How long did you stay at the Commonwealth Bank?---I stayed for
18 just over a year because I left to go to university.

19 You went back to university when?---In 1982.

20 When did you meet Ms Raymond?---I met Ms Raymond in 1983.

21 What was your, just in brief terms, your work history after
22 1983?---My work history after 1983 has been there has
23 been full time stints in different places. I've worked
24 at Coles filling shelves. I've also worked at the State
25 Insurance Office but then Joan - and then left just
26 before Joan Kirner sold that off. So I've done clerical
27 work. I've done, also worked in the Commonwealth Bank in
28 1987 again but that was part time. Most of these jobs
29 were taken after September 26, 1986 were part time jobs
30 undertaken to give me enough time to do my painting in
31 spare time. So I worked part time at nights which

1 allowed me the time to do the painting. So you forfeit
2 an income to have the time to create the artwork.

3 When was your first art exhibition?---My first art exhibition
4 was 1981. It was at a gallery called Roen which is in
5 Glen - - -

6 How do you spell Roen?---R-o-e-n, so far as memory goes, which
7 was in Glenroy. It was the exhibition wasn't organised
8 by myself. It was organised by a girl that I went to
9 school with, Heather Atkinson nee Robinson because she
10 was a surrealist artist as well so she organised the
11 exhibition and I participated.

12 What about after that, when was your next exhibition after
13 that?---Well, after that a life takes over so I didn't do
14 much painting until about 1986 but I did do some
15 dabbling, some painting, bits and pieces of painting. It
16 was 1985 and that was I submitted at least one work at a
17 Clayton art show which was organised by my friend
18 Heather.

19 After 1985 what art exhibitions did you do?---After 1985 I
20 didn't really do anything. I was painting from 1986
21 trying to build a body of work because you have to
22 practice to get better and produce the work for the
23 purposes of exhibiting it. In the meantime I had
24 encountered via news reviews in the newspapers like The
25 Age, the Australian which used to have a good art review,
26 there was a lady called Liz Christiansen who was a
27 surrealist and she was a member of the Contemporary Art
28 Society and I sought her, met her, joined the
29 Contemporary Art Society and started exhibiting with
30 them.

31 When was that?---That was about 1990 that I finally joined

1 them, joined the Contemporary Art Society.

2 How long did you stay with the Contemporary Art Society?---That
3 was till about 1996. It was 95 or 96.

4 What did you do after that?---I exhibited with Roar Studios
5 which it's roar as in the lion's roar.

6 What did that involve with exhibiting with them?---Roar was run
7 by artists so it was a gallery space. You could hire the
8 space yourself and have solo exhibitions but in the main
9 it was to have ongoing exhibitions which was Roar would
10 organise it. All Roar members could submit works and
11 they would be exhibited. In 1996 I participated with
12 Roar in their stand. They had what was then called the
13 Australian Contemporary Art Fair which is called
14 something else now. I think it's called the Art Fair,
15 Melbourne Art Fair. But it was a bi-annual, whatever, it
16 was bi-annual. I get it mixed up, an event that occurs
17 once every two years.

18 When was your first solo exhibition?---The first solo
19 exhibition was at Roar Studios and that was in 1999.

20 HIS HONOUR: Sorry, 19?---Sorry, 1999.

21 99?---Yeah, it was Lee-Anne Raymond had her show at the same
22 time because the exhibitor who had been in the small -
23 because Roar was two major spaces. One of the things
24 that galleries do is they can either hire the entire
25 gallery space because these are for hire galleries or
26 they can hire segments of it. Roar was divided into a
27 smaller space and a larger and the artist involved in the
28 smaller space had for some reason dropped out and they
29 asked me would your partner, because we were both members
30 of Roar, wanted to exhibit in the smaller space. So
31 Lee-Anne said yes and so we both held what was our solos

1 but at the same time.

2 MR GILBERTSON: And Roar's premises were in Brunswick Street,
3 Fitzroy, weren't they?---Yes, yes, they were.

4 What was your exhibition at this time called?---The Fantastic
5 and Surreal I think, sorry. The Surreal and Fantastic.

6 After your exhibition at Roar did you exhibit again at Kaz's
7 premises?---Well, we still maintained friendship with the
8 Contemporary Art Society and I did exhibit at the
9 Contemporary Art Society windows which showcased my
10 works. They were on a - they had an arrangement with
11 Melbourne City Council buildings that weren't in use and
12 they had the front of some buildings where there were the
13 windows where artists could exhibit their works and I
14 hung my works there during one stage.

15 When was this?---Golly, about - it was about 97/98 actually.

16 I'll move onto the 2000's. What exhibitions did you do prior
17 to the exhibition of Guildford Lane Gallery in 2009?

18 ---There was the Roar one and then were the - then there
19 was a small exhibition at a place called Mansour Hill in
20 2001.

21 Can you spell Mansour for us?---M-a-n-s-o-u-r and Hill.

22 Yes?---They closed down shortly thereafter. Lee-Anne also
23 exhibited in that but it wasn't mentioned. Then we held
24 an exhibition called Amalgam and that was at 4Cats which
25 was a gallery in Collingwood, another for hire gallery
26 which we paid for and hired at the time.

27 Who's the we?---Lee-Anne. Sorry, Lee-Anne and myself.

28 Yes?---And then at the same time that we were holding the
29 exhibition at 4Cats I was approached by an American
30 Gallery called Echo Gallery that were holding a Halloween
31 exhibition and asked if I could submit some of my works

1 so I participated in an exhibition in Chicago, Illinois,
2 United States. Four works were sent over and quarantined
3 and Customs destroyed my crate on its return.

4 As well as art you produce digital photography, is that right?

5 ---That is correct.

6 What at least in the 2000's have done in terms of exhibiting
7 digital photography?---That's right, I did forget that.

8 I have - I did join for a short period of time there was
9 the CCP, Contemporary Centre of Photography. It always
10 reminds of Soviet Socialist Republic written in
11 Surrealistic. So I exhibited two works there.

12 Of the works that you produced for the exhibition at the
13 Guildford Lane Gallery?---Yeah.

14 When did you first commence works that appeared in that
15 exhibition?---Works that appeared in that exhibition
16 ranged from 2003 onward. There was many - there was
17 works - the proposal that we proposed to Guildford Lane
18 Gallery was new works and works that had not previously
19 been exhibited so it wasn't necessarily works
20 specifically for that exhibition. What you do as an
21 artist is you prepare for an exhibition so the exhibition
22 you haven't got a - you may not have a formulated idea of
23 what that exhibition is and, yeah, so those works had
24 been prepared from 2003. A lot of the works that were to
25 be exhibited were started in 2004 but in the interim
26 period of time our finances weren't looking too crash hot
27 and we decided that - well, we were looking at the
28 housing market. It looked like it was a bit low and we
29 figured we could buy a house and renovate it because
30 apart from painting I also do carpentry and other things
31 anyway, and renovate the house and possibly be able to

1 make some money out of that so there's - - -

2 All right. If you just concentrate, I'm just trying to get the
3 timeline of the works and I might ask it to you this way,
4 by the start of - I withdraw that. By the start of 2009
5 how many of the works that you exhibited at the Guildford
6 Lane Gallery had been completed?---Sorry?

7 By the start of 2009?---By the start of 2009, there was still
8 out of those works I think there was three that I had to
9 finish off from 2004. There was another one, new oil
10 painting that I'd started. There was to have been all of
11 the ones from 2004 were to have been finished but there
12 was - I had a bike accident which I lost my hand for a
13 period of about two months at the very least where I
14 couldn't paint at all so that put - that limited the
15 amount of paintings that I could exhibit.

16 So how many of the works that you ultimately exhibited at the
17 Guildford Lane Gallery were you still working on in
18 2009?---All of them. I was - there was a portion of them
19 that had already been finished before 2009 but all the -
20 there was quite a few paintings that were finished in
21 2009. Yeah, I think was three from 2004, one from 2009.
22 There was another - there was another from 2009 that I
23 started that wasn't finished from 2004.

24 Ms Raymond has already given evidence about attending at the
25 Guildford Lane Gallery in August 2008 of the works of
26 Stelarc?---Yeah.

27 Would you tell the court in your own words what happened when
28 you and Ms Raymond went to that exhibition?---Maybe some
29 background information. Stelarc isn't everyone's taste.
30 He's generally a performance artist who has - he's
31 considered avant-garde. He's actually, again in regards

1 to what one's taste in art is he's actually quite huge
2 internationally. He usually exhibits at institutions.
3 He exhibits like - in Australia for instance he exhibits
4 at the ACMI which is the Australian Centre of the Moving
5 Image and usually it's institutions so to have Stelarc be
6 present at Guildford Lane Gallery showed that whoever
7 this gallery owner was, a person whom I had never heard
8 of before had quite some leverage. So we went there to
9 have a look at the Stelarc exhibition because Lee-Anne's
10 friend from her work said that there was a new gallery
11 opening and we thought we would go there. I think I
12 should precede this that Lee-Anne and I were looking for
13 a gallery to show in because we saw that Salvador Dali's
14 show was going to be held in 2009 and we were looking at
15 somewhere to exhibit to take advantage of an increased
16 interest in surrealism.

17 What happened when you went to the Stelarc exhibition?---Well,
18 it was impressive. There was cellist down on the bottom
19 floor. There was musicians there playing a classical
20 instrument and it was very impressive. We went there.
21 There was sound. There was the visuals. There was a
22 crowd there. Robert Cripps made a speech. People
23 applauded him and we thought golly, who's this guy,
24 they're clapping him. Stelarc was invited. He
25 reluctantly made a speech and he was quite modest. I
26 actually spoke to - his full name is Stelios Arcadiou
27 which means basically Stelios a bear, but - so he
28 shortened it to Stelarc because it's easier for people to
29 pronounce. He was a really affable fellow and yeah, it
30 was really, really impressive the entire night and so
31 Lee-Anne and I thought, well, this looks like a good

1 gallery.

2 Did you speak to Mr Cripps on that occasion?---No, we didn't.

3 Is this a convenient time, Your Honour? I'm going to take

4 Mr Vakras to some of the documents.

5 HIS HONOUR: Yes, thank you. We'll adjourn now until 2.15.

6 Thank you.

7 <(THE WITNESS WITHDREW)

8 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.14 P.M.:

MR GILBERTSON: Could Mr Vakras return to the witness box,
Your Honour?

HIS HONOUR: Yes, thank you.

<DEMETRIOS VAKRAS, recalled:

MR GILBERTSON: Mr Vakras, I'm going to take you I hope quickly
through a few documents. Could Mr Vakras be handed a
copy of the defendants' court book?---Thank you.

Mr Vakras, if you could open Tab 1 of the court book please?

---Yep.

Do you recognise that as the proposal that was put in to

Guildford Lane Gallery in September 2008?---Yes, I do.

What involvement did you have with the preparation of that

document?---Well, we both compiled the document together,
Lee-Anne and I, so it wasn't an individual work.

Basically it was a discussion on the purpose of the
exhibition which was to correct what surrealism, how
surrealism has come to be defined, how surrealism has
come to be said to have ended at the end of the Second
World War, and I've got a minor contribution with the
term transhumanist which Lee-Anne was a lot happier to
have as a title, and my initial proposal which was
something like counter surrealism, surrealism or
something, yeah, but I was involved in compiling this,
especially the Robert Nelson quote from The Age which I
have mentioned on my website where he criticises
surrealist as unconscious practitioners.

Would you look at the next document please behind Tab 2. Did
you receive that email from Stacy Jewell on 29 October
2008?---Yes, I did.

1 Included with that email was there the letter of offer which
2 appears behind Tab 3?---There was at the time an embedded
3 pdf which on our mail came up as part of the email, yes.
4 Now if you could go please to Tab 4 at the bottom of the first
5 page. There's an email from Ms Raymond to
6 Yolande Pickett. Were you aware of that email at the
7 time?---Absolutely. Because part of the thing of the
8 exhibition in countering how surrealism is perceived was
9 to actually - it can only be done by writing something, a
10 manifest of sorts. Many exhibitions are accompanied, not
11 all, and our exhibition was intended to counter how
12 surrealism is perceived especially since it's limited to
13 the conclusion of the Second World War. So Lee-Anne - we
14 were looking for a printer, and every gallery we've ever
15 been associated with works with a printer when we were at
16 other galleries. Like, Roar had Annandale in Sydney.
17 When we were with 4Cats they had their printer so
18 Lee-Anne was asking what Guildford Lane Gallery's printer
19 was.

20 Above that is an email from Yolande Pickett of 12 December
21 2008. Did you see that at the time?---Yes, I did.

22 If you look then please behind Tab 5 towards the foot of the
23 first page in that tab there's an email of 29 December
24 2008?---Yep.

25 From Ms Raymond to Yolande Pickett?---Yep.

26 Did you see that email at the time?---Yes, I did.

27 On 2 January Ms Pickett responds in an email two pages over.

28 Do you see that? From manager@guildfordlanegallery.org
29 to leanneart@iinet.net.au?---Yep.

30 Did you see that email at the time?---I saw it probably a
31 couple of days or a day after Lee-Anne received it

1 because I had been in hospital, so I did see it, yes.

2 You notice the reference to space, the entire first floor less
3 the open studio?---Yes, I did, and it's - but when we
4 looked at the map there was no open studio. There was an
5 artist's studio. So we assumed that - yeah, we didn't
6 understand what that meant.

7 Now if I could take you please to 23 January 2009?---Yep.

8 You and Ms Raymond met with Yolande Pickett and Mr Cripps that
9 day?---That's correct.

10 Would you tell the court in your own words what happened?

11 ---Lee-Anne and I both arrived separately. I walked into
12 the gallery on that day, it was hot and I was covered in
13 zinc cream and felt ridiculous because I had large
14 abrasions on my nose, chin, knee and forearm from my bike
15 accident. I went there. Lee-Anne wasn't there. I
16 initially walked in and asked the people at the reception
17 if a Lee-Anne Raymond had come in, and they said no. And
18 Yolande Pickett did come down and did see me and she said
19 we could discuss things. I said no, I'll wait for
20 Lee-Anne. So I went outside and waited for Lee-Anne and
21 we went in. Yolande took us upstairs and we were
22 discussing the space. We were discussing the exhibition.
23 One of the things that I took along with me was a book
24 called Carnivora.

25 Before we get to that. So who were these discussions upstairs
26 between?---Initially they were myself, Lee-Anne and
27 Yolande Pickett, and Robert Cripps came later.

28 How much later from when you started talking to Ms Pickett?

29 ---Two, three minutes later. He wasn't there initially
30 but, you know, I didn't pay too much attention to how
31 much later.

1 What did you say in relation to Carnivora?---Well, I brought in
2 Carnivora to explain that when I exhibited at Roar my
3 work had been reviewed in an English language Greek
4 magazine called Vibe and I had big large photocopies of
5 the article that were posted. We have like a scrapbook
6 of what - a scrapbook. It basically establishes your
7 bona fides as an artist. So I was explaining that. And
8 Yolande Pickett said, "Oh, we can order that in for you,"
9 the book. And I was pretty slow and said, "No, no, I
10 didn't bring it in for the purposes of having an order."
11 She goes, "Oh no, we can bring it in." And I asked,
12 yeah, I said, "They're a rather insignificant publisher.
13 The publisher is called Scapegoat Publishing and the book
14 features a guy called H.R. Giger who is fairly big."
15 Anyway, she said that they can do that because they can,
16 and I was pretty impressed with that.

17 Were there any discussions in relation to a catalogue?---Yes,
18 there were. Also we did tell them that, yeah - - -

19 When you say we told them?---Myself and Lee-Anne. So I did
20 tell them, yes, we would be having a catalogue. Lee-Anne
21 was also talking about the catalogue. We both did talk
22 about the catalogue each individually and in tandem with
23 one another. So I said what we're - we discussed the
24 catalogue and I said that we want to publish our own
25 catalogue, and Yolande said, "OK, you can do your own
26 catalogue but we'll bring this one in and we can sell
27 them both in tandem." I said, "That would be great but
28 we're not seeking Carnivora." And I asked her if she
29 could get the publisher's details and she said yes, she
30 could. I said, "I'll email you tomorrow anyway." And,
31 yeah.

1 Did Mr Cripps say anything in relation to the catalogue?---Yes,
2 he did. Well, he asked - after seeing the works in
3 Carnivora, which ended up being the painting that ended
4 up being controversial that we call Secular Muse,
5 Mr Cripps identified the kind of work and asked, "Is that
6 going to be like, is your catalogue going to be like the
7 one of Orange Gallery?" And I said, "No, not really."
8 And he said, "Why?" I said, well, because surrealism,
9 because they are a visionary catalogue, or exhibition,
10 was actually focused a lot on visionary type art which is
11 really - and religious art which is really antithetic to
12 what surrealism is, and I said that some of what's
13 written there I would describe it as kooky. So I said so
14 it's not going to be like that. I said it's going to be
15 polemical. And he clasped his hands together and he
16 seemed really excited with the prospect of a catalogue.
17 And then he says, "Alan Sisley, who is a director, he
18 fried his brain with drugs in the 70s."

19 All right. If I could go back to one other topic in relation
20 to this meeting. Was anything said in relation to the
21 open studio?---Yes, there was because Lee-Anne indicated
22 to Yolande Pickett that that would be a real great space
23 to have set aside or have as a separate area to have all
24 the digital works because that's how Lee-Anne envisaged
25 it at the time, and Yolande said, "No. If you look at the
26 email that you received that's part of the area that you
27 haven't hired." Which we were confused by. Obviously we
28 weren't that aware of the floor plan, because one is open
29 studio, one is art studio. We do concede that there was
30 some misunderstanding. But Lee-Anne wanted it hired and
31 I agreed with Lee-Anne because we didn't want any artwork

1 that's dissimilar from ours or that would be in
2 contradiction to the theme we were presenting. And
3 Yolande said it would be a really good space because the
4 purpose of the space, they usually hire out for what they
5 call their Wednesday project - not Wednesday project.
6 It's their open studio thing where artists interact with
7 the clients that come in. The artist can talk to the
8 clients or talk to people that come in to see the
9 artwork, they can tell them how the artworks are created
10 and I discussed how at Roar I did a similar thing where I
11 had an A frame and I was drawing during the period and
12 also sold my digital works. So that was discussed.

13 Was anything else said by Ms Pickett in relation to the open
14 studio?---Well, that we will have to seek it. She wasn't
15 sure whether it was hired out or not. So Lee-Anne had to
16 email her the next day. She said she wasn't sure if it
17 was hired.

18 Was there any discussion in relation to invitation cards?

19 ---Yes, there was, because we asked what their mailing
20 list protocols were in - when we exhibited at Roar
21 Studios for instance Roar gave us their mail out list, so
22 we got the mail out list, made little tabs and posted it
23 to all the people in - posted the cards to the people
24 there. When we went with another gallery like 4Cats,
25 4Cats had their own mail list. We gave them the cards
26 and they mailed them out. So we asked Guildford Lane
27 Gallery what their protocols - - -

28 When you say we asked, if you could concentrate as much as you
29 can on who it was who did the asking?---Well, Lee-Anne
30 was doing the asking.

31 Was there anything said in relation to an electronic mailing

1 list?---They did say that there was an electronic mailing
2 list in - - -

3 Sorry, I'll have to cut you off. When you say they who is the
4 they?---Yolande Pickett.

5 Thank you. Go on?---Yolande Pickett said there was an
6 electronic mailing list, which is a bit of a surprise
7 because even if there is an electronic mailing list the
8 purpose served by the card is that when you get them in
9 the mail if you're interested you pin it onto your fridge
10 and you have a memento of the event. So we weren't very
11 happy. Lee-Anne was persisting with the argument - with
12 the questioning and Robert Cripps piped in saying yep, we
13 can - said, "No worries, we have volunteers here, we can
14 post volunteers outside the NGV during the Dali
15 exhibition." And we both said, Lee-Anne and I both said,
16 "Really?" And to that Yolande Pickett said, "That's what
17 we have volunteers for," and then she pointed out the
18 value of a gallery that has volunteers.

19 If you could turn please to Tab 7 in the court book in front of
20 you. You see the first document is an email from
21 Ms Raymond to Yolande Pickett copied to you. Did you
22 receive that email at the time?---Yes, I did.

23 If you'd then look please at the following document there's an
24 email from Yolande Pickett to Ms Raymond dated
25 10 February?---Yep.

26 Did you see that email at the time?---Yes, I did. Just to
27 explain. We both have a shared computer, or have a
28 couple of shared computers, and when we retrieve all the
29 emails that come in we don't have separate profile. So
30 when a Lee-Anne email comes in I get to see it and when
31 mine come in Lee-Anne sees them. So yes, I did see it.

1 HIS HONOUR: Sorry, does that mean even if it's not cc'd to
2 you?---That's right, yeah, because we've - - -
3 You have mutual access?---We have mutual access to it, yeah,
4 and because I was working night shift I would get to see
5 all the emails when they came in. So if I did get an
6 email that was pertaining to the exhibition I would tell
7 Lee-Anne we've got it or telephone her at work, so yeah,
8 it didn't matter whether it was sent to me or her. We
9 both saw the emails incoming and outgoing.

10 MR GILBERTSON: This email says, "Please find attached your
11 exhibition agreement." If you look please at the
12 document behind Tab 8, and is that a copy of the
13 exhibition agreement that you received at that time?
14 ---Yes. It does - yes. Yep, that is the one.

15 Did you make any changes to this document?---Yeah.

16 Yolande Pickett had said that we can alter that to
17 include my name if we wished, and I was uncomfortable
18 with the idea that my name was not in the document. Now,
19 the document came in a pdf format which means you can't -
20 you can edit it but only if you've got Acrobat
21 Professional, which I did own, so I opened it in Acrobat
22 Professional. In Acrobat Professional I added my name
23 underneath, I correct human, which was Lee-Anne's error
24 in the first place and never got corrected, and I made it
25 humanist transhumanist. And then - I should explain.
26 After opening it in Acrobat I exported it as a Word
27 document and after within Word I added the field changes
28 and then from Word I exported it back to pdf. And if you
29 notice in the one it's not very legible, it's - - -

30 We'll come to that?---OK, cool.

31 Did you sign the document?---Yes, I did.

1 Would you have a look please at the document behind Tab 16?
2 ---Yep.
3 Is that the document you signed?---Yes, that is the - that's -
4 and the slight reformatting happened as a consequence of
5 Acrobat and Word sort of re-aligning some of the
6 elements.
7 What happened to the exhibition agreement after you and
8 Ms Raymond signed it?---We didn't see it again until we
9 received a copy of it in the points of defence sent to
10 VCAT.
11 I'm really asking you was the document taken anywhere?---Well,
12 after it was signed Lee-Anne handed it in in person.
13 Without taking you to the documents, the invoice for the
14 deposit was paid, is that right?---Yes, because Lee-Anne
15 paid it electronically. I've seen the electronic thing
16 with the Commonwealth Bank, yeah.
17 Would you go to Tab 11 please. The first document is an email
18 from Ms Raymond to Yolande Pickett?---Yep.
19 And copied to two addresses including you, is that right?
20 ---Yes, that is.
21 Did you receive that email at the time?---Yes, I did.
22 If you then go over to Tab 12. Is that a screenshot from one
23 of the links that's referred to in that email that I've
24 just taken you to?---Yeah, that is a screenshot. It's
25 taken, yeah, shortly after the exhibition finished of
26 what that page looked like. That page no longer - it
27 existed for a short while afterward and it's disappeared
28 since then.
29 The surety and the remaining balance of the hiring fee were
30 paid weren't they?---Yes, they were.
31 Now if I could take you please to the events around 1 June

1 2009. Would you have a look please at Tab 18?---Yep.
2 It should be the final page of that tab. Do you have that last
3 page?---Yes, I am on the last page.
4 Towards the foot there is an email from Yolande Pickett to
5 Ms Raymond which says, "I'm now on holiday from Guildford
6 Lane Gallery for three weeks. In my place will be," and
7 I think it's correctly pronounced, "Lian Low, who will be
8 contactable by the same email, phone, et cetera, and will
9 be happy to help you with all your inquiries." Did you
10 see that email at the time?---Yes, I did.
11 Then if you look please at the email above it on 1 June 2009,
12 an email from Ms Raymond to Lian and Melanie?---Yep.
13 "Just letting you know that Demetrios and I will visit the
14 gallery for a brief look at the space," et cetera. Did
15 you see that email at the time?---I did see that email
16 and from my recollection Lee-Anne and I talked to one
17 another over the phone before she sent it. She said she
18 wanted to see the space and drop off the printed invite
19 cards, and we had a discussion over the phone whether or
20 not the gallery is open on a Monday. She said it is,
21 check on NAVA. And yeah, and so I said, "OK, you can
22 send the email, just check on NAVA." So she sent that
23 email and checked on NAVA and the times posted on NAVA -
24 NAVA is the National Association of Visual Artists. And
25 the hours listed were extremely long hours from something
26 like nine to nine or whatever it was every single day of
27 the week.
28 Could you go back one page, please?---Yeah.
29 At the foot there is a 1 June 2009 email from Lian Low to Ms
30 Raymond?---Yeah.
31 Did you see that at the time?---Yes, I did.

1 Did you go to the gallery on 1 June 2009?---Yes, I did.
2 What time did you arrive there?---I arrived at about quarter
3 past five or thereabouts. It was twilight and the
4 gallery was all closed up. The entirety of the
5 first - - -
6 Just stopping you there?---Yes.
7 When you say the gallery was all closed up?---Yeah.
8 The main door, was that open or closed?---The main door was
9 closed.
10 Yes, go on?---And there was lighting on in the entire ground
11 floor. There was to the left of the main door there's
12 two large windows. One of the large windows had an
13 application for a liquor licence to the Melbourne City
14 Council. The only phone numbers on that were to the
15 Melbourne City Council if you wanted to make an objection
16 or whatever to the planning application. The other
17 window had nothing obstructing it. I looked all the way
18 in. There was nothing in. You could see all the way to
19 the back to his back door which point to what's called
20 Flanagan Lane. You could see the stairwell leading
21 upstairs to the first floor. There was a reception desk
22 which had - it just looked like that with folders open
23 and it was just abandoned and my thought was maybe
24 Lee-Anne got the time wrong.
25 Did you observe anything on the door?---Well, the element that
26 made me think maybe Lee-Anne got the time wrong because
27 what was on the door was that the gallery is open from
28 Wednesday to Sunday which excluded Mondays and Tuesdays
29 and I was here on a Monday so yes, I did notice that.
30 There was however there was two doors and there was one
31 thing, Guildford Lane Gallery and the hours of operation

1 and there was nothing on the other door.

2 In relation to the Guildford Lane Gallery and the hours of
3 operation?---Yeah.

4 Were you standing when you were looking at the door?---I was
5 standing when I was looking at the door. I walked back.
6 It's a laneway so I walked back and had a look to see if
7 there's any lights in the rest of the building. There
8 were no lights anywhere in the rest of the building but
9 the entire ground floor of the gallery, what constitutes
10 the gallery which is where the reception is, there was
11 nobody there, no activity and it was completely
12 abandoned.

13 In relation to the sign on one part of the door?---M'mm.

14 Was that above or below your eye level?---It was quite high. I
15 would agree with the opposition that it was pretty close
16 to three metres. It was pretty high. It could have been
17 two and a half metres but it was high.

18 What happened after that?---I was waiting and I walked towards
19 up Guildford Lane and then towards Latrobe Street and
20 then back again, hoping that I might see Lee-Anne because
21 she's making her way from the museum and then I walked in
22 the opposite direction, still no Lee-Anne and I walked
23 back again and about five, seven odd minutes lady, a
24 little red - it was a little car. My memory says it was
25 red but I could be in error and an older lady or a lady
26 older than us was there. So I just as I was there I just
27 talked to her from a distance because it was getting
28 darker as she had come up and I said, "Have you come to
29 see the director of the gallery, owner of Guildford Lane
30 Gallery because I think the gallery's closed". She says,
31 "Oh". Anyway she starts looking, I said, "Don't bother,

1 there's no signage there". But she just looked at the
2 door, she looked at the liquor licence and she said,
3 "There's numbers there. Why are they closed?" And I
4 said, "I don't know". I said, "We had arranged to see
5 him at the time, I really don't why he's closed". She
6 said, "Do you have his number", and I said, "No, I don't
7 have the number". Anyway she said, "I don't have his
8 number either". She phoned up. She said, "Well, I'll
9 see what's happening". She phoned up, telephone Telstra
10 direct or telephone assistance or whatever it's called
11 and I could hear saying, "Guildford Lane Gallery,
12 Melbourne, it's a new gallery. No, it's new", and then
13 she says, "It's ringing", and we waited for a while and
14 then she just shrugged her shoulders. I assumed from
15 that that it had rung through so there was - - -

16 Did she do anything else while she was standing outside there
17 with you?---Well, after the phone call had failed she was
18 banging very loudly on the doors and the windows. She
19 was, "Hello, hello".

20 What did you do after that?---I assured her that my partner
21 Lee-Anne is going to be coming and she did come around
22 the corner because I just sort of felt silly and when
23 Lee-Anne comes she said, "What's happening", and said,
24 "Well, the gallery's closed", and Lee-Anne did what I did
25 and what the lady did, was look for numbers on the
26 outside and Lee-Anne says, "Well, I contacted them
27 earlier, I'll try calling them on the phone". So she had
28 her mobile, she called them on the mobile and there was
29 no answer. So we had a discussion - also the other lady
30 was pretty cranky about it so yeah.

31 What did you and Ms Raymond do?---Well, we waited for a little

1 bit. We there for about half an hour and then we left.
2 We walked to the train and caught the train home and when
3 we got home we emailed, or Lee-Anne emailed saying there
4 was nobody there.

5 I'll just stop you there. If you look again, please, at
6 Tab 18?---18.

7 And what has the Number 3 down the bottom?---Yes.

8 And then towards the middle of that page there's an email of
9 1 June 2009 from Ms Raymond to Lian Low, did you see that
10 email at the time?---Yeah, because that's the one that
11 was sent when we got home because it was about, I don't
12 know, 5.30/fiveish, whatever that we left, five minutes
13 to the station, five/ten minute wait, yeah.

14 If you look back one page, please, to the final line of the
15 page?---Yeah.

16 Do you see it says, "On 1 June 2009 at 6.37 p.m. the manager
17 wrote", and go over the page?---Yeah.

18 There's an email from Lian Low to Lee-Anne Raymond?---Yes.

19 Did you see that email at the time?---I did see that email at
20 the time and I wondered what is the purpose - well, it
21 creates an impression that there was somewhere there but
22 we've got an email from Yolande Pickett on May 14 which
23 was a Monday saying I'm emailing from home and I don't
24 have the information. I'm fairly sure that's been
25 already discovered but it could have been an email from
26 anywhere. It doesn't mean anything.

27 This email says, "Hi Lee-Anne, we were waiting for you but as
28 the gallery is not officially open today I was expecting
29 you to call"?---Yeah.

30 "I'm sorry if this wasn't clear but there was a number outside
31 the door as well for you contact. Please let me know of

1 a better time"?---There was no number.
2 Just a moment. Did you read that?---Yes, I did.
3 What was your reaction when you read that?---Nothing. It's
4 true. It's factual and, yeah.
5 When you say it's true and it's factual, are we looking at the
6 same document. This is the document - - -?---No, I was
7 thinking of Lee-Anne's email where we went there.
8 Just confine yourself, if you would, Mr Vakras?---Sorry.
9 To this particular email that I've taken you to?---Yeah. No.
10 Just a moment?---It's there, yeah, earlier.
11 It says, "We were waiting for you but as the gallery is not
12 officially open today I was expecting you to call. I'm
13 sorry if this wasn't clear but there was a number outside
14 the door as well for you contact. Please let me know of
15 a better time"?---Yeah, yeah.
16 What was your reaction when you read that?---Well, I thought it
17 was pretty absurd. Sorry, my - anyway.
18 Just confine yourself to my question, please?---I thought it
19 was pretty absurd because I was wondering what is going
20 on here so, yeah, it was a very strange email to get
21 because it wasn't as if I was there for ten minutes, or
22 it wasn't as if I arrived there, saw the doors closed and
23 stomped home. I waited and waited for a substantial time
24 and I was there for about a half hour so there was nobody
25 there. There was no activity. There was - the gallery
26 building is multi-levelled. There's lights that can go
27 on on any single level. There was none there. I don't
28 know if there's partitioning in the middle because he
29 also had a façade on what's called Flanagan Lane. There
30 could have been somebody that was there but on the
31 gallery floor there was no activity and no lights went on

1 or off during the entire thing so it seems like a bit
2 rich.

3 If you go back to the page Numbered 2 at the bottom and towards
4 the foot of it there is an email of 1 June 2009 at
5 10.32 p.m. from Ms Raymond?---Yeah.

6 That says, "Oh well, we seem to be set with your last message".
7 You understand that to be an email from Ms Raymond to
8 Lian Low?---Yes, I do.

9 Did you see that email at the time?---I did see that email.
10 The next day there's an email above it from Lian Low to
11 Lee-Anne Raymond?---Yes.

12 Of 2 June 2009 at 12.26 p.m., did you see that email?---I did
13 see that email.

14 Yes?---It was shortly, as I say, our computers are shared and
15 it was addressed to Lee-Anne's home email so it comes in
16 and I phoned up Lee-Anne and I said, "They've just said
17 that we're not allowed in the gallery for an entire
18 week", and Lee-Anne said, "Well, OK, I'll contact them
19 and tell you what they say". So yeah, and Lee-Anne did
20 contact - - -

21 It says, "I just had a chat to Robert, the gallery director,
22 and it looks like this week is out"?---Yes.

23 "As we prepare to have the Kesselskramer exhibition installed.
24 I'm really sorry about that. Next week, Wednesday,
25 10 June or Friday, 12 June is great, from 12 p.m. onwards
26 should be fine"?---M'mm.

27 If you go back one page, please, there's the Number 1 at the
28 bottom. It says, "On 2 June 2009 at 12.43 p.m.
29 Demetrios Vakras wrote, 'You are bona fide idiots. We
30 have already met Robert, I don't care to meet you. I
31 merely wanted to look at the space to see how we might

1 set up so why weren't you there yesterday. I was there
2 at 5.20'?"---Yeah.

3 Firstly, did you send that email?---I did send that email.
4 Why did you send that email?---Because Lee-Anne had phoned up
5 to work out why - the gallery opens on Mondays and
6 Tuesdays they have their installs. On Wednesdays,
7 Thursdays, Fridays, Saturdays and Sundays it is open for
8 exhibitions. The gallery is - they do not have week long
9 installs. The idea that somehow or another we were going
10 to be kept out for a week was rather absurd. Lee-Anne
11 phoned them up because I said to her this email's come
12 in, she said, "Don't do anything, I'll contact them
13 first", and then Lee-Anne phoned up, spoke to - I mean
14 Lee-Anne doesn't remember if it was Melanie Trojkovic or
15 Lian Low, and was told that no, we were essentially - or
16 Robert is too busy, which I thought is pretty perverse
17 when you've exhibited like we have. One of the elements
18 that occurs before an exhibition is that you look at the
19 space. By this stage you should have a fair idea of what
20 works you're going to be exhibiting. You have a fair
21 idea of the sizes and the numbers of the works and you
22 have a fair idea of how you might want to set it up
23 thematically so that the visuals work, so that different
24 elements of the exhibition work and as well as that when
25 Lee-Anne had - that's Lee-Anne Raymond, had initially
26 phoned Lian Low to organise for this meeting to - or for
27 our inspection to have a look at when that had been
28 organised, we had surreptitiously received an email from
29 Melanie Trojkovic that as the exhibition time is getting
30 closer you should come in and visit the gallery to assess
31 with us how you're going to organise your exhibition. So

1 we were actually what we have done in prior experience
2 what was also asked of us by Melanie Trojkovic and we
3 were told that we couldn't enter for the entire week when
4 it's open to the public. Apparently, yeah, we were the
5 only ones not allowed to. So that was pretty bizarre to
6 me.

7 Go back, please, to p.1 of that tab?---Yeah.

8 In the middle of that page there's an email of 3 June 2009 from
9 Lian Low to you?---Yeah.

10 Did you receive that email?---Yes, I did.

11 It says, "Robert and myself were waiting for you at the gallery
12 until 6.30 p.m. There was a sign with the gallery's
13 phone number clearly positioned at the top of the gallery
14 door. We did not receive any phone call from you hence
15 we didn't know you were downstairs". Did you read that
16 email at the time?---Yes, I did read that.

17 What was your reaction when you read that email?---My reaction
18 was I phoned Lee-Anne Raymond at the museum - actually
19 hang on, I didn't phone up Lee-Anne. I'm trying to
20 remember. Lee-Anne was probably home at that stage and I
21 said no - and I said they're obviously looking at us as a
22 joke, there's something really wrong. I'll email them in
23 a tone that is less than - I mean they were obviously, I
24 don't know, they were not taking us seriously so I
25 changed the tone of the - - -

26 In the email above it - - -?---Yeah, I know.

27 To Lian Low, copy to Stacy Jewell, Mr Cripps and Lee-Anne
28 Raymond?---Yeah.

29 You say, "Lian, you're a liar"?---Yeah.

30 Why did you say that?---Because I was there for half an hour
31 and there was no movement. There was nobody there.

1 There was no signage, no telephone signage on the door
2 and even if there was there was two people who telephoned
3 the gallery and it wasn't as if it was dark. It was
4 twilight so the sun had just set. It was a few minutes
5 after sunset. It doesn't go automatically dark. There
6 was clearly and definitively the gallery open hours which
7 had the times that it's closed were Monday and Tuesday
8 but there was no telephone numbers there at all.

9 Did you believe it to be true what you wrote in that email?---I
10 do believe it to be true.

11 If you look, please, now at Tab 21, there's an email of 8 June
12 which is the last document in that tab?---8 June.

13 From Ms Raymond to Melanie Trojkovic?---Yeah.

14 Did you see that email at the time?---Yes, I did.

15 There's a response from Melanie Trojkovic which commences at
16 the foot of the first page of that tab on Wednesday,
17 June 10, 12.56?---Sorry, I'm - - -

18 The first page of that tab I've taken you to, do you have
19 that?---Sorry?

20 I'm in Tab 21?---Yeah.

21 HIS HONOUR: First page.

22 MR GILERTSON: The first page?---Sorry.

23 The entry in the last line, "On Wednesday, June 10, 12.56"?

24 ---Yeah, yeah.

25 Yes?---Yes, there is.

26 Melanie Trojkovic sent?---Sent, yes.

27 Go over to the next page?---Sorry.

28 "Hi Lee-Anne, that should be no problem about using the
29 plinths. I shall check with Robert to make sure they're
30 enough for your use"?---Yeah.

31 Did you see that email at the time?---Yes, I did.

1 If I could take you now, please, Mr Vakras, to 17 June, that's
2 the Wednesday. What did you do that day?---On the
3 Wednesday we still had - we were expecting the printer to
4 finish the printing of the catalogue and in the interim
5 Lee-Anne went into Guildford Lane Gallery and I waited
6 for the email to come in from the printer telling us when
7 the catalogue was going to be finished. Lee-Anne went in
8 and got - and purchased stationery supplies, little
9 stands to put our fliers and the catalogues that were
10 going to be for sale which we were going to be placed on
11 those plinths that she had requested. I in the meantime
12 waited. The email came in rather early and I drove up to
13 pick up the catalogues. There was about ten boxes or
14 whatever it was that were all put into the boot of the
15 car. I drove to Guildford Lane Gallery, parked outside
16 the gallery, grabbed two boxes to quickly unload because
17 from what we've been told you can get a parking fine
18 pretty quickly so I quickly unloaded two boxes, took them
19 up the stairs and Lee-Anne Raymond was there saying,
20 "We've been told we can't store them here", and Stacy
21 Jewell said, "No, you can't store them here". And I
22 said, "Well, too bad, I'm going to put them there and if
23 it comes to anything I'll be selling them myself".

24 If you could go to the next day, please, Thursday, 18 June?

25 ---Yeah.

26 When did you get to the gallery that day?---Thursday, the 18th,
27 sorry, we're not looking at the tabs any more?

28 No, we're not looking at documents at the moment. Thursday,
29 18 June when did you get to the gallery?---I got to the -
30 or Lee-Anne and I - Lee-Anne had been earlier. Lee-Anne
31 and I got there about quarter past six.

1 What happened?---It was - it was fairly full. I thought it was
2 looking - it looked quite good that there was a number of
3 people there. There was probably about 30 people
4 downstairs on the ground floor. There was probably about
5 40 people upstairs on the first floor so it was quite a
6 large turnout. As we walked in there Lee-Anne was
7 talking to somebody and Lee-Anne said, "We've made a
8 sale", and said, "Yes, Lee-Anne, what have you sold",
9 because I was expecting that Lee-Anne would have made the
10 sale. She said, "No, we've made a sale and it was one of
11 your works". I said, "Oh", and - - -

12 Yes, and what happened after that?---It was - well, it seemed
13 to be a really good night. I talked to people. I made
14 sure that I talked to as many people as I could that I
15 recognised and people from Lee-Anne's work that she
16 introduced me and went all the way around and talked to
17 as many people as I could.

18 Were there any speeches?---I did not leave the first floor.
19 Lee-Anne said there was but I didn't - I didn't go down.
20 I didn't even get a drink. The purpose, the purpose of
21 it is what the Americans call glad-handing. So you talk
22 to people, you make everybody feel like they've been, you
23 know, they're especially invited, so that's what I did.

24 How long did you stay at the gallery that night?---Until about
25 8 o'clock.

26 What happened at about 8 o'clock?---Well, the last person that
27 we knew was a guy called William Griffiths. He's a
28 Melbourne jewellery and he'd been to the exhibition. I
29 wasn't expecting him. Lee-Anne had left some invites
30 underneath his door at his shop and I spoke to William
31 for a little bit and then he left. Lee-Anne had been

1 elsewhere and I said to Lee-Anne, "Well, let's catch up
2 with William", because William was quickly disappearing
3 down the stairs. So Lee-Anne and I decided we would
4 leave. As we were going down the stairs we saw
5 Robert Cripps and I went to shake his hand because I
6 thought, well, despite all the drama that had occurred
7 previous, prior to the exhibition it had all gone pretty
8 well I thought.

9 Just stopping you there, where were the two of you when you
10 went to shake his hand?---We were - - -

11 On the stairs or on the ground floor?---No, we were off. We'd
12 gone down the stairs. We'd seen Robert Cripps. He was
13 near where the reception was and we were going to shake
14 his hands there - shake his hand.

15 What happened when you went to shake his hand?---Well, as I was
16 approaching him an older lady who identified herself as
17 somebody related to one of the exhibitors downstairs,
18 asks me, "Are you the artist from upstairs". I said,
19 "Yes, I am". She goes, "I love your work". I said,
20 "Thank you". She says, "It's about time somebody gave it
21 to the Muslims". I said, "Well, it's not really a
22 criticism of Islam", and she says, "I understand what
23 you're meaning but it's about time somebody did give it
24 to the Muslims", and Robert Cripps just passed the lady
25 because we are on our way out and I looked up at him and
26 said, "You realise it's not what she's saying", and he
27 said, "That's where I have a problem with you. I have
28 problem with what you write. I have a problem with what
29 you write because of the sensitivity with Palestine". So
30 after he said that I said, "Palestine, I don't understand
31 what you're talking about with Palestine". He says,

1 "Your opinions on the Koran they're insensitive to
2 Palestine". I said, "Robert, I'm not criticising
3 Palestine". He said, "Well, your opinions of the Koran
4 are racist". I said, "Robert, I'm an atheist", and then
5 he persisted with his story with Palestine. I said,
6 "Robert", you know, the quotes, he was insisting that
7 they were opinions of the Koran. I corrected him and
8 told him, no, they're not opinions of the Koran, they're
9 actually quotes from the Koran. I said to him, "Look, I
10 took a lot of care and if you read what I write I say
11 that I've consulted a number of translations and I've
12 actually got the quotes themselves so when I'm referring
13 to what the Koran says you can't say that it's just out
14 of any bigotry so there's footnotes". He said, "Ah, that
15 makes it read like legalese". I said, "Legalese?"
16 "Yes", he says, "I can't understand it". I said to him,
17 "Well look, we can go over it and maybe explain to you".
18 He goes, "No, it reads like legalese. Even the girls
19 eyes glaze over when they read it". I said, "Well, no,
20 it's not legalese". Sorry, I need to think, sorry.

21 Do you need to take a drink?---I do need to take a drink but
22 there's a number of things with legalese that gets said.

23 HIS HONOUR: Take your time.

24 MR GILERTSON: Yes.

25 HIS HONOUR: And if you need a break in the afternoon let me
26 know?---No, it's just that there's a sequence of events
27 and it's difficult to remember the sequence and then you
28 forget it and you get it out of sequence.

29 You can only try your best?---Yeah.

30 MR GILERTSON: Just to the best of your recollection?---He
31 said - - -

1 What was else was said?---He said, "I have a problem with your
2 quotes from the Koran because they make it - because they
3 create the impression that the Jews are the victims of
4 Muslims", and I said to him, "Well, in Palestine". I
5 said to him, "Whatever exists in Palestine actually
6 predates the existence of the State of Israel so what
7 you're saying can't be right". He's saying, "No, your
8 opinions on the Koran are racist and the Muslims are the
9 victims of Jews in Palestine. I don't like the Jews. I
10 don't like the Jews state in Palestine", or the Jews and
11 their state in Palestine.

12 Where was Ms Raymond when this exchange was going on?

13 ---Lee-Anne was - she was next to me and she was making
14 her interjections saying, "Robert, you're saying you
15 don't like the Jews and you just called our exhibition
16 racist", and she said, "That of itself is racist", and he
17 said, "Yes, what of it". He insisted that any action
18 that the Muslims actions that they do take are racist and
19 what I've written the actions that the Muslims take are
20 reactions to Jews and what I've written is racist
21 and - - -

22 What did you say in relation to his claims that your works were
23 racist?---Well, I told him I'm an atheist and I'm
24 criticising Christianity, I'm criticising Judaism and I'm
25 also criticising Zoroastrianism. So there's four
26 religions that I've criticised and as an atheist it's not
27 racist to criticise religion. But he was fixed on apply
28 to the Palestinians. I asked - I then went to try and
29 defuse the situation by asking him to - or by asking him
30 if he realised that Palestine and Palestinians aren't
31 race, Palestine is a territory. I asked would an Arab be

1 a Palestinian and he said, "Yes, a Muslim would be a
2 Palestinian". "A Christian?", and he said, "Yeah, that
3 would be fine. I said, "A Jew". He said, "No a Jew
4 can't be a Palestinian and there shouldn't be any Jews in
5 Palestine", and I said to him, "Well, that's the same
6 position as (indistinct).

7 Was there anything said in relation to suicide bombings?

8 ---There was. He said that - after he said, "There
9 should be no Jews in Palestine. It is the Jews in
10 Palestine that are causing the problems and the Jews are
11 reacting to what the Jews - the Muslims are reacting to
12 what the Jews to them". And at this stage I got quite
13 annoyed and I said to him, "What, like suicide bombings"
14 and he said, "Yes", and I said, "What like school
15 children on a bus". There is a specific incident called
16 the Haifa Bus Number 37 incident if people want to look
17 it up.

18 Sorry, if you just confine yourself just at the moment to the
19 conversation?---Yeah.

20 What else, if anything, was said about the school bus?---Well,
21 Lee-Anne was interjecting saying, "But they're children",
22 or we both were pretty horrified and then we said why,
23 why is it - he said - he was getting agitated, Robert
24 Cripps was. So at this stage he was just getting
25 agitated and he said yes so - - -

26 What can you recall about Ms Raymond's interjections at around
27 this point?---Well, Lee-Anne was insisting that what he's
28 saying right there is racist, Robert, "You've called us
29 racist for criticising Islam and you're by criticising
30 the Jews are racist yourself", and he said, 'Yeah, what
31 of it". At that stage I thought, well, I'm going to try

1 - what did I say. I did at one stage also mention - I
2 mean the thing is it could be out of sequence but I did
3 at one stage mention that if you really look at what my
4 criticisms are I'm a lot more critical of Christianity, I
5 believe, than what I am of Islam. My criticism of
6 Christianity, which is not in that essay, is in some of
7 the other essays. In particular there's the essay
8 associate with Pithia which is the oracle but it talks
9 about the values of Judaism and Christianity which are
10 for racial purity. It quotes Adolf Hitler so I said to
11 him my criticism are a lot more harsh with respect to
12 Christianity and Judaism and that similar to Mr Cripps
13 the Nazis also - or Adolf Hitler supported the Muslims
14 and their plight, the Muslims and the Mufti in particular
15 and his aims in Palestine and the Mufti being Al-Husseini
16 whose name I didn't recall on the night. I described in
17 an email later to Mr Cripps and Robert - - -

18 MR DIBB: The witness is reading?---Sorry?

19 HIS HONOUR: No, he's not reading.

20 MR DIBB: I beg your pardon?---No, no, no.

21 MR GILERTSON: You just have your hand on a page of the court
22 book?---Yes, I do. You can all have a look.

23 Yes, perhaps if you could close that.

24 HIS HONOUR: He wasn't reading I can assure, Mr Dibb.

25 MR DIBB: But I am just inquiring - - -

26 HIS HONOUR: It's good that you interjected. I am getting a
27 little bit confused though, Mr Vakras?---Yes.

28 Between what you are saying you recollect being said?---Yeah.

29 And what appears to be interposed explanations and background
30 information for us to understand what you did say?---I

31 didn't - yeah, the - - -

1 For example, the questions you are being asked are only what
2 was said on the night?---Yeah, yeah, I understand.
3 Not background information as to why you said?---No, I
4 understand. I understand what you're saying. I - - -
5 Sorry, can I just ask?---Yes.
6 What you've just said in the last few minutes before you were
7 asked a question by Mr Dibb about whether you were
8 reading, was that all conversation or were you giving us
9 also background information to understand?---No, no, I
10 was telling Mr Cripps this information. I didn't mention
11 the - - -
12 This Mufti for example?---I mentioned the Mufti but the
13 background information part of that is I didn't recall
14 his name on the night.
15 Yes, that was sort of in practice, wasn't it?---Pardon?
16 That was not part of the conversation?---I mentioned the Mufti.
17 I said the Mufti, the Nazis supported the Mufti in
18 Palestine had the same aims and - - -
19 MR GILBERTSON: And the reference that you gave to your essay,
20 that wasn't something that you told Mr Cripps about in
21 this conversation?---No, but I did say that my criticism
22 of Christianity are a lot of harsher. I didn't go into
23 the essay in question is one - but I did not say that,
24 sorry.
25 HIS HONOUR: But that's my point, you see?---Yeah, I'm sorry.
26 And that's exactly what I was referring to?---Yeah.
27 You must confine yourself to what was said and if it's
28 necessary to give background you'll be asked questions by
29 Mr Gilbertson to elaborate?---Yeah.
30 I need to know what was said?---Yeah.
31 To make sense of the conversation?---I was hoping to give you

1 the - I'm sorry. I'm sorry for adding that.
2 It confuses the situation?---Yes, I'm sorry.
3 MR GILERTSON: Yes, if you could just confine yourself to the
4 words that you recall used by you, Ms Raymond and
5 Mr Cripps in this conversation?---Yeah.
6 So just to clarify, the - - -?---I said to him that - - -
7 Just a moment. The evidence that you gave in relation to what
8 was in the essay that was not discussed at this time?
9 ---No, not the Pithia, that was not discussed. I did say
10 that my criticisms are a lot harsher with that. I did
11 say that the Nazis supported the cause of the Muslims in
12 Palestine and I then - and I told him that the objective
13 was the same of - the same, Hitler had the same
14 objectives in Palestine and I then went on because I was
15 getting very annoyed with the line that the conversation
16 was taking, I then said to him, "You do realise that
17 Palestine is named after the Paleset. The term Paleset
18 first appears". Anyway he didn't allow me to finish so
19 at that point he starts interjecting telling me that I'm
20 racist and I said, "Robert, you're a man limited in your
21 edition and of limited intellect", and I turned to go
22 because I thought this is ridiculous and I said it to him
23 in those terms because I did not want to be - the thing
24 is just degrading.
25 Just confine yourself to the statements, please?---Sorry, and
26 that's all I said. I turned to walk away.
27 Did he see anything after you turned and walked away?---Well,
28 he started saying, "Well, you're racist and I want you
29 out of my gallery. I want you and your racism out of my
30 gallery", and Lee-Anne was turning around as well and
31 then as we're walking he then has a change of mind and

1 says, "No, come back", and Lee-Anne turned around and
2 said, "We're going, Robert". That's pretty much it. I'm
3 sorry for the embellishments.

4 And those final words in relation to racism that you say were
5 said by Mr Cripps, was anything said in relation to your
6 art being racist?---Well, yeah, "You and your racist
7 art", because the essays obviously pertain to it.

8 The next day - I withdraw that. On Saturday, 20 June what did
9 you do that day?---On that day we thought, well, we heard
10 nothing on Friday, maybe we don't know whether the show's
11 going on or not, we decided we were going to Guildford
12 Lane Gallery. We were a bit sort of nervous about the
13 prospect of doing so.

14 Before you went to the gallery did you go to Art Stretchers?

15 ---Yes, yes, that's why we were nervous. We went and got
16 some art supplies. We did need art supplies, we went
17 there. Art Stretchers was nearby. It was surrounded by
18 RMIT buildings. It's on Victoria Parade. We saw a guy
19 called Steve, who we've known as Steve for about 20 years
20 maybe, 15, I don't know, a long time. We didn't know his
21 surname at the time. We've subsequently found out it was
22 Armstrong, not Anderson.

23 Yes, go on?---And we saw Steve. Now, Steve asked the question
24 which might need a bit of background as the invite cards
25 were dropped at Stretchers before the exhibition we
26 dropped off the invite card at Vanbar, at Prism, at
27 Eckersley's, at a number of art places so - which is what
28 artists do. You get your invite cards. Anyone who goes
29 to these places picks up an invite card if they're
30 interested and they might go to the gallery. So we had
31 dropped some off at Art Stretchers beforehand and Steve

1 sees us and says, "How are you handling Mr Cripps", and
2 Lee-Anne says, "Why, what have you heard", and this is
3 the point where Mr Dibb interjected yesterday and Steve
4 says, "He's universally despised", but that wasn't based
5 on hearsay per MR SERONG: .

6 Can you just confine, sorry, I need to keep you reminding if
7 you wouldn't mind, Mr Vakras?---Well, we asked - - -
8 Just to confine yourself to the conversations?---OK, sure.

9 What did Steve say?---Steve said that he knows Robert Cripps.

10 "Robert Cripps before he turned Guildford Lane Gallery
11 into a gallery, I think he ran his business Redleg
12 Transportation from downstairs, I think. What Steve
13 described was that he had partitioned the gallery into
14 little rooms which are called artists residencies. What
15 artists do is they hire a space and they set up their
16 easel and that - - -

17 HIS HONOUR: Sorry, you're giving us an explanation again I
18 think?---I'm giving an explanation. Steve Anderson had a
19 space that was hired on his behalf by collective.

20 MR DIBB: This isn't what he said?---This is what he told us.

21 MR GILERTSON: Just deal with my questions if you could,
22 Mr Vakras?---Yeah.

23 Just confine yourself to what Steve said?---Steve said that
24 Robert Cripps would yell at people, maybe with reasons,
25 some people may have had their music loud. But he
26 apparently according to Steve wasn't very much liked by
27 some of the people and in the same conversation - - -

28 MR DIBB: I do object to certain aspects of this insofar as
29 it's hearsay and not going to reputation. As Your Honour
30 knows, reputation evidence can talk about things in
31 general but not specific.

1 MR GILERTSON: I'll confine it. (To witness) If you could just
2 say what Steve said in relation to how Mr Cripps was
3 regarded?---He said he was universally despised.

4 After Art Stretchers what did you do?---Well, Art Stretchers
5 didn't end there. There was another shop assistant whose
6 name was Anika Coote I have subsequently found out
7 courtesy of Collin Reid's videos. Anika Coote was there.
8 I didn't know who by name. I subsequently came to find
9 out her name. She said, "Oh Cripps, he's a dickhead".
10 Her - what she said was, "I was a participant at an
11 exhibition". I've subsequently found out the name of the
12 exhibition. "In that exhibition Cripps's dog was digging
13 up piles of dirt". I subsequently found out what that
14 exhibition was and why the dog was attracted to it and
15 that Robert Cripps had berated the artist in question
16 when the artist asked Mr Cripps can you please keep your
17 dog from digging up my exhibit and knocking it up and he
18 yelled at her. So that occurred and after that Lee-Anne
19 and I are thinking what have we got into.

20 All right. You then go to the gallery, is that right?

21 ---Correct.

22 What happened when you went to the gallery?---Well, our
23 observations were that (indistinct) Guildford Lane
24 Gallery was out. As we walked in they had set a whole
25 series of chairs because he was having a piano concerto
26 that we were unaware. Obviously we may not have paid
27 enough attention. We said hello to the two young people
28 who sitting at the reception and they said hello. We
29 walked up. It was dark. Lee-Anne wasn't happy about
30 that, but I wasn't paying attention to the darkness. I
31 wanted to see has everything been taken down or what. So

1 we walked up there and we find to our relief that it
2 hasn't been taken down so we thought oh well, we'll -
3 because as we did enter we did tell them we're going to
4 remove some boxes, we're the exhibitors upstairs, we'll
5 just remove some boxes. We removed three of the boxes of
6 catalogues we'd taken for on the - or I had brought in
7 for on the Tuesday, the 17th.

8 After this Saturday when did you find out about the
9 disclaimants?---When Lee-Anne telephoned me on Monday,
10 the 22nd.

11 What did you do after that?---I said, well, we're really going
12 to have to photograph him. I said to Lee-Anne we should
13 get a secret camera too, but she was against that. So
14 yeah, we decided we would go there. Lee-Anne would
15 finish work early on the Wednesday. We weren't going to
16 go in there on a not open to the public day because it's
17 quite likely that we would not have been given access to.
18 We can't - we couldn't - anyway. So we decided we'd go
19 in there on a Wednesday. We organised for a time to
20 meet. Shortly before we did meet, and that was outside
21 on Latrobe Street, so I drove the car in, I got my camera
22 gear together and drove into the city and parked on
23 Latrobe Street. Lee-Anne came in by tram. We met
24 outside. So that was probably about a quarter past four.
25 I put the camera around my neck because I had a back
26 pack, in the back pack was a camera bag, a camera, a
27 cable release and a tripod. The purpose of the tripod is
28 because it was fairly dark and I wanted to take good
29 shots because some of Lee-Anne's shots that she had taken
30 on the 18th weren't that clear, although mine weren't
31 much better. Actually they were worse. So we walked in,

1 we introduced ourselves to - there was two younger people
2 at the reception, neither of whom we've ever seen before,
3 and we said, "Hi, we're the exhibitors upstairs." We
4 walked - turned around the corner, we noticed the big
5 warning sign. I'm pretty sure that there was a warning
6 sign that was pointing to a disclaimer further up, but
7 Lee-Anne and I have a different recollection to that. So
8 Lee-Anne's looking at that and I'm saying, "M'mm, yeah,
9 yeah, we'll have a look what the space is like." So we
10 keep on walking. As we're walking I've put things down
11 on the ground and from a direction I had no idea, because
12 I heard the voice first, was Robert Cripps running at us.
13 He's running, he's really agitated. "You. You, I want
14 to talk to you. I told you to call me." And he's saying
15 that to Lee-Anne. And then he wheels around and says,
16 "You, people saw you attack me, Demetrios." And Lee-
17 Anne's saying, "What are you talking about, Robert?" And
18 then he ignores her and says, "You're here illegally,
19 you're trespassing." And I said to him, "Robert, we have
20 a right given us by the contract to be here legally. We
21 are here within the law, we are here according to the
22 contract." He says, "You breached your contract because
23 of racism." I said, "Well, if that's the case we'll
24 transport our works out." He goes, "What, you're the
25 ones who breached the contract because the contract says
26 racism is illegal. Read the contract." And Lee-Anne
27 says, "What's racist, Robert?" And he pretty much swings
28 one arm or the other, I can't remember whether it was
29 right or left, he says, "This." Lee-Anne says, "Well,
30 this is surrealism, Robert."

31 Was there anything said by Mr Cripps in relation to truckies

1 and wharfies?---Yes, sorry. As that was happening
2 Mr Cripps, before the this and this thing, it all
3 happened in - - -

4 HIS HONOUR: So for the transcript that - - -?---It happened in
5 quick - - -

6 Just one second. When you said this, it's a motion of the hand
7 as if you're pointing to the wall?---It is the motion of
8 an arm, yes. At one stage during this interaction he
9 comes up to me and says, "You threatened me, Demetrios."

10 MR GILBERTSON: For the purposes of the transcript what was he
11 doing, what gesture was he making?---He was pointing at
12 me and he was coming to - he didn't make contact but he
13 was coming to within about two inches from making
14 contact.

15 HIS HONOUR: With your chest?---To my chest. I was, I thought
16 there's nothing I can do.

17 Don't tell us what you think?---Sorry.

18 Just tell us what you said or Lee-Anne said or Mr Cripps said?
19 ---I didn't say anything. The first thing he says, "You
20 threatened me, Demetrios." Then he walks up closer and
21 says, "I deal with truckies and wharfies and they're
22 tougher than you." And Lee-Anne and I look at one
23 another and Lee-Anne says, "What are you talking about,
24 Robert?" And I think that is the - that's led to the
25 next one, that, "You have no right to be here, you're
26 trespassing," and this. So that was in between what I
27 said.

28 MR GILBERTSON: Was there any discussion at this time that you
29 were a party to in relation to the Jews?---Yes, there was
30 because the conversation went back.

31 Yes, go on?---The conversation did go back to the racism

1 element and the racism element that had occurred on that
2 night and that was, that the art of itself was racist.
3 And Lee-Anne said, "But why is it racist, Robert?" And
4 he says, "Because of Palestine." And Lee-Anne said,
5 "We're atheists, Robert, and we criticise other
6 religions." And he says, "Well, they deserve it." And I
7 interjected at that stage and said, "Robert, you have no
8 idea of how the Zoroastrians were converted in Persia.
9 It was the intolerance of Islam that forcibly converted
10 the Zoroastrians to Islam." I could go into a history
11 there by the way. Anyway he ignored me, he kept on
12 talking with Lee-Anne. As all of this was occurring, at
13 one stage I had noticed a head coming up the stairs, and
14 we were - and Robert Cripps was yelling quite loudly and
15 I was making sure I had my hands down. He was yelling
16 quite loudly, and the lady's head came down. Actually I
17 didn't see it go down. I looked when I was expecting to
18 see her in the gallery and she wasn't there. So we
19 started - the conversation kept on going with Robert
20 Cripps yelling quite loudly. And then she - then I
21 looked again and she had made her way into the space,
22 Robert Cripps noticed, he quietened down a bit and, yeah,
23 as Lee-Anne is asking Robert Cripps to explain what's
24 racist they're starting to move away, they're moving away
25 to the painting that we call Secular Muse. As Lee-Anne -
26 I don't quite hear the rest of the conversation that's
27 going on with Lee-Anne. There is one part that I've
28 forgotten in the earlier part because when Robert Cripps
29 says, "I told you to contact us," Lee-Anne says, "When?
30 Is that after you kicked us out, Robert?" And he goes,
31 "Oh, you're a sarcastic woman, Lee-Anne." So there was

1 that bit that I forgot. So as he's quietened down
2 because there's a visitor I set up my camera. Actually
3 the camera was around my neck, but I pulled out the
4 tripod and start setting up the tripod and start taking
5 shots. And at one instance I turned the camera around
6 and was looking elsewhere and pressed the shutter release
7 and took a photo of Robert Cripps, which is out of focus
8 because I didn't bother with it.

9 Before you took these photos was your conversation and
10 Ms Raymond's conversation only with Mr Cripps?

11 ---Absolutely. That was the only person who was there
12 apart from Lee-Anne seeing some legs in the stairwell
13 coming down, but I didn't see them because I was - Robert
14 Cripps was directly in front of me and I was keeping my
15 eye on him.

16 If you could look please at tab - before I take you to that.

17 I'm going to show you a document that has been discovered
18 by us. I have a copy for Your Honour. It's blurry but
19 it is legible. What is that document?---That is a copy
20 of one of the disclaimers. Robert Cripps had placed a
21 number of disclaimers.

22 Is this a photograph?---That is a photograph that I took on the
23 day, yes, it is.

24 I'll separately tender that, Your Honour?---It's a detailed one
25 of the photographs.

26
27 EXHIBIT D2 - Two photocopied pages containing
28 photograph of document headed disclaimer.

29 MR DIBB: Can I just make an inquiry of my learned friend about
30 that document?

31 HIS HONOUR: Yes.

32 MR DIBB: Are they both photographs of the same disclaimer?

1 MR GILBERTSON: Perhaps I can clarify that. (To witness) If
2 you look at the second page is that a photograph of the
3 same disclaimer that's photographed on the first page?
4 ---It is, and that itself is a detailed - see the
5 photograph's got more in it. That's the detail and then
6 that's the detail. So that's why it's out of focus
7 because - - -

8 MR DIBB: So the highlighting isn't in the original?---What
9 highlighting?

10 HIS HONOUR: I don't have any highlighting on mine.

11 MR GILBERTSON: I've given you one with highlightings, sorry
12 about that. That's my fault.

13 MR DIBB: Thank you.

14 MR GILBERTSON: If I could go on please, Mr Vakras. If you
15 look please at Court Book Tab 24. On the first page of
16 that there's an email from Ms Raymond of 25 June 2009.
17 "The purpose for exhibiting work is for it to be seen"?
18 ---Yep.

19 "For it to therefore be sold." Did you see this email at the
20 time?---Yes, I did because, yeah.

21 Then if you go over please to two pages further on towards the
22 bottom there's an email of 26 June 2009 from Mr Cripps to
23 Ms Raymond. Did you see that email at the time?---Is
24 that the one, "Thank you for your communication. I
25 disagree with you?"

26 Yes?---Yes.

27 Did you send the email that appears above it on 26 June at
28 12.54 to Mr Cripps and copied to a number of people?
29 ---Yes, I did.

30 Why did you copy to all those people in that email?---Because
31 all the people in that email were in the original series

1 of emails. These were - - -
2 When you say the original series of emails, what - - -?---When
3 Lee-Anne - well, when the original email was sent it was
4 sent to all the people at Guildford Lane Gallery on the
5 basis of disclaimer being of the opinions as expressed by
6 us were not of the gallery or representative of the
7 gallery and that this was a management claim made on
8 behalf of all of the staff. So therefore the people who
9 were included in the email included the people in an
10 email list that we were sent by Yolande Pickett of people
11 to contact. Because this wasn't just something - this
12 was made as a gallery against us. So it wasn't
13 necessarily just about Robert Cripps, it was about the
14 entire gallery and their representations made against us,
15 so they were - - -

16 I'll stop you there. Did you send a further email at 6.30 p.m.
17 that night which, if I have those correct, should be one,
18 two, three, four, five, six pages into that tab?---Yes, I
19 did.

20 When were the works removed from the gallery?---The works were
21 removed from the gallery on the Sunday, what was it, 5th
22 I think.

23 Your Honour, I'm just interposing there. I have a couple of
24 witnesses outside. I wonder if I might get my instructor
25 to indicate that they are not likely to be necessary
26 today?

27 HIS HONOUR: Yes, that would be a good courtesy measure to
28 take.

29 MR GILBERTSON: They'll need to be here tomorrow morning. I
30 apologise, Your Honour; I apologise, Mr Vakras.

31 (To witness) If you then please go to Tab 29, the first

1 page of that tab. Is that an email you sent on 4 August
2 2009 to Mr Cripps?---That's correct.
3 And Yolande Pickett?---That is correct.
4 Copied to you and Ms Raymond?---Yes.
5 If you then please go back to Tab 26, three pages into that
6 tab, towards the foot there is an email of 6 August 2009
7 from Mr Cripps to Ms Raymond. Do you have that?---Yes, I
8 do.
9 Did you see that email at the time?---Yes, I did.
10 Ms Raymond's email above it at 7.13 p.m. that day copied to
11 you, did you receive a copy of that at the time?---Yes, I
12 did.
13 Just bear with me a moment. If you go please to the second
14 last page of that tab. This is an email in the middle
15 from Mr Cripps to Ms Raymond, "Sorry, I've made a
16 mistake," do you see that?---I know the one you're
17 referring to.
18 The second last page of Tab 26?---The second last page, sorry?
19 Second last page.
20 HIS HONOUR: I'm not sure that I follow you either.
21 MR GILBERTSON: I'm pretty sure I have the right number.
22 HIS HONOUR: The second last page in Tab 26 up the top is
23 www - - -
24 MR GILBERTSON: Yes, it's my miscalculation. It's the third
25 last page?---Trick question.
26 The middle of that page, on 10 August 2009 - - -?---Yes. Yes,
27 I see what you're referring to, yes.
28 Did you see that email at the time?---Yes, I did.
29 Above it is a response from Ms Raymond on 11 August copied to
30 you. Did you receive that?---Yes, I did.
31 The text of what's in the last two lines of that email, "We

1 agree to this release term with the acknowledgement that
2 the full amount is \$950 and expect to see this
3 transferred into our account without further delay." Is
4 that something that you discussed with Ms Raymond?---Yes,
5 it was.

6 If I can now take you, Mr Vakras, to your article. Perhaps if
7 Mr Vakras can be shown an A3 copy which we had for
8 Ms Raymond of the articles.

9 HIS HONOUR: Are you right to keep going for another
10 45 minutes, Mr Vakras?---Yeah. I'm just looking at the
11 curious back to front date on the bottom.

12 MR GILBERTSON: I'll take you to the annexure marked A in
13 quotation marks?---Yep.

14 Do you have that?---The front page there? There's
15 something - - -

16 HIS HONOUR: We can probably take the folder away, Madam
17 Associate.

18 MR GILBERTSON: Yes, perhaps it would make it easier if you had
19 the folder taken?---Sorry.

20 HIS HONOUR: And also that disclaimer.

21 MR GILBERTSON: Yes, if you could hand the disclaimer document
22 back too please.

23 HIS HONOUR: There was one handed up, that's an exhibit now.
24 Do we have an exhibit, Madam Associate? Otherwise keep
25 that as the exhibit.

26 MR GILBERTSON: (To witness) If you could look please at the
27 A3 page?---Yes.

28 The first seven pages of that, is that the article you uploaded
29 onto the internet?---Well, it is with some - yep.

30 When did you do that?---Well, I did this particular article, it
31 was between 20 and 22 August 2009.

1 What website did you upload that article onto?---Vakras.com.
2 Whereabouts on the website vakras.com did you upload that
3 article to?---Well, the website you go to, to an index
4 page which is sort of like the front page of the cover of
5 the website, you click into it to enter. When you enter
6 it you get a directory page which you imagine as a big
7 hallway that has little signs. One goes to a painting
8 gallery, one goes to a digital gallery, one goes to a
9 drawings gallery and there's other ones that go to
10 different essays, exhibitions, the biography. For this
11 one you had to go to exhibitions. And you would get to
12 this part of the page after looking at a series of other
13 exhibitions that I've participated in.

14 You've given some description of the structure of your website.

15 Could you just explain in general terms that as at about
16 mid 2010 what the content and structure of your website
17 related to?---My art and the essays surrounding my art.

18 Anything else?---Basically my art and my philosophy, my - - -

19 All right, I'll move on?---Sorry.

20 So after clicking into the exhibitions section I think you said
21 you would get to this article, is that right?---You will
22 get to the page on which this article appears but this is
23 only part of the page.

24 HIS HONOUR: Sorry, what was that again?---Probably the best
25 way of describing it is like an old papyrus parchment and
26 the top of this - because a web page can be like a
27 scroll, it can go for however long you have it. So at
28 the top part I've got a history of my - I explain my
29 exhibitions and why commercial galleries, my work doesn't
30 suit commercial galleries, and then I go to this is my
31 exhibition and in this exhibition I did this, in this

1 exhibition, and this here I did that, in this exhibition
2 this happened, in this exhibition, the Chicago, here's a
3 photograph of what quarantine did to my crate when I
4 exhibited in Chicago, and then you go down and then you
5 find the particular section on Guildford Lane Gallery
6 after looking at all these other exhibitions I've
7 participated in. So this particular one is part of that
8 page. So it's only the part where I wrote about
9 Guildford Lane Gallery.

10 MR GILBERTSON: If I take you to the first page?---Below?

11 Sorry, I could be making a mistake because this is the
12 Guildford Lane Gallery page. This particular page, to
13 get to it you have to go to the exhibitions page first.

14 HIS HONOUR: What's what I understood when you first - - -?

15 ---It's been presented back to front from the way that
16 I've constructed the website. Sorry, I am in error,
17 because the first page was my exhibitions page. When you
18 click onto the exhibitions page you come onto this page.

19 That's what I wanted to ask you about?---Yeah, sorry.

20 I understood your explanation initially - - -?---Sorry, I made
21 a mistake.

22 That's all right. You said that you go to the page and it's
23 got the exhibitions?---Yes. So there's an - - -

24 There's an exhibition about Chicago, et cetera?---Yep.

25 Is there one called Guildford Lane Gallery exhibition and then
26 you click into that and then you find this article?

27 ---Yeah. There's a short description of one part of it
28 which has that photograph there with some writing around
29 it. I will indicate to the court on p.2 a section of
30 that is on that exhibitions page and when you click onto
31 it then you come up to this page. Sorry, I was - - -

1 No, I understand.

2 MR GILBERTSON: Now if I could take you to the text?---Yep.

3 On the first page of this A3 document it says, "Guildford Lane

4 Gallery is run by the toxic Robert Cripps. Avoid this

5 gallery assiduously. Had I been aware of him or had

6 information on him been available prior to our agreeing

7 to exhibit at Guildford Lane Gallery (and my co-exhibitor

8 Lee-Anne Raymond) would never have dealt with him. This

9 page expands on criticism already made about the

10 experience of exhibiting at his gallery." What do you

11 say about your belief in relation to those words?---Well,

12 I believe it to be true.

13 It goes on, "There are several words with which I can describe

14 Cripps; poisonous, vile, repellent, malignant, racist,

15 liar, bellicose, bully, stupid." What do you say about

16 your belief in relation to that?---I believe them to be

17 true.

18 "Cripps also runs Redleg, a transporter of art. Can you trust

19 Cripps's Redleg?" What do you say about that?---I

20 believe it to be true.

21 It goes on, "Much money was spent by myself and my co-exhibitor

22 Lee-Anne Raymond to make this show a success. This has

23 turned out to be a waste of money. The owner Robert

24 Cripps had at the time of writing this still not paid us

25 for work that sold during the show (payment was

26 eventually made over five weeks later after we sought

27 legal advice.) Payment of moneys owed was only secured

28 when we were forced into agreeing to terms which were

29 never in the original contractual agreement with Cripps

30 but which he demanded we agree to. He gained agreement

31 by placing us under financial duress. That he procured

1 agreement by duress renders this agreement legally
2 voidable." What do you say about that?---I make only one
3 error, that it was over six weeks. It was just a few
4 days less than six weeks.

5 Otherwise what do you say about your belief in relation to that
6 paragraph?---I believe it to be true.

7 During the course - - -

8 HIS HONOUR: Sorry, Mr Vakras, can I take you back to the
9 previous page please, the first page?---Yes.

10 The very last couple of lines?---Yes.

11 "Cripps also runs Redleg, a transporter of art. Can you trust
12 Cripps's Redleg?" Now, that's a question?---Yep.

13 You said that you believed that to be true?---Whether you can
14 trust him.

15 Do you believe that the question is true? What do you mean,
16 sorry?---OK. Thank you for the pick up.

17 It's not a pick up?---No, no, picking that up. Well, Cripps
18 actually - Redleg - - -

19 I just want to understand your answer?---I understand - - -

20 Is it true - I want to know what you mean by that so that I can
21 make sense of that?---I believe that Redleg cannot be
22 trusted is the point that I'm making. I believe you that
23 you cannot trust Redleg. With our dealings with
24 Guildford Lane Gallery, the correspondences that we have
25 had by email from Robert Cripps all came from information
26 at Redleg. When we had our invoices they were all sent
27 from Redleg. So Redleg is, was Guildford Lane Gallery,
28 so in our dealings it was Redleg so in a sense
29 Robert Cripps, Redleg are all interchangeable. I know
30 I'm posing a question and I apologise for hastily
31 agreeing.

1 MR GILBERTSON: Go back to the second page please, Mr Vakras.

2 The second paragraph, "During the course of the
3 exhibition he by his actions circumvented our capacity to
4 promote our work. Cripps turned the exhibition into an
5 expensive debacle for us but he made a profit on it."
6 What did you mean by he made a profit on it?---Robert
7 Cripps's gallery at the time was a for hire space in
8 which the profit that he makes, the profit that he makes
9 has already been made well prior to the exhibition. When
10 you get a commercial gallery they make their profit on
11 whether or not any works sell. A commercial gallery
12 markets the artist, they act as an agent for the artist
13 and therefore as payment for them acting as agents for
14 the artist they get a commission. So their profit is not
15 - is based on whether they promote the artist. Robert
16 Cripps had made his profit when we - his complete profit
17 that he - all that he could have made from us exhibiting
18 in that particular space in, what was it, the 17th - no,
19 20 May or whatever the final date was when we had to make
20 the final payment.

21 All right, stopping you there. Otherwise what do you say as to
22 your belief in relation to that paragraph that I read out
23 to you?---I believe it to be true.

24 Then it has below a photograph of some of the works exhibited
25 at the June-July exhibition in 2009. I don't want to
26 read any more of that paragraph but I want to take you to
27 the paragraph right at the bottom of that p.2?---Yes.

28 It says this. "Cripps is a self confessed racist," and there
29 is a hyperlink, "thenewleftnazis." I'm just going to
30 stop there. Where was that hyperlink to?---When I
31 constructed this page where the link was - this

1 particular page was in construction. Where I said he
2 made his payment, if we go a bit earlier, over six weeks
3 over, the reason it says over was that where it says six
4 weeks later there was a whole series of symbols because I
5 was - this page was being prepared. Where it says
6 newleftnazis was an explanation that ended up being too
7 long on my - - -

8 No, I'm just asking you whereabouts - - -?---It goes within my
9 website, it goes to an internal part of the website.

10 Could Mr Vakras be shown again the defendants' court book?

11 ---Thank you.

12 Would you have a look at Tab 38 please, Mr Vakras.

13 HIS HONOUR: Is this covered by your objection, Mr Dibb?

14 MR DIBB: It is, Your Honour.

15 HIS HONOUR: I'll receive it subject to that.

16 MR GILBERTSON: What is that document at Tab 38?---That is the
17 new-left Nazis article.

18 Yes, thank you, you can close that book now. I'll take you
19 back to the article.

20 HIS HONOUR: The first page only, is that right, or the whole
21 of the tab?---Sorry, it is the entire element of it, the
22 entire tab. In a sense it was a summary of what I sent
23 to Mr Cripps on I think the 27th.

24 I just want to make sure. This is a hyperlink, so if someone
25 clicked on the new-left Nazis, is that correct?---That's
26 correct.

27 If someone did that - - -?---Yes, they would come to this page.
28 Is it just this page?---Just this page. No, no. We've got a
29 papyrus there and it just goes all the way, all these
30 pages.

31 So every single item on Tab 38?---Yes.

1 All the way through to the last one being - - -?---All the way
2 through, yep.

3 A photograph or a picture of something?---Yeah. That picture
4 is of the mufti Al-Husseini. These are all - those
5 images are from the Wikimedia, not the Wikipedia. The
6 Gundizaki uploaded all the German photographs that they
7 had during the war up onto the Wikimedia comments for
8 their - - -

9 Sorry, I don't want you to explain what it is?---Sorry.

10 I just want to make sure. It's the last page is this one?

11 ---That's a link there because when you click it, it goes
12 back.

13 That was also - anyone pressing that hyperlink would see
14 everything that's in Item 38 and that would be the last
15 item that's there?---That is the last item, yes.

16 Thank you?---But if you hit that it actually took you I think
17 to my essays page which has essays on it and - - -

18 You're saying that that itself is a link to something else?

19 ---It actually goes to essays on the origins of the
20 Griffin and the Sphinx and other different essays on
21 different themes.

22 Yes, thank you.

23 MR GILBERTSON: You can close that court book now, Mr Vakras.

24 If I could take you back to the article where we were at,
25 the foot of the second page on this A3 format. I'd
26 already taken you to, "Cripps is a self confessed
27 racist," and the link for new-left Nazis. The text goes
28 on, "He is a manifestation of the new-left who have
29 adopted the sentiments Hitler expressed in his Mein Kampf
30 but who believed that though theirs and Hitler's
31 sentiments are the same their racism is a justifiable

1 one." And there's another link to the new-left Nazis?

2 ---That's correct.

3 What do you say as to your belief in relation to that paragraph
4 at the time this was uploaded onto the internet?---Well,
5 according to the words that I've used I believe it to be
6 true, in that it is a criticism of the political left and
7 that the sentiments that I am referring to have been
8 expressed as a matter of history and Mein Kampf and the
9 sentiments are specific to what I refer to, which is
10 refer to later, which has to do about the Jews and their
11 position or their right to be in Palestine. So it
12 pertains - - -

13 HIS HONOUR: I'm not sure that you were asking for an
14 explanation are you?---OK, sorry.

15 MR GILBERTSON: No, I wasn't. You have answered my question,
16 thanks?---Sorry, I was - - -

17 HIS HONOUR: Can I just ask, that's the same hyperlink even
18 though it hasn't got the in front of it?---That's
19 correct, because you can have any word but the
20 underlining code underneath it can be different. An
21 underlined K could be same but different - - -

22 MR GILBERTSON: On the next page, p.3 of the 7, you commence
23 the words on that page with, "Cripps took exception to my
24 explanatory essays." And without reading out to you
25 what's in the balance of this document what do you say as
26 to your belief in relation to the words used by you in
27 the balance of the article?---I'm not sure if I
28 understood it, but the way I've understood it is he
29 objected to the essay that was alongside Secular Muse.

30 HIS HONOUR: That's not the question.

31 MR GILBERTSON: No?---Sorry.

1 I'm just trying to do this in a summary way?---Sorry.

2 I can do it in a detailed way if necessary, but I just want to
3 ask you; looking at p.3 and the following pages?---Yes.

4 In relation to the words that you have used what do you say
5 about your belief in relation to the words you've used?
6 ---I believe it to be true.

7 HIS HONOUR: Mr Gilbertson, can I ask you whether any other
8 hyperlinked information is relied upon by the defendants,
9 and if so what are they?

10 MR GILBERTSON: I should indicate, Your Honour, the answer to
11 that is no.

12 HIS HONOUR: It's just that first link?

13 MR GILBERTSON: It's just that first link.

14 HIS HONOUR: All right.

15 MR GILBERTSON: The particulars I should say do rely on another
16 one but I'm only relying on that new-left Nazis link.

17 HIS HONOUR: So you're asking ultimately for a ruling that
18 amongst all of the hyperlinks only one of them should
19 feature in the subject matter of the litigation, is that
20 correct?

21 MR GILBERTSON: On the basis of relevance, yes.

22 HIS HONOUR: Right. You can focus accordingly in articulating
23 your objection ultimately, Mr Dibb.

24 MR GILBERTSON: (To witness) If you could go, Mr Vakras, please
25 to what appears in that A3 document as an Annexure B, and
26 if I could take you to what should be the fifth page of
27 that annexure. It should say 5 of 7 at the top, or my
28 copy does. There is a section in the middle which
29 commences, "Addendum 2 April 2011"?---Yep.

30 Could you explain what that relates to?---That addendum was
31 added. We got - we were served with the writ on 1 April

1 and I added this bit on 2 April. There are some elements
2 that were only on there for approximately 24, maybe 36
3 hours, which I edited out of it, and it did have some
4 additions up until I think maybe 11 April where I changed
5 some of the wording because I didn't like the way some
6 bits were and I didn't like that I had included some
7 other elements into it.

8 In relation to what you described as some of these bits, if you
9 look at the paragraph immediately under addendum - - -

10 MR DIBB: Just ask him to say which bits?---Well, I know which
11 parts I edited out if you'd like me to - - -

12 MR GILBERTSON: I'm not leading.

13 HIS HONOUR: Just wait on.

14 MR GILBERTSON: I'm not leading him. (To witness) If you just
15 start with looking at the paragraph under Addendum
16 2 April 2011, and just indicate to the court which of
17 these bits which you say were added?---The bits that were
18 removed and altered?

19 No, the bits that were added on 2 April 2011?---Oh, everything
20 from Addendum 2011 up until the very end where the last
21 word is, or the last sentence part was in bold, "To
22 expand on her own description of this disastrous
23 exhibition." So that was that from Addendum. So there's
24 one, two, three paragraphs, anyway just - - -

25 HIS HONOUR: From the words, "Addendum 2 April 2011," until the
26 end of that box on the - - -?---Til the end of that box,
27 that's correct.

28 Do you say that all of that was added on 2 April?---It was
29 added on 2 April but there was some parts that were
30 removed either on the 3rd, sometime on the 3rd or later.

31 Does that mean that on 2 April in addition to this material

1 there was other material?---No.

2 Which has since been removed?---This page was sometime at the
3 end of - sometime on 2 April, this is what the page
4 looked like. They printed this page on 3 April and at
5 the time they printed that page either on that day or the
6 next day I removed, had removed some material from it.
7 So this is as it was extant on that particular date but
8 it was only in this form for a short period of time like
9 24 to 36 hours.

10 Does that mean that there is material here which was removed?

11 ---That's correct. If you want me to read you out the
12 parts that - - -

13 MR GILBERTSON: Just in relation to this material that we're
14 focusing on are you able to say what part or parts were
15 removed?---I am able to say what parts. There was one
16 part that was removed and there was one part that was
17 altered.

18 Yes. Would you identify which part was removed?---Where I've
19 got, "To quote a small portion of this email," that's
20 towards the bottom. I said, "What are the experiences of
21 others," in capital. And then it says, "To quote a small
22 portion from this email," I'm quoting somebody's email,
23 "Just stumbled upon your website and read the review
24 about Guildford Lane Gallery. I am a recent exhibitor in
25 GLG and I'm just having the most difficult time in my
26 personal career. I exhibited a show which is about human
27 rights and the gallery owner has done a massive damage to
28 my professional reputation. Robert embarrassed the
29 directors and executives as well, not only him being
30 unreasonable on everything, he has been sexually
31 harassing staff and volunteers as well. How do I know?

1 Because he's been telling it to his staffs every next day
2 like he's done something awesome. I need to stop this
3 and want to save poor girls who are volunteering for
4 gallery assistant." That was removed.

5 Where did you get that email?---That was an email, to my
6 recollection it was 10 May of 2010 sent by Courtney Kim.

7 What date did you receive Courtney Kim's email?---To my
8 recollection it was 10 May 2010.

9 10 May 2010?---That's - yeah, the quote comes from that email.

10 HIS HONOUR: Is it Courtney King?---Kim. Kim, sorry, she's
11 Korean.

12 Kim, K-i-m?---She's Korean, so Kim, Courtney. So that's where
13 the quote actually comes from, but I've never referred to
14 it until I put it on this, and it didn't appear in the
15 original struck out writ.

16 When did you remove this you said?---I removed it either on the
17 day that this was printed or the next day on the 4th.

18 The 3rd or 4th, is that right?---Look, I actually don't
19 remember exactly the time. All I know is that it changed
20 the dynamics of what I was writing about. It wasn't
21 about what Robert Cripps has done to others, it was
22 merely - it was supposed to be - it altered the direction
23 I wanted to take. And the other part, yeah, the part
24 that I altered was a part that said that which has been -
25 sorry, it's right in the middle part there where I've
26 said, "Which has been arrived at by bullying, badgering
27 and threatening legal action against others which has
28 resulted in them remaining silent is his true character."
29 I altered that part.

30 So what was the alteration that you made?---I said words to the
31 effect that now I know why others haven't spoken of him

1 or something like that. I reduced it because it was way
2 too definitive. I thought it was - - -
3 So you deleted the words, "Which have been arrived at by
4 bullying, badgering and threatening legal action against
5 others which has resulted in them remaining silent"?
6 ---Although I believed that to be true at the time. I
7 removed it because I didn't - it was a bit ambitious.
8 When did you alter it?---Well, it was either on the 3rd of the
9 4th. But the page was uploaded either on the 2nd or
10 early on the 3rd. I was working night shift and I can't
11 quite remember whether I did it because I edited it and
12 then looked at it the next day and then uploaded it. I
13 can't remember the exact sequence that I took, but I did
14 alter some of the other wording as well later, just
15 typos.

16 MR GILBERTSON: Yes, thank you. You can close that document
17 now, Mr Vakras. You are aware that in this proceeding in
18 your second further amended defence there are a number of
19 meanings pleaded as to what your articles mean to the
20 ordinary reader?---I am aware of them.

21 Are you familiar with them, the meanings I mean?---What the
22 meanings are, their claimed imputations?

23 Yes?---I am aware of them.

24 In particular I'm asking you about the meanings that are in
25 your second further amended defence. You're aware of
26 those?---I'd have to read them, sorry.

27 I'll show you a copy of your second further amended defence.

28 MR DIBB: If my learned friend is going to ask the witness if
29 he believes these meanings to be true could I ask that he
30 exhaust the memory of the witness as to what these
31 meanings are before he reads them.

1 MR GILBERTSON: Your Honour, it's not a memory exercise and, in
2 my submission, I'm entitled to show the witness his own
3 defence and ask him what his belief is.

4 HIS HONOUR: I agree with that.

5 MR GILBERTSON: (To witness) Would you have a look at this
6 document please. I'll just double check. No, that one
7 is marked. Just excuse me a moment, Your Honour. I have
8 two marked copies. There's one in the plaintiff's court
9 book I know. Perhaps if Mr Vakras could be shown a copy
10 of the plaintiff's court book. That's the pleadings.

11 HIS HONOUR: Perhaps if the defendants' court book can be given
12 back to the defendant and then when we've finished with
13 the plaintiff's court book give it back to the plaintiff
14 so we don't get confused?---Thank you.

15 MR GILBERTSON: I don't know whether the version you have been
16 handed, Mr Vakras, has tabs on it?---It does, yeah.
17 Would you have a look, please, at Tab 4.

18 HIS HONOUR: It might be Tab 3 because that's where mine is.
19 Tab 3 first, what do you see there?---Demetrios Vakras
20 and Lee-Anne Raymond further and better particulars of
21 amended - - -

22 Next one, Tab 4?---It's second further amended defence, first
23 defendant.

24 MR GILBERTSON: Would you look, please, Mr Vakras, at - I'll
25 just find my own because it's not tabulated. Have a
26 look, please, at Paragraph 8A, it should be on p.3?
27 ---Page 3, 8A.

28 Do you have that?---Yes, I do, 8A and it's got in lower case
29 (bc).

30 You'll see there it says, "Further or alternatively", he says,
31 that, "If the first Vakras article was defamatory of the

1 first plaintiff which is denied then in its natural and
2 ordinary meaning the first Vakras meant and was
3 understood to mean that (a), the first plaintiff treated
4 the defendants in a disgraceful manner and other artists
5 should avoid him". What do you say in relation to your
6 belief in relation to that meaning?---I agree with that.
7 When you say you agree with it?---Yeah, he did treat the
8 plaintiffs - the plaintiffs, he did treat us in a
9 disgraceful manner and other artists should avoid him
10 because - - -

11 HIS HONOUR: I think you were asked for an explanation.

12 MR GILERTSON: Yes, thank you, Mr Vakras. And what about the
13 meaning that Mr Cripps used economic duress to force you
14 and Ms Raymond to agree to terms that were not in the
15 original contract for rental of space of the gallery,
16 what do you say as to your belief in relation to that?
17 ---That is correct, that is true.

18 And in relation to the meaning that Mr Cripps profited from
19 your and Ms Raymond's art exhibition notwithstanding that
20 he inhibited your and her capacity to promote the
21 exhibition causing it to fail, what do you say as to your
22 belief in relation to that?---That is correct.

23 And the next that Mr Cripps is a racist who holds views that
24 are similar to those of Adolf Hitler, what is your belief
25 in relation to that?---In the context of what was
26 discussed which was Jews in Palestine, yes.

27 And the meaning that Mr Cripps is a bellicose bully, what do
28 you say about that?---His actions, yes.

29 Could you then next, please, Mr Vakras, look at Paragraph 9A
30 which should be on p.10?---Which one 9?

31 9A.

1 HIS HONOUR: It's not on p.10. Page 11 I think?---It's on p.11
2 here I think.

3 MR GILERTSON: Page 10 of mine, anyway you have Paragraph 9A?
4 ---Yeah, "Further or alternatively" he says.

5 What do you say about the meaning that Redleg Museum Services
6 Pty Ltd is a company of questionable repute and not to be
7 trusted?---Well, Redleg ran Guildford Lane Gallery so in
8 a sense they're one and the same company.

9 HIS HONOUR: I don't think he's asking you for an explanation?
10 ---OK, sorry.

11 I think he's asking you whether - - -?---I do agree with that
12 on that understanding, sorry, yes.

13 MR GILERTSON: And finally in this regard if you could look,
14 please, at Paragraph 12A?---12, where are we up to. 12A.

15 HIS HONOUR: 14?---Yeah, thank you.

16 MR GILERTSON: In relation to the meaning that Mr Vakras -
17 sorry, I withdraw that, that Mr Cripps' intimidating
18 behaviour has left other artists reticent to describe
19 publicly their own negative experiences with him, what do
20 you say as to your belief in relation to that?---That is
21 true.

22 And in relation to the meaning that Mr Cripps has sexually
23 harassed volunteers and staff at his gallery, what do you
24 say as to your belief in relation to that?---I believe
25 that to be true.

26 Yes, thank you. You can hand back that plaintiff's court
27 book. Would you take the court through a brief summary
28 of the artwork you have sold, Mr Vakras?---It's going to
29 be very short because it's not much. Yeah, it's - I
30 haven't sold very many works. I sold - the last work I
31 did sell of course was the digital work that was

1 exhibited at Guildford Lane Gallery and that was for
2 \$450. The period before that, sometimes what constitutes
3 as a sale may not be the actual work itself, I sold at
4 some stage in 2004 because we go back a bit, the
5 copyright to one of my images for a metal, some heavy
6 metal band in the United States wanted to use it on their
7 cover. Prior to that I sold in Guildford Lane -
8 Guildford Lane - at Roar Studios in 1999 I sold one
9 painting some time during the exhibition that was about
10 \$1200. During the course of that exhibition I sold eight
11 to ten digital prints. They were A4 size prints. They
12 were all pinned up on the wall and people would say I
13 like that one and then they would buy it for \$10 and
14 after the exhibition at Roar finished I was contacted
15 because somebody who had seen the work was interested and
16 bought one of the works outside of the exhibition that
17 was about \$950. I have bartered some drawings in the
18 meantime to get some books on the Vienna School of
19 Fantastic Realism so I've bartered some drawings that I
20 did for some books that are in German, one of them, yeah,
21 and before that I sold some mass produced landscapes, as
22 I call them. They matt landscapes that take something
23 like an hour to paint so I've sold probably about two or
24 three of those in the past and that is my bare cupboard,
25 not much.

26 Yes, thank you.

27 HIS HONOUR: Mr Dibb.

28 MR DIBB: I see it's seven past four, Your Honour. I'd like to
29 get some instructions before I commence cross-examining
30 Mr Vakras. It might be more convenient for him also not
31 to be in cross-examination overnight.

1 HIS HONOUR: Yes, all right, that's convenient for me. Any
2 other matters the parties wish to raise before we adjourn
3 until tomorrow?

4 MR GILERTSON: No, Your Honour.

5 HIS HONOUR: All right, thank you very much. Madam associate,
6 can you please adjourn the court until 10.30 tomorrow
7 morning.

8 <(THE WITNESS WITHDREW)

9 ADJOURNED UNTIL WEDNESDAY 19 MARCH 2014

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1 MR GILBERTSON: Just two preliminary matters, Your Honour.

2 HIS HONOUR: Sure.

3 MR GILBERTSON: Firstly some transcript corrections. Page 118,
4 Line 9. The website is leeanneart.com.

5 HIS HONOUR: I direct the transcript service to make that
6 correction to Line 9 on p.118 of the transcript and
7 substitute leeanneart.com.

8 MR GILBERTSON: There's a similar correction on the next page,
9 p.119, Line 7 where it says leanneart.. That should be
10 leeanneart spelt as previously, .com.

11 HIS HONOUR: Yes, I make similar direction in relation to Line
12 7 on p.119.

13 MR GILBERTSON: And Line 27 on that same page, the woman's name
14 is Josie Waddelton, W-a-d-d-e-l-t-o-n.

15 HIS HONOUR: Yes, I direct that that change be made to Line 27
16 on p.119.

17 MR GILBERTSON: Just two more, Your Honour. Page 163, Line 11,
18 it should be arts, not art.

19 HIS HONOUR: Yes, Line 11, p.163 substitute arts for art.

20 MR GILBERTSON: The final is on p.202, Line 9, it should be
21 disclaimers rather than disclaimants.

22 HIS HONOUR: Line 9, p.202 substitute disclaimers for
23 disclaimants.

24 MR GILBERTSON: On Line 19, my recollection is the words were
25 on 11 and 12, "I said, well, we're really going to have
26 to photograph them," not him.

27 HIS HONOUR: What do you say about that, Mr Dibb?

28 MR DIBB: I was puzzling why my lining was different on my
29 version. I think that my learned friend is correct.

30 HIS HONOUR: That's my recollection too and the context
31 suggests that that must be so. On Line 12, p.202

1 substitute them for him. Thank you. Anything else?

2 MR GILBERTSON: Just one other matter. We've obtained

3 overnight, Your Honour, some photographs in relation to

4 the door of the premises and I seek leave to ask

5 Mr Vakras some questions in relation to those photographs

6 which I can distribute.

7 HIS HONOUR: Anything to say about that, Mr Dibb.

8 MR DIBB: I should have asked some questions last night, Your

9 Honour. May I see the photographs involved?

10 HIS HONOUR: I'm inclined to allow this. They're really memory

11 joggers, no more than that.

12 MR DIBB: Yes. No, I have no objection, Your Honour.

13 HIS HONOUR: Thank you very much. Are you ready for Mr Vakras?

14 MR GILBERTSON: Yes, Your Honour, Mr Vakras be recalled.

1 <DEMETRIOS VAKRAS, recalled:

2 MR GILBERTSON: Mr Vakras, I'm going to show you this document
3 with a copy for His Honour. What is that that I've just
4 shown you?---That is a picture of the photograph of the
5 front doors of Guildford or what used to be Guildford
6 Lane Gallery.

7 How did you obtain this photograph or these three photographs?

8 ---Robert Cripps has still got his Guildford Lane Gallery
9 Twitter page going. He has a background image on that
10 Guildford Lane Twitter page and that is the background
11 image. The screenshot comes from a screenshot taken last
12 night.

13 By you?---Yeah. The screenshot is of what appears on the
14 internet.

15 So if one goes from the back what is the third of those
16 documents?---That's a screenshot itself. That shows you
17 the Guildford Lane Gallery Twitter page, and if you have
18 a smaller computer screen the text that you see in the
19 middle part ends up going over the image, but once you
20 pull out the browser the wording moves across and you can
21 see the full image that he has in the background, and
22 that is Robert Cripps's or Guildford Lane Gallery's own
23 photograph that they've used in the background there.

24 Go to the photograph in the middle?---Yes.

25 What is that?---That's a detail of the part that's exposed.

26 Then the first photograph, what's that?---That's a detail again
27 of the detail.

28 Are you able, looking at those photographs, to see any fixed
29 sign on the door?---There are no fixed signs on the door.
30 They're all - they're four plastic sleeves.

31 I tender that, Your Honour.

1 MR DIBB: I object, Your Honour. The witness can't see that
2 from there?---I absolutely - - -
3 I'll cross-examine.

4 HIS HONOUR: He's expressing an opinion as to what he sees in
5 the photograph. Ultimately what is in the photograph is
6 a matter for me. I don't think you can object to the
7 tender, Mr Dibb.

8
9 #EXHIBIT D3 - Three photographs.

10 HIS HONOUR: Are you ready to cross-examine, Mr Dibb?

11 MR GILBERTSON: There's one other set of photographs, Your
12 Honour.

13 HIS HONOUR: Sorry.

14 MR GILBERTSON: I'll hand to you, Mr Vakras, and to His Honour
15 another set of photographs. What are these photographs,
16 Mr Vakras?---They're photos of the outside of Guildford
17 Lane Gallery again. They appear to be earlier, like, as
18 Guildford Lane Gallery looked at an earlier time prior to
19 whenever he took, or whenever this first photo was taken.
20 How did you obtain these photographs?---Well, if you look,
21 there's two parts of this document. The second part,
22 it's, say, on a Mac if you right click onto an image it
23 gives you like what's called the metadata and it tells
24 you where from, which is on the middle part there and
25 it's got http://sphotos, and the FBC is Facebook. That's
26 their code. So if I were to put a photograph into
27 Facebook that would be the code. It also shows that I
28 took this image off a particular Facebook page in July
29 2012, but I do not know whether it was - he had several,
30 Robert Cripps had several Facebook pages running. Some
31 were for Guildford Lane Gallery, some were for Ruby's
32 Room, some were for Ruby's Music Room, so I do not recall

1 which one of those the photo was posted in.

2 The first photo of those two is what?---Are you talking about
3 this?

4 Yes?---That's of the two front - it shows the front, main front
5 doors but it shows the sleeves as they were arranged when
6 we were exhibiting, because if you make a
7 comparison - - -

8 Yes, I'll stop you there. I'll stop you there. I tender that,
9 Your Honour.

10 MR DIBB: Your Honour, my objection to this is it's not clear
11 what the date of this document is. I'm not expert
12 enough, Your Honour, to know if this date 4 July 2012 -
13 and perhaps the witness can assist - indicates when, as I
14 think he's suggested, is when he pulled it off the web.

15 HIS HONOUR: That's right?---That is.

16 He said he doesn't know when this was taken other than it was
17 at an earlier time than when this was taken. That's all
18 he said.

19 MR DIBB: Well, I object to the tender on the basis that its
20 provenance is uncertain and we don't know what it really
21 represents.

22 HIS HONOUR: That's a matter of weight I think.

23
24 #EXHIBIT D4 - Two photographs.

25 MR GILBERTSON: As Your Honour pleases.

26 MR DIBB: Thank you, Your Honour.

27 <CROSS-EXAMINED BY MR DIBB:

28 You've still got Exhibits D3 and D4 in front of you haven't
29 you?---I do have these two exhibits.

30 I might just ask you one or two things about those now. You
31 were explaining, looking at D4, the second page of D4?
32 ---Is that - - -

1 You were explaining I think what the meaning of that panel is
2 to the right of the photograph?---That's correct.
3 Can you tell us what we can tell from that panel? Can we tell
4 when this photograph was taken?---We can't tell when the
5 photograph was taken. All we can tell from the
6 photograph is that the computer retains a record where
7 the photograph came from, and it came from the internet,
8 the http address, and it tells me where - - -
9 Just stopping you there, Mr Vakras. Where did it come from?
10 ---From <http://A1.sphotos>.
11 I see. This is about the middle of that column, right?---Yeah.
12 And that, the FBC indicates that it was a Facebook photo.
13 If you put - - -
14 On which Facebook page did you take that from?---As I said, I
15 don't recall which Facebook page but it was - Robert
16 Cripps has, had multitudes or a multiplicity of pages
17 regarding his different facets of his Guildford Lane
18 Gallery, so I don't recall.
19 I take it from that that you were monitoring Mr Cripps's
20 Facebook pages in their various facets at that time?---I
21 was looking at different exhibition openings and I was
22 looking for different, different things that might be
23 useful in the façade of the building and different
24 exhibitions.
25 This might, you were saying, be the Ruby's Music Room Facebook
26 page?---Ruby's Music Room started off as Ruby's Room,
27 which was a room in Guildford Lane Gallery. Robert
28 Cripps maintained Ruby's Room and when he started his new
29 venue he retained the Guildford Lane Ruby's Room and it
30 became Ruby's Music Room and it still continued on as if
31 there was never a cessation.

1 HIS HONOUR: I don't think you answered the question, and you
2 really should focus on the question?---Sorry, yes.
3 The question was; could this be of Ruby's Room?---I don't know.
4 MR DIBB: You don't know?---No.
5 When you were monitoring Ruby's Music Room - - -?---No, I was
6 monitoring - you do realise what the date - the date is
7 before - - -
8 4 July?---Yes, and that's before Ruby's Music Room ever opened
9 as a venue. Ruby's Music Room opened as a venue
10 according to the announcements that we heard in the
11 middle of 2013, so this is a year before that. I didn't
12 even know he was going to open new business.
13 How often were you monitoring these various Facebook pages?
14 ---At this stage not very often at all.
15 When you say at this stage is that because it's now three years
16 after your exhibition?---No, that wasn't - I had - I was
17 looking at Guildford Lane Gallery openings and looking at
18 images on Google searches but at that stage I was looking
19 for images of the façade of the building.
20 Why were you looking for images of the façade of the building
21 at that stage?---To see the various manifestations of how
22 the façade changed over time.
23 These other images that you've taken from the Twitter page, you
24 say you've taken those last night, yes?---That's correct.
25 Are we able to tell from this material when that photograph was
26 taken?---From that photograph there's no way.
27 You can't - - -?---I cannot tell when that photograph was
28 taken. If you want me to tell you - - -
29 You can extract that sort of data?---The only thing I can
30 extrapolate is via the signage of the exterior, that the
31 one on the Twitter page is at a later date. I'm looking

1 at the middle page. Because it has the signage over the
2 top that did not exist until some time after and since we
3 never revisited the building we don't know when that was
4 put up. That is absent in the earlier photograph.

5 You're referring to the Urban Codemakers sign are you?---I
6 don't know what sign you're referring to but there's one
7 which has a green sign which has whatever it is. There's
8 three signs up the top. I don't know how to them. They
9 are absent in the first, in the other photograph.

10 HIS HONOUR: You were just drawing an inference that because
11 this photograph has more signs than this photograph
12 therefore this photograph is later in time than the other
13 one?---Yeah, because when we visited the gallery in 2008
14 to see the exhibition for the first time there was none
15 of this signage there, and we've never seen this signage
16 before so that we only know of the existence of this
17 signage via the photographs because we never went past
18 the gallery after exhibiting there.

19 You're quite expert with computer matters aren't you,
20 Mr Vakras?---I'm competent.

21 You'd describe yourself wouldn't you as being above average in
22 this regard?---Above average? It depends on what the
23 average is. I would - - -

24 It does, yes. Do you think most people know how to obtain this
25 sort of, what did you call it, metadata?---Metadata. All
26 you do is you right click on your - Windows provide
27 you - - -

28 HIS HONOUR: That's not the question though?---Yes, I do
29 because I don't - I've always looked at the metadata.
30 You right click on the mouse, it brings you the details.
31 If you have an image - - -

1 Sorry, the question was; would most people know this?---I would
2 believe that most people that I know who would use Macs
3 know how to, would do this.

4 MR DIBB: You operate your own website don't you?---Yes, I do.
5 Do you and Ms Raymond cooperate in the management of these
6 websites or do you manage your own?---We each manage our
7 own website.

8 But you share a computer and you have access to one another's
9 emails don't you?---Correct, yeah.

10 You're aware aren't you from your knowledge of computers that
11 you can enhance the rank of any particular page using
12 some techniques aren't you?---I'm not sure what you're
13 referring to. The websites that we have were created in
14 the years 1999 and they were submitted back then to
15 search engines like, so I'm not sure what you mean.

16 You submitted them to search engines?---In 1999.

17 In 1999. And they've been searched ever since, yes?---Correct.

18 Do you check the ranking of your pages on search results?---No,
19 I don't. I did a search for my page once, doing a search
20 say for fantastic art, and I came as Number 3 in
21 Australia, and I came as Number 3 in Australia, and I did
22 searches on google.gr, which is a Greek version in Greek
23 to find that my page was also - one of my pages was in
24 the Greek language, was ranked on Page 1 as well, so I
25 have done those searches for fantastic art, which is what
26 my sites orientated toward.

27 I'm going to show you a document and ask you if you can tell us
28 anything about it. I only have the one copy of this
29 document. I hadn't planned this particular line of
30 questioning at this time. Have a look at that document,
31 would you, Mr Vakras. Can you tell us what you think

1 that document is?---Well, it was like a Google search.
2 Can you tell from that document what the date of that search
3 was?---The date of that search was on 19 March of this
4 year.
5 So that's today?---That's what it says.
6 Can you tell the time?---7.45 a.m.
7 What's the search term?---The search term is Robert Cripps.
8 What's the first result?---I would like this search to be done
9 on Bing because you'll get different results. The first
10 result says Redleg v. Artists.
11 If I show you a document, can you tell from that Google search
12 result page that you see there?---Yes.
13 Whether that first result would have led to this document, to
14 this web page?---It does.
15 And this web page, would you identify this web page?---This is
16 our site, Redleg v. Artists.
17 And is this a site maintained by you?---It is largely
18 maintained by me.
19 When you say largely do you mean it's partly by you and partly
20 by Ms Raymond?---It started off as a joint site but I've
21 added some elements to it.
22 You've maintained this site in connection with these
23 proceedings?---The site started off with regards to the
24 VCAT.
25 With regards to VCAT?---Well, its regards with us - it was it
26 included these proceedings but it was regarding our VCAT
27 claim so it was put in - - -
28 It's called Redleg v. Artists?---That's right.
29 Rather than Artists v. Redleg, isn't it?---Yes.
30 I suggest to you that that's because it related to Supreme
31 Court of Victoria 1 484 [2011] as it says a little

1 further down the page?---Yes, yes.
2 Which is these proceedings, the defamation proceedings rather
3 than the VCAT proceedings?---It does, yes, it does.
4 So it was in fact about the defamation proceedings, wasn't it,
5 Mr Vakras?---It was about both.
6 Could you go back to the Google search again, please, and I
7 apologise for not having a copy of this for Your Honour
8 but I didn't foresee this particular line coming up at
9 this time.
10 HIS HONOUR: That's fine.
11 MR DIBB: If you look at that Google search from this morning?
12 ---Yes.
13 Can you say what the second - I withdraw that. Can you say
14 what other results and perhaps you can do them by number,
15 relate to pages maintained by you or by Ms Raymond?
16 ---Yes, the third one.
17 The third one?---Yes, and the second last one because the last
18 one is actually you the YouTube.
19 So the second last one on the front page of that search, any on
20 the second page?---No.
21 I don't have a copy for me so I couldn't see it, OK. So the
22 first, the third and the second last?---The first page is
23 actually - - -
24 Perhaps I could have that back?---Sorry.
25 Before I do that could you just tell us which pages those other
26 search results lead to?---The first one there leads to
27 Redleg v. Artists. The next one leads to the site called
28 Human Transhumanist which was our publication.
29 Yes?---The next one is to Phantastart which was a site founded
30 - anyway, that's to Phantastart which our site.
31 I haven't actually investigated this at this stage, Mr Vakras,

1 but you can probably save us a lot of trouble. The
2 Humanist Transhumanist page to which the third result
3 would lead?---Yes.

4 Is that a later version of the first or second matters
5 complained of in these proceedings?---The Humanist - - -

6 I mean I could probably get it up now?---The Humanist
7 Transhumanist page is the matter that we put into VCAT,
8 that particular page that it goes directly - Humanist
9 Transhumanist was the name of our publication and on that
10 page Humanist Transhumanist it has a link to the
11 application that was submitted in I think it was 20
12 August 2011 to VCAT so it has the actual page of paper
13 that was submitted to VCAT, so that's what that is.

14 I'm less expert than you are at this. And the second last one,
15 what does that lead to?---The page on Phantastart.

16 Phantastart is what?---When we were disconnected, we had our
17 pages taken down, we moved to a different IS web hosting
18 service there was a period where our sites were not
19 available so we created a new profile Phantastart. So
20 phantastart.comvakras hosted for the period that my site
21 was missing, vakras.com, so basically it mirrored my site
22 and there was phantastart/leeanneart which was Lee-Anne's
23 site that was mirrored so that was during that period of
24 time and it just remains there.

25 I'll show you a document, it's a web page. It's on this
26 computer. It seems very modern, doesn't it?---Yeah.

27 HIS HONOUR: I'm very impressed, Mr Dibb.

28 MR DIBB: Now, that page, do you want to scroll down, you're
29 familiar with that brand I think?---Yeah.

30 That page is a version, is it not, of the first matter or
31 second matter complained of in these proceedings?---Yes.

1 As I said, it was mirroring the site vakras.com. So it
2 was vakras.com because vakras.com was not available so
3 it's been left mirrored.

4 So is your evidence that that's now defunct that page?---No,
5 that page is extant.

6 So you maintain that page?---I don't maintain it in that I
7 don't make alterations to it. It's there. It hasn't
8 been - - -

9 Thank you, I'll have that back.

10 HIS HONOUR: So what is that, is that the second - - -

11 MR DIBB: Perhaps His Honour should see to understand
12 because - - -

13 HIS HONOUR: Which one is it?

14 MR DIBB: I haven't looked at the bottom. It's a version of
15 the matter complained of. I haven't looked all the way
16 down.

17 HIS HONOUR: I know that but what did you click to get into
18 that, was it the first, the third or the second last one?

19 MR DIBB: This was about the seventh results I think on that
20 Robert Cripps Google search.

21 HIS HONOUR: Yes, all right.

22 MR DIBB: It's described as the second last on that page.

23 HIS HONOUR: The second last.

24 MR DIBB: How many there are on the page.

25 HIS HONOUR: Mr Vakras gave evidence that this is a mirror of
26 the matter complained of so I'll just accept that.

27 MR DIBB: Yes. Why would the results be different with Bing,
28 Mr Vakras?---Because they actually are. I noticed on or
29 about 7 January, or it could have been in early part of
30 January so I can't be specific on a date, that all
31 searches on Google, if you searched Guildford Lane - the

1 first thing that I noticed was the
2 guildfordlanegallery.org page disappeared off the
3 internet. When I did a search on google.com and
4 google.com.au and searching Guildford Lane Gallery there
5 was an absence of guildfordlanegallery.org,
6 guildfordlanegallery.orgcontact,
7 guildfordlanegalleryfridaynightjazz or whatever other
8 links were associated. There's a plethora of Guildford
9 Lane Gallery search results that were gone. Guildford
10 Lane Gallery had a BlogSpot and although the BlogSpot is
11 still extant you can still find it, they did not appear
12 on any of the Google search results. I did a cross
13 comparison search on Bing and all of those searches for
14 Guildford Lane, all those guildfordlanegallery.org,
15 guildfordlanegallerycontact, all of those pages appeared
16 in a whole list and our material was much further down
17 the bottom but the difference between Bing and Google was
18 that some results of our pages don't turn up, didn't turn
19 up on a Google search because there's what's called a
20 chilling effect because they wrote to Google, the other
21 side wrote to Google. I know this because I contacted
22 Google and they have tended to be omitted from the search
23 results and on Bing some of those that were omitted on
24 the Google search result, which is our sites, appear on
25 it but it creates the impression somehow or another all
26 of the information has been removed from Google but it's
27 all still available on Bing so you can still find all the
28 Guildford Lane Gallery's own pages. So unless you do a
29 search, so Bing brings up their pages, Google now just
30 brings up anything written by somebody other than
31 Guildford Lane Gallery and Robert Cripps.

1 Can I ask you to have a look at this document again, is that
2 now a Bing search, isn't it, performed just now for
3 Robert Cripps?---Yes.
4 The first result is related to your matter, isn't it?---Yes.
5 And it leads to, to what page does that lead?
6 ---humanisttranshumanist, our VCAT claim.
7 And the second one?---The Guildford Lane Gallery page which you
8 can't find on Google usually because there's a chilling
9 effect on it.
10 Does that snippet refer to the toxic Robert Cripps?---Yes, it
11 does but Google picks its own snippets which it's got in
12 trouble before.
13 Yes, I know. Could you pass that back, please? Are there
14 others that are related to you?---The last link is
15 leeanneart.com/guildfordlanegallery.
16 Just before I pass from this, going back to the Google result
17 is there a Google result on that page? Not on the page
18 on the computer but on the printed page that you have?
19 ---Sorry. The images are on a cross, yes.
20 Are some of those images photographs of Robert Cripps with a
21 slash through them?---It's a cancel sign.
22 Cancel sign through them?---Or do not enter, whatever.
23 Do not enter?---Or don't smoke. Yes, there's three images
24 which have Robert Cripps in them.
25 Photographs of him with a do not enter sign?---Two with that.
26 One is our photograph from - that I took on 24 June 2009.
27 So you acknowledge that those results in the images section of
28 the search include photographs of Robert Cripps taken by
29 you with a do not enter sign across them and if we went
30 through those results we'd get to your pages again,
31 wouldn't we?---We would.

1 Thank you. Does anyone assist you with your internet
2 activities?---No.
3 You've heard of search engine optimisation?---I have heard of
4 search engine optimisation but it doesn't - yes, I've
5 heard of it.
6 Do you engage in anything that you would call search engine
7 optimisation?---No, I don't.
8 But you're aware also, aren't you, that you can request your
9 pages not to be indexed by search engines?---I've heard
10 that there is some code, MyRobot may follow code or
11 something but that's - - -
12 And you've never made any attempt to get your - - -?
13 ---As far as I know - - -
14 HIS HONOUR: Just wait for the question.
15 MR DIBB: To get your pages removed from the indexing of any
16 search engine, have you?---No, I haven't.
17 Indeed quite the reverse, you have been concerned at every turn
18 to make this material as widely available as you can,
19 haven't you?---No, I haven't.
20 You have whenever it has been de-indexed by a search engine,
21 well, when you've lost the ability to use one internet
22 service provider you've, because of these pages, you've
23 put those pages up on new service providers?---I have put
24 up the pages on new - it's not the pages, it's the entire
25 site.
26 The entire site?---Due to the circumstances.
27 That's happened a few times, hasn't it?---Yes.
28 While we're in the internet region I'll show you MFI3.
29 HIS HONOUR: Mr Dibb, did you want to do anything with these
30 documents that you've taken the witness to?
31 MR DIBB: Yes, I think I can tender those, Your Honour, but I

1 will need to make copies of the web search page because I
2 only have that one at this time.

3 MR GILERTSON: I object to the tender of documents that relate
4 to the searches. I object to the Google search and I
5 object to the Bing search. They're not carried out by
6 this witness.

7 HIS HONOUR: Sorry, what was the basis of the objection?

8 MR GILERTSON: They've been shown to this witness. They
9 weren't carried out by him. The provenance of the
10 searches hasn't been established in my submission. I
11 have no objection to the Redleg v. Artists document. The
12 witness has acknowledged that that's his website but the
13 others are searches that have been done by other people
14 that have been shown to him.

15 HIS HONOUR: What do you say about that, Mr Dibb?

16 MR DIBB: If my learned friend requires that I ask my solicitor
17 to do that search and print that page and give evidence
18 about having done so and then I tender those documents
19 through him I'll do it that way, Your Honour.

20 HIS HONOUR: So the person who carried out the search is your
21 instructor, is that right?

22 MR DIBB: Not those searches. Your Honour saw me do the Bing
23 search myself.

24 HIS HONOUR: Yes.

25 MR DIBB: And I did the Google search myself, that particular
26 Google search this morning. I have no influence on the
27 net, Your Honour. The result will be the same whoever
28 does it.

29 HIS HONOUR: Yes. I think in the circumstances that would be
30 an unnecessary step to take so I will accept the tender
31 of these documents but you can formally hand them up once

1 you've made copies and I'll give them a number at that
2 stage.

3 MR DIBB: Thank you, Your Honour.

4 HIS HONOUR: But I've made that ruling now.

5 MR GILERTSON: If Your Honour pleases.

6 MR DIBB: You were in court when I showed that document to

7 Ms Raymond, weren't you?---Yes, I was.

8 You understand that the top section of that document, does Your

9 Honour have MFI3?

10 HIS HONOUR: Yes, I do.

11 MR DIBB: You understand the top section of that document is an

12 email from Robert Cripps?---That's what it says on the

13 top.

14 And the second section is an email from a Liz Paul, address

15 liz@aemetal.com.au?---Yeah.

16 To Robert Cripps?---M'mm.

17 Then from "Begin forward message"?---Yeah.

18 There is one single long email including a number of embedded

19 pictures?---Yeah.

20 And it comes out the way it does because of the way it is

21 printed but it would be continuous on the page?---I

22 understand that.

23 Mr Vakras, do you know anything about the origin of that

24 email?---I only saw it for the first time yesterday.

25 Can I ask you, Mr Vakras, to look at the address header and to

26 tell us from whom that email appears to have been sent?

27 ---The email address is at info@redleg.com.au

28 Now looking down to the portion to which I refer which is

29 after, "Begin forward message", just below the middle of

30 the page do you see the line "Begin forward message"?

31 ---Yes, I do.

1 The portion below is the portion to which I refer. The two
2 messages above that are how it came to us, you might us,
3 but the portion to which I refer is below "Begin forward
4 message". You understand that, do you, Mr Vakras?
5 ---You're asking me to look at the image back down there,
6 is that - - -
7 No?---Sorry.
8 I'm asking you to look at the address header under "Begin
9 forward message" about two centimetres below the fold?
10 ---"Begin forward message", two centimetres from Ruby's
11 Music Room, is that the one you're asking?
12 That's the one I'm asking about?---Yes.
13 From whom does that email appear to have come?
14 ---rubysinfo@rubysmusicroom.
15 Have you read the body of the email, have you had a chance?---I
16 saw the front yesterday which is - - -
17 Ms Raymond of course didn't get a copy. So perhaps you'd like
18 to read down and read the contents of it?---What the
19 entire?
20 Yes?---Well, everything bar what are pages Number 2, 3, 4 and 5
21 looks to be taken directly off one of our pages, from
22 redlegvartists.
23 Yes?---How the front image on p.1 and the final image on p.6 is
24 not anything off our website.
25 So by the final image on p.6 are you referring to this box that
26 says Ruby's Music Room - - -?---The entire thing I have
27 no idea what that is.
28 All of p.6?---All of p.6.
29 And this Ruby's Music Room - sorry, RMR Jazz Classical Opera
30 and World Music box?---Yes.
31 That's the other one you're referring to?---That's the entire

1 thing, I've never seen it before.

2 That contains, doesn't it, "The reasons why you shouldn't
3 support Robert Cripps and his business fraud, for
4 additional reasoning search Robert Cripps Melbourne or
5 visit", and then there are three websites listed, aren't
6 there?---Yes.

7 And they're your websites, aren't they?---They are.

8 Are you telling the court that you believe there may be some
9 anonymous benefactor out there sending out this sort of
10 thing on your behalf and pretending it comes from Ruby's
11 Music Room?---I have no idea. I've never seen this
12 before until, well, I saw it yesterday. I have no idea
13 where this comes from. I have no idea what this is. I
14 can only speculate and I'm not going to. I have no idea
15 what it is.

16 You're aware that it's possible to obtain further data about
17 the path travelled by an email, aren't you, Mr Vakras?
18 ---I have been - I have heard that there's what can be
19 called spoofing and but I don't know how to do it and
20 I've never done it and I don't know any detail other than
21 it's called spoofing where you can create an impression
22 of something can be sent from someone but all I know is
23 that it exists but I have no idea.

24 Turning to your evidence yesterday, would you describe yourself
25 as a vain man, Mr Vakras?---No.

26 Or sensitive about your standing in the world?---No.

27 Turning to your evidence yesterday, for the benefit of my
28 learned friend I'm talking Transcript p.163, Line 11. My
29 learned friend asked you, "You got into Melbourne
30 University to do what"?---Yes.

31 And your answer was, "Arts, which was at that stage it was

1 before what's his name, John Dawkins decided to
2 amalgamate all the campuses so it was Melbourne Uni
3 proper". That's a small thing but - - -?---Did I say
4 what's his name?
5 - - - you were concerned to indicate that when you went there
6 it was an institution of even higher standing than it is
7 now?---No, not necessarily because when the campuses were
8 amalgamated Melbourne University incorporated within its
9 campus structure art colleges where they teach art. That
10 is, the practice painting and whatever. Before that
11 Melbourne University had nothing to do with art and
12 whatever so - - -

13 I see. So you were just making the point that you'd studied
14 arts as an academic subject rather than as a practical
15 discipline, is that right?---That's correct.

16 I apologise to you. Turning to your evidence about what we'll
17 call the failed meeting?---Yes.

18 We've seen the photograph that you've tendered. Your evidence
19 was, and this is p.181, Line 30 - sorry, I'll go back a
20 bit. You were asked at Line 25, "Did you observe
21 anything on the door". Your answer, "Well, the element
22 that made me think maybe Lee-Anne got the time wrong
23 because what was on the door was that the gallery is open
24 from Wednesday to Sunday which excluded Mondays and
25 Tuesdays and I was here on a Monday so yes, I did notice
26 that. There was however, there was two doors and there
27 was one thing, Guildford Lane Gallery and the hours of
28 operation and there was nothing on the other door?
29 ---That's correct.

30 When you said nothing on the other door did you mean nothing?
31 ---There was nothing.

1 Nothing?---There was just, there was the hours of Guildford
2 Lane Gallery and the hours of operation. There was
3 nothing on the other side to indicate what we were told
4 later that there was a phone number there because the
5 first thing I did was look to see if there was any
6 contact points because - anyway, there was nothing. The
7 next thing I did was look at the windows to see whether
8 the signage that was on the window to the left included a
9 telephone number. It only included telephone numbers to
10 the Melbourne City Council and - - -

11 I'll stop you there, Mr Vakras, yes. So when you say nothing
12 you mean absolutely nothing on that door?---I didn't see
13 that there was anything on that door at all.

14 Was there not because in the photographs you've tendered and in
15 the photographs I'll now show you, the photograph I'll
16 now show you from yesterday which was Marked For
17 Identification 3 I think?---Thank you.

18 You'll see in that photograph that there were the hours of
19 operation on the right hand door and two signs on the
20 left hand door?---As we discussed - or as you can't make
21 out what the signage says I'll take you on your word.

22 You can't but it's not nothing?---On the photographs, yeah
23 there are two bits of paper there but on the night that
24 we arrived those two bits of paper or the paper that's in
25 those sleeves was absent.

26 Are you saying now that the sleeves were on the door?---They
27 could quite likely have been on a door but there was no
28 other paperwork that indicated anything.

29 I suggest to you that you didn't look at those doors as closely
30 as you claim to have done?---Well, that's wrong.

31 I suggest to you that at minimum there would have been the two

1 sleeves?---Empty sleeves aren't actually - do not have
2 numbers on them so I was looking for numbers.
3 So you might have meant by nothing empty sleeves?---Yes, but I
4 didn't pay any attention to them being empty because
5 there was nothing there to look at. I didn't notice
6 gauging from these photographs that there's no admittance
7 sign on one of the doors. There's a number of details
8 that when you're looking for something you're not going
9 to notice because they're irrelevant to what you're
10 looking for.

11 When you said that you thought perhaps Lee-Anne had got the
12 time wrong?---Yes.

13 That was based on the sign that showed the opening hours, yes?
14 ---That was based on the signage there that demonstrated
15 pretty clearly that the gallery is not open on Mondays
16 and Tuesdays.

17 Did you perhaps think that Lee-Anne had got the time wrong and
18 not really investigated the matter much further?---Well,
19 I thought something may have occurred and Lee-Anne
20 didn't, maybe Lee-Anne had it wrong. I went there and it
21 was closed up. It's - yeah. It was a consideration.

22 When you came to send the emails that you sent following the
23 failed meeting?---Yes.

24 Some of them were in fairly strong terms, weren't they?---Yes,
25 they were robust, intentionally robust.

26 When you were giving evidence I suggest that you were trying to
27 paint the picture of a building in which there was no-one
28 present?---There wasn't anyone present as far as we could
29 see on the basis of the observations that we made.

30 You thought they'd gone home, didn't you?---Yeah, there was -
31 the ground floor you can see all the way in. Yeah, if we

1 look at the photos that we tendered earlier which is the
2 best aid, if I may point to - the signs there were
3 absent. Now, in that window there, there was a liquor
4 licence application and there was - - -

5 HIS HONOUR: Can you show Mr Dibb?---Yeah. The liquor
6 application was in that window. There was nothing in
7 that window and you could see in because the lights were
8 on in the interior. You could see all the way to the
9 back. You could see to the stairs leading up and you
10 could see around to where the reception of the gallery
11 was. The tables were there - the folders were open on
12 the table and it did look like it had been left in some
13 haste.

14 MR DIBB: You believe that everyone was lying to you about
15 being there and waiting for you?---That's correct.

16 And about there being a number on the door?---That's correct.

17 You thought they'd forgotten you and gone home?---I don't think
18 they'd forgotten me. When Lee-Anne and I left we
19 decided, we thought to ourselves, well, maybe something
20 occurred.

21 You thought maybe something had occurred?---Yes, from the other
22 side.

23 But when they said we were in the gallery and waited for you,
24 why didn't you call?---Yes.

25 Did you still think maybe something had occurred?---No, that to
26 us was a pretty bizarre call.

27 You believed that was a lie, didn't you?---I do believe that
28 was a lie and there's no - yes, and the email of itself
29 didn't prove anything one way or another.

30 You referred throughout your evidence to things being bizarre
31 and no activity. Can you think of any reason why they

1 would, if they'd been called away, wouldn't have just
2 told you that?---That exactly the question that I have.
3 Did you think they weren't taking you seriously?---I have no
4 idea.

5 At times you have said they're not taking us seriously, haven't
6 you?---Pardon, I'm not sure.

7 I'll come to it.

8 Following the failed meeting you said that Lee-Anne said,
9 "Don't do anything, I'll contact them first"?---That's
10 right, yeah.

11 Why did she say that? Was it because she was concerned that
12 you were - - -

13 MR GILERTSON: I object to that.

14 HIS HONOUR: How can he say - - -

15 MR DIBB: I'll withdraw the question. (To witness) You
16 referred in your evidence and I truly don't know what
17 this means and I wonder if you've been misquoted, you
18 referred in your evidence to, "We had surreptitiously
19 received an email from Melanie Trojkovic"?---Yeah.

20 HIS HONOUR: That's what he said. It's not a misquote.

21 MR DIBB: Yes, right. What did you mean by surreptitiously,
22 Mr Vakras?---Well, it happened. Maybe I used the wrong
23 word. But it had arrived on the same day that the
24 arrangements were being made by Lee-Anne Raymond with
25 Lian Low I'm going to the gallery. Melanie Trojkovic
26 sent an email on that same day. The email included in
27 it, as far as I know, was the - was it the exhibition
28 pack? Anyway, it was advised to come into the gallery,
29 it's approaching the time for your exhibition, at this
30 stage we advise artists to come in and assess, basically
31 we go over to see how we're going to utilise the space

1 which is standard procedure.

2 So you don't mean that it was a secret communication or
3 something like that?---No, no, no. It's just that what
4 we were embarking to do was what the gallery itself in
5 the form of Emily - Emily, Melanie - - -

6 HIS HONOUR: You mean it was ironic that it happened in that
7 way or something like that?---Yeah, it just happened. As
8 we were doing that, that happened so, yeah, we were
9 apparently at that stage on the same wave length.

10 MR DIBB: A little further on, after you'd been informed that
11 the gallery was very busy for a period you said in your
12 evidence, "I said they're" - this is Transcript 188, Line
13 21, "I said they're obviously looking at us as a joke.
14 There's something really wrong. I'll email them in a
15 tone that is less than - I mean they were obviously, I
16 don't know, they were not taking us seriously so I
17 changed the change of the" - and I think my learned
18 friend then took you to an email. You were concerned
19 that you weren't being taken seriously, weren't you?
20 ---Lee-Anne had sent several rather innocuous emails
21 asking where they were and the responses that we had were
22 in our opinions quite odd and it seemed that we weren't
23 being taken seriously. It was after we paid the entire
24 amount for the hire of the space. It was after the
25 period in which the contract stipulates we would lose the
26 entire amount that we had paid and we were wondering was
27 that related. So yes, we were concerned that the
28 demeanour of the gallery had altered or changed.

29 Are you a man who's sensitive about his standing in the art
30 world?---I have no idea what that means.

31 Are you, and you may not be the best judge of this, Mr Vakras,

1 I can understand that, but are you someone who's - are
2 you a vain man, would you say?---You asked me that
3 question before.
4 Yes. I'm asking it to you again?---I answered it before.
5 When you were describing your exhibitions?---Yes.
6 You referred to one in Chicago Illinois, United States, do you
7 know many Chicago's, Mr Vakras?---Pardon?
8 Do you know many Chicago's?---No, there's only one Chicago.
9 Did you, and again it's a small but perhaps indicative thing,
10 Mr Vakras, isn't it, did you call it Chicago, Illinois,
11 United States because it was a feather in your cap?
12 ---This is my exhibition page. It's the CV. Every
13 artist lists where they've exhibited that their - so
14 there's nothing - - -
15 Were you reading from something when you gave that evidence,
16 are you saying, you were reading from your exhibition
17 page? I'm talking bout your oral evidence yesterday?
18 ---No. I was just saying that Chicago, Illinois, United
19 States. Sorry, I thought it was - no.
20 How many copies of the catalogue did you have printed,
21 Mr Vakras?---A lot. It was 4000 I think, 4000.
22 4000?---No, 2000, sorry. 2000, yeah.
23 2000 copies. You'd had exhibitions before, hadn't you?
24 ---That's correct.
25 In previous exhibitions even at the most successful of them
26 only a few works were sold, weren't they?---That's
27 correct.
28 How many - well, I suppose we could look at the pricelist,
29 Document 40. Was there a minimum printing required by
30 the printer?---Well, with the printer if you had say 1000
31 it was going to cost \$2500 or whatever, or I can't

1 remember what the fee was, and then for about 1000 more
2 you doubled the amount so we decided we would double the
3 amount.

4 But you can't possibly have thought you were going to sell 2000
5 copies at \$15?---Absolutely not.

6 Absolutely not did you say?---No. Yes. The purpose of the
7 publication was to have a publication ready to be
8 available for sale at future exhibitions. When we did
9 the Humanist Transhumanist exhibition we had also applied
10 at the same time, or Lee-Anne had made an application to
11 what was called a Substation at Newport and that was the
12 proposal for that exhibition which fell through, was that
13 we were going to continue the Guildford Lane Gallery
14 Exhibition Humanist Transhumanist at the Substation as
15 well. So we intended on trying to gain as much momentum
16 during that period of time such as a fellow named Edgar
17 Gambin had always with every exhibition he held, he sold
18 his publications. Another one, Dominic Ryan, he had
19 publications that he sold for exhibitions that he held.
20 So you create a publication not necessarily for the
21 purposes of selling it during that exhibition alone but
22 for the purposes of selling it in further future
23 exhibitions.

24 Yes, because the expenditure on the catalogue would have been
25 out of all proportion of what you would have earned at
26 this exhibition?---The expectation is that we would have
27 recouped enough money from the sales we had. We had
28 enormous interest in the past in asking for catalogues.

29 How many copies, being serious with the court, how many copies
30 did you expect to sell?---How many copies? We expected
31 to sell a couple of hundred.

1 So the other 90 per cent you didn't expect to sell at this
2 exhibition at all?---We expected to - well, we were
3 hoping to sell a lot more than a couple of hundred but
4 the purpose of having the catalogue was to take it with
5 us for future exhibitions as well.

6 If you'd been preparing a catalogue for just this exhibition it
7 would have been less elaborate and less expensive?

8 ---That's pretty much correct.

9 I want to talk a bit about Palestine because it comes up in the
10 conversation as you report it, with Mr Cripps. You're
11 aware of course that there's - you're a man who is fairly
12 aware of what's going on in the world aren't you?---I
13 have awareness, yes.

14 You regard yourself as reasonably well informed do you?

15 ---Reasonably well informed. I've never claimed to be
16 omniscient.

17 HIS HONOUR: I'm sorry, I didn't hear that?---Sorry. I've
18 never claimed to be omniscient.

19 MR DIBB: You're aware that there's a range of opinions about
20 the political situation in the Middle East aren't you?

21 ---There is a range of opinions, that's correct.

22 You know for example, or do you know - I suggest you must - you
23 know that United Nations has occasionally passed
24 resolutions with respect to the situation in the Middle
25 East?---That's correct.

26 You know that many countries have protested against the
27 expansion of settlements for example?---That is correct.

28 Or the building of the wall dividing some Arab lands?---That is
29 correct.

30 Are you aware that the expansion of settlements is widely
31 regarded as illegal?---Yes.

1 You're aware that that's a substantial minority opinion within
2 Israel itself aren't you?---A substantial minority? A
3 substantial minority of Israelis are Palestinians, that
4 is, Arab, Muslims, some are Christians as well, so there
5 would be a substantial - I think 20 per cent, so that
6 could constitute a substantial minority that would be in
7 agreement with that idea that you're suggesting.

8 You think that no one except Christians and Muslims would
9 regard the occupation of the West Bank as being improper
10 or the conduct of that - - -?---I would believe - I have
11 - I believe that there would be people who are of Jewish
12 - Jewish Israelis would agree that some of the goings on
13 are illegal as well, yep, I wouldn't disagree with that.

14 You don't regard them all as dangerous racists who've embraced
15 the views of Adolph Hitler do you?---No.

16 I'd like to take you to the conversation - I'm going to take
17 you to the opening night of the gallery, of your
18 exhibition at the gallery on 18 June. You remember that
19 day of course?---Yes.

20 You've given evidence haven't you that there was a conversation
21 between yourself and Mr Cripps?---That's correct.

22 You said that this happened about 8.15?---I said it happened
23 about eight.

24 You say it as preceded by Mr Cripps being passed by a lady who
25 made a comment about your work and the Muslims, giving it
26 to the Muslims, or something like that. I'm talking here
27 of on transcript p.192. You say, "She said are you
28 artist from upstairs?" Had you seen her before?---No.
29 She was an older lady. I don't know who she was other
30 than how she identified herself to me.

31 She said, "I love your work. It's about time somebody gave it

1 to the Muslims"?---That's correct.

2 You say that Mr Cripps heard that?---Yes.

3 I put it to you that that didn't occur?---It did occur.

4 You say in your evidence there - had you had discussions before

5 this - we were talking about Palestine - had you been

6 talking about Palestine to Mr Cripps before this?---I've

7 never talked about Palestine to Mr Cripps ever.

8 Had you had any discussions with him about politics at all?

9 ---Never had any discussions about politics. The closest

10 to politics was when I was hanging one of my paintings

11 called The Fucking Press. Pardon?

12 Yes?---It had a short essay and Mr Cripps was looking at that

13 painting and I said to him, "Oh, that painting is

14 inspired by Peter Costello," and I did not progress

15 further than that. He says, "I don't like Costello," and

16 he did a quick spin and walked away.

17 That's the only conversation you'd had about politics?---That's

18 the only conversation that I had that it could in any way

19 be described as political.

20 What about religion, did you discuss religion with him?---We

21 did not discuss religion.

22 You knew nothing of his views about religion?---No, I don't. I

23 could speculate on his view but, no, I didn't.

24 Or beyond not liking Peter Costello, from which I suppose you

25 might infer that he wasn't a coalition supporter, you

26 knew nothing of his views on - - -?---No. I thought it

27 was odd because I'm not a coalition supporter either.

28 No, I didn't know anything about his political views.

29 You gave evidence here on p.192 that this woman said, "It's

30 about time somebody gave it to the Muslims." And you

31 said, "Well, it's not really a criticism of Islam." And

1 she says, "I understand what you're meaning but it's
2 about time somebody did give it to the Muslims"---That's
3 correct.

4 Then you said, "And Robert Cripps just passed the lady because
5 we were on our way out, and I looked up at him and said,
6 'You realise it's not what she's saying'"---Did I say
7 Robert Cripps passed that lady? Because she - I was
8 walking toward Robert Cripps. We were on the ground
9 floor and she passed between us as I was approaching
10 Robert.

11 She passed between you?---And Mr Cripps.

12 So putting to one side the question of whether he passed her or
13 she passed between you, you looked up at him you say and
14 said, "You realise it's not what she's saying"---That's
15 right, because it seemed a bit embarrassing to have that
16 claim made.

17 Can I suggest to you that this statement is a reflection of the
18 later conversation that somehow got imported forward.

19 Why would you say that to Mr Cripps?---Because it's not a
20 reflection of what my exhibition was about. I don't
21 understand what your question means.

22 What I'm suggesting to you is, one, that this didn't happen at
23 all?---It did.

24 And two, that there's something just a little bit odd about
25 that passage of evidence where you say, "You realise it's
26 not what she's saying," when you'd had no discussions
27 about religion or politics or the contents of your
28 exhibition or his view of it or anything like that?---I
29 don't understand why it would be odd at all. She's said
30 at the exhibition, which had two artists, both have
31 different point of views. There was only about three or

1 four works of mine that pertained strictly to the theme
2 being in discussion, and that's not what the exhibition
3 was. It was a bit - she made that claim and I just
4 wanted to clarify that's not what the exhibition's about.
5 Where you said on p.194 that Mr Cripps said - and this is Line
6 8, "No, your opinions on the Koran are racist and the
7 Muslims are the victims of Jews in Palestine. I don't
8 like the Jews, I don't like the Jew state in Palestine or
9 the Jews and their state in Palestine." I suggest to you
10 nothing like that was said?---Your suggestion is
11 incorrect.

12 I put it to you that what Mr Cripps said when he spoke to you
13 on the evening of 18 June was related to the labels
14 attached to your pictures and to the essays and he said,
15 the first thing he said was, "The labels are difficult to
16 understand. I've had some of the volunteers tell me that
17 they don't understand what they're about. Some of them
18 aren't in an English alphabet. Can we have simple
19 English explanations as well"?---The element about it not
20 being in the English alphabet wasn't brought up because
21 of course I would have corrected him on that element
22 because there's no such thing as an English alphabet to
23 begin with. No, that - - -

24 Some of it was in Greek wasn't it?---There's a Greek alphabet
25 and there's a Latin alphabet. There's no such thing as
26 an English alphabet.

27 Well, then you can correct me. Some of it was in the Greek
28 alphabet. You're of Greek background are you?---That's
29 correct.

30 You speak and write Greek?---That's correct.

31 But you know of course that a lot of people don't speak or

1 write Greek?---That's correct. There was no claim ever
2 made to alter any of the wording that I had from the
3 Greek to its Latin rendition ever at any stage.
4 I put it to you that that was the beginning exchange in this
5 conversation and that that suggestion that these labels -
6 that the essays were impenetrable and that the labels
7 were too difficult to understand and might be
8 supplemented with a simple English explanation, enraged
9 you?---There was no mention of the labels and no rage
10 occurred.
11 What did the labels say, Mr Vakras?---The labels?
12 Yes?---I'm not sure what you're talking about the labels.
13 There were essays that were alongside the paintings.
14 Yes, but there were also, weren't there, smaller title labels?
15 ---There was the price list, so whatever is written on
16 the price list.
17 No, I'm not talking about the price list. I'm talking about,
18 as I'm instructed, about 50 by 100 labels with a very
19 brief statement - - -?---No, there wasn't any labels, no.
20 Partly in terms of - - -?---There weren't any labels. What the
21 exhibition was; there was the paintings and the paintings
22 were hung. There was the catalogue which was the price
23 list, which is technically the catalogue. That had all
24 the paintings' titles. The titles are numbered, 1, 2,
25 whatever, 26, whatever they were, and the numbers in the
26 price list were stuck beside the paintings. So to get to
27 the title of the painting you looked at the number.
28 Number 2 goes to Number 2 on the price list, Number 22
29 goes to the number. There was no labels as you are
30 explaining it.
31 So was there a title for each picture?---There was a title of

1 each picture and it was in the price list.
2 It wasn't, you're saying, attached to the picture itself or to
3 anywhere near the picture?---That's correct.
4 There was no title on the wall?---No.
5 There was no explanatory label?---There were the essays that
6 were pinned alongside paintings but they are not the
7 title. There's a difference, unless you're trying to
8 conflate the two.
9 I understand the difference between the essays and the labels
10 to which I'm referring. I wonder if I might just
11 consult.
12 HIS HONOUR: Yes. Do you want a break, Mr Vakras?---I'm right.
13 It's just my legs are getting a bit stiff.
14 You can stand up if you like and just stretch your legs.
15 MR DIBB: Might you have forgotten them, Mr Vakras?---No, I
16 have not forgotten them because they weren't made.
17 It seems like a minor point, Mr Vakras, but I'm firmly
18 instructed that there were annexed to each picture a
19 label about 100 by 50 with a few lines of explanation,
20 description, difficult to tell particularly where it was
21 not in the Latin alphabet?---There were no labels. There
22 were shorter essays by Lee-Anne which were on A4 paper
23 that were next to her paintings but there were no labels,
24 and they weren't, and Lee-Anne's weren't labels either,
25 they were her little essays that accompanied her works,
26 which she gave evidence to earlier.
27 It became quite a heated conversation didn't it?---Well,
28 Mr Cripps became quite heated.
29 Your evidence is that you didn't become heated?---My evidence
30 is that I didn't become heated. I became annoyed at the
31 end that the conversation kept on leading back to

1 Palestine and it was futile pursuing it any longer and I
2 told him that he was a man of limited intellect and
3 limited in his erudition, and left because there was no
4 point discussing it any further.

5 I put it to you that he never said that your art was racist on
6 this night?---That is incorrect.

7 Indeed, you never said to him that he was a racist on this
8 night?---Lee-Anne put it to him that his views are
9 racist.

10 I think you gave that evidence, and indeed you gave it twice
11 didn't you, that Ms Raymond - I'll have to find that. On
12 p.194 at Line 17 you said that Ms Raymond had said, "That
13 of itself it racist," and he said, "Yes, what of it"?
14 ---Correct.

15 You gave the same evidence again not long after. I'm sorry,
16 I've lost it. My instructor, I thank him, points out
17 that at 195 at the bottom, p.195, Line 29, you report
18 that Lee-Anne said, Lee-Anne Raymond the second
19 defendant, said, "You've called us racist for criticising
20 us for Islam and you're, by criticising the Jews, are
21 racist yourself," and he said, "Yeah, what of it?" You
22 were in court when Ms Raymond gave evidence. She didn't
23 ever give that evidence did she?---I don't recall.

24 I put it to you that she did not make that statement?---She
25 did.

26 And that Mr Cripps did not say, "Yes, what of it"?---Yes, Lee-
27 Anne put that to Mr Cripps on both the 18th and then on
28 the 24th.

29 When you gave that evidence did you have in mind your defensive
30 comment?---I don't understand. What are you asking?

31 You've done a certain amount of research into the law of

1 defamation haven't you, Mr Vakras?---Subsequent to being
2 sued, yes.

3 You know that one of your defences in this case is comment?

4 ---Yes.

5 I think you perhaps know that comment must be based on proper
6 material for comment do you?---I have come to, yes, find
7 that out, yes.

8 You know that proper material, loosely speaking, is facts truly
9 stated?---I do know that. There was something, yep.

10 So if you are to defend a comment that is based even in part on
11 the statement that he is a self confessed racist you are
12 going to need to prove that he confessed himself to be a
13 racist aren't you?

14 MR GILBERTSON: I object to that. That's not what the
15 substance of the opinion that's contained in the
16 imputation is. That question is unfair in my submission.
17 There's nothing about self confessed in the imputation.

18 MR DIBB: I'm not referring to the imputation, Your Honour.
19 I'm referring to what is manifestly part of the proper
20 material, if there be proper material, is manifestly
21 going to be the central peg or the central leg on which
22 such a comment might be based.

23 HIS HONOUR: I'll allow the question.

24 MR DIBB: Thank you. (To witness) You're aware that you need
25 to show that he is a self confessed racist for the
26 benefit of your defensive comment don't you?---No. I
27 actually - my understanding of defamation law is
28 reflected pretty much in our petition that Lee-Anne and I
29 both constructed to modify defamation law, and our
30 understanding of it was if something was true, we
31 believed we had enough evidence to demonstrate that the

1 matters were true and that if it is true it's not
2 defamatory. We were - if you look at our earliest
3 correspondences between (indistinct) and yourself -
4 ourselves, rather, that was our thing. We thought it was
5 absurd that we were getting - we were being - that the
6 assertion was made of defamation, that the matter was
7 defamatory even though it was true. And the first time
8 we actually understood Australian defamation law as it's
9 intended was when Lee-Anne was doing a search. The
10 search ended up on a defamation lecture by Michael
11 McHugh, who was a former defamation barrister, who was an
12 ex High Court judge, and he did a lecture in Dublin
13 called Dancing the Defamation Tango, and one of his
14 sentences said that the admission, the truth is the
15 admission to having defamed, which was to us pretty
16 startling, and that's the point at which we started to
17 understand the - - -

18 This is really interesting, Mr Vakras, but I'll cut you off?

19 ---Well, you were asking me what I know about defamation
20 law and I'm saying that I structured what I've written.

21 You're aware that you've got more than one defence mounted in
22 this case?---I am now but - - -

23 You're aware that you say that it is a matter of truth that
24 Mr Cripps is a racist who has embraced the views of
25 national socialism, you're aware that - - -

26 MR GILBERTSON: Objection. That's not the defence at all.

27 That's what's in my learned friend's pleading.

28 HIS HONOUR: Yes.

29 MR DIBB: As I understand the defence that is indeed. I know
30 there's a Polly Peck defence to a slightly different
31 meaning, but in the second further amended defence of the

1 first defendant - - -

2 HIS HONOUR: What page? Do you want the witness in court, or
3 does it not matter?

4 MR DIBB: I don't think it matters, Your Honour.

5 HIS HONOUR: Yes, thank you.

6 MR DIBB: I've misquoted. You know that you've pleaded it's a
7 matter of truth that the first plaintiff is a racist who
8 holds views that are similar to those of Adolph Hitler?
9 ---Yes, I acknowledged that yesterday.

10 But you have also pleaded other defences haven't you?---Yes.

11 One of them is comment?---Yes, but it doesn't - - -

12 You know that's a different defence?---Yes, I do know that it
13 is a different defence.

14 If you failed to - - -?---I don't know the exact intricacies of
15 the law to actually know what the law asks of me, which
16 is why I have my own counsel to do that.

17 No one suggested to you that you need to be able to prove that
18 he is a self confessed racist?

19 HIS HONOUR: Is that asking for him to tell us what legal
20 advice he's received?

21 MR DIBB: If there's an objection.

22 MR GILBERTSON: There is.

23 MR DIBB: I withdraw the question. (To witness) In summary I
24 put it to you that there was no discussion of racism or
25 mention of racism at this first conversation?---That's
26 incorrect.

27 When you were giving evidence about this conversation you said
28 that it started as you were going down the stairs. I'll
29 get an exact reference. "As we were going down the
30 stairs we saw Robert Cripps and I went to shake his
31 hand"?---Well, I sometimes get ahead of myself. As I saw

1 Robert Cripps we were going down - I saw Robert Cripps as
2 we were going down the stairs. We'd gone down the stairs
3 and I was approaching him, so I was already down the
4 stairs, we were already off the stairs. He was on the
5 floor in front of the bar. I've actually described that.
6 Yes. I put it to you that the conversation took place in about
7 the middle of the first floor exhibition space that you
8 occupied with Ms Raymond?---No. It took place on the
9 ground floor where his doorway was open to Flanagan Lane
10 where they had a big bonfire or something burning, which
11 we weren't aware of, which we didn't know had been
12 happening, so it occurred with two doors open on either
13 side and a bonfire burning, people mainly to one side of
14 the gallery on the ground floor. It did not occur on the
15 first floor. The first floor had virtually no people in
16 it.

17 I put it to you that it occurred in the context of your art
18 because it was your art that you were discussing?---No.
19 The circumstances I have described are the circumstances
20 in which it occurred. Your scenario is wrong.

21 I'll take you to the article itself, the first matter
22 complained of. Do you have a copy?---No, I don't, no.

23 You have it now do you?---I do.

24 You see it says, "Guildford Lane Gallery is run," sorry, before
25 I go there I'll just deal with the conversation of 24
26 June?---Yes.

27 At that conversation, that's the Wednesday when you next met
28 Mr Cripps?---That's correct.

29 When you next met Mr Cripps that was on the first floor you
30 say?---That's correct.

31 He came up to you and said, "I asked you to call me"?---No, no.

1 He was pointing at Lee-Anne when he was saying that.
2 I suggest to you that he at no stage said that he had called
3 the police?---He said he had called the police.
4 That he did not say you were trespassing?---He did say we were
5 trespassing.
6 But you did have a heated discussion didn't you?---Mr Cripps
7 was very heated.
8 At the end of which he asked you, and not Ms Raymond, to leave
9 the premises?---He demanded that we both leave the
10 premises, demanded we both leave the premises. At one
11 stage he left. We'd had a discussion with the visitors,
12 with the visitor who was in the gallery, and then he came
13 back with Yolande Pickett after the visitor had gone down
14 the stairs and he and Yolande Pickett, or he says that,
15 "I'm the director."
16 You didn't give this evidence-in-chief did you about Ms Pickett
17 coming to this meeting?---I don't recall.
18 Well, you didn't. I put it to you that this exchange involving
19 Yolande Pickett didn't happen as it's been described by
20 you?---I did happen and Yolande was asked, Yolande was
21 asked, "Do you agree if it's racist?" And she refused to
22 make - I was looking at her, she refused to make eye
23 contact with myself, she refused to make eye contact with
24 Lee-Anne, and Robert Cripps said, "I want you out of my
25 gallery," and both - and then as he's leaving he said,
26 "The sheriff knows about you," which we thought was odd.
27 We were walking down the stairs and Lee-Anne and I both
28 see the big warning sign that we had walked past but as
29 I'd packed away the equipment and it was - I needed a
30 tripod to set it up to take the photo, because I didn't
31 have a flash camera with me, we didn't want to incite

1 another exchange, we'd left.
2 Going back to the article. You've got the article there
3 haven't you?---Yes.
4 "Guildford Lane Gallery is run by the toxic Robert Cripps.
5 Avoid this gallery assiduously. Had I been aware of him
6 or had information on him been available prior to our
7 agreeing to exhibit at Guildford Lane Gallery I and my
8 co-exhibit Lee-Anne Raymond would NEVER have dealt with
9 him. This page expands on criticism already made about
10 the experience of exhibiting at his gallery." And
11 there's a hyperlink there to another page of exhibitions,
12 yes?---Yes, because this is a page that comes off
13 exhibitions.
14 I'm not asking you about the other page, I'm just confirming
15 that it's a hyperlink is it?---Correct.
16 "There are several words with which I can describe Cripps.
17 Poisonous, vile, repellent, malignant, racist, liar,
18 bellicose, bully, stupid." That's not holding back is
19 it?---Absolutely not. When you saw the way Yolande
20 Pickett on the day was looking.
21 In the next line you say, "Cripps also runs Redleg, a
22 transporter of art. Can you trust Cripps's Redleg"?
23 ---Yep.
24 I put it to you that when you wrote that you did not see Redleg
25 as being the company that ran Guildford Lane Gallery?
26 ---Yes, I did. Our exchanges with Robert Cripps were all
27 from info from Redleg.
28 All from info from Redleg and they were on - - -?---And the
29 invoices we got, they were all Redleg.
30 Emails that said Redleg Museum Services, yes.
31 HIS HONOUR: Sorry, don't please talk over him.

1 MR DIBB: I'm sorry.

2 HIS HONOUR: Just ask the question again so the transcript
3 writers get the question as well as the answer?---My
4 apologies.

5 MR DIBB: (To witness) When you wrote, "Cripps also runs
6 Redleg, a transporter of art," I suggest to you that you
7 thought Redleg, the transporter of art, was another
8 company associated with Mr Cripps?---Another facet.
9 Guildford Lane Gallery was one facet of Redleg and that
10 was another facet of Redleg.

11 Seeing it as another facet you didn't deal with them did you?
12 ---I did deal with Redleg.

13 You didn't deal with anyone associated with the gallery in
14 respect of the transportation of art. You hired a
15 transit van didn't you?---That's correct.

16 And you did the transport yourself?---Yes, that's correct.

17 So you hadn't deal with Redleg as a transporter of art of
18 anyone who worked for Redleg in transporting art or
19 packing art or hauling it about in any way?---No, we
20 hadn't dealt with a transport element at all.

21 You dealt with Mr Cripps didn't you?---We dealt with Redleg
22 running Guildford Lane Gallery.

23 You dealt with Mr Cripps, you dealt with Ms Lian Low?---That's
24 correct.

25 She wasn't involved in the transport of art was she?---No.

26 And you dealt with Yolande Pickett, and she was the gallery
27 manager. She wasn't involved in any transport of art
28 business?---She was Redleg, she was involved in
29 transport.

30 I suggest that you included that because your purpose
31 throughout has been to do as much damage to Mr Cripps as

1 you possibly can manage?---That is not true.

2 You were motivated by your extreme annoyance of Mr Cripps to do

3 whatever you could to give your allegations against him

4 as wide a publicity as you could, as broad a reach as you

5 could?---That's not true.

6 We'll come to some other documents later. But you have pursued

7 him into his Ruby's Music Room venture in Bennett's

8 Lane?---I haven't pursued him.

9 You've certainly publicised your allegations against him in

10 connection with Ruby's Music Room in Bennett's Lane?---In

11 my description of Redleg Museum Services, yes, because

12 that was the - I have actually been following what is

13 occurring there lest that - - -

14 You've been following what's occurring in Ruby's Music Room

15 because you identified those - - -?---We've been

16 following what's happening at Ruby's Music Room lest any

17 claims be added against us, so yes, we're wary and

18 watchful.

19 Whatever you say about the origins of the email that's the

20 spoof email - - -?---I have no idea what that email is.

21 I'm just saying - - -

22 But you - - -

23 HIS HONOUR: Sorry, just wait for the question?---Sorry.

24 MR DIBB: Much of the internal content as being screenshots

25 from your pages?---It doesn't look like screenshots of

26 our pages. What it looks like is that there's been a

27 copy and paste of a certain portion of the page that's

28 been stuck into the middle of whatever that is.

29 Much of that text where you say things like, "We don't

30 understand what the threat means," all that sort of

31 thing?---Correct.

1 "He has sued us," much of that text is written by you isn't
2 it?---I'm not disputing that text.

3 No. That's all I'm clarifying. Where you say, "We have no
4 real idea of what Cripps's claim could really be for"?
5 ---That's correct.

6 All that's associated with material concerned with his new
7 venture, Ruby's Music Room and Bennett's Lane?---Because
8 he's continuing with the same modus operandi. He's
9 seeking interns when the only people that can seek
10 interns are not for profit organisations, and we're
11 looking at - - -

12 Isn't it really because it's run by Robert Cripps?---No, it's
13 not.

14 How many pages like this have you got going with respect to
15 other businesses in Melbourne or anywhere?---Well, I
16 haven't been sued by any businesses for whom I have to
17 have - keep abreast of what they're doing lest that
18 make - - -

19 That's a telling admission isn't it, Mr Vakras? You haven't
20 been sued by anyone else so you haven't engaged in this
21 kind of publicity against anyone else?---It's not
22 publicity.

23 Your first thought, Mr Vakras, was not that you had had a bad
24 experience of Mr Cripps, it was that you'd been sued by
25 him wasn't it?---No. The first thought was that at the
26 conclusion of the exhibition, that is my exhibitions
27 page, it's my CV. I had the option of either writing I
28 exhibited at Guildford Lane Gallery or not mentioning it
29 at all, and if I exhibited at Guildford Lane Gallery then
30 the purpose of writing about it would not be to promote a
31 person who had caused me great damage.

1 Mr Vakras, your first thought when asked why you weren't
2 pursuing anyone else who was hiring interns was you
3 hadn't been sued by them?---But I'm not pursuing him.
4 On the second page under the photograph at the bottom of that
5 second page you say, "Cripps is a self confessed racist,
6 the new-left Nazis, he's a manifestation of the new-left
7 who have adopted the sentiments Hitler expressed in his
8 Mein Kampf but who believed that though theirs and
9 Hitler's sentiments are the same their racism is a
10 justifiable one, new-left Nazis"?---That's correct.
11 Is that pretty close to the worst thing you could say about
12 anyone?---No. The medium in which this appears is
13 electronic. There are certain words that are live, that
14 is, when you go - if you put your cursor over the words
15 they go somewhere. Cripps is a self confessed racist
16 means that he has confessed, admitted to that state. The
17 link new-left Nazis explains what the new-left Nazis are
18 that I'm about to refer to. I say he's a manifestation
19 of the new-left. It is the new-left, not Robert Cripps
20 as an individual, who have adopted the sentiments
21 expressed in Hitler's Mein Kampf, which is a matter of
22 history, it's a matter of - - -

23 I'm sorry, can I interrupt - - -

24 MR GILBERTSON: Let the witness answer the question.

25 HIS HONOUR: Yes, just one second please. I think, Mr Dibb,
26 you need to let the witness finish first.

27 MR DIBB: Yes, Your Honour.

28 HIS HONOUR: So keep going, Mr Vakras?---Which is a matter of
29 history. It's not predicated on anyone having read Mein
30 Kampf, it's just that on an historical level the same
31 sentiments that have been expressed by the left are the

1 same sentiments that were expressed in Mein Kampf, and it
2 is irrelevant whether a person's aware of Mein Kampf or
3 not. I unfortunately read Mein Kampf.

4 What was your supplementary question, Mr Dibb?

5 MR DIBB: I'll move on, Your Honour. You've pleaded that it's
6 true that he has - I withdraw that. The defence speaks
7 for itself. On the third page you say, "It was not the
8 exposure of the biblical basis of Hitler's racism that
9 Cripps took exception to. His actual objection was to my
10 quoting from the Koran, particularly 938 to 52, in which
11 the god of Islam, Allah, guarantees automatic martyrdom
12 to those who kill while in the act of killing non
13 Muslims. According to Cripps quoting the Koran in
14 insensitive to Palestine because he is opposed, as he
15 said, to the Jew state in Palestine and then accused me
16 of racism. Neither Israel or Palestine or the conflict
17 there are mentioned in the exhibition." A couple of
18 bullet points further down, "That his hatred of Jews is
19 exposed for the outright racism that it is." You didn't
20 believe he hated Jews did you, Mr Vakras?---I did.

21 He had said to you that he was of a particular view about the
22 conflict in the Middle East?---His view on Jews was that
23 they had no right to be in Palestine at all. If you,
24 regardless of whatever the political situation is that
25 you referred to earlier, that's a pretty extremist view.
26 The extremist view is regardless - and this is despite
27 agreeing with what the UN says about the occupied
28 territories and the like. It is only Hamas that seeks to
29 make Palestine, which is an area conterminous with Israel
30 to make it, as the Nazis called it, Judenfrei, that is,
31 free of Jews, and it's a very extremist view. Mr Cripps

1 said to me that Jews had no right to be in Palestine.
2 He did not say that did he? He said he was against the Jewish
3 state in Palestine?---He did say that in the evidence
4 that I tendered yesterday when I defined - I sought to
5 deflect the argument on the opening night by suggesting
6 that we consider that Palestine is a territory. And on
7 asking him further he said that he admitted that Arabs
8 and Muslims can be Palestinians but not Jews on the
9 grounds that they're Jewish, so.

10 I put it to you that that conversation didn't happen in those
11 terms at all?---It did.

12 Towards the bottom you launch another attack don't you? I'm
13 talking here about p.4.

14 HIS HONOUR: Whereabouts, Mr Dibb?

15 MR DIBB: About five centimetres below the fold you say, "Since
16 the staff and volunteers at Cripps's Guildford Lane
17 Gallery acquiesce to and agree with his hatred of Jews
18 and are in disagreement with me then it would be a
19 disservice to them if they were to remain unacknowledged
20 and anonymous. Those who I know by name are Yolande
21 Pickett, Sarah Webb, Melanie Trojkovic, Stacy Jewell and
22 a Danielle, all ethically deficient. They were carbon
23 copied into email correspondences and were aware of the
24 situation." Did you think everyone in the Guildford Lane
25 Gallery hated Jews, Mr Vakras?---The disclaimer said that
26 they disagreed with the opinions and views expressed in
27 the exhibition. The corollary to that is that they were
28 in agreement with Mr Cripps.

29 The corollary to them saying that they did not endorse the
30 views if any expressed in your art was that they were
31 haters of Jews, is that what your evidence is, Mr Vakras?

1 Is that your genuine belief?---Can you repeat that,
2 sorry.

3 The corollary to them saying they're not associated with the
4 views there, the views of the artist, not of them, is to
5 say that they hated Jews?---Mr Cripps put it to me that I
6 was a racist and put it to us that the disclaimers were
7 there on account of our racism, which was on account of
8 criticism of Islam. We were told - and which was on
9 account of - - -

10 You're read the disclaimers. Sorry, I'll let you finish?

11 ---Which was on the basis of, as he admitted, that he
12 disliked Jews, as Lee-Anne and I, I think I may have
13 asked him too, said on a number of occasions on both the
14 18th and the 24th, "But you hate Jews," and he said,
15 "Yes, so what of it?" So that is what we're referring
16 to, and that they - all his - yeah, so we're very annoyed
17 that his volunteers didn't say anything. It didn't mean
18 that they had to agree to with my stance.

19 Did you say that you'd given evidence that someone said, "But
20 you hate Jews," and he said, "Yes"?---We said yes. I
21 mean, I have said something similar to that.

22 I suggest you've given evidence nothing like that, Mr Vakras?

23 ---It was asked at least by Lee-Anne on a number of
24 occasions, "But you hate Jews, Robert." He said, "Yes,
25 what of it?"

26 I suggest you've enhanced that story a great deal, Mr Vakras.

27 That what you actually gave evidence of, and Ms Raymond
28 it may be noted did not give this evidence, what you
29 actually gave evidence of was that she said something
30 along the lines of, "But that itself is racist," and he
31 said, "Yes, what of it"?---Yes, that did - - -

1 MR GILBERTSON: I object. There is a reference at transcript
2 p.194 of the evidence given yesterday. The evidence
3 wasn't using the word hate but there are two references
4 to evidence given by Mr Vakras of Mr Cripps saying, "I
5 don't like the Jews. I don't like the Jew state in
6 Palestine." I accept it didn't use the word hate but it
7 wasn't as my learned friend put it just then.

8 HIS HONOUR: I think it's legitimate questioning to clarify
9 with the witness whether the answer just given is a
10 departure from or embellishment or enhancement of
11 previous evidence.

12 MR GILBERTSON: As Your Honour pleases.

13 MR DIBB: (To witness) The disclaimer reads doesn't it, "The
14 management would like to state clearly that the views and
15 opinions expressed in this exhibition are those of the
16 artists and not in any way representative of the views or
17 opinions of the management, staff or volunteers of
18 Guildford Lane Gallery." That's what it says doesn't
19 it?---That's what it says obviously, the Cyrillic, the
20 Greek lettering.

21 It's your position isn't it that your are was not an attack on
22 Jews or Muslims or anyone else as people but was a
23 critique of four major religions?---It was a critique of
24 religion.

25 So when the volunteers and the people you name here as Jew
26 haters on the internet, when you say that you base this
27 allegation that they agree with his hatred of Jews on
28 that circumstance, that they did not dissociate
29 themselves from the disclaimer?---They were all carbon
30 copied into a number of emails. The emails that I'm
31 referring to are the emails as far as my recollection

1 goes sent to Guildford Lane Gallery, Robert Cripps,
2 Yolande Pickett and all of those people mentioned there
3 who were carbon copied, about which was a rebuttal and an
4 addendum to the misrepresentation of our art, in
5 which - - -

6 None of those emails were about hatred of Jews were they?

7 ---They were. The emails sent by myself, and they were
8 on the 26th if my recollection is correct, and the 27th.

9 So do you mean if one of the employees didn't pipe up and say,
10 "I agree with Mr Vakras about this," that they're branded
11 as Jew haters and like the Nazis before who Yolande
12 Pickett might in the future claim to have been following
13 orders?---Yes. That's a reference to what's called the
14 Milgram experiment. The Milgram experiment was an
15 experiment conducted to see who follows orders.

16 Mr Vakras, this is just an example isn't it of your extreme
17 anger?---There's nothing angry with it at all.

18 HIS HONOUR: Sorry, was that the entirety of the question?

19 MR DIBB: Your extreme anger at anyone who doesn't expressly
20 agree with your point of view?---No, not at all. They
21 didn't have to agree with my point of view.

22 You didn't believe these people all hated Jews did you?---I was
23 hoping they would come out and say I disagree with you
24 being a racist.

25 You didn't believe they all hated Jews did you, Mr Vakras?---I
26 don't know what they believed because they'd refused
27 to - - -

28 But you said that they all acquiesced to and agree with his
29 hatred of Jew?---That is correct, they do - - -

30 You didn't know that did you?---By their silence they acquiesce
31 and that's - - -

1 You didn't have any real basis for making that allegation did
2 you?---The claim is made on the basis of their
3 acquiescence made by virtue of their silence.
4 You didn't believe that they were all Jew haters?---They
5 acquiesced by virtue of their silence.
6 Answer the question. Did you believe they were all Jew
7 haters?---I couldn't really know other than via their
8 acquiescence.
9 Thank you. At the end of that section on p.5 of the first
10 matter complained of you lament don't you that you're not
11 able to name them all?---Yes.
12 "If I could list them all I would"?---Because the email that
13 Mr Cripps sent was made on the basis of his staff and
14 volunteers.
15 Turning to the second matter complained of. You gave evidence
16 didn't you that you added an addendum on 2 April 2011?
17 ---Yes.
18 That's on p.5 of that document?---Page what, sorry?
19 Page 5 of 7?---This is - - -
20 HIS HONOUR: Annexure B.
21 MR DIBB: Of Annexure B, sorry.
22 HIS HONOUR: Where it starts in the middle of the page,
23 Addendum 2 April 2011. Do you have that page?---Yes, I'm
24 at that page.
25 MR DIBB: You added that addendum on 2 April 2011?---The
26 addendum has a date of 2 April. I could have uploaded it
27 on the 3rd but the, yeah, the amendments were made on the
28 2nd.
29 You were served with the statement of claim on 1 April?
30 ---That's correct.
31 You added that addendum in response to that outrage didn't you,

1 Mr Vakras?---It was pretty outrageous for both of us.

2 That's why you put it there wasn't it?---No. That particular
3 section there is just we were wondering why we could be
4 sued. There's worse things said about Mr Cripps than
5 anything that we've ever said and I quoted that which I
6 subsequently took off.

7 You put it there to suggest that other people should have been
8 sued instead; is that your evidence?---No, no, that is
9 not what I said.

10 Well, tell me again?---Other people have said worse things
11 about Mr Cripps.

12 By worse things you're referring to this allegation of sexual
13 harassment are you?---I was quoting what I received as an
14 email from Courtney Kim.

15 You regarded that as worse than what you'd said about him?

16 ---Yes.

17 That he was a racist who'd embraced the views of the national
18 socialists or who had views similar to those - views on
19 Jews similar to those of Adolph Hitler?---Superficially
20 what I had written was that he is a manifestation of the
21 left and it is the left who I've described. I could have
22 written it differently. I could have said he's chanting
23 the - - -

24 You've described him as having a hatred of Jews hadn't you?

25 ---Yes, which he admitted to.

26 You've added this as an example of something even worse that
27 someone else was saying?---Yes. I thought it was worse.

28 You say that was not in retaliation for being served with the
29 claim in these proceedings?---It wasn't retaliatory.

30 I put it to you that it was prompted by your anger and prompted
31 by a desire to injure him even further if you could?

1 ---No, it wasn't.

2 You'd had this email for nine or ten months hadn't you?---It

3 was sent, if memory serves me, on about 10 May of 2010.

4 So was that answer yes, ten or 11 months?---Yep.

5 You chose to publish it after you'd been served - would you

6 indicate to us, Mr Vakras, where you suggest that other

7 people have said worse things about him or where you

8 query why it's you that's been sued instead of them?

9 ---I'm not querying why others have been sued instead of

10 us. There's no mention of that.

11 No?---I'm saying that the experience my co-exhibitor and I have

12 had with Mr Cripps is one not unique to our exhibition,

13 that people were making complaints about their relations,

14 relationships, dealings with Mr Cripps, so I quote one of

15 them. So it was about a situation not being unique to

16 us.

17 Your previous addendum had been on 11 November 2009?---That is

18 correct.

19 You hadn't anything for what, a year and five months?---Yeah.

20 Roughly. You added that didn't you to see what further damage

21 you could do him because you were annoyed at being sued?

22 ---No, I didn't.

23 You took it off you say very quickly?---I removed that bit and

24 I've altered one sentence.

25 But you took out the allegation of sexual harassment?---I took

26 out the entire quote because my page was never about the

27 experiences of others even though that had been - - -

28 Even though it says what are the experiences of others?---Yes.

29 My page had not been -there is no part of my pages

30 anywhere that had been about what are the experiences of

31 others up until that date. It was a feature of Lee-

1 Anne's website where she talked about the experiences of
2 others but that had not been part of my web page.
3 So is it your evidence that you took out this allegation of
4 sexual harassment, this quote, you took that out because
5 you decided you didn't want to recount the experiences of
6 others?---Because it was irrelevant to the page. The
7 page was about what had occurred in our exhibition.

8 Did you seek advice - I don't ask of the content of the advice
9 - did you seek advice about the claim when it was
10 delivered to you?---Do you mean when I was served the
11 writ?

12 Yes?---The first thing I did was phone up Arts Law but I didn't
13 seek advice on writing anything.

14 How long after you got the writ did you seek advice?---Probably
15 within, I don't know, a few days.

16 When you say you took out that quote, you didn't take out the
17 bit that said what are the experiences of others did
18 you?---Well, no. I merely limited it to what - that
19 others have had a terrible experience and left it at that
20 as far as I remember. I haven't been to my page for a
21 while.

22 Excuse me just a moment, Your Honour. I wonder if Your Honour
23 would give me a moment. I've lost a notebook. I don't
24 quite know what I've done with it.

25 HIS HONOUR: Yes. Do you want me to leave the bench or do you
26 want to just - I'll just stay here and if you need more
27 time let me know.

28 MR DIBB: I apologise, Your Honour, I don't seem to be able to
29 find it.

30 HIS HONOUR: Do you want five minutes, Mr Dibb?

31 MR DIBB: I would appreciate that, Your Honour, just to check

1 that I've covered all that I need to cover.

2 MR GILBERTSON: Perhaps if my learned friend could indicate. I
3 have two witnesses who are under subpoena who came
4 yesterday who are outside again. Perhaps my learned
5 friend can indicate how long he'll be?

6 HIS HONOUR: Yes.

7 MR DIBB: I won't be very much longer as soon as I find this
8 document.

9 HIS HONOUR: Madam Associate, we'll adjourn for five minutes
10 literally. I won't go far and I'll come back - - -

11 MR DIBB: If I can't find it in that time I'll just have to
12 deal with that.

13 HIS HONOUR: Yes, thank you.

14 <(THE WITNESS WITHDREW)

15 (Short adjournment.)

16 <DEMETRIOS VAKRAS, recalled:

17 MR DIBB: Thank you, Your Honour.

18 HIS HONOUR: Did you find your notebook?

19 MR DIBB: I did, thank you, Your Honour. Probably being away
20 from home I think. (To witness) Mr Vakras, we've covered
21 this already to some extent but you would accept that you
22 have published along with Ms Raymond you've published a
23 great deal of material based on your experiences at this
24 gallery and your response to being sued?---Well, we only
25 had about three pages on the internet and that was it,
26 and when we were sued our web pages were knocked off the
27 internet, which meant that we mirrored the sites that
28 multiplied. When I - and then we were knocked off the
29 internet again which meant that we had to get other sites
30 hosted elsewhere which again meant they were mirrored,
31 and we wrote of the experiences of being knocked off the

1 internet, including our web domain hijacking. So all of
2 those processes came about because of us being sued, and
3 because our sites were removed there was only a few
4 pages, and the intention has always been, in our opinion,
5 that Mr Cripps has sought only to remove our pages from
6 the internet.

7 You're familiar enough with modern life to know, to return to
8 an earlier theme, that if you make a new friend or a new
9 enemy, you apply for a job or a loan, or you meet a new
10 potential business partner or a customer or a potential
11 life partner that people routinely Google you - Google's
12 the verb we use now?---That's correct.

13 And you know from your own experience of the internet that this
14 material, as we've seen today, was bound to be visible to
15 anyone who made any inquiry on the internet using the
16 name Robert Cripps?---It's quite likely.

17 That's the cross-examination, Your Honour.

18 HIS HONOUR: Thank you very much.

19 MR GILBERTSON: Excuse me, just one matter, Your Honour.

20 <RE-EXAMINED BY MR GILBERTSON:

21 I'm going to show you, Mr Vakras, a document. I have two
22 copies of this document. I can show one to my learned
23 friend and we need to share it?---You can show the judge
24 if you like. David, we can show the judge because I
25 know, I took the photo.

26 I have only one copy of it.

27 HIS HONOUR: That's fine. I'm happy to receive it later?

28 ---OK.

29 MR GILBERTSON: What is that document?---That is one of the
30 photographs that was taken of my painting, the
31 contentious painting at Guildford Lane Gallery.

1 Who took that photograph?---I took the photograph.
2 When did you take it?---On the 24th.
3 Pardon?---On the 24th, sorry, of June.
4 As well as the photograph depicting the painting what else can
5 you see in that photograph?---Well, there's a painting -
6 alongside the painting is the entirety of p.22, if memory
7 serves correctly, I think it's 22 of the catalogue
8 Humanist Transhumanist, so it includes the images and
9 text on p.22. Beneath it is the essay of what is at p.25
10 and 26, so beside it. In a small little corner there's a
11 number which is not legible.
12 Are there any labels depicted in that photograph?---There are
13 no labels.
14 I tender that document, Your Honour.
15 HIS HONOUR: Anything to say about that, Mr Dibb?
16 MR DIBB: I'd like to ask a question about it. I don't know if
17 Your Honour will permit that.
18 HIS HONOUR: Of course I will. I think that's fair.
19 <FURTHER CROSS-EXAMINED BY MR DIBB:
20 How many photographs did you take of the exhibition, Mr Vakras,
21 on that day or on any day?---I don't have an actual count
22 of the photos but they have all been discovered to your
23 side, not, as far as I'm aware, not in print form, but I
24 didn't - our solicitors discovered them.
25 I call for the photographs?---You have had them discovered.
26 HIS HONOUR: Sorry, he's not talking to you, he's talking to
27 your counsel.
28 MR GILBERTSON: We'll have to go through the folders of
29 discovery to find them, Your Honour.
30 HIS HONOUR: Do you not accept that that photograph has been
31 discovered, Mr Dibb?

1 MR DIBB: I haven't seen it, Your Honour.
2 HIS HONOUR: The witness has said, if I understood his
3 evidence, that all the photographs he took were
4 discovered but not necessarily in print form. I don't
5 know what that means but that's what he said.
6 MR DIBB: I suspect it means a list of names of photographs, or
7 it might mean in an electronic form, I don't know.
8 HIS HONOUR: I don't know but, I mean, if they are discovered
9 the onus is on your side to inspect or ask for copies.
10 Perhaps this can be explored later.
11 MR DIBB: We're not of the view we've seen them, Your Honour,
12 so I call for the photographs if they're available.
13 HIS HONOUR: Yes.
14 MR GILBERTSON: That will be attended to, Your Honour.
15 HIS HONOUR: Yes, Mr Gilbertson will attend to that.
16 MR GILBERTSON: Yes, I'll hand that up, Your Honour.
17 HIS HONOUR: I'll need two copies, one for me and one to become
18 the official exhibit.
19 MR GILBERTSON: Perhaps if Mr Vakras could hand over the copy
20 he has as well.
21 HIS HONOUR: Thank you.
22
23 #EXHIBIT D5 - Photograph of one of paintings with three
24 documents to right of painting.
25 HIS HONOUR: Anything else, Mr Gilbertson, of the witness?
26 MR GILBERTSON: No, Your Honour.
27 HIS HONOUR: Thank you very much, Mr Vakras, that completes
28 your evidence. You may step down?---Thank you.
29 (Witness excused.)
30 <(THE WITNESS WITHDREW)

1 HIS HONOUR: Some of those documents will have to go back, if
2 not all of them, to the instructing solicitors unless
3 they're exhibits.

4 MR DIBB: I don't see the ones Your Honour is going to mark.

5 HIS HONOUR: I said to you that once you have all your
6 documents and you're ready to tender them. I've ruled on
7 the objection so that when you're ready you can tender
8 them and I'll mark them then.

9 MR DIBB: Yes, thank you.

10 MR GILBERTSON: Your Honour, I call Katie Bowman.

11 HIS HONOUR: How long will she be do you think?

12 MR GILBERTSON: I'm hopeful that these two witnesses will be
13 very short and we can do them before 1 o'clock.

14 HIS HONOUR: I'm happy to sit for another five minutes if it
15 takes that, if that's not an inconvenience for the
16 witnesses.

17 MR GILBERTSON: Thank you, Your Honour.

18 HIS HONOUR: Mr Dibb, I've indicated that if it takes another
19 five minutes to clear these witnesses and reduce the
20 inconvenience to them I'm prepared to do that.

21 MR DIBB: Yes.

22 HIS HONOUR: Do you think you'll be longer than 20 minutes with
23 both of them?

24 MR DIBB: In cross-examination, Your Honour? I don't know what
25 evidence they're going to give yet but I doubt it.

26 HIS HONOUR: All right. Let's take it one step at a time. I'm
27 not sure that Ms Bowman is actually outside court. My
28 associate is taking a bit of time.

1 <KATHERINE REBECCA BOWMAN, affirmed and examined:

2 MR GILBERTSON: Your full name is Katherine Rebecca Bowman?

3 ---That's correct.

4 What is your address?--- [REDACTED] Fairfield.

5 What is your occupation?---I'm an artist and I also work in a
6 library.

7 Have you had any involvement with the Guildford Lane Gallery?

8 ---I have.

9 Would you tell the court what involvement that was?---I studied
10 in 2009 at RMIT and for my final year show was held at
11 the Guildford Lane Gallery and subsequent to that I also
12 showed the following year in January as a solo artist.

13 If we just concentrate on your exhibition as a solo artist
14 would you tell the court what happened?---I prepared a
15 work based on a site visit for a specific gallery space.
16 I negotiated with the gallery manager at - - -

17 Who was that?---Emily, I can't pronounce her surname. The
18 stated fee and the area of space that I would have access
19 to. I negotiated with he via email in regard to
20 amendments to that space based on the work that I was
21 developing. I did a site visit during which I took
22 photographs.

23 When was the site visit?---Prior to Christmas 2009 and I
24 delivered a work which would be responsive to the passage
25 of the viewer and the ambient airflow of the space.

26 What did your exhibition entail?---It entailed four large drops
27 of paper like textile that fell from a central beam onto
28 the floor with - and it had perforations that curled
29 down. It was very, very delicate textile designed for no
30 more than ambient airflow to - so that it would respond
31 to the view moving past the falling drapes.

1 What did you observe on the site visit?---I observed an empty
2 space devoid of any ceiling fans.

3 You said that the exhibition was in January 2010, is that
4 right?---That's correct.

5 What happened then?---On the opening I installed my work and on
6 the opening night, which was a very hot night, there were
7 four large ceiling fans that were buffeting the work. I
8 was disappointed that my plans and the atmosphere, that
9 the situation had shifted and commented to Mr Cripps that
10 this was sort of not particularly good for the work and
11 he commented that's the way it is.

12 What happened after that?---The gallery manager offered me some
13 weights to help stabilise the work and during the course
14 of the evening several people commented to me that my
15 work looked nice, moving. That was beside the point.
16 The point was that my work had not been fabricated to
17 withstand the four large fans buffeting it over long
18 periods of time.

19 Did you have any other conversations with Mr Cripps?---The only
20 other - prior to, prior to the exhibition I'd had a
21 conversation regarding his commentary of the Masters
22 Exhibition that I had had a work during the December
23 prior to Christmas which he thought didn't work and I
24 suggested that perhaps the curator had a different set of
25 criteria than what he was judging the exhibition on.

26 If I could take you to Sunday, 10 January 2010, what happened
27 that day?---I arrived at the gallery to attend to my work
28 to try and figure out some sort of solution to make it
29 work in the changed situation and prior to entering the
30 gallery I had a small chat with a fellow artist who was
31 exhibiting and who was also about to volunteer as an

1 invigilator in the exhibition. As I entered the gallery
2 Mr Cripps gruffly said to me, "I want to speak with you
3 in private". I went upstairs to the top floor of the
4 gallery where my exhibition was installed and he came up
5 and proceeded to angrily berate me.

6 In regard to what?---To an assertion that I had told the
7 gallery manager that he was unprofessional, that I,
8 myself was unprofessional, that I had consumed a lot of
9 everyone's time, that I was a nobody, that he belittled
10 me in terms of not having seen that they were fans,
11 overhead fans when I was a visual artist and that was
12 something that was something that I should have noticed
13 and I was taken aback by this barrage of insult that
14 impinged on my personal space. I was surprised and
15 alarmed at the ferocity of his attack on me. He called
16 me a liar repeatedly when I said that I had not called
17 him unprofessional and I was left perplexed by why he
18 would want to attack me in such a way. I remained civil
19 and polite during this tirade and at the end of it I
20 requested an opportunity to respond to which he responded
21 that he had no interest in what I had to say and walked
22 away.

23 Yes, thank you.

24 HIS HONOUR: Mr Dibb.

25 <CROSS-EXAMINED BY MR DIBB:

26 Ms Bowman, Mr Cripps did organise to have one of the turned off
27 removed, didn't he?---That I don't remember but may I say
28 that was in a way beside the point. That was the
29 context, the issue being I was subjected to a tirade that
30 came to me from nowhere.

31 HIS HONOUR: Ms Bowman, at this stage just listen to the

1 question and answer that question, please?---I was
2 unaware that a fan had been arranged to be turned off.

3 MR DIBB: You were not aware of that?---I don't recall.
4 That's the cross-examination, Your Honour.

5 MR GILERTSON: No re-examination, Your Honour.

6 HIS HONOUR: Thank you, Ms Bowman, for your attendance and for
7 the evidence and I apologise on behalf of the court that
8 you were inconvenienced yesterday afternoon I think and
9 to a certain extent today but you are now free to go
10 about your business?---Thank you very much.

11 (Witness excused.)

12 <(THE WITNESS WITHDREW)

1 MR GILERTSON: Your Honour, I call Emily Biggs-Kocaj which is
2 spelt B-i-g-g-s-K-o-c-a-j. I apologise, I've got the
3 wrong person. Perhaps Madam Associate could come back.
4 She's still here. Ruth Leveson, please.

5 HIS HONOUR: You better spell that.

6 MR GILERTSON: Yes, Your Honour, it's L-e-v-s-o-n.

7 <RUTH LEVESON, affirmed and examined:

8 MR GILERTSON: Is your full name Ruth Leveson?---Yes.

9 Is your work address Museum Victoria, 9 Nicholson Street,
10 Carlton?---Yes.

11 Are you the Manager, History and Technologies Collections,
12 Humanities Department of Museum Victoria?---Yes.

13 In the late 1990's were you the Registrar of Museum Victoria?

14 ---Not the whole museum but technology, science and
15 technology and history.

16 And are you acquainted with a body called the Council of
17 Australian Registrars Committee?---Yes.

18 What is or was that?---It was - the Australian Registrars
19 Committee which is now the Australasian Registrars
20 Committee was the professional - or is the professional
21 body for the museum registrar profession.

22 What area does it cover, or did it cover I should say?---It was
23 - museum registrars they manage the collections of
24 museums and art galleries.

25 Yes?---I don't know how much detail to go into but it's things
26 like documentation.

27 Sorry, I'm not asking you about what the registrars do?---Yeah,
28 yeah.

29 I'm asking you about the council, the geographical area - - -?
30 ---The geographical at the time in the 1990's was
31 Australia.

1 Yes, thank you. Was there a meeting of this body in about 1997
2 in Melbourne?---Yes.
3 Were you present at that meeting?---Yes.
4 Would you tell the court what happened?---Yes. During one of
5 the breaks of the meeting the president of the council,
6 of the Australian Registrars Committee spoke to me
7 privately and she said to me that on no account should I
8 deal with Mr Cripps or Redleg in my professional work,
9 that he had a reputation for being extremely difficult to
10 work with and that he had accused the Australian
11 Registrars Committee of - sorry.

12 MR DIBB: I object to this portion on hearsay grounds, Your
13 Honour.

14 HIS HONOUR: On the basis it's too specific?

15 MR DIBB: On the basis that, yes, it's hearsay evidence of an
16 actual incident rather than reputation.

17 MR GILERTSON: Which in my submission can form the foundation
18 of the reputation because there's New South Wales
19 authority about that which probably my learned friend
20 knows better than I do. It's just a judgment of Justice
21 Maher and I can't remember the name of it but the point
22 is that depending on the evidence as to the specific act
23 it can form the foundation of the reputation.

24 HIS HONOUR: Yes, but does evidence need to be given of the
25 specific evidence rather than an conclusion arising from
26 it?

27 MR GILERTSON: That's so and that's what the evidence about to
28 elicit goes to that accusation.

29 MR DIBB: It's hearsay of the specific act.

30 HIS HONOUR: I thought we had this discussion yesterday in
31 relation to another witness and you agreed at that point

1 that evidence could be given of the general reputation
2 but not of a specific incident which went towards
3 creating that reputation when it came to hearsay.

4 MR GILERTSON: I hadn't recalled myself going that far but in
5 any event I'll deal with it this way, Your Honour. I
6 won't persist with that part of the question.

7 HIS HONOUR: Yes, right.

8 MR GILERTSON: Who was this person who you spoke to?---She was
9 the chief registrar. I don't know the exact title. She
10 was the Registrar at the National Gallery of Australia.
11 What was her name?---Eric Persac.

12 Why were you contemplating any involvement with Mr Cripps or
13 Redleg at that time?---Well, the museum was relocating
14 its collections, or was about to relocate its collections
15 and we were having a conference about relocation and
16 although I wasn't really directly involved in the
17 relocation she thought that I might be I suppose and she
18 told me this information.

19 Yes, thank you.

20 MR DIBB: No cross-examination.

21 HIS HONOUR: Thank you very much for your evidence, Ms Leveson.
22 Sorry to have inconvenienced you yesterday and today but
23 you're now free to go with the court's thanks?---Thank
24 you.

25 (Witness excused.)

26 <(THE WITNESS WITHDREW)

1 MR GILERTSON: Is this a convenient time, Your Honour?

2 HIS HONOUR: It is. What are we doing in the afternoon, Mr

3 Gilbertson?

4 MR GILERTSON: I have two witnesses available at 2.15.

5 HIS HONOUR: Are they going to be short witnesses?

6 MR GILERTSON: I understand they will be short which leaves me

7 with two further witnesses, one by video link tomorrow.

8 HIS HONOUR: Yes.

9 MR GILERTSON: And another who was here yesterday on subpoena

10 and who is only available tomorrow so that will leave me

11 with no further witnesses this afternoon I'm afraid to

12 say.

13 HIS HONOUR: All right. Perhaps in that case just to keep

14 things moving I might hear the objection to the hyperlink

15 and that gives me an opportunity to think about that

16 perhaps overnight and look at some of the authorities

17 which you'll no doubt take me to. How long do you think

18 we'll need to deal with the objection? I won't rule on

19 it immediately because I want to go into the authorities.

20 MR GILERTSON: I would think it could be done in a half to

21 three quarters of an hour.

22 HIS HONOUR: That's fine, so we may finish early perhaps.

23 MR DIBB: I wouldn't think very long, it's quite a short one.

24 HIS HONOUR: Yes, all right. We may finish early but I

25 certainly have plenty to do. Tomorrow the witnesses

26 coming in the morning, we've got the video conference at

27 4 o'clock I think. How long is the witness tomorrow

28 likely to take?

29 MR GILERTSON: I'm now told the other witness for tomorrow can

30 do it in the - no. Yes, can do it in the afternoon which

31 would fit in with the video conference witness.

1 So is it proposed then that we resume sitting tomorrow at 2.15
2 rather than 10.30, is that the idea? Why don't we see
3 how we go in the afternoon perhaps.

4 MR GILERTSON: It might leave a gap because I understand all of
5 these witnesses are likely to be of short duration. If
6 we were to start at 2.15 tomorrow we would then have a
7 gap before 4 p.m.

8 HIS HONOUR: We'll work back from 4 o'clock if that's
9 necessary.

10 MR GILERTSON: If Your Honour pleases.

11 HIS HONOUR: Perhaps the parties can have a chat.

12 MR GILERTSON: I'll talk to my learned friend about it.

13 HIS HONOUR: Yes, talk to Mr Dibb and agree on something which
14 works for everybody. It minimises inconvenience both to
15 the parties as well as witnesses.

16 MR GILERTSON: As Your Honour pleases.

17 HIS HONOUR: And minimises inconvenience both to the parties as
18 well as witnesses.

19 MR GILERTSON: As Your Honour pleases.

20 HIS HONOUR: And minimises sort of disruption because I do have
21 a lot of work to do in this matter. It's quite a
22 complicated matter just the way it's structured. So if I
23 can have a block that would be beneficial. All right.

24 Madam Associate, can you please adjourn until 2.15.

25 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.15 P.M.:

MR GILERTSON: I apologise, Your Honour, I'm just doing some housekeeping. I have a number of folders I need to remove.

HIS HONOUR: That's fine, take your time.

MR GILERTSON: Your Honour, I call Gavin Nicholson.

HIS HONOUR: Is that with an "aa" or an "ai"?

MR GILERTSON: G-a-v-y-n, M-i-c-k-e-l-s-o-n.

<GAVYN JOHN MICKELSON, sworn and examined:

MR GILERTSON: Is your full name Gavyn John Mickelson?---Yes.

Is your address [REDACTED] Kingsville?---That's correct. Somerville Road, sorry.

Are you a logistics analyst?---I am.

Have you previously worked as a life model?---I did.

When did you do that?---That was during the period of 2008 to 2012, yeah.

What did your work as a life model involve?---Essentially I was contracted by various art groups around Melbourne to perform various poses for the groups for a paid remuneration.

What type of groups did you perform that work for?---All private groups, some registered associations, yeah, mainly small places. No schools as such so it was very much ad hoc work.

Have you had any involvement with the Guildford Lane Gallery? ---I have.

When was that?---That was in - sorry, I think May 2010, I could be corrected.

What involvement was that?---I was contracted to work initially for four sessions over a two week period. That was cut

1 back to two sessions over a two week period.

2 I actually conducted one session over the two week period.

3 Did you have any discussions with Mr Robert Cripps at that
4 time?---I did.

5 What were those discussions?---When I was initially contracted
6 I dealt with Britana but when I arrived I realised that
7 there had been no formal agreement towards remuneration
8 and methods of payment so when I arrived on the first day
9 I spoke to the art teacher. I'm sorry, I couldn't
10 remember the art teacher's name at this stage and he
11 informed me that Mr Cripps would be the person to talk to
12 in regards to the details. So before the session started
13 I approached Mr Cripps about identifying the pay rate and
14 the method of payment and, yeah.

15 What did he say?---He told me that the pay was \$30 an hour and
16 it would be paid on the completion of both sessions.

17 Did you say anything after that?---No. That was very unusual.
18 I'd been involved in art for a very long time and it was
19 the first time that I'd heard of that type of agreement,
20 but no.

21 After you performed the work what happened?---After the first
22 session we closed the day. The second session I arrived.
23 As I was a student at the time I was cycling. I went to
24 park my bike in the main foyer downstairs, as I did the
25 previous week, and Mr Cripps informed me that I couldn't
26 leave my bike downstairs, that I had to park it out on
27 the street and he showed me outside and where I had to
28 lock it up to it just couldn't be done. I informed
29 Mr Cripps that I needed to lock my bike because it would
30 be stolen if it was outside and he said stout that I
31 couldn't leave it inside. The conversation got very

1 aggressive very quickly. It got to the point where I
2 said, "Well look, I can't work if I can't leave my bike
3 locked". He said, "Well, that's it then, it's
4 cancelled". So I went outside and had to think about how
5 the conversation went down and gather my mind together
6 and I thought, well, I knew the art teacher was still to
7 arrive. I thought I'll approach the art teacher and
8 describe the situation, or explain the situation and see
9 if I can come to some type of agreement, whereas I could
10 help Mr Cripps run the class for the session because I
11 knew that there was potential loss on both parties.

12 Did you have any further conversation with Mr Cripps at this
13 time?---I did. Following - the art teacher arrived. I
14 explained the situation and he went in and spoke to the
15 art teacher. The art teacher said, "Look, there's
16 nothing that I can do". So I thought all right, well,
17 there's nothing more that I could have done.

18 HIS HONOUR: Sorry, don't tell us what you thought. Just tell
19 us what you said and what people said to you?---OK, I'm
20 sorry. So I went back into the foyer of the gallery and
21 approached Mr Cripps and asked what we would do in
22 regards to payment for the work completed. He said,
23 "Well, you know, I'll fire you an email and I'll think
24 about it", and I said, "OK". So at that point I left. I
25 later emailed Mr Cripps.

26 MR GILERTSON: How much later?---I think it was later, two days
27 later. I emailed Mr Cripps an outline of the agreement
28 and my pay structure just for the work completed and
29 requested that it be paid by 1 June.

30 What happened?---No, I didn't receive any communication. I
31 followed it up with a reminder notice on 8 June which I

1 sent via registered mail to Mr Cripps registered address
2 detailing the agreement and the amount outstanding for
3 work completed. That wasn't followed up again and in
4 fact actually, sorry, in their registered letter I had
5 mentioned that I would forward the matter to legal
6 proceedings.

7 What happened then?---So I forwarded the matter to VCAT and
8 after six months the hearing was heard and the case was
9 in my favour.

10 Did you have a lawyer appear for you at the hearing or did you
11 appear for yourself?---I appeared for myself. It was a
12 very low amount so I didn't have any money.

13 Did anyone appear or did Mr Cripps turn up?---No, he didn't
14 appear.

15 Did you receive the money?---I did eventually.

16 When?---I had to send a reminder notice after the court hearing
17 and then I received a cheque in the mail with no
18 explanation.

19 A cheque for how much?---\$60.

20 Yes, thank you.

21 MR DIBB: Sir, when the problem arose what did you do with your
22 bike the first time?---The first session I actually
23 parked it in the foyer.

24 Did you not have a lock for the bike?---I did have a lock.

25 So what was the problem, there was nothing to lock it to?---It
26 wasn't that there wasn't anything to lock it to. It was
27 that the position of the, if I could describe it, he
28 asked me to lock it to a grill that was this height, so
29 my bike was this high and I had to actually lift it up in
30 the air to try and lock it so it was - - -

31 HIS HONOUR: Sorry, just capture for the transcript. So the

1 bike was about slightly less than a metre high?---Yeah.
2 Whereas - - -?---So about my waist and the window was at
3 shoulder height.
4 Shoulder height, maybe two metres?---Yeah.
5 So you would have to lift it physically to hang it from that
6 spot to lock it?---To lock it, yeah, yeah.
7 Was this out on the street?---It's not something that I could
8 have done on my own.
9 Was this out on the street somewhere?---Yeah.
10 All right, thank you.
11 MR DIBB: There was nowhere nearby you could have locked your
12 bike?---Actually, no. The Guildford Lane Gallery -
13 sorry, the Guildford Lane itself has absolutely no
14 facilities for locking the bike.
15 I see. When you visit premises you usually would lock your
16 bike somewhere in the street, wouldn't you?---Absolutely,
17 or either there's a facility available to lock the bike
18 or they just - or places would let me leave my bike
19 inside the foyer. It's usually not an issue. It
20 actually has never been an issue.
21 The agreement was that you would paid after the second session,
22 yes?---Yes.
23 And you weren't able to perform the second session?---No.
24 Nothing further.
25 HIS HONOUR: Thank you. Any re-examination?
26 <RE-EXAMINED BY GILBERTSON:
27 Why is it you couldn't perform the second session?---Because I
28 had nowhere to park my bike. We had no - there was no
29 agreement that payment was only going to be made after
30 both sessions were complete.
31 MR DIBB: I submit it doesn't arise, Your Honour.

1 MR GILERTSON: It does arise.

2 HIS HONOUR: It does in part.

3 MR GILERTSON: As Your Honour pleases. I have nothing further.

4 HIS HONOUR: Thank you very much, Mr Mickelson, for your

5 evidence and for your attendance, you're now excused?

6 ---Thank you, Your Honour.

7 MR GILERTSON: Your Honour, I call Josie Waddelton which as I

8 said this morning is spelt W-a-d-d-e-l-t-o-n.

9 HIS HONOUR: Yes.

1 <JOSIE WADDELTON, sworn and examined:

2 HIS HONOUR: Ms Waddelton, you seem to have a very soft voice?

3 ---Is that better?

4 There is a transcript being taken of your evidence but it's

5 remote. There's no-one in the court with the equipment

6 so we need just to keep your voice at a reasonably high

7 level?---OK.

8 So that you can be picked up?---All right, OK.

9 Thank you?---Right.

10 MR GILERTSON: Is your name Josie Waddelton?---Yes.

11 Is your address [REDACTED] St Kilda?---Yeah, that's

12 correct.

13 Are you an artist?---Yes.

14 Have you had any involvement with the Guildford Lane Gallery?

15 ---Yes, I have.

16 What is that?---I had an exhibition there about in 2010.

17 What exhibition was that?---It was an exhibition on literature

18 and censorship.

19 What was that exhibition called?---It was called, "Defaced".

20 That's D-e-f-a-c-e-d, is that right?---Correct.

21 What did that exhibition involve?---It involved canvasses,

22 prints, some what do you call it, recycled books.

23 How long did that exhibition go for?---It went - I've got an

24 invitation, can I look it up?

25 No, if you can just remember if you can?---It was in August

26 last week - I think it was about two or three weeks, I

27 can't remember.

28 Who arranged for the preparation of that exhibition?---I did

29 with my friends.

30 What did that preparation involve?---That involved there was

31 quite a lot of people from a theatre company called Fly

1 on the Wall Theatre and they perform some lines from the
2 books that were censored.

3 During this exhibition did you have any conversations with
4 Mr Robert Cripps?---Yes, I did.

5 Would you tell the court what those conversations involved?

6 ---The conversation involved at the beginning of the
7 exhibition when it hadn't really started, there were
8 drinks on the table with glasses that needed to be
9 filled. A friend of mine started to pour himself a glass
10 and Mr Cripps flew into a rage and upset everybody.

11 What did he say?---He said, "How dare you", blah, blah, blah,
12 something like that. Just flew into a rage.

13 You don't recall anything else that he said in that regard?---I
14 can't remember.

15 Towards the end of the exhibition what happened?---What
16 happened, well, the singer came. There was a lot of
17 people that came.

18 And once it ended how was the - - -?---Was that at the end of
19 the exhibition?

20 Yes?---Or at the end of the night?

21 No, at the end of your exhibition what occurred?---Well, one
22 day I went in there to pack up and the gallery was
23 closed. He had another group in there. They were
24 recording something or other so I had gone to the trouble
25 of getting friends and family to come and help me pack up
26 and the gallery was open. We had to go. We were told to
27 leave.

28 Before this exhibition had you any conversations with anyone as
29 to how Mr Cripps was regarded?---Yes.

30 Who did you have a conversation with in that regard?---There
31 was a person called Dr Paul Carter and I told him that I

1 was having an exhibition there and he said, "Don't go
2 there it's hopeless", and I'd heard from other people in
3 the studio that Mr Cripps was quite sleazy.

4 Thank you.

5 HIS HONOUR: Mr Dibb.

6 <CROSS-EXAMINED BY MR DIBB:

7 There's a bar at the gallery, isn't there?---Yes.

8 And that's a licensed premises?---Yes.

9 Which has a licensee?---M'mm.

10 And is bound by the usual rules of licensed premises?---Yeah.

11 Responsible service of alcohol and such like. Your friend

12 actually entered the bar to serve himself a drink, didn't

13 he?---I think so, yeah.

14 And Mr Cripps concern was that he wasn't have to do that?

15 ---Yeah, well, why did he have to shout for goodness

16 sake? Why did he have to embarrass everybody?

17 HIS HONOUR: Ms Waddelton, can you just answer the question,

18 please?---Well, I did. I've had other exhibitions. This

19 has never happened.

20 MR DIBB: That's all, Your Honour.

21 MR GILERTSON: No re-examination, Your Honour.

22 HIS HONOUR: Thank you very much, Ms Waddelton, that concludes

23 your evidence. Thank you for your attendance in court,

24 you may now leave.

25 (Witness excused.)

26 <(THE WITNESS WITHDREW)

1 MR GILERTSON: As I indicated before the luncheon adjournment,
2 Your Honour, they're the only witnesses I have available
3 today.

4 HIS HONOUR: All right. We'll deal with the objection if
5 that's convenient for the parties.

6 MR GILERTSON: It is, Your Honour, if I could just get my
7 authorities?

8 HIS HONOUR: Yes, of course.

9 MR GILERTSON: Thank you, Your Honour.

10 HIS HONOUR: When you're ready, Mr Dibb.

11 MR DIBB: Sorry, Your Honour, I anticipated my learned friend
12 was applying to strike in some material. We have pleaded
13 the first matter complained of as being the publication
14 of Annexure A.

15 HIS HONOUR: Yes.

16 MR DIBB: We say that's the matter complained of, that's the
17 material on which the case is based. It probably doesn't
18 matter which way round we take this because Your Honour
19 will rule on it, and I'll address Your Honour first. It
20 would seem to me that what's being dealt with is a strike
21 in application as we say, that is, an application to add
22 something to the presently pleaded first matter
23 complained of.

24 HIS HONOUR: I thought the way it had formally arisen the other
25 day was that there had been an application before Justice
26 Beach to strike out part of the defence which His Honour
27 said should be dealt with by the trial judge, and that's
28 why I thought it was your application. But if that's not
29 right then - - -

30 MR DIBB: To strike out certain words, yes, because we said the
31 appropriate procedure was for the defendants to bring in

1 a strike in application rather than simply unilaterally
2 to add to the matter complained of in that way.

3 HIS HONOUR: What do you say about that, Mr Gilbertson?

4 MR GILBERTSON: In my submission, Your Honour, Your Honour is
5 correct, that the application to strike-out was made to
6 Justice Beach, he refused the application and ordered
7 that particulars be given of the hyperlinks relied upon.
8 Those particulars were provided. They do form part of
9 the defence and it is our learned friend's application,
10 in our respectful submission, to strike that out.

11 HIS HONOUR: Am I right in thinking something that you said the
12 other day, that the particulars are more extensive in
13 terms of the hyperlinks that they refer to than the
14 current intention in terms of what you will rely upon, is
15 that right?

16 MR GILBERTSON: The particulars refer to two. I'm only now
17 relying on one.

18 HIS HONOUR: Being the one that we discussed the other day,
19 which I read this morning?

20 MR GILBERTSON: The new-left Nazis, yes.

21 HIS HONOUR: All right. Mr Dibb, are you in a position to make
22 an application, leaving aside for the moment the niceties
23 of whether you should go first or second?

24 MR DIBB: Indeed, Your Honour.

25 HIS HONOUR: thank you.

26 MR DIBB: I'll hand Your Honour just two authorities.

27 HIS HONOUR: Yes, thank you.

28 MR DIBB: That deal with what one might call marking out the
29 field. One is a decision of Her Honour Justice Simpson
30 in Phelps v. Nationwide News Pty Ltd and Anor [2001]
31 NSWSC 130, a decision of 9 March 2001. The other is a

1 decision of Justice Le Miere [2012] WASC 314. The first
2 case, Your Honour, relates to a matter in which - in many
3 of these cases about the limits of the matter complained
4 of, what it comprises, are derived from newspapers of
5 course. Some of them derived from television programs
6 where there has been a promo and then a main program.

7 But some of them, in my submission, they're very
8 good guidance because where you have, as in the case of
9 Phelps, you have, on p.1, as Her Honour says in Paragraph
10 3, on p.1 - - -

11 HIS HONOUR: Paragraph what, sorry?

12 MR DIBB: I'm sorry?

13 HIS HONOUR: What paragraph?

14 MR DIBB: Page 1, Paragraph 3, sorry. On p.1 of the newspaper
15 under the headline No Job for Phelps's Partner, there is
16 proportion, and Her Honour reproduces that portion, and
17 then at the bottom of that portion it says, "Full report
18 page 3." So to read the full report you have to turn
19 over one page of the newspaper. The whole of this
20 paragraph which is sometimes referred to as pointer
21 appears in the schedule and the statement of claim, that
22 is to say that the plaintiffs pleaded that paragraph on
23 its own as one of their matters complained of.

24 Your Honour will see that they pleaded in the
25 alternative both of the parts you might say of the matter
26 complained of separately and then in the alternative they
27 pleaded them as one publication. In Paragraph 10 Her
28 Honour says, "The issue raises a question about the
29 proper ...(reads)... multiple single entities are
30 numerous."

31 Her Honour refers to the case of Burrows v.

1 Knightly, a decision of His Honour Justice Hunt, and that
2 decision is 1987 at 10 NSWLR 651, in which His Honour
3 said, "In my opinion the law may be stated ...(reads)...
4 complains when considered in isolation. Her Honour
5 observes at Paragraph 14, "It is to be observed that Hunt
6 J described ...(reads)... acceptable mode of pleading."

7 Her Honour then refers to the case of Lucas v. John
8 Fairfax in Paragraph 16, a decision of Justice Levine.
9 She says, "On p.1 of a Saturday newspaper a headline and
10 news item appeared, a second article also appeared on the
11 second page under a different heading." So those were
12 the two parts about which it was a question of whether
13 they're one or two publications or whether there could be
14 either.

15 Her Honour refers also to Rachimov in Paragraph 18.
16 "In that case the defendants did not complain of the
17 separate action," Paragraph 20, "brought in relation to
18 the third matter ...(reads)... to a single action." Her
19 Honour completes that review and gives Her Honour's view
20 of the law at Paragraph 22. "It is to be borne in mind,"
21 the second sentence, "that subject to unfairness
22 ...(reads)... mark out the playing field."

23 Your Honour will recall that I suggested to Your
24 Honour that that was the law. The plaintiff is entitled
25 to rely on, to mark out the playing field as to what the
26 matter complained of of which he complains. The second
27 authority to which I take Your Honour is a more recent
28 case and concerns, as Your Honour will see - there's a
29 good deal of other material here but if Your Honour turns
30 to p.19, from Paragraph 44, Your Honour will see that
31 His Honour Justice Le Miere reviews the law in relation

1 to this in the context of an item linked by hyperlink on
2 the web.

3 This item was a page on a website and the page
4 included a hyperlink embedded under a URL, a uniform
5 resource locator, at the end of the article, and I'm
6 reading from Paragraph 45. The link takes the reader to
7 a separate web page which displays the open letter. In
8 this case on the web page of which the plaintiff did
9 complain there was a miniature copy of the open letter on
10 which you could click to get to a bigger copy of the open
11 letter but, as is observed, it's not readable except for
12 the words, "Openness as the Honourable John Day MLA, the
13 Minister for Planning, Member for Kalamunda."

14 I don't know if Your Honour will be reserving, or
15 Your Honour might wish to read the whole - - -

16 HIS HONOUR: I will be reserving.

17 MR DIBB: You will?

18 HIS HONOUR: Yes.

19 MR DIBB: I imagined Your Honour would, and I needed weary Your
20 Honour in that event with reading through this Survey of
21 the Law.

22 HIS HONOUR: I'll read it carefully.

23 MR DIBB: Your Honour will obviously read it.

24 HIS HONOUR: Yes. You can just highlight the main issues.

25 I'll read it very carefully.

26 MR DIBB: The Survey of the Law includes, as Your Honour sees,
27 Kermode, His Honour refers to the reliance of Justice
28 McCallum in Kermode on Dow Jones v. Gutnick where the
29 High Court held that in the case of publication on the
30 internet, and this is at Paragraph 38, about the middle,
31 "It's only when material is downloaded ...(reads)..."

1 available on the same website."

2 His Honour refers to Justice McCallum's reference
3 back to the decision of the Full Court of the Supreme
4 Court of Western in *Buddhist Society* and the judgment in
5 that case in which the majority of the full court had
6 rejected the argument that these electronic pages had to
7 be pleaded together and said, "The letter or pro forma
8 letter is not part of the other two items ...(reads)...
9 discrete written communication."

10 More importantly, "In its electronic existence as
11 part of the content ...(reads)... would not uphold this
12 ground of appeal." That in brief is precisely the
13 position we have here. It may well be that when reading
14 newspapers many people turn from a pointer to the main
15 article but some may well not. It may well be that where
16 there are footnotes or where there is serialisation that
17 people read the footnotes or read what the footnotes
18 refer to or read the various parts of the serial.

19 It may be, and the argument may actually have less
20 force, as Your Honour perhaps knows, in the context of
21 the internet, because there are so many hyperlinks that
22 if you start following them you will never get to the end
23 of anything. The immediacy of these hyperlinks in the
24 internet, and we all use it now, the immediacy of the
25 hyperlinks imposes on the reader a discipline. It's not
26 necessary to my argument but it's a fortiori in my
27 submission. It imposes on the reader a discipline
28 because if you didn't have that discipline you would end
29 up getting down these endless daisy chains of connections
30 of which the internet is composed.

31 Whether that be accepted or not by Your Honour, this

1 is a separate file and it is downloaded and displayed on
2 a computer as a whole web page, and if someone does click
3 on the hyperlink they might, they will see a different
4 web page and it's a separate publication. Many, many
5 people will not have clicked on new-left Nazis or perhaps
6 any of the hyperlinks in this matter, and there's no way
7 of knowing which ones they might have clicked on or which
8 combination of them they might have clicked on.

9 HIS HONOUR: Have you counted how many links there are in
10 the - - -

11 MR DIBB: I have not, Your Honour. I have not counted how many
12 hyperlinks there are.

13 HIS HONOUR: I can do that.

14 MR DIBB: But if there were only one it would still be open to
15 the plaintiff in this situation to plead that as the
16 matter complained of without having to add in the
17 separate web file included in the - - -

18 HIS HONOUR: Mr Dibb, I haven't looked at these authorities and
19 I don't pretend that I'm familiar with the underlying
20 principles and the specific outcomes that they represent,
21 but isn't it a different issue though when one looks at
22 the position of the plaintiff and then one looks at the
23 position of the defendant? When one looks at the
24 position of the plaintiff the question is; is there a
25 fault in the statement of claim in the way that it's
26 chosen to plead the matter complained of?

27 It's not put against you that your reliance on the
28 web page without reliance on the hyperlinked page
29 constitutes a defect in your pleading. What they say is
30 that in defending themselves they're entitled to rely on
31 the hyperlink as part of the context in which the issues

1 in dispute are to be resolved. I hope I'm not putting
2 words into Mr Gilbertson's mouth, but we're looking at
3 the position of the defence, not the position of the
4 statement of claim.

5 MR DIBB: Quite, Your Honour.

6 HIS HONOUR: What do you say about that?

7 MR DIBB: I say that the defence must answer the pleading of
8 the plaintiff. The plaintiff pleads this is the
9 publication; the defence has to answer that. It may well
10 be, and as I said at the very beginning, I haven't been
11 informed as to exactly what use Mr Gilbertson wishes to
12 make of this additional material, whether he wishes to
13 say it influences the meaning of the publication and is
14 relevant to the argument about whether different meanings
15 are conveyed and defamatory or whether he wishes to argue
16 that it includes material that he's entitled to rely on
17 as facts truly stated for the purpose of comment or what
18 the position is. And the position might be different
19 depending on what Your Honour rules.

20 The general rule, assuming that it's thought to be
21 relevant to the defence of comment, the general rule is
22 that the facts truly stated must be contained in or
23 sufficiently referred to in the matter complained of, and
24 by sufficiently referred to, in my submission what is
25 meant are those exceptional sorts of comment cases that
26 involve things like performances, plays, restaurants,
27 that sort of the thing where ex hypothesi despite the
28 fact that the comment defence is aimed at a situation
29 where the reader can make a judgment for themselves,
30 nevertheless a kind of exception is made for performance
31 and restaurant review type commentary because the reader

1 can't.

2 It may have only been a single recital. The reader
3 necessarily - it's published the next day - cannot in
4 fact go and see the recital and cannot make a judgment
5 for themselves. Nevertheless that sort of fact is
6 sufficiently referred to and supports the case of what
7 Justice McHugh called the exceptional. So whether my
8 learned friend seeks to rely on it in support of the
9 meaning argument or in support of the comment defence or
10 in some other respect, the material before the ordinary
11 reasonable reader we say, or we complain is this.

12 People might read all sorts of other things, and we
13 don't know, but we complain of the publication of this
14 web page. That's my submission.

15 HIS HONOUR: I understand. Thank you very much.

16 Mr Gilbertson?

17 MR GILBERTSON: In our submission, Your Honour, the law has
18 moved on from Phelps, a decision of 2001, to be more
19 accurately stated in the judgment that my learned friend
20 referred to of Justice Le Miere in Leighton v. Garnham
21 and in particular the references at Paragraphs 49 and 50
22 to the Full Court Western Australian decision in Buddhist
23 Society of Western Australia Inc v. Bristile (2000) WASCA
24 210. If I could just take Your Honour through these
25 passages at 49 and 50.

26 You'll see it says there in 49, "In that case the
27 plaintiff brought a defamation action ...(reads)... not
28 uphold this ground of appeal." Justice Wheeler, as Your
29 Honour will see in the next paragraph, said, "The
30 question of how one determines ...(reads)... regarded as
31 part of a single package." There are several factors

1 here, in my submission, or in our submission which make
2 this a single composite publication, that is, the first
3 matter complained of and the new-left Nazis hyperlink.

4 Firstly, the nature of the documents are that they
5 are both web pages, the matter complained of contains a
6 link which, on the evidence, is to the same website, and
7 the context in which it appears, in our submission, in
8 the first matter complained of is relevant. If Your
9 Honour looks at the first Vakras article, p.2 of 7 at the
10 foot, the link is in the context of the words, "Cripps is
11 a self confessed racist," and the words, "He is a
12 manifestation of the new-left ...(reads)... their racism
13 is a justifiable one." And there's another reference to
14 the hyperlink.

15 If one looks at Document 38 in the defendants' court
16 book, this article, it is submitted, is in relation to
17 that same subject matter, namely, a manifestation of the
18 new-left who have adopted the sentiments Hitler expressed
19 in his Mein Kampf but who believe that though theirs and
20 Hitler's sentiments are the same, their racism is a
21 justifiable one.

22 What we rely upon, Your Honour, in relation to two
23 issues is as follows. We rely upon it in relation to
24 both meaning conveyed by the first matter complained of
25 and, secondly, in relation to the fair comment and
26 opinion defences of the first defendant. So what we
27 submit is that these, by reason of being a single
28 composite publication are read by the ordinary reasonable
29 reader in order to first of all form the meaning conveyed
30 and, secondly, in relation to the facts, comment and
31 opinion relied upon in support of that defence.

1 The passages that will be relied upon I can indicate
2 to Your Honour are as follows. They are all of the first
3 page down to the second line of the last paragraph, that
4 is, down to the words, "This is expressed as a racial
5 hatred of Jews with arguments which are derived directly
6 from Mein Kampf."

7 HIS HONOUR: Sorry, you've lost me. So on the first page from
8 the top down to?

9 MR GILBERTSON: The words, "Mein Kampf," in the second line of
10 the last paragraph.

11 HIS HONOUR: I see.

12 MR GILBERTSON: The subject matters which those paragraphs that
13 I've just referred to deal with are the New Racism of the
14 Political Left, a reference to the - what the first
15 defendant writes was a criticism for the sentiments which
16 underlie his works by the owner of the gallery. The next
17 paragraph, "For nearly 65 years after the end of World
18 War 2 and the views of Hitler are rehabilitated, Adolph
19 Hitler and the 21st Century Left, Hitler's Racist
20 Disciples, the Political Left."

21 Then there's a reference to, "A large number of the
22 conscientious left are or claim to be oblivious
23 ...(reads)... sincerity of their good conscience." I
24 won't read the rest. The other passages upon which the
25 defendants seek to rely are on the third page of that
26 document from the words towards the top, "In the Mein
27 Kampf Hitler writes," and there's a reference in that and
28 in the paragraph two below it to quotations from Mein
29 Kampf. I don't rely upon the paragraph headed, Hitler's
30 Attitude, it is Christian, but I rely upon the next
31 paragraph.

1 HIS HONOUR: Sorry, you've lost me. So we start at the top in
2 the Mein Kampf Hitler writes, and then there's the first
3 quote ending in translation?

4 MR GILBERTSON: Yes. So I rely upon everything from, "In the
5 Mein Kampf Hitler writes," down to the end of, "Mannheim
6 translation," at the end of the third paragraph.

7 HIS HONOUR: The third paragraph?

8 MR GILBERTSON: Or it might be the fourth.

9 HIS HONOUR: I'm sorry?

10 MR GILBERTSON: It's the line, "Our present day Christians
11 debase themselves to begging for Jewish votes at
12 elections," p.278, a reckoning in Mein Kampf.

13 HIS HONOUR: Yes, I've got that now.

14 MR GILBERTSON: The other part of this page upon which I rely
15 is the passage, "Thus a Christian Hitler writes," and in
16 a reference to p.60 of Mein Kampf.

17 HIS HONOUR: So just that paragraph?

18 MR GILBERTSON: Yes.

19 HIS HONOUR: That's it?

20 MR GILBERTSON: And that is all. In our submission the reasons
21 that the other hyperlinks are not included is because
22 they are not relevant to the meanings pleaded by the
23 plaintiff. So in our submission there can be a number of
24 hyperlinks in a document. If a plaintiff complains about
25 part of it and one of those hyperlinks goes to the
26 question of meaning or of the basis of fair comment
27 qualified - I withdraw that. Fair comment or honest
28 opinion that it doesn't matter in our submission that the
29 other hyperlinks are not referred to.

30 HIS HONOUR: That's your submission?

31 MR GILBERTSON: I'm just going to double check something.

1 That's my submission.

2 HIS HONOUR: Just before you sit down, if in the article
3 complained of, instead of just the passive hyperlink the
4 text read something like this, if you want to know what I
5 mean by the new-left Nazis click here, would that
6 strength or weaken your position?

7 MR GILERTSON: It doesn't affect it in our submission because
8 one has to look at the particular context used, had those
9 words been used that Your Honour's referred to, there
10 would have been a clear link whereas the question that
11 Your Honour needs to determine with respect is what the
12 effect of these words are but in my submission that would
13 be a stronger indication than this but this is
14 nonetheless sufficient.

15 HIS HONOUR: All right. On the face of the hyperlinked
16 document, apart from the first paragraph there is no
17 connection with Mr Cripps and the gallery at all so it
18 looks as if this item was written quite separately, the
19 main target of which is the cartoonist and it looks to me
20 and there's no evidence about it I don't think, that
21 superimposed on separate publication about this theme was
22 an introductory paragraph that takes us to the particular
23 experience at the gallery. In other words, it looks as
24 if where there's a hole it was an independent writing
25 prepared for an independent purpose and the only links
26 are the hyperlink that when you get into it just the
27 introductory paragraph at the beginning. Do you have
28 anything to say about that?

29 MR GILERTSON: There is no evidence about that but it does
30 appear on its face to have been written independently
31 however given the subject matter and the context of the

1 matter complained of and the passage that Your Honour's
2 referred to in this document referring to Mr Cripps, the
3 two documents become linked in our submission.

4 HIS HONOUR: They become linked but are they a composite
5 publication. You see, Mr Vakras could have said in the
6 document this issue of the new-left Nazis is something
7 that I wrote a thesis about five years ago and if you're
8 interested in following it up, well, here's a link. I
9 know this is not what it is and I've got to deal with
10 what it is but I'm looking at really how one sensibly
11 takes this material as one finds it and it does have that
12 sort of element to it that he says what he says in the
13 piece and then allows the reader, if the reader chooses,
14 to find out more about that subject matter by clicking on
15 the hyperlink and then when one goes into the hyperlink
16 there's an introduction but it's a separate document that
17 was not created either simultaneously on the face of it
18 or for the same purpose so that's what I'm exercising my
19 mind about in considering your submission that they can
20 be treated as composite. What do you say about that?

21 MR GILERTSON: In our submission it goes further than a
22 description of if you'd like to find out more about.
23 What it does is it puts meat on the bones as it were as
24 to what the manifestation of the new-left Nazis means.
25 So it's not merely if you'd like to find out more about
26 the new-left Nazis here it is, it is a detailed
27 explanation as to what the reader should understand the
28 words, "Here's a manifestation of the new left Nazis who
29 have adopted the sentiments expressed in Mein Kampf
30 means".

31 HIS HONOUR: Yes, all right. Anything else?

1 MR GILERTSON: If Your Honour pleases.

2 HIS HONOUR: Mr Dibb.

3 MR DIBB: Your Honour will readily see of course but I just
4 point out that Justice Wheeler was in the minority in
5 that case and that Her Honour's judgment rises no higher
6 than saying it's arguable that they colour one another as
7 a strikeout application.

8 HIS HONOUR: Yes, it was a strikeout application.

9 MR DIBB: I mean it's not - - -

10 HIS HONOUR: Mein is not a strikeout application. Mein is a
11 substantive ruling.

12 MR DIBB: Indeed, Your Honour. There is the majority of the
13 Full Court said it wasn't even arguable on a strikeout
14 application.

15 HIS HONOUR: Yes, all right. I will reserve because I want to
16 do justice to the arguments and the case law. I had a
17 quick look at Dr Matthew Collins' book. Not much in
18 there. He says hyperlinks raise all sorts of issues,
19 thank you very much, Dr Collinson, one of the answers of
20 Dr Collinson, but I'll have a closer look at that. Apart
21 from these cases and the parties don't wish to refer me
22 to anything else that might be helpful?

23 MR DIBB: No, Your Honour.

24 HIS HONOUR: All right, I'll deal with that possibly tomorrow
25 morning but I don't see it altering the course of the
26 next few days anyway so I might take a bit of time.

27 MR GILERTSON: Can I indicate the position in relation to
28 tomorrow. We have the video link at 4 o'clock and what
29 we would, if it's convenient to Your Honour, endeavour to
30 do is to have the other witness available some time
31 shortly prior to then. The difficulty with that I

1 suppose is that it will mean a late start tomorrow.

2 HIS HONOUR: Yes.

3 MR GILERTSON: But I don't know what my learned friend's
4 position is in relation to that. We've had some brief
5 discussions.

6 HIS HONOUR: If there's something useful we can do before the
7 witness arrives in court then I'm happy to do that. I
8 mean this is obviously something that is a necessary part
9 of the trial which has been able to fill some of the time
10 in the afternoon. Are there any other preliminary issues
11 or issues that will need to be dealt with later that we
12 can deal with tomorrow morning or straight after lunch
13 that won't cause any embarrassment because they will be
14 taken out of the natural sequence?

15 If not then I think there's no choice other than to
16 start at the time that you think the witness should
17 start.

18 MR GILERTSON: For my part I can't. I've tried to think of
19 anything that might be usefully done otherwise but I
20 can't think of anything.

21 MR DIBB: I'm afraid I can't either, Your Honour. But in that
22 event my difficulty with not being able to get a
23 particular witness until Monday of course becomes quite
24 irrelevant that we won't have any delay, I assume Your
25 Honour would sit on Friday?

26 HIS HONOUR: Yes, yes. Friday was suggested as a non sitting
27 day only to accommodate the fact that you would otherwise
28 be embarrassed because of the witnesses unavailability.

29 MR DIBB: Yes.

30 HIS HONOUR: At 5 o'clock tomorrow I have to participate in a
31 national judicial telephone conference and I would be

1 embarrassed if I were to start late because of my
2 involvement in that. Is there any risk that this witness
3 will be finish if we start at 4 o'clock beyond 5 o'clock?

4 MR GILERTSON: I don't believe so. He will be of similar
5 length, perhaps slightly longer than the other shorter
6 duration witnesses.

7 HIS HONOUR: That's fine. I can sit up to say five to five but
8 then I have to get back to my chambers to participate in
9 this telephone conference. Apropos of that, it is
10 important that we are ready to start the overseas witness
11 at four so we might bring the - I'm told we actually have
12 quarter to four to set up the administrative
13 arrangements. My point is we should allow a bit of extra
14 time and start a bit earlier with the other witness, not
15 assume that they're only going to take 15 minutes and
16 then find that the witness is encroaching into the 4
17 o'clock.

18 MR GILERTSON: I suggest 3 o'clock, Your Honour.

19 HIS HONOUR: 3 o'clock?

20 MR GILERTSON: Yes.

21 HIS HONOUR: That's plenty of time? Who is the witness that
22 you're calling at three?

23 MR GILERTSON: Emily Biggs-Kocaj

24 HIS HONOUR: All right, fine. I think that's probably generous
25 then in that case to start at three but I'd just prefer
26 to make sure that we don't find ourselves in the position
27 of having to start the video conference later.

28 MR GILERTSON: Yes, Your Honour.

29 HIS HONOUR: Unless there's anything else we'll then adjourn
30 until 3 p.m. tomorrow. All right, Madam Associate.

31 ADJOURNED UNTIL THURSDAY 20 MARCH 2014

1 HIS HONOUR: Just before we commence this afternoon I would
2 like to draw the parties' attention to a matter
3 concerning the application that was made by the
4 plaintiffs yesterday afternoon. In the Buddhist Society
5 case one of the matters that was discussed was whether
6 the three files were accessible on the internet
7 independently without first going through the Buddhist
8 Society's home page.

9 As I consider that this may be relevant to the
10 present case this morning my associate typed the web
11 address http://www.vakras.com/guildford_lane_gallery.html
12 to see whether that had the effect of bringing up the
13 article in Annexure A. It appeared to do so. My
14 associate then typed [http://www.vakras.com/new-left-and-](http://www.vakras.com/new-left-and-nazis/)
15 [nazis/](http://www.vakras.com/new-left-and-nazis/) to see whether that had the effect of bringing up
16 the hyperlinked article. It appeared to do so.

17 My associate was in each of the sites for about a
18 second. Neither my associate nor I read any content of
19 either website. As this matter was not canvassed
20 yesterday I am informing the parties of it now to give
21 them an opportunity to make submissions on whether I can
22 take the above information into account and if so what I
23 should make of it for the purposes of the plaintiff's
24 application.

25 The parties can address me on this issue today if
26 they're in a position to do so otherwise they can do so
27 first thing tomorrow morning. I'm still in the process
28 of reading the case law and trying to understand the
29 relevant principles and the matters that are to inform my
30 ruling on the plaintiff's application, and I won't
31 deliver my ruling before hearing further from the

1 parties.

2 The parties are perfectly at liberty to say that
3 this information is not something I should or can take
4 into account, and if that's the case then of course I'll
5 put it to one side. But because it was information that
6 was without notice to the parties then it's incumbent on
7 me to inform the parties that this exercise occurred this
8 morning and I'm open to further submissions about that.

9 It may be that I shouldn't take it into account, in
10 which case that's fine. If it's relevant I need to take
11 it into account I'm open to submissions as to what effect
12 it has one way or the other on the application that the
13 plaintiffs have made.

14 MR DIBB: I wonder if I might just have a word with
15 Mr Gilbertson?

16 HIS HONOUR: Yes, of course.

17 MR DIBB: Mr Gilbertson would like to consider the position.

18 HIS HONOUR: Of course.

19 MR DIBB: I think we're of one mind on our response but
20 Mr Gilbertson would like to give it some thought.

21 HIS HONOUR: Thank you.

22 MR GILBERTSON: Yes, just overnight if I could, Your Honour,
23 just overnight.

24 HIS HONOUR: Absolutely, yes. Thank you.

25 MR GILBERTSON: We're ready to proceed with the evidence,
26 Your Honour.

27 HIS HONOUR: Thank you.

28 MR GILBERTSON: I call Emily Biggs-Kocaj. As I indicated
29 yesterday, her surname is spelt B-i-g-g-s - K-o-c-a-j.

30 HIS HONOUR: Just while we're waiting for the witness; one of
31 the issues that was discussed I think by Justice Wheeler

1 in the Buddhist case was the extent to which judges are
2 able to take judicial notice about how the internet
3 works. I see that as a very complex area, the limits
4 beyond which judges can - - -

5 MR DIBB: It is and it's constantly changing. My submission
6 would be that everybody knows how the internet works now
7 including judges, at least in - - -

8 HIS HONOUR: You don't know some of the judges in this court
9 well enough, Mr Dibb, to say that.

10 MR DIBB: I know some of my colleagues on my floor. I think
11 use of the internet is now so widespread for so many
12 things, for banking and booking tickets and hotels and
13 just about everything is done electronically now that it
14 would be my submission that Your Honour can regard that
15 as part of the common knowledge of society.

16 HIS HONOUR: We'll wait and see what Mr Gilbertson says.

17 MR GILBERTSON: Subject to things like spoofing and concepts
18 like that.

19 HIS HONOUR: I don't know what that means but other than what
20 the evidence suggests. Yes, very well, please continue.

1 <EMILY BIGGS-KOCAJ, affirmed and examined:
2 MR GILBERTSON: Perhaps if you could just speak up a little if
3 you could, Ms Biggs-Kocaj?---Sure.
4 Is your full name Emily Biggs-Kocaj?---correct.
5 Is your work address [REDACTED] Richmond?---No.
6 It's not any more. What is your address, your work address?
7 ---My work address?
8 Yes?---400 Flinders Street.
9 Melbourne?---Melbourne.
10 What is your occupation?---I'm an exhibitions manager.
11 Where are you an exhibitions manager?---Museum Victoria.
12 Have you had any involvement with - I'll withdraw that. Did
13 you have any involvement with the Guildford Lane Gallery?
14 ---I did.
15 When was that?---2009 into 2010.
16 What was your involvement with the gallery?---Originally I
17 started as a volunteer and I curated an exhibition at the
18 gallery and then I was employed to assist with the
19 management of the gallery.
20 Did you have a work title in relation to assisting with
21 management?---Yes, I did. I think it changed a couple of
22 times but one of them was gallery manager and I think
23 artistic director.
24 Over what period of time were you involved in management of the
25 gallery?---September 2009 to February 2010.
26 Did you cease working there in February 2010?---Correct.
27 Would you tell the court the circumstances under which you
28 ceased working there at that time?---The circumstances
29 were that on a Friday afternoon Robert Cripps requested
30 the keys from me for the gallery and said that there was
31 going to be a re-keying of the locks in the gallery, and

1 then I received a call, I think it was the Saturday, from
2 him stating that I would no longer be required to attend
3 work and some commentary on my incompetence and also
4 financial problems in terms of the gallery. I hung up on
5 that phone call and ceased contact.

6 And ceased contact. Did you have any dispute with the gallery
7 after that?---Yes, absolutely, because I was owed quite a
8 significant amount of money.

9 How much money?---I can't remember the exact amount but it was
10 I think it was around \$2500.

11 What happened in relation to that money?---In relation to that
12 money initially an associate offered to make a call on my
13 behalf to Mr Cripps, which happened, and I subsequently
14 found out that was an inappropriate phone call. After
15 that I took up the services of a professional debt
16 collection company to try and get those funds back, and I
17 think I'm still owed \$800.

18 Have you spoken to people who know Robert Cripps?---Yes.

19 What types of people have you spoken to who know Robert Cripps?
20 ---Artists, ex volunteers, ex staff of the gallery and
21 then just more generally the cultural sector.

22 What do you mean by the cultural sector?---Well, I work in, you
23 know, quite a large state institution, a lot of our staff
24 are also practising artists or have been involved in the
25 arts or cultural communities over periods of time whether
26 in their professional life or in their artistic life, and
27 when I have mentioned previously to some staff members
28 where I worked in the past they've had a reaction in
29 terms of bad reputation of that particular gallery or the
30 art transport services.

31 By art transport services what are you referring to?

1 ---Mr Cripps's alternative company, Redleg I believe.

2 How many people would you say you have spoken to since 2009

3 about Robert Cripps?---I mean, if you include the ex

4 staff and gallery - volunteers, sorry, and ex staff and

5 artists probably between ten and 15.

6 From the people that you have spoken to about Robert Cripps

7 what do you say his reputation was in early 2010 in

8 relation to the way he treated artists and exhibitors at

9 the Guildford Lane Gallery?---I think primarily it would

10 be that people who had had that interaction, not all by

11 any means, but a percentage of those artists would make

12 the comment that they weren't treated with respect in

13 terms of the work that they were exhibiting within the

14 gallery space, that some of them experienced bullying

15 behaviours in terms of the presentation of their artistic

16 work within the gallery space. Other artists commented

17 that they felt uncomfortable with Mr Cripps's conduct in

18 a sexual nature towards them. Just in general, you know,

19 the people were unimpressed by the service that they

20 received for the moneys that they paid in terms of the

21 gallery hire.

22 From the people you've spoken to about Robert Cripps what do

23 you say his reputation was in early 2010 in relation to

24 the way he treated female staff and volunteers at the

25 Guildford Lane Gallery?---From my personal viewpoint?

26 I just want you to focus please from your conversations with

27 these people, the way he has been regarded in that way?

28 ---Well, depending on the person, you know, that was

29 communicating it would have been anything from slightly

30 inappropriate sexualised behaviour to extremely offensive

31 behaviour in terms of comments about women's appearances,

1 about their private activities. I mean, I know that
2 particular people were very, very offended by those sort
3 of comments.

4 I will come to that. Do you know a former volunteer by the
5 name of Laila?---Yes, yes, I remember that person.

6 HIS HONOUR: How do you spell that?

7 MR GILBERTSON: L-a-i-l-a. (To witness) Did you witness any
8 conversation between Laila and Mr Cripps?---I witnessed a
9 series of interactions between the two, so Laila and
10 another young lady called by the name of Thao I believe
11 were regular volunteers who would come into the gallery
12 on a certain evening of the week or perhaps it was every
13 fortnight and they would undertake what was called a
14 gallery sit. So they would come in of an evening when
15 the gallery was open to the public in order to have
16 people within the space. Mr Cripps would buy them a meal
17 a lot of the time and he would make comments such as, you
18 know, these are my girlfriends, or he'd make comments
19 about what they were wearing. And I'll just note that
20 these two young ladies were international students, their
21 language skills at that stage were probably still
22 advancing so they might not have had a great degree of
23 comprehension of the subtext in terms of the
24 conversation. I personally made a comment to Mr Cripps
25 about this conduct, commenting that I thought it was
26 inappropriate to these young ladies, and he said
27 something along the lines, and I can't remember exactly
28 the words, but that they enjoyed it.

29 When did you observe this interaction between Mr Cripps and
30 Laila and Thao?---I think it was at the end of 2009.

31 HIS HONOUR: What's the spelling of the second young lady's

1 name?

2 MR GILBERTSON: T-h-a-o, Your Honour. Yes, thank you.

3 <CROSS-EXAMINED BY MR DIBB:

4 Ms Biggs-Kocaj, is it?---Kocaj.

5 Kocaj, I'm sorry. Ms Biggs-Kocaj, you've given evidence about
6 the reputation of Mr Cripps and Redleg Museum Services as
7 an art transporter in 2010?---M'mm.

8 That's a yes, sorry?---Sorry, yes.

9 Had you by that stage yourself seen any of the web pages that
10 are the subject of these proceedings? Are you familiar
11 with those web pages?---I am.

12 Had you seen them by then?---I think I'd seen them once I
13 believe, yes.

14 So you were aware of the allegations that were being made in
15 those web pages at that time?---Yes, but I'll add that it
16 was a very vague understanding.

17 I'll ask you to answer my questions, thank you. When you first
18 started working for the gallery yourself as a volunteer
19 did you do any investigations as to the bona fides or the
20 reputation or the history or anything else to do with
21 Mr Cripps or Guildford Lane Gallery?---No, not at that
22 stage, no.

23 Had you heard - what were you doing before you worked for
24 Guildford Lane Gallery?---Before I was working for
25 Guildford Lane Gallery, do you mean directly before?

26 Yes?---I was working for a not for profit arts organisation.

27 A not for profit arts organisation?---Yes.

28 So you were in the arts field. And before that?---I've had a
29 variety of different positions in artist agencies, I
30 worked in a house museum, those sort of areas.

31 So you had some history in that area of work and that area of

1 life, museums, artists, exhibitions?---Correct. However,
2 I hadn't undertaken work for I guess what you'd term a
3 commercial gallery as such, I hadn't worked for that sort
4 of institution before. Cultural Infusion was a
5 performing arts organisation.

6 Would it be a reasonable assumption that when you went to work
7 for Guildford Lane Gallery, despite your exposure to the
8 arts world you weren't aware of any particular bad
9 reputation associated with Mr Cripps or Guildford Lane
10 Gallery; would that be a fair assumption or would it
11 not?---I would think that that would be a fair
12 assumption. From what I'd heard when I entered into the
13 gallery was that it was a new space. I'm not sure about
14 when it was established. I think it was only in 2008 or
15 early 2007, so it was fairly new still in terms of how
16 reputation behaves.

17 Thank you. That's the cross-examination, Your Honour.

18 HIS HONOUR: Any re-examination?

19 MR GILBERTSON: Just one matter, Your Honour.

20 <RE-EXAMINED BY MR GILBERTSON:

21 In 2010 how much had you read of the articles by Lee-Anne
22 Raymond and Demetrios Vakras in relation to Mr Cripps?

23 MR DIBB: I do object to that, Your Honour. As I understand it
24 the witness was giving evidence about the reputation.
25 Those questions were to establish that the material was
26 out there at that time and had been seen. Now, whether
27 this witness had seen it or not is not really relevant.

28 MR GILBERTSON: But you asked her.

29 MR DIBB: Yes, indeed. But whether this witness has actually
30 read it. I asked her to establish that it was in
31 circulation at that time.

1 HIS HONOUR: That may have been the purpose of your question

2 but Mr Gilbertson is entitled to follow on from that.

3 MR DIBB: As Your Honour please.

4 MR GILBERTSON: (To witness) How much had you read of their

5 articles at that time?---Nothing really. I saw some

6 emails relating to it and I was aware that there was an

7 issue about it but I hadn't gone into the materials in

8 depth.

9 Thank you.

10 HIS HONOUR: Thank you very much for your attendance this

11 afternoon?---Thank you, Your Honour.

12 That completes your evidence and you're free to go?---Thank

13 you, Your Honour.

14 <(THE WITNESS WITHDREW)

1 MR GILBERTSON: Your Honour, I was a bit over generous in the
2 3 o'clock estimate. I see we have about 25 minutes until
3 the video conference.

4 HIS HONOUR: I can stand the matter down or if the parties wish
5 to raise anything then that can be done. If the parties
6 are ready to address me on the issue that can be done,
7 otherwise the course will be that I'll leave the bench
8 until the conference is set up.

9 MR GILBERTSON: If Your Honour pleases. We have prepared a
10 tender list of the documents in our court book.

11 HIS HONOUR: Yes.

12 MR GILBERTSON: We have the transcript references if necessary.
13 I haven't included them on this document. We've
14 endeavoured to just describe them by emails between which
15 people and what date and what time.

16 HIS HONOUR: That's sufficient. Yes, thank you. Mr Dibb, can
17 you have a look at this and at a convenient time let me
18 know. It can be a time no later than tomorrow morning.
19 Let me know whether you have any objection to any of
20 these items.

21 MR DIBB: Yes, thank you.

22 HIS HONOUR: If not what I will do is assign an exhibit number
23 to each of them and probably send the Word document to
24 the transcript writers so that they can incorporate that
25 into the record of the proceeding and they'll then become
26 the exhibits and the same process will be followed with
27 yours.

28 MR DIBB: Thank you, Your Honour. My learned friend - sorry,
29 Your Honour. My learned friend has discussed a witness
30 that he can't get here until Monday.

31 HIS HONOUR: Yes.

1 MR DIBB: We're agreed that he'll interpose that witness
2 subject to my being able to recall the plaintiff if I
3 need to.

4 HIS HONOUR: Yes, that's fine.

5 MR GILBERTSON: Yes, if that's convenient to Your Honour that's
6 what we propose to do.

7 HIS HONOUR: Who is that witness?

8 MR GILBERTSON: Courtney Kim, K-i-m.

9 HIS HONOUR: Yes, she was referred to in the evidence. Fine.

10 Just before if necessary, standing the matter down, can I
11 just make sure that I have the current pleadings for both
12 proceedings. What I'll then do is just take them out of
13 the folders and just have them as a pleadings bundle.

14 Just bear with me. In the defamation proceeding, looking
15 at the plaintiff's pleadings court book, the current
16 statement of claim is the one in Tab 1, is that correct?

17 MR GILBERTSON: Yes.

18 HIS HONOUR: And then the current defence of the first
19 defendant is Tab 4 and that of the second defendant is in
20 Tab 6. Is that all correct?

21 MR GILBERTSON: Just excuse me a moment.

22 HIS HONOUR: Yes, sure.

23 MR GILBERTSON: Prior to the commencement of the trial,
24 Your Honour, I had my instructor send an email to
25 Your Honour's associate indicating that what appeared in
26 the court book that we were provided with in Tabs 4 and 6
27 was not the version of the second further amended defence
28 as they had been filed and I did have my instructor email
29 the correct versions. I wonder if we might make sure by
30 having another copy somewhere - - -

31 HIS HONOUR: Just one second. My associate tells me that she

1 actually changed over the documents emailed and are in
2 the folder that I have. I would not have seen the
3 earlier versions.

4 MR GILBERTSON: If Your Honour pleases.

5 HIS HONOUR: So just to make sure by reference to dates that's
6 probably the most reliable course. The further amended
7 statement of claim in the defamation proceeding is the
8 one that's said to be amended pursuant to Order 36.03
9 dated 22 May 2012, is that correct?

10 MR DIBB: Yes, Your Honour.

11 HIS HONOUR: All right. Then the second further amended
12 defence of the first defendant is the one that's dated
13 3 September 2013 in place of 15 June 2012.

14 MR GILBERTSON: That's correct, Your Honour.

15 HIS HONOUR: And there's a reply that is dated 8 February 2012,
16 is that the correct reply?

17 MR DIBB: Yes, Your Honour.

18 HIS HONOUR: Then the second further amended defence of the
19 second defendant is dated likewise 3 September 2013 in
20 the place of 15 June 2012 version.

21 MR GILBERTSON: That's correct.

22 HIS HONOUR: All right. Then there's a reply that's dated
23 8 February 2012, is that correct?

24 MR DIBB: It is, Your Honour.

25 HIS HONOUR: And the various further and better particulars,
26 have they changed in any way, shape or form?

27 MR GILBERTSON: They should be the further and better
28 particulars and I'm talking here of the further and
29 better particulars filed pursuant to the orders of the
30 honourable Justice Beach.

31 HIS HONOUR: 7 September.

1 MR GILBERTSON: 7 September. Those further and better
2 particulars are dated 10 October 2012.

3 HIS HONOUR: I have those. All right. Just one second. There
4 are some interrogatories which I won't look at unless any
5 particular answer is tendered. There are a whole host of
6 answers to interrogatories which as I said, I just wont
7 look at unless they're tendered in some way. Then in the
8 other proceeding the statement of claim is the one that
9 you handed up, Mr Gilbertson at the commencement of the
10 hearing.

11 MR GILBERTSON: It is. It's dated 3 September 2013.

12 HIS HONOUR: Yes, I've got that and where is the current
13 defence to that?

14 MR DIBB: Behind Tab 20, Your Honour.

15 HIS HONOUR: 20. Points of defence?

16 MR GILBERTSON: There is an issue about that. There is a
17 defence dated 31 August 20`12.

18 HIS HONOUR: Yes, I have that. So what is the status of the
19 points of defence, they can be just ignored, they're
20 historical, is that right?

21 MR GILBERTSON: That's what I understand. That's from the
22 VCAT.

23 MR DIBB: That is from the VCAT proceedings, Your Honour.

24 HIS HONOUR: All right, thank you. Just to make sure that's
25 right. Was there any reply to that?

26 MR GILBERTSON: I don't believe so.

27 HIS HONOUR: No. Does that then exhaustively deal with each of
28 the current pleadings?

29 MR DIBB: Yes, Your Honour.

30 MR GILBERTSON: Subject only to there are some further and
31 better particulars of the amended statement of claim and

1 a request in that regard.

2 HIS HONOUR: This is in the VCAT proceeding?

3 MR GILBERTSON: No, this is in the defamation proceeding and
4 it's in the - it's Tab 2 and 3 of the plaintiff's court
5 book of pleadings.

6 HIS HONOUR: Very well. So there's a request for further and
7 particulars dated 27 June 2011?

8 MR GILBERTSON: That's it.

9 HIS HONOUR: And further and better particulars dated 30 June
10 2011?

11 MR GILBERTSON: That's so, Your Honour.

12 HIS HONOUR: All right, I have those. Does that then
13 exhaustively deal with the pleadings of particulars in
14 both proceedings?

15 MR GILBERTSON: It does.

16 HIS HONOUR: All right. Unless the parties wish to raise
17 anything else I will leave the bench and come back when
18 the video conference is ready to start.

19 MR DIBB: There are also the further and better particulars
20 that you filed in response to the judgment of Justice
21 Beach?

22 MR GILBERTSON: We've mentioned that.

23 MR DIBB: You've mentioned - - -

24 HIS HONOUR: They were the earlier ones that we dealt with?

25 MR GILBERTSON: They were the ones filed pursuant to the order
26 of Justice Beach.

27 HIS HONOUR: Yes. We've dealt with that, that's right. All
28 right. Do the parties wish to raise anything else?

29 MR GILBERTSON: No, Your Honour.

30 HIS HONOUR: Otherwise I'll leave the bench and come in when
31 the video conference is set up. Madam Associate, please

1 adjourn the court temporarily.

1 (Short adjournment.)

2 <ALBERT EDWARD BANOUB MIKHAIL MISHRIKI, affirmed and examined:

3 HIS HONOUR: Mr Mishriki, at our end there's a slight echo when
4 we speak, is that causing you any difficulty at all?

5 ---No, there may be some delay but it's not so much of an
6 echo over here.

7 Thank you very much. Yes, Mr Gilbertson.

8 MR GILBERTSON: Thank you, Your Honour. Is your name

9 Albert Edward Banoub Mikhail Mishriki?---Yes, it is.

10 For the purposes of the transcript is Banoub spelt

11 B-a-n-o-u-b?---Yes, it is.

12 And is Mikhial, M-i-k-h-i-a-l?---M-i-a-k - sorry,

13 M-i-k-h-a-i-l.

14 Is your usual address [REDACTED] Annerley,

15 A-n-n-e-r-l-e-y, Queensland?---It is.

16 And are you the installation officer at the Queensland Art
17 Gallery?---I am.

18 Did you have any involvement with the Guildford Lane Gallery?

19 ---I did.

20 What involvement was that, Mr Mishriki?---It was as an artist
21 and co-curator of an event.

22 When did that occur?---That occurred January 2009.

23 Would you tell the court what was involved?---It was to be a
24 six month - well, duration of a six month event occurring
25 once a month in the evenings and what was involved was
26 the performances, that once a month we'd have
27 performances by various performers for a short time in
28 the gallery on the ground floor performing sound works.

29 What was the title of the exhibition?---The title was Found
30 Sound: The Experimental Instrument Project.

31 Did you have any discussions with Mr Robert Cripps at that

1 time?---Yes, I did.

2 Would you tell the court what those discussions were?---The

3 discussions are difficult to categorise. We - - -

4 Sorry to cut you off?---Amelia Barachan who was then Amelia

5 Douglas and I co-curated this event and our dealings

6 with - - -

7 HIS HONOUR: Mr Mishriki, sorry to interrupt you, are you

8 reading from something?---No, no, I'm not. It's just

9 difficult to keep my eyes either on the screen or on the

10 camera or on the microphone because they are on different

11 levels, different heights.

12 That's fine, thank you?---So if you prefer I'll keep my eyes on

13 the screen but it looks like I'm looking above your heads

14 which is kind of weird. Anyway, I'll try to keep my eyes

15 somewhere in between.

16 MR GILBERTSON: Thank you?---So Amelia Douglas who's now Amelia

17 Barachan and I co-curated this event and our dealings

18 were to be primarily with Yolande Pickett who was the

19 manager of GLG at the time. So Robert Cripps would on

20 occasion come in and interject but we weren't supposed to

21 be dealing with him so much but he did come into the

22 scene for no reason, just at a whim. But yes, we did

23 have dealings with him.

24 What arrangements did you have in relation to your exhibition?

25 ---The arrangements were to have the space to hold the

26 exhibition or rather the performances free of charge.

27 There was a deposit, cash deposit we gave but to be used

28 in case of emergency but that's another matter. So we

29 were to have people come in to a space that we had

30 created but without changing the space because it was

31 amongst other artworks. So we were to have performances

1 amongst current exhibitions. We were disallowed from
2 taking a door charge as the director, Mr Cripps had
3 decided on having a bar to serve alcohol.
4 When you say disallowed what did Mr Cripps say?---We asked him
5 about having a door charge. He declared that he would
6 have a bar and therefore we could not take money from the
7 door. We suggested that perhaps there need not be a bar
8 where money was charged and he became visibly angered and
9 yelled that had to decided to have a bar and hence he was
10 going to have a bar. So we could have our - we couldn't
11 charge a door charge.

12 Was there a written agreement or was the arrangements put in
13 place just by discussions?---Written agreement regarding
14 the door charge or the bar or just altogether?

15 No, the exhibition?---There was. There was a contract that had
16 been drawn up by Yolande Pickett I believe. I'm not sure
17 how much input Cripps had had into that but there was an
18 agreement. It seemed a bit strange. There was clauses
19 that were unnecessarily oppressive if you like and
20 totally irrelevant. So we took the contract to a pro
21 bono lawyer for advice, a barrister by the name of
22 James - - -

23 Sorry, I need to cut you off. I don't want you to go into what
24 discussions you had with your lawyer?---OK.

25 But perhaps if you could just confine if you could to this,
26 were there discussions with Yolande Pickett or Mr Cripps
27 in relation to the contract?---There were, there were.
28 Having sought some legal advice we asked that the
29 contract be made more reasonable. Yolande Pickett agreed
30 that she would go over the contract with Mr Cripps and we
31 waited. We wait for the contract come back. It did not

1 come back. We called and we emailed and we did not get a
2 response until the eve of the performance that we were
3 installing and Mr Cripps came on down the stairs yelling
4 without introduction that I was going to sign a contract
5 on the spot and I was, excuse the language, "I'm not
6 going to fuck around any more, no more bullshit, you're
7 going to sign this contract right now," is what he said.
8 Would you tell the court what happened in relation to the
9 installation of the exhibition?---The installation went
10 ahead as planned. We were left to install without much
11 or a problem, no hitches until it came time to plug in
12 the in-house sound system. The in-house sound system was
13 agreed verbally and we had nothing in writing because the
14 contract had not been amended so we had not signed that.
15 But GLG had agreed to provide the sound system and so I
16 proceeded as per agreement to ask Mr Cripps if he would
17 approve the way in which I had plugged the system in and
18 I sought his approval because, one, that's what we're
19 expected to do, seek approval before plugging anything
20 in, and two, I didn't want to take responsibility for
21 anything going wrong with the system because I saw there
22 might be a problem considering the electricity supply.
23 Some circuits were looking to be overloaded. So I sought
24 Mr Cripps's sign off on it. Rather than just giving a
25 simple yes and go ahead he started to yell about all
26 kinds of irrelevant information and seemed to be boasting
27 about his standard electrical supply, having ten amps and
28 so many watts and voltage here and there, blah blah blah,
29 and told me I didn't know anything. Anyway, I plugged
30 the system in and I turned it on and it blew a fuse, and
31 he then blamed me for the fuse blowing, once again went

1 off on some kind of rant about all kinds of irrelevant
2 information about how much the system costs and insurance
3 and all kinds of stuff. Anyway, I offered to go and get
4 him a new fuse and to replace it. He refused. I said,
5 "OK, well, what does this mean for our performance
6 tomorrow night?" He said, "Well, you'll just have to use
7 one speaker." I said, "OK, no problem." So we came back
8 ready to perform, the system had disappeared. I asked
9 him why. He said it was his right, blah blah blah, did
10 some yelling. We had no sound system for the performance
11 and no time to get another one. So the installation was
12 not a complete success and the result was a lacking,
13 inadequate kind of performance.

14 When you lacking - - -?---But apart from - - -
15 Sorry to cut you off. When you say lacking and inadequate, how
16 was it lacking and inadequate?---It was lacking and
17 inadequate in that it had been prepared, it had been
18 designed, the performance had been designed for sound
19 reinforcement, to have a sound system in place, and when
20 there was no sound system in place certain things could
21 not be done, the whole form had been compromised as it
22 wasn't - we could not implement everything in the
23 performance that had been intended to be implemented
24 because the sound system was not there, so it was
25 lacking, lacking in certain - - -

26 After this did you continue with the exhibition?---No, no,
27 certainly not. Not on the basis of the sound system or
28 anything physical but just on the basis of Cripps's
29 behaviour. It was impossible.

30 Prior to this exhibition had you spoken to anyone about
31 Mr Cripps?---Yeah. Yeah, there were warnings, but

1 naively we thought if we behaved in a decent and
2 professional manner then we'd be not giving cause for any
3 kind of bad behaviour. That turned out to be a
4 misconception. We were warned. Amelie Douglas,
5 Amelie Barachan Douglas at the time was warned by people
6 in the sound art scene. I cannot recall names right now.
7 There was just general talk, a general reputation, that
8 Cripps's reputation was a bad reputation, and what she
9 told me, and I quote, she said, "There's word about town
10 this guy's a bit of an arsehole." To which I responded,
11 "Well, maybe we'll just be real nice and he won't be an
12 arsehole." So we went and saw an exhibition at Guildford
13 Lane Gallery to look at the space, to perhaps meet Cripps
14 current informally, and of course to see the work that
15 had been exhibited at the time by Nina Sellars and
16 Stelarc. And everything seemed fine, we couldn't see
17 much of Cripps so we didn't have an opportunity to gauge
18 his personality, but we did see a performance there,
19 something similar to our program by an artist that we
20 knew called Rod Cooper, and he was really, really upset
21 on the night of his performance because Cripps had been
22 bullying him in one way or another and - - -

23 Sorry, I need to cut you off. I might ask you this question.

24 Did Mr Cooper tell you at this time anything about how
25 Mr Cripps was regarded?---Did Mr Cooper mention Cripps's
26 reputation in general, is that what you're asking?

27 Yes?---That's not something that I particularly recall. He was
28 very, very upset, Mr Cooper.

29 All right, thank you?---He was very, very upset and then he
30 said don't have any dealings with this guy.

31 Yes, thank you, Mr Mishriki. Just wait one moment please.

1 HIS HONOUR: Mr Mishriki, now you'll be asked questions by
2 counsel acting for Mr Cripps. There's be just a short
3 delay while Mr Cripps's barrister speaks to Mr Cripps.
4 He'll ask you some questions shortly.

5 <CROSS-EXAMINED BY MR DIBB:

6 Can you hear me, Mr Mishriki?---I can. You're a little quiet
7 but I can hear you.

8 I'll speak up. Thank you. Did I understand you to say that
9 the space was free of charge?---Yes.

10 There was no paid bar at the venue at that time was there?

11 ---There was. There was a paid bar at the venue at that
12 time.

13 I suggest to you that no licence had been granted at that time
14 and Mr Cripps was not charging for drinks, he was giving
15 drinks away?---I suggest to you that no licence was held
16 by Cripps at that time but he was charging for drinks.

17 Turning to the sound system. Didn't Mr Cripps tell you that
18 following the blown fuse there was a problem with the
19 speaker, that he had taken it back to the manufacturer,
20 the manufacturer had confirmed that it wasn't your fault,
21 that it was a manufacturing fault in the speaker but the
22 speaker would have to be replaced?---There was no such
23 advice. I don't know how I could have received that
24 advice as we had absolutely no correspondence whatsoever
25 with Cripps following our withdrawal, which was the day
26 immediately after the performance. We had no
27 correspondence and no news.

28 Are you saying you didn't speak to Mr Cripps before the
29 performance about the sound system?---No, sir. You
30 stated that the speaker had been returned to the
31 manufacturer and had been assessed by the manufacturer as

1 having a fault with the manufacturing. That could not
2 have happened between the time of the speaker being
3 removed from the situation, being the gallery, and the
4 commencement of the performance which was on the same
5 day. The speaker system had been removed on the day of
6 the performance so I don't see how it could have gotten
7 to the manufacturer and been assessed and all that kind
8 of business, so it just didn't happen. I know it
9 wasn't - - -

10 How long was there between when you blew the fuse and the
11 performance?---Less than 24 hours. The fuse blew in the
12 evening, maybe 9 p.m. or 10 p.m. It was five years ago,
13 I don't quite remember. And the performance was at maybe
14 six or 7 p.m. the following day.

15 The following day?---Yes.

16 I'm sorry, I thought you said the blown fuse had happened on
17 the same day. I've misunderstood you, I'm sorry,
18 Mr Mishriki?---No, you misunderstand me - I
19 misunderstand. I assume that if a fuse blows long after
20 business hours that you could not return it on that day,
21 you'd have to send it to the manufacturer the following
22 day. So I don't see how - assuming that Cripps got it to
23 the manufacturer by 9 a.m. the next day how it could have
24 gotten back on the same day.

25 This isn't anything you know though is it, Mr Mishriki? This
26 is a surmise on your part, that nothing could have
27 happened in the day before you got back to the gallery
28 along the lines of the speaker being assessed as having a
29 fault. That's a guess on your part is it?---That is a
30 guess and you're quite right there, it is a guess. But I
31 received no news of assessment or anything whatsoever

1 regarding the speaker from Cripps, just that it had been
2 taken away.

3 You said you went to - I'm sorry, had you finished? I'm
4 sorry?---Yes, I've finished, thank you.

5 I know there's a delay.

6 HIS HONOUR: He has finished.

7 MR DIBB: I know there's a delay. It's possible for us to clip
8 one another. I get your pardon. You said you went to
9 the Nina Sellars and Stelarc exhibition at the gallery?
10 ---Yes.

11 Were you aware that that was the first event to take place at
12 the gallery after it opened?---No, I was not. Well, I
13 don't recall.

14 Did I understand you to refer to a general reputation of the
15 gallery at about that time, or have I misunderstood?
16 ---No, not about that time. Yes, you misunderstood. And
17 it wasn't a general reputation about the gallery but it
18 was the reputation about the person, the director,
19 Mr Cripps.

20 Nothing further, Your Honour.

21 HIS HONOUR: Any re-examination?

22 MR GILBERTSON: I have no re-examination, Your Honour.

23 HIS HONOUR: Mr Mishriki, that concludes your evidence, so
24 thank you for making yourself available in Paris to
25 participate in the hearing. We will now terminate the
26 video conferencing facility. Thank you again and enjoy
27 your time in Paris?---Thank you.

28 (Witness excused.)

29 <(THE WITNESS WITHDREW)

30 HIS HONOUR: What remains? Anything for this afternoon?

31 MR GILBERTSON: That, subject to Courtney Kim on Monday,

1 Your Honour, is the defendants' case.

2 HIS HONOUR: All right, thank you. I'll hear from Mr Dobb as
3 to any objection to the proposed tender documents. I
4 assume that if they are confined to the documents that
5 you took witnesses to then there wouldn't be any such
6 objection but I won't formally give these documents
7 numbers until I've heard from you tomorrow.

8 MR GILBERTSON: We have undertaken the process of going through
9 the transcript and identifying the documents that
10 witnesses were taken to.

11 HIS HONOUR: Yes, all right, thank you for that indication.
12 Very well, if there's nothing else you'll be in a
13 position to start your case tomorrow subject to Courtney
14 Kim giving evidence on Monday.

15 MR DIBB: Yes, Your Honour.

16 HIS HONOUR: Who will be your first witness?

17 MR DIBB: Mr Cripps will be the first witness.

18 HIS HONOUR: Thank you very much. Madam Associate, can you
19 please adjourn the court until 10.30 tomorrow.

20 ADJOURNED UNTIL FRIDAY 21 MARCH 2014

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1 HIS HONOUR: Yes, Mr Gilbertson.

2 MR GILBERTSON: Your Honour, in relation to the question of

3 Your Honour's associate's searches, it's our submission

4 that they can be taken into account but that they don't

5 take the matter any further. In particular they don't

6 bear on the question of whether the articles are likely

7 to be separately accessed or on the question, whether a

8 reader of the first Vakras article is likely to click on

9 the link given the context and words or whether someone

10 who access the new-left Nazis article is likely to refer

11 back to the first Vakras article given the link on that

12 page to exhibit.

13 HIS HONOUR: Yes. You really wouldn't go into the items

14 directly unless you knew all the details of the website.

15 All right, thank you. Did you want to say anything about

16 that, Mr Dibb?

17 MR DIBB: Yes, Your Honour. It's common ground that they are

18 separate files and that they appear on separate pages.

19 To that extent it's implicit in that that they are

20 separate and accessible - - -

21 HIS HONOUR: Yes, it confirms that - - -

22 MR DIBB: I'll just take Your Honour to, on the other matter

23 that Your Honour raised, the question of judicial notice.

24 I'll take Your Honour very briefly to a judgment of

25 Justice Kay.

26 HIS HONOUR: In this court?

27 MR DIBB: In this court, yes, Your Honour, and to Coolio v.

28 Yahoo Incorporated. The passage I refer Your Honour to

29 is at Paragraph 36 which is on p.9, and embarrassed -

30 well, not at all embarrassed actually to say that it's a

31 matter in which I appeared. Your Honour will see at the

1 second sentence of that paragraph His Honour says,
2 "Mr Dibb was correct in pointing out that I would be
3 entitled to take into account ...(reads)... commonly
4 referred to as to Google."

5 The following sentence is pertinent perhaps
6 particularly to that case where it was Google itself that
7 was the defendant. That was two years ago. That's about
8 10 per cent of the life of the modern internet and, I
9 would submit to Your Honour, that with the pace of which
10 these things have moved I expand on that submission to
11 say that Your Honour could take judicial notice of quite
12 a lot of aspects of the internet including that people
13 really seldom access anything on the internet by typing
14 in a full URL, relatively seldom.

15 They mostly either click on a hyperlink somewhere or
16 an advertisement, very often an advertisement will take
17 you to a web page, or perhaps even more commonly they
18 perform a web search and click on the URLs produced by
19 that web section. So that whereas before the invention
20 of search engines people might habitually have typed in
21 guildford_lane_gallery.html, that's just not the way it
22 works any more, Your Honour, and I submit that Your
23 Honour can take judicial notice of that.

24 HIS HONOUR: Do you want to respond, Mr Gilbertson?

25 MR GILBERTSON: Yes. I'm not sure it quite goes that far but
26 that might be a matter for argument later, Your Honour.

27 HIS HONOUR: Yes, I think so. I think that goes beyond the
28 specific issues that I had raised, but it is a relevant
29 matter. Did you have any objections to any of the
30 proposed documents sought to be tendered by the
31 defendants?

1 MR DIBB: Tab Number 38, which is the hyperlinked new-left and
2 Nazism document, the objection is relevance, subject to
3 Your Honour's ruling on the other issue.

4 HIS HONOUR: My inclination at the moment in relation to the
5 ruling, I haven't prepared it, is to strike out the
6 reference to this item in the defence because it's a
7 matter for the plaintiff to identify the matter
8 complained of. But that really doesn't affect the
9 question of what use this separate item can be made by
10 the defendants in terms of bolstering any of their
11 defences and so on. It seems to me that they are two
12 separate issues.

13 MR DIBB: They are, Your Honour, I agree.

14 HIS HONOUR: So that, again, subject to anything further the
15 parties wish to make in their final addresses once I do
16 publish my ruling, it seems to me that striking out those
17 words from the defence doesn't necessarily amount to much
18 at all in terms of its practical implications, because
19 whilst it is a matter for the plaintiff to identify the
20 matter complained of and it's not for the defendant to
21 expand it, unless the plaintiff breaches the pleading
22 rules by being too selective and ignoring what is
23 normally and reasonably considered to be the article or
24 whatever the item might be, but in terms of bringing in
25 other materials by way of context or in support of a
26 defence, the fact that something is not part of the
27 matter complained of is not determinative except in
28 relation to defences where you are confined to the matter
29 complained of. That's where my thinking is at at the
30 moment.

31 MR DIBB: I respectfully agree with everything Your Honour's

1 said, except that it's not a matter of great consequence
2 because my learned friend was relying on this additional
3 material with respect to the meaning conveyed, and the
4 meaning conveyed must be found within the matter
5 complained of.

6 HIS HONOUR: Yes, I did say that that would be one of the
7 consequences. But insofar as it is a separate item that
8 can be brought in as a separate item then it would still
9 be available notwithstanding the striking out.

10 MR DIBB: Yes. With respect to its availability in aid of any
11 defence I'm not able to see immediately myself how it
12 could be relevant to any defence except for comment, and
13 as far as comment is concerned the facts truly stated
14 again will need to be found within the matter complained
15 of in my submission. Now, there will no doubt be
16 argument about that.

17 HIS HONOUR: Yes.

18 MR DIBB: Could I submit that perhaps would admit that document
19 provisionally subject to some relevant basis for its
20 tender being established at a later date.

21 HIS HONOUR: It's the subject of evidence, and there as was no
22 - I think the witnesses were taken to it were they not?
23 There was no objection at that point to the witnesses
24 being taken to it.

25 MR DIBB: The way in which Your Honour has dealt with the
26 tender of matter meant it wasn't being tendered at that
27 stage and, no, I did not object to the witness being
28 taken to it. It is his document and he admits publishing
29 it, and it seemed to me at that time, given that
30 Your Honour had not yet ruled on the issue as to the
31 limits of the matter complained of, that was not the time

1 to object to its tender. I object to it now.

2 HIS HONOUR: I see, all right. I won't preclude you from
3 raising the objection because of the timing issue that
4 arose from you making the application on the earliest
5 opportunity and my deferring consideration of it, so
6 that's fine. I'm inclined to allow it absolutely but in
7 order to provide you with an opportunity to make any
8 further submissions on it I will mark it for
9 identification at this stage only, but in final addresses
10 - actually I'll need to rule on that finally before final
11 addresses so that the parties know what the area of
12 contest is. So at the close of evidence I'm going to
13 rule on this before the parties make their final
14 submissions. At the moment I'll just mark it for
15 identification.

16 MR DIBB: Thank you.

17 HIS HONOUR: Is that the only item that you object to?

18 MR DIBB: It is, Your Honour.

19 HIS HONOUR: Mr Gilbertson, are you content with that course?

20 I'm preserving all your rights in relation to that.

21 MR GILBERTSON: Yes, I'm content with that course but I wish to
22 say something in relation to Your Honour's preliminary
23 thinking. It's our submission, which I think I raised
24 during submissions, that the article, that is, the new-
25 left Nazis article, can be relied upon in relation to the
26 meaning conveyed on the basis that it's part of the
27 context so that it goes - - -

28 HIS HONOUR: Even, you say, as I understand it from what you've
29 just said, that even if I were to grant the application
30 to strike out those words in your defence that does not
31 preclude you from relying upon it in terms of context?

1 MR GILBERTSON: That's so.

2 HIS HONOUR: That's what I thought was the effect of the
3 authorities but I'll hear further submissions on that.

4 MR GILBERTSON: So it goes, in our submission, not only to the
5 question of the positive defences but also the question
6 of context for the purpose of Your Honour determining the
7 meaning conveyed. If Your Honour pleases.

8 HIS HONOUR: That again is consistent with my preliminary
9 thinking but it's a matter that the parties can make
10 final addresses upon and take me to whatever authorities.
11 But that was the purport I think of the three key
12 authorities to which I was taken in relation to this
13 application, but if I misread them on the first read then
14 I'm happy to hear further submissions on that.

15 MR GILBERTSON: AS Your Honour pleases.

16 HIS HONOUR: What I will do in relation to the tender documents
17 is to give the documents in the defendants' court book
18 tender list that was handed up yesterday numbers
19 commencing with D6 from Tab 1 and then continuing. So D7
20 will be Tab 2 item all the way through until Tab 38.
21 That item will be marked for identification MFI4, and
22 then Tab 40 will be given a D number. We will do that
23 administratively. Can this document please be submitted
24 to my associate in Word format so that we can then
25 prepare the document, substitute the actual exhibit
26 numbers for the tab numbers on the left column and then
27 send that to the transcript writers so that they can
28 incorporate that in their transcript for Monday.

29 MR GILBERTSON: Your Honour wishes us to provide it to both
30 Your Honour's associate and the transcript people?

31 HIS HONOUR: No, we will do that.

1 MR GILBERTSON: As Your Honour pleases.

2 HIS HONOUR: So just email it to my associate. We will then
3 allocate the exhibit numbers and then provide that to the
4 parties in hard copy form or indeed electronic form on
5 Monday and provide it to the transcript writers on
6 Monday. I'll actually announce it in court and then
7 everyone knows exactly what's happened.

8 MR GILBERTSON: As Your Honour pleases.

9 HIS HONOUR: Just to save time, otherwise I'll have to go
10 through each of the documents and give them numbers now.
11 There's an administrative issue that I need to raise.
12 This court is sought after for next week in a matter
13 involving multiple parties. They would prefer to have a
14 court room with a wide bench. I'm asked to provide a
15 realistic estimate as to when the case will finish and
16 this court room will become available if I may.

17 MR DIBB: I expect us to be in addresses on Tuesday, perhaps
18 even late Monday. I have Sarah Curro and the plaintiff
19 and I have a swinging witness for later in the day if
20 he's dealt with before we rise, and then we do now have
21 we think seven witnesses for Monday but they are mostly
22 reputation witnesses and they will be quite brief. So
23 that and Courtney Kim may well see us commence addresses
24 on Monday afternoon I would think.

25 HIS HONOUR: Tuesday.

26 MR DIBB: Finish on Tuesday.

27 HIS HONOUR: So you're happy to move into addresses without a
28 break?

29 MR DIBB: I'll be ready to move into addresses at the end of
30 the evidence.

31 HIS HONOUR: How long do you think you'll be in your address?

1 MR DIBB: I will probably be about two hours.

2 HIS HONOUR: Mr Gilbertson?

3 MR GILBERTSON: I would anticipate a similar amount of time,
4 about two hours in address.

5 HIS HONOUR: So we may finish on Tuesday?

6 MR DIBB: I'm hoping so, Your Honour.

7 HIS HONOUR: Yes, but we may go into Wednesday?

8 MR DIBB: It's possible. I'm notoriously short winded,
9 Your Honour. I say two hours and I'll be finished in
10 40 minutes.

11 HIS HONOUR: You're a rare breed before this court, Mr Dibb.

12 Thank you. It looks as if we can say that the court will
13 be available from Thursday for sure but possibly from
14 Wednesday?

15 MR GILBERTSON: Yes.

16 HIS HONOUR: Thank you. We have a lady at the back of the
17 court. Does anyone know whether she's a witness or not?
18 No, fine, thank you.

19 MR DIBB: Thank you, Your Honour. As Your Honour knows
20 perfectly well by this stage of the proceedings and no
21 doubt even before that, these are two proceedings. One
22 is what I might describe fairly as a minor contract claim
23 without wishing to belittle it too much, but the major
24 portion of the proceedings are quite important defamation
25 claim by Mr Cripps and on behalf of his company Redleg
26 Museum Services.

27 Your Honour has seen the matters complained of and
28 Your Honour knows that - well, Your Honour I submit will
29 be aware that they are pitched at a very level of
30 particularly the first and second matters complained of,
31 are pitched at a very high level of defamatory content.

1 The case that's been made thus far - well, I understand
2 my learned friend's case is closed subject to calling
3 Ms Kim on the issue of a late payment for artwork. The
4 case that's been made Your Honour might think didn't get
5 anywhere near establishing the truth of either the
6 plaintiff's or the defendants' version of the racism
7 allegation, and Your Honour might also think it doesn't
8 get anywhere near establishing the truth of the sexual
9 harassment allegation, bearing in mind the seriousness of
10 those allegations in particular.

11 Nevertheless I do propose - the plaintiff's always
12 entitled to nail the lie, Your Honour, even if there
13 isn't a justification defence. In this case in relation
14 to both those allegations there is a justification
15 defence. So I will be calling Ms Laila Hua, H-u-a. I
16 understand it might be spelt L-e-i-l-a rather than
17 L-a-i-l-a.

18 HIS HONOUR: Hopefully she will know.

19 MR DIBB: Ms Hua will set us straight on that when she arrives
20 on Monday. We'll be calling Ms Hua to give evidence to
21 nail the lie. Ms Thao, the other person said to be the
22 subject of the particulars pleaded in respect of that
23 allegation is in Vietnam we understand and we're not
24 going to bring her back from there given the weakness of
25 the case made against us. Apart from that, Your Honour,
26 I will be calling witnesses as to the general reputation
27 of Mr Cripps and of Redleg Museum Services, and I will be
28 calling witnesses of course as I must as to the
29 publication of the matters complained of. That's an
30 important matter on which I bear the onus.

31 The plaintiff himself again, although there's

1 arguably not much of a case for him to answer, the
2 plaintiff himself will give evidence in particular
3 because he wishes to give evidence of certain feelings
4 and because we wish to rely on subsequent conduct.
5 Your Honour knows that on the issue of aggravated damages
6 Your Honour can take into account all the conduct of the
7 defendants up to the time of judgment including the
8 conduct of the defence, the way in which the plaintiff is
9 cross-examined, all aspects of that conduct.

10 Aggravated damages fall into three categories
11 really. There are matters of aggravation associated with
12 the conduct of the defendant, and they're divided into
13 two subcategories, and there are what you might call the
14 subjective factors of the plaintiff. As Your Honour
15 knows, there are no exemplary damages in defamation as a
16 matter of statutory ruling, and aggravation, matters of
17 aggravation can entitle the court to look further up the
18 appropriate scale for an appropriate figure.

19 In this case, returning to my tripartite
20 certification of aggravation, the statute imposes a cap
21 which I believe is presently \$355,500, subject to
22 checking the - - -

23 HIS HONOUR: Is that an agreed position?

24 MR GILBERTSON: That is an agreed position, Your Honour.

25 HIS HONOUR: Because it's indexed under the legislation.

26 MR GILBERTSON: Yes, and we have the entry from the Government
27 Gazette.

28 HIS HONOUR: It doesn't matter if it's an agreed - what was the
29 amount again?

30 MR DIBB: \$355,500.

31 HIS HONOUR: Yes, thank you.

1 MR DIBB: That's the statutory cap. I don't know if there may
2 be argument about this. It's, in my submission, a true
3 cap, that is to say, it's just a guillotine, a case where
4 350,000 gets 350,000 or a case worth 360,000 gets
5 355,500. It's not a scaling exercise. I don't know if
6 there will be any debate with my learned friend about
7 that but it no doubt will come at the end.

8 Your Honour can ignore the cap if Your Honour finds
9 that the circumstances of the publication provide matters
10 of aggravation. Subsequent conduct of the defendants
11 which is regarded as improper or lacking in bona fides,
12 as the third word escapes me.

13 MR GILBERTSON: Unjustified.

14 MR DIBB: Unjustified. Improper, unjustified or lacking in
15 bona fides can also serve to aggravate damages, but that
16 would not be, in my submission, associated with the
17 circumstances of the publication and therefore that sort
18 of aggravation wouldn't entitle Your Honour to exceed the
19 cap.

20 HIS HONOUR: Would not?

21 MR DIBB: Would not entitle Your Honour to exceed the cap.

22 HIS HONOUR: It fees the damages subject to the cap.

23 MR DIBB: Subject to the cap, yes, Your Honour. So the cap's
24 divided defendants' conduct aggravation into categories
25 in my submission.

26 HIS HONOUR: Yes, I understand.

27 MR DIBB: The third category is the subjective factors of the
28 defendant. For example, as we have pleaded, the
29 defendants' knowledge of falsity. I should tell
30 Your Honour that there is a judgment of Justice Beach
31 directly on that point in which His Honour says that that

1 is not a matter of aggravation. Thinking on my feet,
2 actually I think I probably won't seek to rely on that as
3 a matter of aggravation just to avoid raising an appeal
4 point. No, I will.

5 HIS HONOUR: You don't have to go into your own subjective
6 thinking.

7 MR DIBB: I really am thinking on my feet here, Your Honour.
8 It just occurred to me that I would doubt that - I
9 wouldn't be surprised that this matter would go on appeal
10 anyway. We may as well have all the arguments. We will
11 be relying on that.

12 HIS HONOUR: That's fine.

13 MR DIBB: As I say, Mr Cripps will give evidence as to his hurt
14 feelings and that will be relevant to damages. There
15 will also be - Your Honour saw the Redleg, the Artist
16 page that was shown to the defendants. That is, as it
17 says itself, a work in progress. It's a protean thing.
18 It's developed as we go along. It's become apparent to
19 us since we gave our particulars that there is more
20 material hyperlinked to that document and I will be
21 seeking to rely on the present form of that material in
22 aggravation as being unjustified, improper, lacking in
23 bona fides and as aggravating the damages.

24 I don't know if, strictly speaking, that involves me
25 asking Your Honour for leave to amend our particulars.
26 Given that it's conduct right up to judgment of course
27 inevitably where there is conduct subsequent to the
28 pleadings there will also always be this situation arise.

29 HIS HONOUR: Let's address that. Mr Gilbertson, are you clear
30 as to what Mr Dibb is referring to and, if so, do you say
31 that I need to give him leave to amend the particulars?

1 MR GILBERTSON: In our submission it's a little premature.

2 We'll have to see how this is put.

3 HIS HONOUR: Right. Well, my approach to these things is to
4 formally grant leave and to formally make orders and to
5 formally make rulings rather than just allow them to
6 drift because it just creates problems for everyone. So
7 you need to come back to it on the assumption that you do
8 need leave. I think that's the starting point, subject
9 to any dispensation that may be discussed later.

10 MR DIBB: Thank you, Your Honour. I think the issues are
11 sufficiently clear to Your Honour that I might at this
12 point call my first witness, unless there's some other
13 inquiry Your Honour wishes to make.

14 HIS HONOUR: No, I have been doing quite a bit of reading
15 behind the scenes to understand the law and the framework
16 because it is a very technical area, and that's been my
17 priority rather than trying to understand the pleadings
18 and the particulars and the other documents which of
19 course I will read in a great deal of detail. So I am
20 fairly familiar with the various defences, the issues and
21 so on, so at this stage I don't require any further
22 assistance from you.

23 MR DIBB: Thank you, Your Honour. I call Sarah Curro, who
24 should be outside. That's C-u-r-r-o.

25 HIS HONOUR: And Sarah?

26 MR DIBB: Sarah, S-a-r-a-h.

27 HIS HONOUR: You can't make any assumptions about spelling
28 people's names any more.

29 MR DIBB: You can't, no, you truly can't.

30 HIS HONOUR: I've had that problem personally since I was one
31 year old, Mr Dibb. I've been spelling my name for people

1 ever since I could talk.

2 MR DIBB: Yes, Your Honour. People generally add an S to mine.

3 I mean, solicitors I've worked for for years add an S to
4 Dibb. There seems to be no way of stopping.

5 HIS HONOUR: I get a gratuitous U, Emiliious, among other
6 things, some of them charitable, some of them not.

1 <SARAH RUTH CURRO, affirmed and examined:
2 MR DIBB: What is your full name?---Sarah Ruth Curro.
3 Is that S-a-r-a-h R-u-t-h C-u-r-r-o?---Yes.
4 Thank you. What's your address, Ms Curro?---Flat 5, [REDACTED]
5 [REDACTED] Brunswick East, 3057.
6 What's your occupation, Madam?---I'm a violinist with Melbourne
7 Symphony Orchestra.
8 How long have you worked for the Melbourne Symphony Orchestra?
9 ---Probably ten years altogether.
10 Who did you work for before that?---Tasmanian Symphony
11 Orchestra, Australian Chamber Orchestra, the Hong Kong
12 Philharmonic for three years, Queensland Philharmonic,
13 orchestras mainly since I was about 20.
14 So your whole professional career has been as a professional
15 musician, violinist, a classical violinist?---Yes.
16 How did you first come to meet the plaintiff Mr Cripps?---I was
17 invited to a Syzygy concert. Syzygy is a contemporary
18 music ensemble.
19 Are you able to spell that for the transcript please?---Yes.
20 S-y-z-y-g-y, Syzygy Ensemble. That was in December 2009.
21 They were launching their 2010 program. I'd known these
22 people beforehand. They invited me to the concert. I
23 went to the concert by myself. I loved the room, I loved
24 the atmosphere and I thought I wanted to put on some of
25 my own things at this venue.
26 What did you do about that?---I found who - I went to the venue
27 and I asked him if I could please put on some concerts
28 and he said yes, so I was happy.
29 HIS HONOUR: Which venue are you talking about?---Sorry, the
30 Guildford Lane Gallery.
31 MR DIBB: When you say you found who owned it, who was that?

1 ---That was Robert Cripps.

2 How many concerts did you put on, can you remember?---At

3 Guildford Lane I put on two, one was called Shostakovich

4 Plugged. Sorry, one was called Volume. Sorry, I've put

5 on so many concerts. I have it here. Am I allowed to

6 look at my - - -

7 It's not really important?---OK, sure. I put on two concerts.

8 HIS HONOUR: Sorry, when?---The year after that, 2012 for sure,

9 that was Volume at the galleries, Guildford Lane Gallery

10 and Collingwood Gallery, and something for the fringe -

11 no, I'm sorry. I do put on a lot of concerts. But I did

12 put on two concerts at Guildford Lane Gallery, one for my

13 solo violin show, that was called Volume, and another one

14 was - I actually can't remember what the other one was.

15 Chostakovich Plugged I think, yes, where you amplify some

16 instruments.

17 Were they both in 2012?---Yeah, they were both in 2012.

18 Thank you.

19 MR DIBB: That was some years after you first met Mr Cripps?

20 ---Yes. Yeah, a couple of years after I met him.

21 Did you talk about these concerts to other musicians or to

22 other artists generally?---Well, usually what happens

23 with my performances outside of the MSO is I ask

24 everybody I know in my industry to come to my concerts

25 and if anyone else is similar to me putting on their own

26 small scale concerts outside of the MSO they will become

27 interested in those venues as well. So I think Cam

28 Butler was a person who took interest in the venue and I

29 think he programmed something there. So usually what

30 happens is if you introduce a venue to other musicians

31 they start thinking about what they can put on at that

1 venues. Whether they do or not is up to them but we're
2 always on the lookout for venues that are inexpensive,
3 because it usually costs us money to do extra things
4 outside of Melbourne Symphony, so not all of us do it.

5 So how many people would you say you introduced to the venue?

6 ---Well, the concert I had there, it was for the fringe
7 festival, that's right. The concert I had there got a
8 lot of attention because it was me playing Chostakovich
9 on some amplified instruments and there were probably
10 about 65 or 70 people there. Some of them were from the
11 wider community but a lot of them were from the music
12 community.

13 How many of those went on to perform at the space, do you know?

14 ---I don't know but I also don't know that because soon
15 after that the venue stopped being Robert's venue and
16 then Robert had the plan to open another venue, so there
17 was a long waiting period between those two venues for me
18 personally because I was keen to continue putting on
19 concerts.

20 How were the arrangements made with regard to your agreement to

21 perform at Guildford Lane Gallery?---Well, if I can just
22 answer in a backwards way. If you approach the Melbourne
23 Recital Centre they have a massive contract which you
24 have to read through and you have to guarantee a certain
25 number of sales and it's very stressful and it ends up
26 being very expensive for us, so I'm always on the lookout
27 for venues which have a negotiable door deal or a person
28 in charge who is prepared to look at all the numbers and
29 see that I'm not generating a lot of money with it but
30 artistically it's something I feel that outside of the
31 MSO the community can benefit from, like, you know,

1 commissioning new Australian works in the absence of that
2 sort of thing. Sorry, on a tangent. So I'm always
3 looking for venues with owners who can see that vision
4 with me and I found that in Robert because - - -

5 MR GILBERTSON: I object. This is evidence going to character
6 and not to reputation or anything that's relevant to the
7 proceeding.

8 HIS HONOUR: I think part of the difficulty is that, Ms Curro,
9 instead of answering the question directly you've given
10 us an explanation?---I'm happy to - sorry.

11 I understand normally we do that outside the court room, but in
12 a court room it's a very disciplined relationship between
13 questioner and the person in the witness box?---OK.

14 So we're going to get these objections if you stray beyond the
15 question?---OK, certainly.

16 Ask the question again, Mr Dibb.

17 MR DIBB: Thank you, Your Honour. (To witness) When you made
18 the arrangements with Mr Cripps for your performances how
19 were they made? Were they verbal or written?---At first
20 they were verbal, he told me what the deal was for
21 performing artists, and then he said if there's anything
22 you need help with - these aren't his words, I'm just
23 remembering from a long time ago. The implication was,
24 you know, the more people who came the better the deal
25 could be, or something like that. But really that's
26 quite common in my industry with people who run venues,
27 so it is a difficult question to answer. But at first it
28 was verbal and then I was sent a one page information
29 sheet about the deal at Guildford Lane Gallery, which
30 suited me and it happened and I was happy.

31 Turning to Mr Cripps's reputation, I understand you to say you

1 first met him in December 2009, is that correct? So had
2 you heard of Mr Cripps before that?---No, not until that
3 night that I met him.

4 Have you heard anything about Mr Cripps since?---You mean
5 besides what my experience with me? You mean from
6 outside of my relationship with him?

7 HIS HONOUR: I think you need to ask the question again because
8 she may have heard lots of things about Mr Cripps but is
9 it about reputation you're asking?

10 MR DIBB: Yes, I'm asking relevant to his reputation. Have you
11 heard people talk about Mr Cripps' reputation since then?

12 HIS HONOUR: Being December 2009, is that right? Since then
13 means December 2009?

14 MR DIBB: Yes?---If people had met him there might be
15 conversations about him, oh runs Ruby's Music Room, he's
16 got a great venue, just general things like that, except
17 for the time that relatively recently, about six months
18 ago my friend from the orchestra had heard that I was
19 programming at Ruby's Music Room and he had done a little
20 bit of research, had stumbled upon this quite nasty
21 article about Robert so then I - he was trying to ask me
22 if I knew about this, if I knew that the person I was
23 dealing with had this terrible thing going on and so I
24 just - I had heard about the difficulties that Robert had
25 had with some artists at some point and so in my head I
26 had heard that so I thought, well, I read it but it was
27 so kind of disturbing that I just set it aside because it
28 wasn't my relationship with Robert at all.

29 Can I ask you to look at the first matter complained of, Marked
30 A.

31 HIS HONOUR: Madam Associate, can you provide that to the

1 witness, please. It's marked for identification I think.

2 MR DIBB: Would you have a look at that article, Ms Curro, is
3 that the article you read or does it appear to be the
4 article you read at that time?---As far as I can
5 remember, having skimmed over it and not really
6 interested in getting involved in anything too negative
7 because I'm extremely busy, yes, this is from what I can
8 remember the article.

9 Do you have the second matter complained of marked B there?

10 HIS HONOUR: Just keep - - -?---Keep going?

11 Yes. Up the top you'll come across a B?---Yeah.

12 MR DIBB: That article is substantially the same until you get
13 the text box with a double outline a few pages along?
14 ---Addendum 7.

15 HIS HONOUR: Keep going.

16 MR DIBB: Addendum 7 November. The following page, Addendum
17 2 April 2011.

18 HIS HONOUR: In the middle of the page.

19 MR DIBB: In the middle of the page?---Yeah.

20 At the bottom you'll see the heading What Are the Experiences
21 of Others?---Yeah.

22 Can you have a look at that paragraph and tell the court
23 whether when you read that article that paragraph was
24 included in it?---I can't remember, I'm sorry. I mean
25 it's quite - the whole thing is quite similar to that
26 article and I didn't scour, you know, I didn't go through
27 it in really great detail so I'm sorry.

28 Turning to the third article, C, two pages?---M'mm.

29 Have you seen that article before? Have a look at it first?

30 ---It's similar in nature but I think - I won't say I
31 think. I know that I'm more familiar with the first one.

1 When do you say you read that?---Well, I believe this or B but
2 I can't say which, is the one that my friend from the
3 orchestra sent me, worried that I didn't know that this
4 was going on with Robert so it was either A or B that my
5 friend sent me.

6 When did you read that article?---I have tried to look for it
7 in my emails and it wouldn't surprise me if I just
8 deleted the email because I wasn't interested in getting
9 involved but July last year, I'll guess at that because
10 that was when I was beginning to program a lot of acts at
11 Ruby's Music Room.

12 Thank you. Could the witness be shown a copy of the recent
13 email which is MFI3? That email is not of course
14 addressed to you but going down to below, "Begin
15 forwarded message", there commences an email that has
16 been passed from there to someone called Liz Paul and
17 from there to reception. Have you seen an email of that
18 sort before?---Yes, about a week and a half, two weeks
19 ago. I get regular emails from Ruby's Music Room because
20 I'm on the mailing list, obviously, and this was sent to
21 me and as I said before, I'm always really busy so I read
22 it and I was really confused as to why Robert would send
23 this to me but I set it aside and then when I came back
24 to it, probably the same day, the same day I just read it
25 and I thought, well, obviously it's from the same people
26 who - - -

27 MR GILBERTSON: I object.

28 HIS HONOUR: Yes. You can't guess. That's fine?---OK, sure.

29 I understand. Yes, I was sent this email. Sorry.

1 MR DIBB: And you read the email at some stage about that
2 time?---Again I skimmed the email, gleaning it had
3 similar content to previous.

4 Did that lead you to read anything else?---No, it didn't.
5 That's the evidence-in-chief, Your Honour.

6 HIS HONOUR: Thank you very much.

7 <CROSS-EXAMINED BY MR GILBERTSON:

8 Ms Curro, you gave evidence that you performed two concerts I
9 think you said at the Guildford Lane Gallery in 2012, is
10 that right?---Yes.

11 Do you know when the Guildford Lane Gallery closed?---I can't
12 remember.

13 Might it be that you performed your two concerts in 2011?

14 ---Yes, it might be that.

15 In February and March of that year?---Yes, it might be that.

16 You have performed at Ruby's Music Room in 2013, haven't you?

17 ---Yes.

18 In July and August of that year, is that right?---July and
19 August, possibly two in September. I would program
20 myself regularly at Ruby's Music Room.

21 My learned friend took you to what he called the matters
22 complained of, you'll remember these Annexures A, B and
23 C?---Yes.

24 After you read these articles you didn't think anything less of
25 Mr Cripps, did you?---No.

26 Do you know a Registrar of Museum Victoria by the name of Ruth
27 Leveson?---No.

28 Do you know a former chairman of the Australian Museum
29 Registrars Committee by the name of Emily Persac?---No.

30 A curator and sound engineer by the name of Albert Mishriki?
31 ---No, no.

1 An artist by the name of Rod Cooper?---No.
2 Do you know a former manager of the Guildford Lane Gallery by
3 the name of Emily Kocaj?---No.
4 Or an artist by the name of Katie Raymon?---No.
5 A curator by the name of Courtney Kim?---No.
6 A life model called Gavin Mickelson?---No.
7 An artist by the name of Josie Waddelton?---No.
8 Has anyone suggested to you, Ms Curro, that Mr Cripps has a
9 general bad reputation?---No.
10 Has anyone suggested he has a reputation for not treating
11 artists with respect?---No, except for the article but
12 which is not a direct suggestion.
13 But that's something you didn't believe when you read the
14 article, did you?---Well - am I allowed to answer a
15 little bit more detail?
16 I'm just asking you about your belief. You didn't believe what
17 you read in the article, did you?
18 HIS HONOUR: You are meant to answer accurately?---Yeah,
19 exactly the question.
20 Accurately but not all answers can be answered yes or no so we
21 don't want you to give a speech?---Sure.
22 But if you think that your answer requires some elaboration?
23 ---A little bit.
24 Then that's permissible?---I'd like to answer in the sense that
25 it concerned me because I felt I had a good relationship
26 with Robert therefore if other people didn't have a good
27 relationship with Robert it made me question generally my
28 relationship with Robert. It didn't make me question
29 Robert. It just made me put a few doubts in my mind
30 until those doubts were laid to rest. That's all I can
31 say.

1 MR GILBERTSON: You didn't question anything in your mind about
2 Mr Cripps personally?---Not in terms of my relationship
3 with him. That's - yes.
4 Yes, thank you. Has anyone ever suggested to you that
5 Mr Cripps has a reputation for bullying artists?---Not -
6 except in this article.
7 Or a reputation for providing artists with services that were
8 unimpressive?---No. I don't know many artists. Can I
9 say that as well? I'm more in the music industry than
10 the fine arts world. They're quite separate.
11 Yes, I understand that. Has anyone ever suggested to you that
12 Mr Cripps has a reputation for engaging in inappropriate
13 sexualised behaviour with staff or volunteers at the
14 gallery?---No, no.
15 Yes, thank you.
16 HIS HONOUR: Any re-examination, Mr Dibb?
17 MR DIBB: No, Your Honour.
18 HIS HONOUR: Ms Curro, thank you very much for your attendance
19 this morning?---Thank you.
20 And for your evidence. You're now free to go?---Thank you.
21 (Witness excused.)
22 <(THE WITNESS WITHDREW)

1 MR DIBB: I now call the plaintiff, Mr Robert Cripps.
2 <ROBERT RAYMOND CRIPPS, affirmed and examined:
3 MR DIBB: Is your name Robert Raymond Cripps?---Yes, it is.
4 What's your address, Mr Cripps?---[REDACTED] Street,
5 Melbourne.
6 What's your occupation, sir?---Venue owner.
7 What's that venue called?---Ruby's Music Room.
8 How long have you been operating Ruby's Music Room?---A little
9 less than 12 months.
10 What did you do before that, sir?---I ran Guildford Lane
11 Galleries.
12 How long was that?---Four or five years.
13 How old are you, Mr Cripps?---67.
14 When did you leave school?---Third form.
15 Do you remember what year that might have been?---No.
16 What did you do after you left school?---I became an
17 apprentice.
18 What sort of apprenticeship was that?---Fitting and machining
19 and then toolmaking.
20 HIS HONOUR: Sorry, Mr Cripps, you'll need to speak up a bit?
21 ---Fitting and turning and then toolmaking.
22 MR DIBB: Where did you work?---A little engineering factory in
23 Highest, Simpax Engineering. Joseph Lucas, Doitcher's,
24 McKay Rubber Mills.
25 This was one after the other, was it?---Yes.
26 How long did you do that sort of work for?---Until I was 25 or
27 26.
28 What did you do after that?---There was a break in between when
29 I was in Vietnam.
30 How did you come to go to Vietnam, Mr Cripps?---I was
31 subscribed.

1 How old were you when you were conscripted?---19.
2 How long did you spend in Vietnam?---12 months.
3 Sorry?---12 months as a combat soldier.
4 Did that experience have any effect on you?---Yeah.
5 Can you describe how it affected you? Are you all right,
6 Mr Cripps?---Sorry.
7 HIS HONOUR: That's fine, Mr Cripps. We might just break
8 temporarily just to give you an opportunity to compose
9 yourself, Mr Cripps. Just take your time. I might leave
10 the bench temporarily.
11 MR DIBB: Thank you, Your Honour.
12 HIS HONOUR: You may speak to the witness if you wish. Thank
13 you. Madam associate, can you break temporarily, please.
14 <(THE WITNESS WITHDREW)

1 (Short adjournment.)

2 <ROBERT RAYMOND CRIPPS, recalled:

3 HIS HONOUR: Are you right to continue?---Yeah, I'm really
4 sorry. I'm sorry.

5 You needn't apologise. It's not the most comfortable place to
6 be in a court room but if you need a break at any time,
7 as with previous witnesses, just ask and that will be
8 accommodated?---Thank you.

9 Yes, Mr Dibb.

10 MR DIBB: Thank you, Your Honour. (To witness) You were
11 telling us, Mr Cripps, that you had served in Vietnam and
12 you were outlining or you were about to outline I think
13 how that experience had affected you? Should we move on
14 from that topic?---No, it's hard to deal with. It's got
15 to be dealt with.

16 HIS HONOUR: Take your time, Mr Cripps?---I'm just reliving
17 with all this crap at the moment. I'm just being
18 attacked again and I've got to fight, you know. I
19 deserve better than this. It really - - -

20 MR DIBB: Mr Cripps, I'm just taking you now through your
21 history. After your service in Vietnam how were you?---I
22 come from a family that's got a long military history and
23 I was supported by my family. I'd been injured so I was
24 quite heavily sedated for a period of time and I was able
25 to wean myself off the anxiety with heavy doses of Valium
26 and I weaned myself off that and then I've managed to go
27 forth.

28 You were taking sedatives you say, how long for?---It was a
29 number of years but it was like being a zombie. It was
30 just - - -

31 Once you - - -

1 HIS HONOUR: Sorry, you were going to say something else?

2 ---It's like seeing things in a fog. I'm not a drug
3 taker and it's just quite a foreign experience.

4 MR DIBB: Once you had weaned yourself, as you put it, off the
5 sedatives, what did you do work wise then?---I got a job
6 as the technician in the sculpture department of
7 Caulfield Institute and - - -

8 What did that involve doing?---Working closely with students
9 and the infamous Nick Cave and Gareth Sansom and a whole
10 range of people that went on to bigger and better things.

11 How long did you work there?---I was there for a number of
12 years. I went from Caulfield Institute to the sculpture
13 department - sorry, the architecture school at RMIT in
14 the Gossard building and I set up the workshop there for
15 model making and experimentation into timbers and metals
16 and also the manufacturer of student projects.

17 What did you do after that?---I - or my brother had introduced
18 me to what was to be Guildford Lane Gallery, 20-24
19 Guildford Lane, Melbourne and I then had a reprographic
20 business and in the process of the reprographic business
21 my brother was the exhibitions officer at the National
22 Gallery of Victoria and subsequently started doing
23 crating and work for the National Gallery of Victoria and
24 then we handled the Into Warriors Chinese terracotta
25 exhibition.

26 So are you saying that you transitioned into arts
27 transportation at that point?---Correct.

28 HIS HONOUR: What year are we talking about, Mr Cripps,
29 roughly?---I can't tell you, I'm sorry.

1 MR DIBB: How old might you have been at that time?---Well, I
2 got out of the army in 69. It might be 70 something -
3 no, no, 80 something, 80. 1980's I suppose.

4 HIS HONOUR: 1980's is when you first started the art
5 transportation business?---I think so. I think so.

6 MR DIBB: Did you register a company to operate that business?
7 ---Yes, it was the Redleg Group Pty Ltd.

8 Is that related to the second plaintiff in these proceedings,
9 Redleg Museum Services?---It's a different company.

10 When did you start Redleg Museum Services?---Probably late 80's
11 I suppose. I'm really useless at dates. I don't - I
12 really can't remember dates.

13 A lot of people are.

14 HIS HONOUR: Just try your best, that's fine.

15 MR DIBB: Were you exclusively working in arts transportation
16 at that period?---Yeah, yes. Because I have a trade
17 background I started to manufacture pieces of equipment
18 that are used in museums and art galleries, for instance
19 the RMIT gallery has one of my art storage, sliding art
20 storage systems plus 50 other art galleries Australia
21 wide. So basically what I was doing was running trucks
22 Australia wide moving exhibitions. I was working
23 specifically for Arthur Boyd, for Brett Whitley, Sid
24 Nolan, Jolly, I just can't - Margaret Jolly. Basically I
25 was doing very hands on specialist art transportation for
26 most of the really well established arts in Australia.

27 When did you do open the Guildford Lane Gallery? Was there any
28 intervening business between those two?---Yes, yes. I
29 ran out of energy because I was running from Cairns
30 through to Perth on a regular cycle of once every three
31 weeks or a month and I lived my life on the road at the

1 other end of the telephone. I had a person who ran my
2 office so I was working seven days a week, 16/18 hours a
3 day. I'm just very, very strong. I did that without
4 taking drugs or without - I just looked after myself and
5 when I slept, I slept. But I worked very, very hard.

6 When you stopped, when you found that too much what did you
7 do?---I have a road train licence so that enables me to
8 drive just about anything that you can put on the road.
9 So I went down the docks and had a bit of a think about
10 what I could do as far as operating semi-trailers and I
11 then met a person called Asham who's an Egyptian Muslim
12 man and I started doing truck repair and driving with him
13 and I did that for a number of years.

14 Was it at that point you started the Guildford Lane Gallery?

15 ---Yes, I borrowed the best part of \$1m against the
16 property and started the process of renovating and
17 turning it into the largest contemporary art space in
18 Melbourne, or probably in Australia, privately owned
19 contemporary art space.

20 Would it be fair to say you were proud of the gallery and what
21 it's achieved?---I'm very good at what I do, very, very
22 good.

23 When did the gallery actually open?---I can't tell you, I'm
24 sorry.

25 Do you know which year it would be?---No. I have no memory.

26 What was the first exhibition?---Nina Sellars with Stelarc.

27 Stelarc, photos of his - - -

28 We heard about that exhibition earlier in these proceedings,
29 didn't we?---Yes.

30 So would that have been in 2008 do you think?---It maybe. I
31 really don't - I don't know. I haven't - I don't know.

1 When did you first have any contact with the defendants in this
2 matter?---I was shown a - I was shown an application by
3 Yolande Pickett of what they intended to do and she
4 Googled some of their work and so that's when I became
5 aware of them. Prior to that I didn't know who they
6 were.

7 Do you remember when you first met them?---No, I don't remember
8 the date but it was only fleetingly. I've met them three
9 times, you know.

10 Taking a step back, how did you come to put on the Nina Sellars
11 Stelarc exhibition? We heard earlier Stelarc was quite a
12 prominent artist?---I do things that are really, really
13 interesting and Guildford Lane was in the middle of the
14 city. It had beautiful big spaces, expansive spaces and
15 Nina Sellars was interested in something that was unique
16 and that it was exciting and could contextualise and to
17 best show the works. So she was approached by Yolande -
18 she either approached Yolande Pickett or Yolande Pickett
19 approached Nina Sellars and I don't just clearly
20 remember. But - and also I know Stelarc and I've known
21 him since I got back from Vietnam. I can remember him as
22 being part of an art click that my brother was part of.
23 So he's known of me. I've known of him. I've done art
24 transport work for him so what I was doing was immensely
25 credible.

26 Returning to the defendant's application, you were shown the
27 defendant's application by Ms Pickett and did you meet
28 the defendants?---I think I met them once for a very
29 brief period of time after that.

30 Do you remember when that was?---No, I don't.

1 What happened at that meeting, can you remember anything of
2 what happened at that meeting?---No, very brief
3 discussion, very, very brief discussion.
4 Were you excited by the work of these artists?---No, I wasn't
5 excited by their work. I was warned not to show them.
6 That you would show them it seems?---Vakras is an incredibly
7 good draftsman, a phenomenal draftsman. Ms Raymond is
8 competent. I thought their work was colourful, it was
9 bright it was provocative. I could see the juxtaposition
10 between what was going on at the National Gallery of
11 Victoria and turning a business eye to it. I thought
12 there was a possibility for something that was really
13 interesting here. You know, there was - I was the only
14 one supporting the exhibition around in the gallery
15 circle and it was they were shown because I believed they
16 should be shown.
17 At this first meeting do you recall any discussion of a
18 catalogue?---No, there was some books shown around. I do
19 remember that and I remember some creature type book that
20 I think the name starts with a V or something but - - -
21 HIS HONOUR: With a what, sorry?---A V.
22 V?---Yeah, Victorious.
23 MR DIBB: Are you thinking of Carnivora?---Yeah, OK, yes.
24 Yeah, I think that's right.
25 Do you recall what was said about the catalogue?---There was
26 some general - I've heard a rang of things that have been
27 said about it but from my memory - sorry, I've heard in
28 court a range of things but from my memory, very little
29 about the catalogue. Carnivora, sorry.

1 Did you - I withdraw that. I'll move on. You're aware of
2 what's come to be known as the missed meeting?---Sorry,
3 as the?
4 Missed meeting?---What a fiasco, yeah.
5 HIS HONOUR: Can I just encourage you, Mr Cripps, as I did with
6 Mr Vakras and Ms Raymond?---OK.
7 Just avoid comments?---Sorry, I'm not meaning to be sarcastic.
8 I did not mean it like that, Your Honour.
9 It's not helpful, you see?---OK. I apologise.
10 It's not helpful for anyone to stray beyond answering the
11 questions?---I apologise.
12 That's fine.
13 MR DIBB: Talking about the missed meeting, do you recall that
14 sequence of events?---Yes, I do.
15 On the day of that meeting were you at the gallery?---Yes.
16 Who else was there?---I don't remember distinctly. I've heard
17 who was there. I don't - I had one or two staff members
18 in the office. I don't remember who they were. I also
19 live on the premises so I was certainly there.
20 When you say you live on the premises, you mean you didn't
21 leave the premises at all?---No, I didn't leave the
22 premises.
23 You've seen an email exchange between the defendants and
24 Ms Lian Low?---Yes.
25 In which you participated, I think it was Document - could the
26 witness be shown the defendants court book documents, 18
27 and 19. Did you see those email exchanges at the time?
28 ---Yes, yes, I did.
29 How did you respond to them?---I asked - I asked that - my
30 feeling is this is - this is the first time I've seen
31 this stuff since it was written.

1 HIS HONOUR: Sorry, does that mean that you saw it back then
2 and you haven't seen it since until today?---I rarely
3 look at this stuff. It's too disturbing for me. I
4 rarely look at it.

5 So the question you were asked is at the time when you first
6 saw it how did you respond, what did you do?---I asked -
7 I asked that we write a response email.

8 MR DIBB: Did you have any reaction to the tone of this
9 exchange?---I found it upsetting.

10 When did you next meet either of the defendants?---I think I
11 then had a discussion with Ms Raymond. I think that's
12 the next time I - - -

13 Can you tell the court what happened during that discussion?
14 ---Generally indicated to her that I wasn't impressed
15 with the email and didn't see it as being necessary.

16 What did she say?---She was apologetic and I was apologetic in
17 return that, you know, I kissed her on the cheek, walked
18 downstairs, showed her the sign above the door.

19 When you say you showed her the sign above the door, what was
20 that sign?---It indicates it's got telephone numbers,
21 it's got gallery address, it's got gallery name, you
22 know, over three metres above the ground and if you look
23 up you clearly see it.

24 The telephone number on that sign, what did it relate to?---Can
25 I go on a little? There's - - -

26 What telephone would have rung if you'd rung that number?---The
27 landline number if it wasn't in use.

28 HIS HONOUR: So can I take it from that, Mr Cripps, that the
29 gallery had only one landline number at that time?---No,
30 I think was for the fax machine, the other one was for

1 the gallery line, for the advertised gallery line and
2 there was a mobile number.

3 MR DIBB: Talking about the mobile number, whose mobile number
4 was that?---It was to be used by gallery staff.

5 So who would have had at that any particular time?---Most
6 likely the person who was managing it at that stage.

7 Would that be, in the absence of Yolande Pickett, would that
8 have been Ms Lian Low?---Most likely.

9 When Ms Pickett was managing the gallery she would have had
10 that phone, is that the understanding?---Correct,
11 correct.

12 Was that number displayed anywhere?---The gallery was very,
13 very big.

14 I'm sorry, Mr Cripps?---Yes, it was.

15 Where was it displayed?---On the door.

16 I'll show you this photograph.

17 HIS HONOUR: Which one is that? MFI2 I think.

18 MR DIBB: MFI2. Can you identify on that photograph which of
19 those three signs had the gallery manager's mobile number
20 on?---bottom left.

21 What were the other two signs, Mr Cripps?---The operating hours
22 and name and address of the gallery across the top with
23 the landline telephone number.

24 Which ones are those?---The three sleeves across the top of the
25 door.

26 The top right hand sign is which?---Gallery hours.

27 And the top left hand sign is?---I'd be going - I think there's
28 the landline number on that but I can't get positive, or
29 it may have been on the far right hand side. I just
30 don't clearly remember.

1 Thank you, if you could return that picture, Mr Cripps. Did
2 you ever use that mobile phone number, Mr Cripps?---If
3 there was no-one else in the gallery I'd have it, yes.
4 Did you ever get prank calls on that number when you had it?
5 ---No, because we'd turn the phone off of a night and the
6 same with a landline, just put it to an answering
7 machine.
8 Did you ever get complaints from any of the staff who did have
9 that mobile number that they were getting prank calls?
10 ---No.
11 The exhibition of the defendants opened on 18 June 2009 we've
12 heard. Can you describe what happened on that night?
13 ---Well, it was a pretty big interesting night, a lot of
14 people.
15 What time did things get underway?---Probably around about six
16 and we had - and it would have need to finish about by
17 9 p.m. so it would have run between six to 9 p.m.
18 What did you do in the course of that night?---From memory I
19 just circulated around. I don't - yeah, from memory I
20 just circulated around talking to people.
21 Did you talk to the defendants at any stage?---I think I had
22 one only conversation that comes to mind to them.
23 How many exhibitions were opening that night?---There were two
24 that I remember but three exhibitions.
25 Where was the defendants exhibition?---On the first floor of
26 the building.
27 And the other exhibitions?---On the ground floor of the
28 building.
29 Were any sales made in any of those exhibitions?---I don't
30 think sales were made downstairs but there was one sale

1 made from the Vakras and Raymond exhibition on the first
2 floor.

3 Did you speak to the defendants about that sale?---Yes.

4 What did you say?---I asked whether I could give the person a
5 catalogue, free catalogue.

6 And what was the response?---Yes.

7 Did you speak to the defendants again in the course of that
8 evening?---Yes, towards the end of the exhibition.

9 What time would this be?---Around eight I'd say.

10 How many people were in the gallery at that stage?---I think
11 there was only person that I'm aware of on the first
12 floor other than the Vakras and Raymond. On the ground
13 floor there was probably only a handful of people, five
14 to seven people.

15 Where did this conversation take place?---The conversation I
16 had with Vakras and Raymond?

17 Yes, the conversation towards the end of the night?---Yeah, on
18 the first floor, in the centre of the first floor but
19 beside a movable wall. It's a hanging movable wall.

20 Do you still have the defendants' court book documents in front
21 of you?---Yes, I do.

22 Could you turn to Document 5, to the second page of that
23 document?---Floor plan.

24 Is that a floor plan of the first floor?---Yes, it is.

25 Can you indicate perhaps by holding it up where you say this
26 conversation took place?

27 HIS HONOUR: You'll need to show - I can see it.

28 MR DIBB: And for the benefit of the transcript you are
29 indicating approximately the middle of that floor?
30 ---That's right. That's right.

1 By the removable walls, where it says movable wall?---Correct,
2 to the left hand side of that, yes.

3 What was said?---I congratulated them and made comment about
4 the labelling.

5 Did you hear anyone else speak to the defendants about that
6 time?---No.

7 Did you hear anyone congratulate the defendants on what they'd
8 said about Islam or Muslims?---It didn't happen, no.

9 What was said?---There was no discussion about - initially
10 about that.

11 What was said after you'd congratulated them and said you
12 didn't understand the labelling?

13 HIS HONOUR: I'm not sure that he actually said he didn't
14 understand the labelling. He said there was a discussion
15 about the labelling.

16 MR DIBB: Sorry. I beg your pardon, Your Honour?---Well, the
17 truth of the matter is I didn't understand the labelling
18 and that was - - -

19 HIS HONOUR: Just wait for the question, please.

20 MR DIBB: Can you tell the court as best you can recall if
21 possible in direct speech, you understand what I mean by
22 that, as though it were in inverted commas, what was said
23 by whom?---I congratulated them on the show, on the sale
24 that had been made and I said that I couldn't understand
25 the labels and the written support material for their
26 works. It was too complex for me to understand. I also
27 indicated that my philosophy was that we should de-
28 mystify the art process so would it be possible to leave
29 the labels and the signage as is and to put some simple
30 English documents there as well so the exact meaning of
31 the works could be deciphered much more easily.

1 What was the response to that?---Mr Vakras was unimpressed. He
2 believed that an educated person should be able to - - -
3 HIS HONOUR: Sorry, you need to tell us what he said rather
4 than you - - -?---He said, Mr Vakras said to me that an
5 educated person should be able to understand what he was
6 writing about.

7 MR DIBB: Carry on?---I disagreed. I indicated to him that it
8 may be possible for misinterpretation to take place and
9 that if it was anti Palestinian, if it was anti Zionist
10 there could be a problem. I didn't have the skill or the
11 ability to understand what his works actually meant, what
12 the writing meant. I don't profess to be an art critic.
13 I'm primarily a business person that's involved in the
14 arts. I don't have any art training.

15 HIS HONOUR: Sorry, are you telling us now what you told
16 Mr Vakras or are you just explaining - - -?---No, I'm
17 not. I'm not. I'm prattling on.

18 Please don't explain, just tell us.

19 MR DIBB: Could you just say what was said between you and the
20 defendants?---I admitted I had no art background, I had
21 no art training and I didn't understand, I didn't
22 understand his essays, nor did I understand the
23 paintings.

24 What did he say in response?---He was just insulting.

25 Do you recall any of the insults?---I lacked erudition. No,
26 no, I don't.

27 How was his manner?---He gets incredibly agitated and is quite
28 - I find him quite threatening.

29 I'm asking you about this particular incident rather than in
30 general. How was his manner at that time?---I found him
31 threatening, I found him quite threatening.

1 Who was present apart from you and Mr Vakras?---Ms Raymond.

2 Did she say anything to you?---Yeah, but I don't remember.

3 There was some discussion but I really don't remember
4 what she said.

5 How as her manner?---She's more, more controlled than

6 Mr Vakras.

7 At that time how was her manner?---More - agitated but more
8 controlled.

9 How did the discussion progress? Was there more said?---I

10 moved over to - we moved over to a particular work that
11 was, that was in the middle of, of the wall.

12 And this, for the benefit - - -

13 HIS HONOUR: Close to the artists studio, is that right?

14 ---Yeah, on the outside wall of the artists studio.

15 Yes, thank you?---And I indicated, I indicated the, what I was

16 concerned about. There are, there are labels missing

17 from all of the, all of the paintings. There were, there

18 were labels other than the essays and I've yet to see an

19 image with any of the labels attached. And I was

20 actually talking to him about the labels because they

21 were written in, in another, in another - in a different

22 script and then it wasn't written in English that I could

23 understand.

24 MR DIBB: What did you actually say about the writing?---I said

25 it bordered on being legalese. It was just really

26 complex and difficult to understand and, and that the

27 gallery's philosophy was to de-mystify and not mystify,

28 and I asked again whether they could, they could, they

29 could leave what was there but put some simple English

30 explanations beside the works.

31 Was anything else said?---No, that's it.

1 Was there any discussion of Palestine?---Oh, yeah, yes. Well,
2 yes, but I've already said that.

3 What was said about Palestine?---I, I was concerned that there
4 could - - -

5 HIS HONOUR: Just tell us what you said rather than what you
6 thought?---Well, what, what I, what I was actually
7 thinking and what I said was that I was, I was concerned
8 that, that it was, that it could be possible to
9 misinterpret the message of their works, that it could be
10 anti, anti Palestinian.

11 MR DIBB: Can you move back from the microphone just a little?
12 ---That it could be anti Palestinian or anti Israeli. I
13 really didn't have the skill to, to interpret it.

14 HIS HONOUR: And that you did not have the skill to interpret
15 it?---Exactly.

16 MR DIBB: What did Mr Vakras or Ms Raymond say in response to
17 that?---There was general comment about my inability to
18 understand and that, that as the gallery director I'm
19 supposed to be able to understand these things.

20 How was your manner do you say at that time?---I was, I was
21 getting pretty grumpy because I was really trying to be
22 friendly to them and they were so prickly and, and upset,
23 upset at me not being able to understand their work.

24 How did this discussion end?---I walked, I walked away and
25 walked downstairs and that, that's the last conversation
26 I had with them that night. That, that's the last
27 conversation I had with them that night.

28 When did you next see the defendants?---I next, I next saw them
29 when they were photographing the exhibition a while
30 later.

31 Where did that conversation take place?---Pretty much the same

1 spot as the last conversation, in the middle of the
2 floor, first floor.

3 Who was present then?---There was Mr Vakras, Ms Raymond,
4 myself.

5 How did you come to start this conversation?---The, the
6 volunteers on the front door rang to say the artists were
7 in the gallery and that, and so I went down to, went down
8 to talk with them.

9 And what did you say?---I indicated to them that, that I'd
10 requested that they contact me personally before they,
11 they attended the gallery given the conflict that had
12 happened and that, that, that the - as had already been
13 indicated to them that the volunteers and none of the
14 other staff wanted to deal with them so it was left for
15 me to do it, and I really wanted them to have full use of
16 the gallery, have full use of their exhibition but they
17 really needed to correspond with me or ring me, and that
18 was what I said to them quite clearly. And I would have
19 been, I would have been quite forceful in saying that to
20 them.

21 What was their response?---Oh, belittling and negative
22 and - - -

23 Could you tell us what was said; are you able to recall what
24 was said and by whom?---That I, that I had no right to
25 ban them from the gallery. I wasn't banning them, I just
26 wanted them to tell - - -

27 Did you say I'm not banning you, or is that a comment?---No.
28 I, I said I'm not banning you from the gallery.

29 What did they say?---They, they, they just said to me that they
30 were really uncomfortable and they weren't happy and that
31 I, that I had no right to, to talk to them in the space.

1 When you referred - going back to the previous conversation -
2 you referred to going over to a particular picture?
3 ---Yes.

4 Did you regard that picture as being racist?---No. None, none
5 of their work's racist.

6 Did you accuse them of being racists?---Never.

7 In that first conversation?---At no time have I ever accused
8 them of being racist.

9 In the second conversation?---Never.

10 Do you regard any of their pictures as racist?---I, I don't
11 regard any of their pictures as being racist in any way
12 or any form.

13 Did you regard any of the explanatory material as being
14 racist?---I thought - no, but I thought there was the
15 potential for misinterpretation. No, I didn't think
16 their, their written material was racist, but I didn't
17 understand it so therefore I didn't know.

18 Was there any mention of racism to your recollection in these
19 conversations?---No, no.

20 Might the witness be shown the first article. Do you need a
21 break, Mr Cripps?---No, no. The emotional stuff's out of
22 the way, thank you.

23 HIS HONOUR: Can I just inquire of the temperature; is it
24 comfortable?

25 MR GILBERTSON: It's a little bit high I think.

26 HIS HONOUR: Yes, a bit warm?

27 MR GILBERTSON: Yes, Your Honour.

28 HIS HONOUR: Madam Associate, can you attend to that please.

29 MR DIBB: (To witness) Have a look at that article marked A,
30 Mr Cripps. Have you seen that article before?---Yes, I
31 have.

1 When I refer to the article of course I don't mean the
2 printout, I mean as a web page on a computer screen?
3 ---I've been shown this, yes, on the computer screen.
4 HIS HONOUR: Sorry, you trailed off?---I've been shown this on
5 the computer screen.
6 MR DIBB: When did you first become aware of this web page?---I
7 - Colin, Colin Reid sent information to the gallery,
8 "Have you guys seen this?" and then I was made aware of
9 something, whether it's exactly this or something similar
10 to this.
11 HIS HONOUR: Who was the person, sorry?---Colin Reid.
12 Who is he?---Colin Reid was a gallery volunteer and he stumbled
13 onto the Vakaras information online.
14 You pronounce the first defendant's name as Vakaras. I
15 understand you to mean Mr Vakras?---Oh, Vakras then.
16 That's fine, but we're talking about the same person?---That's
17 right, yes.
18 MR DIBB: Do you remember when that was?---No, I don't clearly
19 remember but I, I know it to be a couple of months after
20 the exhibition.
21 Did you read the web page at that time?---Yes, I did.
22 How did that affect you?---It gave me nightmares.
23 Have a look at the text. When you read the page the first time
24 did it include the paragraph that starts, "There are
25 several words with which I can describe Cripps"?---Yes, I
26 think so.
27 How did those descriptions affect you?---Just blatantly untrue.
28 Did that cause you any concern?---I had volunteers crying, I
29 had gallery staff members really upset. I could, I could
30 see my life being ruined by this. I just admit that I
31 didn't realise how serious it was going to become. It

1 really, really upset me.

2 In the next paragraph it says, "Cripps also runs Redleg, a

3 transporter of art. Can you trust Cripps's Redleg?" Did

4 you read that?---Yes, I did.

5 Did that cause you any concern?---Yes. Can I explain why?

6 Yes?---In all of the years that I ran Redleg I handled millions

7 and millions and millions of dollars worth of artwork. I

8 never had one single insurance claim and I was the most

9 enervative and constructive art transporter in Australia.

10 I introduced temperature and humidity control transport.

11 I had a fine reputation.

12 Were you still running Redleg as an arts transportation

13 business at that time?---I did, I did limited work,

14 extremely limited work. I no longer own trucks. I hired

15 trucks but did limited work.

16 Had you expended money on the Guildford Lane Gallery in setting

17 it up?---Yeah. I put somewhere in the vicinity of

18 \$1 million into reorientating the building.

19 In the next paragraph - - -

20 HIS HONOUR: This is on the next page, is that right?

21 MR DIBB: Sorry, it's on the next page. (To witness) On the

22 next page did you see the image referring to Redleg

23 Museum Services Pty Ltd?---Yes. Yes, I did.

24 Did that cause you any concern?---Yes, it did.

25 Under the image there is a paragraph - - -

26 HIS HONOUR: I'm sorry, just in relation to the image, I cannot

27 read that. Is there meant to be something in the boxed

28 area which I should - - -?---It describes the

29 service - - -

30 Sorry, I'm asking a question of Mr Dibb.

31 MR DIBB: It's difficult to read on these printouts, I can see

1 that, Your Honour. It clearly says Redleg Museum
2 Services Pty Ltd at the top.

3 HIS HONOUR: I can read that part, yes.

4 MR DIBB: Packing and transport of - no, it's very difficult to
5 read.

6 HIS HONOUR: My question is this, Mr Dibb; is it suggested that
7 there's anything to be complained about within the boxed
8 area?

9 MR DIBB: No. It's only the fact that it refers to Redleg in
10 its transportation business.

11 HIS HONOUR: I see. I just want to make sure I understood the
12 witness's evidence about his concerns. His concern is
13 that it's addressed to that company which is identified
14 as distinct from the boxed text itself stating anything,
15 which is of specific discrete concern?

16 MR DIBB: Yes, Your Honour.

17 HIS HONOUR: I understand, thank you.

18 MR DIBB: Your Honour would understand of course that this
19 would be continuous on a web page.

20 HIS HONOUR: I understand that, yes.

21 MR DIBB: It wouldn't be overleaf in that sense.

22 HIS HONOUR: I'm sorry to interrupt. (To witness) I think
23 you're being taken to the text below that Redleg box?

24 ---Yes.

25 MR DIBB: Did you see the allegation that you gained agreement
26 by placing the defendants under financial duress?---Yes,
27 I did.

28 Is it true?---That's not true.

29 Did that cause you any concern?---Yes. It's a lie.

30 Under the photograph at the bottom of that page there is a

31 caption, "Cripps is a self confessed racist, the new-left

1 Nazis. He is a manifestation of the new-left who have
2 adopted the sentiments Hitler expressed in his Mein Kampf
3 but who believed that though theirs and Hitler's
4 sentiments are the same their racism is a justifiable
5 one, new-left Nazis." Did you read that?---Yes.

6 Have you heard of Adolph Hitler?---I have.

7 Are you familiar with his reputation in the world?---Yes.

8 Did that cause you any concern?---I was shocked. I've been an
9 infantry soldier, I've been an honourable soldier, and
10 then someone goes and calls me that. I just find it's
11 appalling.

12 HIS HONOUR: Did you say appalling?---Appalling. I could say,
13 I could say it a lot more clearly but it's not
14 appropriate.

15 MR DIBB: On the following page about three inches from the
16 bottom of that page did you see a paragraph that says
17 that, "His hatred of Jews is exposed for the outright
18 racism that it is"? It's about three inches from the
19 bottom of that page?---That's not correct.

20 Do you hate Jews, Mr Cripps?---No, I don't.

21 HIS HONOUR: You can only answer questions, you can't seek
22 advice?---OK.

23 Yes, go on?---Most of my customers in Redleg were Jewish
24 people, the good majority of my customers. A great deal
25 of the musicians I currently work with have a Jewish
26 background. I have really good relationships with people
27 of all nationalities.

28 MR DIBB: Three paragraphs down, "The quotes from the Koran
29 though are not an opinion. All quoting from the Koran
30 achieve was the exposure of Cripps for what he is, a
31 racist." Is it true that you are a racist, Mr Cripps?

1 ---I'm not a racist.

2 Did that cause you any concern?---It really hurt.

3 Above the photograph to the right of that page there is more
4 text. Do you see it says, "He is a bellicose bully
5 limited in erudition and of limited intellect." Are you
6 a bellicose bully, Mr Cripps?---No, no. No, I'm not a
7 bully.

8 Are you of limited erudition and of limited intellect?---In
9 relation to the writings of their works, yes.

10 The following page, two inches below the fold, "Since the staff
11 and volunteers of Cripps's Guildford Lane Gallery
12 acquiesce to and agree with his hatred of Jews and are in
13 disagreement with me that it would be a disservice to
14 them if they were to remain unacknowledged and anonymous.
15 Those who I know by name are Yolande Pickett, Sarah Webb,
16 Melanie, Trojkovic, Stacy Jewell and a Danielle, all
17 ethically deficient. They were carbon copied into email
18 correspondences and were aware of the situation. It is
19 my stance that an action or inaction should never be
20 without consequence. Like the Nazis before her Yolande
21 Pickett might in the future claim to have been following
22 orders." Did that passage of text cause you any
23 concern?---It's unbelievable. These are, these are
24 honest, simple, hard working people with futures and then
25 you go and label them like that. It's not appropriate.

26 Did you ultimately instruct your lawyers to issue proceedings?

27 ---Yes, I did.

28 Are you aware that in relation to that article the first
29 defendant has filed a defence in which he says it is true
30 that you treated the defendants in a disgraceful manner
31 and other artists should avoid you; are you aware that

1 that's said to be true?---Yes, I've heard that.
2 Does that cause you any concern?---Yes, because it's not true.
3 That you used economic distress to force - - -
4 MR GILBERTSON: No, duress.
5 MR DIBB: Sorry, what did I say?
6 MR GILBERTSON: Distress.
7 MR DIBB: Distress, sorry. That you used economic duress to
8 force the first and second defendants to agree to terms
9 that were not in the original contract for rental space
10 at the gallery; are you aware that they say that is
11 true?---Yes. It's not, it's not true.
12 Did that cause you any concern?---Yes, it did, it caused me
13 immense concern.
14 That you profited from the defendants art exhibition
15 notwithstanding that you inhibited the defendants'
16 capacity to promote the exhibition causing it to fail.
17 Are you aware that they say that is true, the first
18 defendant says that is true?---I, I didn't, I didn't
19 inhibit them exhibiting, I didn't inhibit them in any way
20 or any form. Did you see that the first defendant pleads
21 that it is a matter of substantial truth that you are a
22 racist who holds views that are similar to those of
23 Adolph Hitler? Are you aware that the first defendant
24 says that he will prove that to be true?---Impossible.
25 I, you know, I don't know a great deal about Hitler other
26 than what's in, in the common realm, but I've - as a
27 soldier I operated in a proper, professional and
28 appropriate manner. Through my working life I operate in
29 a proper, appropriate and professional manner. You know,
30 I'm nothing like Hitler at all. I don't have any
31 attributes that Hitler had.

1 Are you a racist?---I've never been racist in anything I do.

2 Did that statement cause you any particular concern?---Yes, it
3 did. It's just so inappropriate. I build things, I
4 don't tear things down.

5 Are you aware that the first defendant says that it is true
6 that you are a bellicose bully?---That's not true.

7 Does that cause you any concern?---It causes me great concern.

8 Are you aware that the second further amended defence of the
9 first defendant says it is true that your company Redleg
10 Museum Services Pty Ltd is a company of questionable
11 repute and not to be trusted?---Yeah, that's entirely
12 untrue, that, you know, I have an unenviable insurance
13 record, you know. You could ring, you could ring Lloyds
14 and they would cover me immediately to do jobs that no
15 one else could touch. I had a perfect reputation.

16 Would you turn to the second of these articles please,
17 Mr Cripps. After you first saw the first article, before
18 we get to the second article, after you first saw the
19 first article what did you do? Did you take any action
20 at all?---I consulted a lawyer as to what I could do
21 about it and I just purely and simply didn't have the
22 funds to initiate any sort of action.

23 Did you go back to the article at all?---My Vietnam experience
24 means that I've got to be very careful with what I load
25 myself up with. I control my emotional well being by
26 believing in myself and I found the article and the stuff
27 they put online started to question my whole being. I've
28 never heard anyone.

29 Did anyone speak to you in terms that suggested they had seen
30 this material?---Yes.

31 How many people?---All of the gallery staff talked about it all

1 the time. My friends talked about it to me. I'm mostly
2 protected by those around me because they'd know I just,
3 I find it so disturbing.

4 HIS HONOUR: Do you want a break, Mr Cripps?---I just want it
5 to be over.

6 Do you want a break?---No, I'll be OK.

7 MR DIBB: Were you aware of any changes to that web page at any
8 time?---No, no.

9 When I said that web page I don't mean the article that's
10 Exhibit A, I mean the underlying web display. Did that
11 always stay the same or did it change?---I don't - I
12 really have little to do with it. I can't bear it. I
13 can't bear to look at the stuff.

14 Have a look at the second matter complained of, the one marked
15 B, and go the fifth page marked p.5 of 7 in the top right
16 hand corner of Exhibit B?---Sorry, I was being stared at.

17 HIS HONOUR: I'm sorry, who are you being stared at by?

18 ---Mr Vakras staring at me.

19 I can't make a judgment about that, so I neither accept what
20 you say nor do I want to go into this, but I can just say
21 that it's inappropriate for anyone to in any way
22 gesticulate, stare or do anything in relation to anyone
23 in the witness box, whether they are a party or not, that
24 would distract them or upset them. So I'll just make
25 that as a general observation. We'll move on.

26 MR DIBB: Have you p.5 of 7?---Yes, I have.

27 Do you see the section at the middle of the page marked
28 Addendum 2 April 2011?---Yes.

29 Have you seen that section of text from there to the top of the
30 next page, have you seen that section of text before?

31 ---Yes, I have.

1 When did you first see it?---I can't tell you when I first saw
2 this. I've, I've read every single piece of information
3 that's been presented to, to the court, but I really
4 remember little of it.

5 Do you recall how you came to see it first? Were you led to it
6 by someone or did you find it yourself?---Yes. Xiang
7 Tao, when preparing this case, had me read all the
8 information and we, we spent weeks going through all of
9 this information and then, and talking to me about it.
10 So I've read everything and I just don't remember much of
11 it.

12 HIS HONOUR: Sorry, who is this person to whom you refer?---The
13 first initiating solicitor.

14 One of your legal advisors somewhere along the line?---That's
15 right, yes.

16 That's all I need to know.

17 MR DIBB: Have a look towards the bottom of that p.5 of 7,
18 "What are the experiences of Others?" Do you see three
19 lines from the bottom a sentence that starts, "Not only
20 him being unreasonable on everything, he has been
21 sexually harassing staffs and volunteers as well." Did
22 you read that?---Yes, I did.

23 Is it true that you have been sexually harassing your staff and
24 volunteers?---Not at all.

25 Did that cause you any concern?---I was really concerned.

26 Turn to the third article please. I'm sorry, before I pass on
27 to that. Are you aware that the first defendant says, in
28 relation to that allegation that you've sexually harassed
29 volunteers and staff at his gallery, that that is true?
30 ---It's not true.

31 Does it cause you any concern that he says that it is true and

1 he'll prove it?---Yes, it really does concern me.
2 Turning to the third article; have you seen that article
3 before?---Yes, I have.
4 When did you first see it?---I, I can't, I can't tell you.
5 How did you come to see it, Mr Cripps?---I would have been, it
6 would have been given it to me to read.
7 Is this by your solicitor again?---By, yeah, yes, it would have
8 been by Xiang Tao.
9 Has anyone spoken to you in terms that suggest that they've
10 seen that article?---There would be a good, a good
11 handful of people would have - basically I just can't
12 bring myself to, unless I'm really forced to, to read it.
13 I have a number of friends who keep me updated on what's
14 going on.
15 HIS HONOUR: Sorry, you said there were a number of people who
16 would have?---Oh, do.
17 Then you said that you can't bear to look at it and said keep
18 you up to date. The question is not whether something
19 would have happened but whether it actually happened. So
20 just - you may not appreciate the distinction but it's
21 very important?---I do, I do. I'm being loose. I, I
22 have, I've read all of the documentation that, that's
23 here. I don't remember when I've read it but I've read
24 it all a number of times and I, I've made, I've made
25 affidavit comment in relation to it.
26 Yes, but the question was whether anyone has told you that
27 they've read it?---Yes.
28 And you started by saying you would have?---I've been brought,
29 brought to this information by a range of people who,
30 who've actually read the information prior to me,
31 including my lawyer, one of my lawyers.

1 MR DIBB: In the time you ran Guildford Lane Gallery how many
2 Lailas worked for you?---One.
3 What's her second name?---Hua.
4 How do you spell that?---H-u-a.
5 You've heard reference to another volunteer or employee called
6 Thao, T-h-a-o?---Thao Bui.
7 How do you spell the second name?---B-u-i.
8 Do you know where Thao is now?---Thao worked for me up to a
9 month ago and she went back to Vietnam to be married
10 again. She's just been married in Australia and she, she
11 had her reception at Ruby's Music Room.
12 Might the witness be shown the plaintiff's court book
13 documents. It's not all that easy to deal with these
14 documents, Mr Cripps, they're confusingly numbered, but
15 can you turn to the document FFSAD2.
16 HIS HONOUR: Did you say 22? Is that the document - - -
17 MR DIBB: FFSAD2. It should be a document - - -?---Right down
18 the back, sorry.
19 HIS HONOUR: Right down the bottom?---Yeah, sorry.
20 MR DIBB: That's a document headed "Robert Cripps now owner of
21 Ruby's Music Room sues artists for defamation after
22 exhibition." Do you see that document?---Yes.
23 Redleg v. Artists?---Yes.
24 Do you see that the first numbered paragraph about two inches
25 from the top reads, "Redleg Museum Services now runs
26 Ruby's Music Room, Registration Number B2409701A ASIC"?
27 ---Yes, that's right.
28
29 And Number 2, "Cripps's Redleg Museum Services Pty Ltd was the
30 respondent to objections raised in VCAT regarding his
31 Ruby's Music Room"?---Correct.
32 "The team behind one of Melbourne's much loved galleries and

1 performance spaces, Guildford Lane Gallery, are very
2 proud to present Ruby's Music Room," and a URL for a web
3 page?---Yes.
4 It follows with a note, "Redleg runs Ruby's Music Room," and so
5 on and so forth.
6 You've given evidence that Ruby's Music Room is your new
7 venture?---Correctly.
8 I'll show you some photographs. Did you take those
9 photographs, Mr Cripps?---Yes.
10 When did you take them?---Within the past six months.
11 What do they depict?---This is the - this is the Little
12 Lonsdale Street façade of Ruby's Music Room, 132 Little
13 Lonsdale Street, Melbourne.
14 That's the top picture and the others are photographs of the
15 interior including the bar area?---Correct.
16 In those pictures you can see a piano. I think you're quite
17 proud of that piano, aren't you?---I have - - -
18 MR GILBERTSON: I object to the relevance of this.
19 HIS HONOUR: Yes, what is the relevance, please?
20 MR DIBB: Its relevance is, Your Honour, that Mr Cripps has
21 moved on and spent a lot of money on a new venture and
22 he's being pursued into that venture as well by the
23 defendants and I shall be submitting that that is
24 relevant on the issue of damages, aggravated damages in
25 the sense that this is improper or lacking bona fides.
26 HIS HONOUR: Did you want to say anything further
27 MR GILBERTSON: No, no, Your Honour.
28 HIS HONOUR: Thank you. Please ask the question again.
29 MR DIBB: Thank you. You're proud of that piano, aren't you,
30 Mr Cripps?---I own a Steinway D. You'll find another one
31 at the concert hall. It's a high performance piano in an

1 engineered environment for high performance music.

2 Did it cost a lot of money?---\$150,000.

3 What that the new price or used price?---New, 328,000.

4 In those photographs you can see the parquetry floor. How much
5 did the floor cost?

6 HIS HONOUR: Sorry, you need to answer?---Yes, the parquetry
7 floor was done by Bruno and Aldo who did the art centre
8 and this is a \$12,000 floor.

9 MR GILBERTSON: I object. This has gone from aggravated
10 damages to some sort of special damages claim.

11 MR DIBB: It's not a special damages claim, Your Honour. The
12 argument will be that this is a very considerable and
13 important investment and it's a matter of hurt to
14 feelings and concern that this large sum of money and
15 effort and emotional investment is being imperilled in
16 this way.

17 HIS HONOUR: Keep going.

18 MR DIBB: Thank you, Your Honour. (To witness) How much
19 altogether have you spent on the works to that building?
20 ---I've spent \$1.5m on the renovation of the 132 Little
21 Lonsdale Street building.

22 Did you obtain a liquor licence for that building?---I have a
23 liquor licence and a food service licence.

24 And when you were seeking the licenses and approvals you're
25 required to run Ruby's Music Room was there an
26 objection?---There were hundreds of objections.

27 I take you to FFSAD6 which is the very last - - -

28 HIS HONOUR: I'm sorry, Mr Dibb, are we operating on the basis
29 that insofar as you take the witness to a document
30 whether it be a photograph or any other document you're
31 flagging that potentially at the very least, perhaps more

1 likely, that you'll be tendering that?

2 MR DIBB: Yes, Your Honour.

3 HIS HONOUR: And therefore if anyone has an issue now is the

4 time to actually to flag an objection.

5 MR DIBB: Yes.

6 HIS HONOUR: Thank you.

7 MR DIBB: Well, I've flagged that I will be tendering those

8 photographs, Your Honour.

9 HIS HONOUR: You're operating on the same basis that everyone

10 knows that although the tender will formally take place

11 later, now is the time to flag an objection?

12 MR DIBB: Yes, thank you, Your Honour.

13 HIS HONOUR: If that be the intention. Are you taking the

14 witness to?

15 MR DIBB: FFSAD6 which is the very last document in the book.

16 Mine's only one page I suspect. Do you see that

17 document, Mr Cripps?---Yes, I do.

18 Have you seen it before?---Yes, I have.

19 In what circumstances have you seen it before?---A hearing at

20 Melbourne City Council.

21 What does it consist of?

22 MR GILBERTSON: I object to the relevance of this. There's no

23 evidence that the defendants had anything to do with

24 this.

25 MR DIBB: No, Your Honour. It goes to publication and the

26 grapevine effect.

27 HIS HONOUR: I'll allow it, thank you.

28 MR DIBB: Was this part of - I'm sorry, what is this document?

29 ---This, Michelle Tortoni is the wife of Michael Tortoni

30 who runs Venice Lane Jazz Club and in discussion with

31 Michael he made me aware that he was aware of these

1 Vakras and Raymond articles and that he would be
2 submitting this to the city council and his wife did so.
3 You recognise - well, the document speaks for itself,
4 Your Honour?---I do.

5 HIS HONOUR: Can I just ask, Mr Cripps, is that the only point
6 of entry to these premises or is there another facade
7 somewhere?---No, that's not the entry, sir. That's - the
8 Steinway sits behind the front door. The entry is at the
9 rear of the building off Bennetts Lane.

10 I see, thank you. You might be cognisant of the time too,
11 Mr Dibb. It's a matter for you, we're not there yet but
12 find a convenient spot.

13 MR DIBB: Yes, it is a convenient time, Your Honour.

14 HIS HONOUR: All right, thank you. We'll adjourn until 2.15.

15 Thank you very much.

16 <(THE WITNESS WITHDREW)

17 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.15 P.M.:

HIS HONOUR: Are we ready to resume with the plaintiff?

MR DIBB: Thank you, Your Honour. I recall Mr Cripps.

<ROBERT RAYMOND CRIPPS, recalled:

MR DIBB: Mr Cripps, have you been aware since the commencement of these proceedings of other material about you apparently published by the defendants?---Yes, I am.

Can I show you a bundle of documents.

HIS HONOUR: You might take that other material away. Have you finished with the folder?

MR DIBB: Yes, I have finished with the folder, Your Honour.

HIS HONOUR: And the photographs.

MR DIBB: I'm sorry, Your Honour, we have copies of these documents but it seems that they're not sorted into piles. They've come out as separate collections. I think perhaps I'll deal with it this way, we'll sort out a complete pile for my learned friends and for Your Honour but I only intend to take Mr Cripps to three of the documents - four of the documents in the pile, the Redleg v. Artists document and three of the documents that are the underlying documents, the links in that. So I wonder if we can just give my learned friends those as we get to them. Have a look at that top document, Mr Cripps.

MR GILBERTSON: I'm sorry, before this is done we would like to see a copy of the document that's being referred to.

HIS HONOUR: I think that's fair, Mr Dibb.

MR DIBB: Yes, absolutely.

HIS HONOUR: Do you want me to leave the bench while you sort things out? How do you wish to proceed?

1 MR DIBB: Thank you. Yes, I'm very sorry, Your Honour.

2 HIS HONOUR: All right. Thank you very much, we'll adjourn.

3 <(THE WITNESS WITHDREW)

4 (Short adjournment.)

5 <ROBERT RAYMOND CRIPPS, recalled:

6 HIS HONOUR: All sorted, Mr Dibb?

7 MR DIBB: We've got the documents sorted and I've had a short
8 discussion with my learned friend and we're actually
9 going to restrict the size of this bundle so I wonder if
10 I might have back the bundle that's been handed to the
11 witness?

12 HIS HONOUR: A shorter bundle is always better than a bigger
13 bundle, Mr Dibb.

14 MR DIBB: It is, Your Honour. Before I give this back to you,
15 Mr Cripps, at the opening night at the exhibition you
16 gave evidence that you handled the sale of a work, did
17 you see the person who purchased that work again in the
18 course of the night?---Yes, yes, I did.

19 Can you describe the circumstances in which you saw that person
20 again?---We both were looking at the same work on the
21 Flanagan Lane wall of the exhibition space which was the
22 back wall and I made comment to the person who was a
23 woman was that her lovely bottom.

24 Do you know who the woman was or anything about her?---It was
25 the person that bought the work earlier in the night and
26 she identified me as she identified herself to me as
27 Ms Raymond's superior.

28 Why did you ask if it was her lovely bottom?---Because we were
29 both looking at the one work and the bottom was to the
30 best of my knowledge the main feature and I was just
31 being sort of jovial and communicating with her.

1 I'll hand you back that bundle now and I have a similar bundle
2 for His Honour. Could you look at that top document
3 headed Redleg v. Artists. Have you seen that document
4 before?---Yes.
5 Have you seen it recently?---Yes, I have.
6 Looking down the left hand column on that document, on the
7 second page of the printout I want you to look six
8 hyperlinks from the bottom do you see a hyperlink called
9 isthatyourlovelypenis?---Yes, I do.
10 Turn over the page and go to the last two hyperlinks, is there
11 a hyperlink thehideousrobertcripps?---Yes.
12 And the last one crippspullswbsiteson2march2014?---Yes.
13 Have you looked at the documents to which those hyperlinks
14 lead?---Yes.
15 Look at the documents under that, is the first one - well, what
16 is the first one?---It's a mock up of the work in
17 question, of the work that, if I remember correctly, we
18 were looking at.
19 Could you look at the html at the bottom of the page, that's
20 areyoulookingatyourlovelypenis.html?---That's correct.
21 Does the second page of that show a photograph of you with a no
22 entry sign or a slash sign through?---Yes, it does.
23 Have a look at the second one, is that cripps-hideous.html? If
24 you look at the URL at the bottom of the page is that
25 called - - -?---Yes, yes, I see it.
26 Cripps-hideous.html. Do you see a line about a third of the
27 way down, thehideousrobertcripps?---Yes, I do.
28 "Beauty is in the eye of the beholder. Australian defamation
29 law says sue the beholder. Demetrios Vakras 17 January
30 2014. The hideous Robert Cripps is suing us to alter
31 our opinion of him because it conflicts with the opinion

1 he holds with himself?---Yes.
2 Did you read this document?---Yes.
3 And turn to the third one, is that called
4 2march2014crippspulledhissitesindex.html?---Correct, yes.
5 Did you read that document?---Yes.
6 Did the first two documents cause you any - well, what was your
7 response to the first two documents?---Here goes my new
8 business.
9 Why did you say that?---Ruby's Music Room has got nothing to do
10 with Guildford Lane Gallery.
11 When you looked at the third document what was your response to
12 that?---I just can't see the relationship between
13 Guildford Lane and Ruby's Music Room, totally different
14 entities.
15 On the second of those documents, the cripshideous.html, could
16 you turn to p.6?
17 HIS HONOUR: Is that p.6 of 8?
18 MR DIBB: Yes, p.6 of 8. Did you see around about the middle
19 underneath the extensive caption, "In order to prove our
20 case Cripps has crapped our lives. Cripps crapped our
21 lives. Data harvesting, lots of it". Did you read
22 that?---Yes.
23 "We've had to embark on a massive data harvesting venture in
24 order to find out who Cripps associates with, what views
25 Cripps shares with his associates. The reasons for doing
26 this are many. In some instances it's in order to show
27 whom it was that he conspired with to commit his fraud
28 against us by means of deceptions that led us to exhibit
29 at his gallery. Show who it was that conspired with him
30 to keep their witness evidence from being available to
31 us. More importantly, find out who out of those who

1 exhibited at his gallery or worked at his gallery shared
2 his opinions, opinions that he's come to deny having.
3 It's going to be interesting", et cetera, et cetera. Did
4 you see at the bottom, and it's the bottom, once again
5 this is continuous display on the screen but it's the
6 bottom of this page. "There are 180 Cripps crap folders
7 and files on the desktop of our computer as on December
8 2013", and below that there are two illustrations, one of
9 the desktop as it stands with the 180 files and folders
10 relating to you and the earlier on as at March 2011. Did
11 that material cause you any concern?---I find it
12 unbelievable. I was really, really distressed.

13 Thank you.

14 HIS HONOUR: Mr Dibb, I notice if you go back to p.6.

15 MR DIBB: Yes, Your Honour.

16 HIS HONOUR: Some of the text on the right hand side is cut
17 off. It may be just a few letters but there is
18 some - - -

19 MR DIBB: I see, yes, it's clipped. Yes, it's clipped about
20 one letter, hasn't it. There's a line that says, "Cripps
21 staff are as" - - -

22 HIS HONOUR: Probably a couple of letters but I'm just drawing
23 to your attention when you come to tender this if you
24 come to tender it with a - - -

25 MR DIBB: Yes, we'll have to print it perhaps at 95 per cent to
26 get it onto the page.

27 HIS HONOUR: I'm just drawing it to your attention.

28 MR DIBB: Mr Cripps, how would you describe your manner in your
29 dealings with artists and exhibitors at your gallery and
30 performers at your venue?---I'm very straight forward.
31 I'm very honest. I'm professional and I work in areas

1 that are totally unique and ground breaking.

2 How would you describe your relationships with women, both
3 women in general and women who work for you or volunteer
4 to work at the venues you've administered?---I think
5 women just wonderful. I'm very flirtatious. I'm very
6 respectful and I have a large circle of strong supportive
7 professional women friends.

8 Lastly, how has all this great tide of material on the internet
9 affected your life?---It's affected my love life
10 tremendously. I currently - - -

11 Can you say in what ways?

12 HIS HONOUR: Sorry, he was going to - keep going.

13 MR DIBB: I'm sorry, I was too quick?---I currently don't have
14 a lover. I feel incapable of maintaining that sort of
15 relationship. I'm fearful. I suspect those that I
16 shouldn't suspect. I'm less the person than I was at the
17 start of the year and today I feel even less than I was
18 yesterday. I'm a really good man. I'm a good honest
19 solid man. I do think things that are incredibly
20 interesting and evocative. I provide environments that
21 are very expensive and people do wonderful artistic
22 things and I feel, you know, I'd like to have a
23 relationship and I'm quite fearful. I'm quite fearful.

24 Apart from your love life, your business life or other aspects
25 of your life?---The pressure is immense. I've had to
26 after investing 1.5 million in the Ruby's Music Room
27 project I've had to seek assistance from a range of
28 friends. They're very comforting. They're very
29 financially supportive and intellectually they keep me on
30 track.

31 Do you suspect that people who you deal with come across this

1 material?---I know they come across the material.

2 MR GILBERTSON: I object to the suspicion.

3 HIS HONOUR: Yes, Yes. I think that's badly phrased, Mr Dibb.

4 MR DIBB: Your Honour, it's part of hurt feelings that the
5 victims of defamatory material commonly are more fearful
6 of what's being said about them than they're actually
7 able to put their finger on to know for certain.

8 HIS HONOUR: Yes.

9 MR DIBB: It's not uncommon for people to give evidence in
10 terms of what they fear is happening around them, what
11 they think people might be saying behind their back.

12 HIS HONOUR: The witness in response to your question said, "I
13 know they've seen it", so go from there.

14 MR DIBB: As Your Honour pleases. That's the evidence-in-
15 chief, Your Honour.

16 HIS HONOUR: Thank you very much.

17 <CROSS-EXAMINED BY MR GILBERTSON:

18 Mr Cripps, you gave evidence before the luncheon break that you
19 have difficulty recalling some of the dates, do you
20 remember saying that?---That's correct.

21 It's fair to say, isn't it, that you also have difficulty
22 recalling a number of conversations you had with the
23 defendants?---I've had three conversations.

24 And you have difficulty recalling those conversations, don't
25 you?---No, I don't.

26 You say, do you, that everything that's material to this case
27 that you said in those conversations you can recall, is
28 that right?---Yes.

29 When you first met Ms Raymond and Mr Vakras you told the court
30 you don't remember when it happened, remember saying
31 that?---Yes.

1 And you said you remember a discussion about Carnivora or
2 Carnivora, do you recall saying that?---Yes.
3 And you said that there was very little about Carnivora, do you
4 also recall saying that?---Yes.
5 At one point, Mr Cripps, you said, "There was very little about
6 the catalogue - Carnivora, sorry", do you remember saying
7 that this morning?---Yes.
8 Because there was a conversation in your first meeting with the
9 defendants in which their catalogue was discussed, wasn't
10 there?---There wasn't.
11 Was Ms Pickett present at this conversation?---She may - yes,
12 she was.
13 Were you about to say she may have been?---She was.
14 Did you say anything during this conversation about the Orange
15 Gallery?---Yes, I have a long relationship with the
16 Orange Gallery.
17 Did you tell Mr Vakras and Ms Raymond about your association
18 with the Orange Gallery?---Yes.
19 What did you say to them?---I talked about an exhibition that
20 was similar to theirs run by the sheriff and Alan Sisley.
21 I also indicated the comment that Alan would say to most
22 people about his rock and roll history that he fried his
23 brains in the 60s.
24 Yes, and the conversation in relation to the Orange Gallery and
25 Mr Sisley arose after the catalogue was mentioned, didn't
26 it?---No, it was about the exhibition that I saw as being
27 similar to theirs.
28 There was a discussion at this first meeting about the open
29 studio, wasn't there?---I don't remember.
30 You don't remember that, is that right?---I don't remember
31 that, Mr Gilbertson.

1 When the document Carnivora was produced did you say that you
2 can order that in for them?---I did not.

3 Might Ms Pickett have said that and you can't recall it?

4 HIS HONOUR: You mean in his presence?

5 MR GILBERTSON: Yes?---No, I don't remember her saying that.

6 You told Mr Vakras and Ms Raymond that you had volunteers,

7 didn't you?---All galleries have volunteers.

8 Did you tell them that you had volunteers?---Yes.

9 Did you say to them that you could post volunteers outside the

10 National Gallery at the Dali exhibition?---That's a lie.

11 So you say, do you, that Mr Vakras and Ms Raymond when they

12 gave evidence about that were lying, is that right?

13 ---Yes, they were.

14 You gave evidence before lunch that you have read all the

15 documents that have been produced to the court, do you

16 remember saying that?---Yes, I do.

17 In the defamation proceeding you have sworn answers to what are

18 called interrogatories, haven't you?---Yes, I have.

19 I'll in fairness to you show you a copy of your answers to

20 interrogatories. It's Document 16 in the plaintiff's

21 court book, Your Honour. It might be easier, sorry, if I

22 do it by way of document for the purposes of Mr Cripps.

23 HIS HONOUR: I'll just try and find it. Plaintiff's court book

24 documents or plaintiff's - - -

25 MR GILBERTSON: Plaintiff's court book of pleadings. It should

26 be Document 16.

27 HIS HONOUR: Yes, I have got that.

28 MR GILBERTSON: Would you have a look at that document that's

29 been handed to you, please, Mr Cripps?---Yes, I can see

30 it.

31 Could you please go to the last page of that document. Is that

1 your signature?---Yes, it is.

2 You swore, didn't you, that these answers to interrogatories

3 were true and correct, didn't you?---Yes, I did.

4 Before you swore that they were true and correct you checked

5 that they were true and correct?---Yes, I did.

6 Yes, thank you. If you could for the moment hand that document

7 back to me, please, or have handed rather. Thank you.

8 I'm next going to ask you about what you described before

9 lunch as the fiasco, do you remember saying that?---I

10 don't remember the context.

11 Perhaps if I can give you the context. This was in relation to

12 the meeting that was arranged but never took place, do

13 you remember that?---Correct.

14 And you told the court before lunch that your gallery was very,

15 very big, do you remember saying that?---Correct.

16 You also said before lunch that when the meeting was proposed

17 you couldn't remember who else was there with you at the

18 gallery, is that right?---Correct.

19 You said that there was a fax number, is that right?---Correct.

20 A gallery line?---Yes.

21 And a mobile number?---Yes.

22 And the mobile number was used by gallery staff, is that

23 right?---Yes.

24 Prior to - I withdraw that. Guildford Lane on the ground

25 floor, did it have any rooms that you could close with a

26 door?---Yes.

27 How many rooms could be closed with doors on the ground floor?

28 ---Two.

29 On the first floor there was a storage chamber, wasn't there?

30 ---Yes.

31 You could close the door of that storage chamber?---There are a

1 number of storage chambers.
2 How many?---Two, with three doors.
3 On the third floor of the building was your office, wasn't it?
4 ---Correct.
5 What else was on the third floor?---Storage area.
6 Whereabouts was your residence?---The top floor, the third
7 floor and part of the second floor.
8 So it was over three different floors, is that right?---I beg
9 your pardon?
10 Your residence where you lived was over three different floors,
11 do I understand that correctly?---No.
12 Where, could you clarify for us, please, was your residence?
13 ---The second and the third floor.
14 And they were connected by stairs, were they?---Yes.
15 The building had how many floors?---A ground and three upper
16 floors.
17 What was on the fourth floor?---There was no fourth floor.
18 I apologise to you. What was on the floor Numbered 3?---There
19 was an exhibition space and there was also a residence in
20 making.
21 Did you have control of all these floors while you were
22 operating the Guildford Lane Gallery?---Yes, I did.
23 You gave evidence before lunch that you turned the mobile
24 number off at night, do you remember saying that?
25 ---Correct.
26 And that you turned the landline to an answering machine, do
27 you remember also saying that?---Correct.
28 So it's possible, is it not, that when this meeting was
29 organised you were at some part of the building and
30 didn't hear the telephone?---No, I don't believe so.
31 It's just a belief, is that right?---I wasn't.

1 I beg your pardon?---I could hear the telephone.
2 You could hear the telephone throughout the whole of that
3 evening, is that what you say?---The telephone would have
4 been switched off at a particular time once the gallery
5 was closed.
6 So if the door was shut the phone was off, is that right?---Not
7 correct.
8 If the gallery was closed what do you mean by that?---What are
9 you asking, please?
10 I'm asking you what you meant by if the gallery was closed?
11 ---If the gallery was closed up until office hours which
12 was 6 p.m. then the phone would be put on the answering
13 machine.
14 And that's what you mean by closed, is it, 6 p.m.?---Yes.
15 Sometimes it was later than that. There were Wednesday,
16 Thursday nights where it was nine or 9.30 p.m.
17 And during the time that this meeting was arranged for you
18 don't recall as you sit there now where you were in the
19 building do you?---In the office.
20 You stayed in the office the whole time did you?---Yes, I
21 believe so.
22 But you're not sure?---I believe so.
23 It's just a belief, is that right?---I beg your pardon?
24 Is it just a belief on your part rather than knowledge?
25 ---Sorry, explain the difference.
26 You don't understand the difference?---I do not understand what
27 you're asking me.
28 Outside the door of the gallery at this time there were four
29 signs on the door weren't there?---Incorrect.
30 How many signs were there?---Three fixed signs and one movable.
31 Actually two movable.

1 Two movable and two fixed?---Three fixed and two movable.

2 So there were five signs?---On occasions.

3 So was there a practice of removing the fifth sign?---Which one
4 do you call the fifth?

5 The one you said was removable?---There were two that were
6 removable.

7 So just let me understand this correctly. At any one time
8 there could be five signs on the door?---Not correct.

9 At any one time what's the maximum number of signs there could
10 be on the door?---Four.

11 Four. So what were you referring to when you were referring to
12 the fifth sign?---The one with the telephone number and
13 the other saying gallery open.

14 The one saying the telephone number and the one saying gallery
15 open?---Mobile number. Gallery open, so that people
16 would push the door open.

17 So the one with the phone number and the one saying gallery
18 open, were they all the one sign?---No.

19 They were two signs?---Yes.

20 So two were removable?---Correct.

21 The others you say were fixed?---Three were fixed.

22 All right. I'll show you please. If the witness could be
23 shown, Your Honour, Exhibit MFI2.

24 HIS HONOUR: You should have MFI exhibit. It's not an exhibit
25 as such.

26 MR GILBERTSON: I see the problem. I can show this copy.

27 HIS HONOUR: That's fine.

28 MR GILBERTSON: (To witness) Can you have a look at this
29 document please. This is the photograph taken by you at
30 the time the gallery opened isn't it?---Yes.

31 That picture has four signs in it doesn't it?---Three fixed,

1 one removable.

2 Where would the fifth sign have been located?---In the place of
3 the third.

4 I see. So you say that there were two different signs and one
5 would be substituted for the other, is that right?

6 ---Exactly.

7 Yes, thank you. That's one of the removable signs, is that
8 correct?---Correct.

9 What was the other removable sign?---I can't read this one so
10 I'm not quite sure what the other one would have been.

11 You can't remember?---I beg your pardon?

12 You cannot remember?---I don't know how to answer that, I'm
13 sorry.

14 As you sit there now you can't remember which of the other ones
15 it was?---I don't know which sign is currently on show.

16 You don't know which sign is currently on show. I'm lost,
17 Mr Cripps. What do you mean by that?---I can't read the
18 sign that's on show at the moment.

19 HIS HONOUR: When you saw on show you mean in the photograph?
20 ---I can't distinguish what writing's on it.

21 MR GILBERTSON: Yes. And you have no independent recollection
22 about which was the other sign that was removable do
23 you?---I, I know there were two signs, one said gallery
24 open, the other had a mobile number on it.

25 All of the signs were about the same size weren't they?
26 ---Correct.

27 All of them had a horizontal line across the top didn't they?
28 ---No.

29 Are you sure about that?---No.

30 You're not sure about that?---No.

31 At least one of the signs had an air pocket in it didn't it?

1 ---I don't understand, sorry.

2 All right. Now if you could hand that back. You gave evidence

3 before lunch that the top left had the landline number or

4 could be the right, you can't remember, is that right?

5 ---Correct.

6 Now, Your Honour, if the witness could be shown Exhibit D3.

7 HIS HONOUR: Apparently we haven't been given an additional

8 copy. I've got mine.

9 MR GILBERTSON: I'll obtain another one, Your Honour.

10 HIS HONOUR: Thank you. If that could be returned by my

11 associate to go into the exhibits folder.

12 MR GILBERTSON: Guildford Lane Gallery, Mr Cripps, has a

13 Twitter page doesn't it?---Yes.

14 Have you at any time seen that Twitter page?---I don't know how

15 to operate it.

16 You've never seen it?---I don't know how to operate it.

17 Yes, but I'm not asking you about whether you know how to

18 operate it, I'm asking you whether you have seen it?

19 ---Yes.

20 You have seen it?---Yes.

21 When did you see it?---I couldn't remember.

22 Is it recently or is it a long time ago?---The gallery one

23 would have been a long time ago.

24 Who operates the Twitter page?---Whoever's delegated within the

25 gallery.

26 When you saw the Twitter page you saw that it's background was

27 a photograph of the outside of the gallery didn't you?

28 ---I don't remember that.

29 If you look at this photograph. You were present in court

30 weren't you when Mr Vakras gave evidence?---Correct.

31 You heard him say didn't you that this was obtained by him from

1 the Guildford Lane Gallery Twitter page on 18 March of
2 this year. Do you recall him saying that?---Yes, yes.
3 No, I don't recall him saying it but I knew it was said.
4 Would you look at the front page please of that exhibit. Do
5 you see the four signs towards the right hand side of the
6 photograph?---I don't see four, sorry.
7 On the door there are three at the top and one at the bottom
8 are there not?---Correct, I see those.
9 And there's a horizontal line across the top of each of them
10 isn't there?---Not that I can see.
11 You can't see it?---No, I can't.
12 All right, hand that back please.
13 HIS HONOUR: Yes, we'll retain that.
14 MR GILBERTSON: Sorry, I apologise.
15 HIS HONOUR: Exhibit D3.
16 MR GILBERTSON: No, I had made a mistake here. If Mr Cripps
17 could be shown that exhibit again. (To witness) Look at
18 the four signs that I've taken you to. Could you look at
19 the top left, Mr Cripps?---Yes.
20 Do you see that? There's nothing in there is there that
21 appears to be an air pocket on that sign?---Each - can I
22 be expansive?
23 Yes?---These are A4 heavyweight plastic sleeves.
24 So these are plastic, heavyweight plastic sleeves?---The top
25 three sleeves are over three metres above the ground.
26 Yes, I understand that. The one at the top left was the one
27 that had the phone number on it wasn't it?---I, I
28 couldn't, I'm not sure. I can't, I can't read what's
29 here.
30 The one that had the phone number on it was a plastic sleeve
31 that the page could be taken out from wasn't it?---You're

1 not correct, Mr Gilbertson.

2 Yes, thank you. Now please if you could hand that back.

3 I want to take you to a meeting you had with Ms Raymond after

4 what you called the fiasco. Do you remember meeting with

5 her?---Yes.

6 You gave evidence this morning that Ms Raymond - I'll withdraw

7 that. You gave evidence this morning that you told

8 Ms Raymond that you were not impressed about the email?

9 ---Correct.

10 And you said she was apologetic and you were apologetic, is

11 that right?---Correct.

12 There was more said in this conversation than just that wasn't

13 there?---No, I don't believe so.

14 Ms Raymond said to you in this conversation that they did not

15 like being told that they had not turned up to a meeting

16 that they had turned up to didn't she?---I don't remember

17 that conversation.

18 You don't remember that conversation?---I don't remember that

19 conversation.

20 Did you say to her that they should have called?---Possibly

21 could have. I don't remember the conversation though.

22 You were more than not impressed about the emails that

23 Mr Vakras had sent you. You were angry about them

24 weren't you?---Really dissatisfied, angry, disgruntled,

25 not angry.

26 You understand the difference between all those concepts?

27 ---Please explain them.

28 You understand the difference between all those concepts that

29 you've just - - -?---No, I probably don't, Mr Gilbertson.

30 Just answer my question if you wouldn't mind?---No, I don't

31 understand.

1 You don't understand the difference between the words that
2 you've just used, is that right?---Where are you leading
3 me, Mr Gilbertson?

4 Don't worry where I'm leading you, Mr Cripps. If you could
5 just answer my questions we'll be - - -?---I do not
6 understand the difference between the words,
7 Mr Gilbertson, I've said it again.

8 All right. I suggest to you, Mr Cripps, that you were very
9 angry about the emails that Mr Vakras had sent prior to
10 your meeting with Ms Raymond, isn't that right?---No.

11 Ms Raymond said to you didn't she that there was no number
12 outside the door?---Yes.

13 You said to her you take it in at night when you close the
14 gallery didn't you?---No.

15 And you said something about prank calls too didn't you?---No.

16 If I could now take you please to an email, Mr Cripps. If
17 Mr Cripps could be handed the defendants' court book.
18 Could you open that court book please, Mr Cripps, at
19 Tab 4. Do you have that, do you have Tab 4?---Yes.

20 Towards the bottom of that page, first page of that tab,
21 there's an email from Lee-Anne Raymond to
22 Yolande Pickett, do you see that, of 11 December 2008?
23 ---Yes.

24 Where it says, "Hello Yolande, just wondering if the gallery
25 uses a preferred printer? Demetrios and I are looking
26 into it now as we want to produce a catalogue in time for
27 the exhibition next year." Did you see that email at the
28 time?---Probably not.

29 It was Yolande Pickett who had responsibility for matters such
30 as these, is that right?---Correct.

31 The email above it, you will see that there's an email from

1 Yolande Pickett to Ms Raymond of 12 December 2008; do you
2 see that?---Yes.

3 "Hi Lee-Anne, as a new gallery and one that doesn't generally
4 get printing ourselves I couldn't speak from personal
5 experience. I'm more than happy to chase this up with
6 some of our recent exhibitors but I'll have to do it next
7 week." Do you see that?---Yes, I do.

8 Did you see this email at the time?---Probably not.

9 Again, this was a matter that Yolande Pickett had
10 responsibility for, is that right?---Correct.

11 Did you discuss with Yolande Pickett in December 2008 anything
12 about the defendants having a catalogue at the
13 exhibition?---No. Sorry, I should say I do not remember.

14 Just prior to the exhibition Melanie Trojkovic was the
15 installations coordinator at the gallery wasn't she?
16 ---Most likely.

17 You don't really recall?---I don't know, I don't remember.

18 There were a number of them.

19 Yes, but you don't recall who it was?---I don't recall.

20 The installations coordinator was responsible for, what it
21 suggests, coordinating with exhibitors about the
22 installation of their exhibitions wasn't it?---Correct.

23 If you could go forward in that court book please, Mr Cripps,
24 to Tab 21. Do you have that Tab 21?---Yes, I do.

25 If you could go three pages into that tab please. Do you see
26 at the top there's an email to neltrojkoVIC@hotmail.com
27 of Monday 8 June 2009; do you have that or not? You're
28 on the third page of that tab at the top?---Yes.

29 It says, "Hi Melanie, I think we would like to use two small
30 plinths or a small table on which to place gallery copies
31 of the illustrated catalogue if something like this can

1 be available." You'll see further down it says, "Thanks
2 Lee-Anne and Demetrios." Do you see that at the bottom
3 of the text relating to that email?---Yes, I do.
4 Did you see that email at the time?---Most likely.
5 Now if you could go to the first page of that tab please,
6 Mr Cripps. Do you see the last line it says, "On
7 Wednesday June 10, 12.56, Melanie Trojkovic," do you see
8 that?---Yes.
9 Go over the page please. Do you see it says, "Hi Lee-Anne,
10 that should be no problem about using the plinths. I
11 shall check with Robert to make sure they're enough for
12 your use." Do you see that?---Yes.
13 Did you see that email at the time?---Possibly.
14 Did Ms Trojkovic check with you about the plinths to be used at
15 the exhibition?---If they used plinths they most - they
16 would have checked with me but I don't remember.
17 You don't remember. Just bear with me a moment, Mr Cripps,
18 just bear with me. Just go over please to Tab 22. Do
19 you see at the top of the first page, "From
20 manager@guildfordlanegallery.org date 12 June 2009, do
21 you see that?---Yes.
22 "To Lee-Anne Raymond," and it says, "Dear Lee-Anne, thanks for
23 confirming your run time with us. I'll make sure that
24 Robert is aware of that. Will you have people to help
25 you install? Robert has," and it uses the word advised,
26 "that there will be three exhibition openings on 18 June!
27 This will mean that we will need our volunteers to make
28 sure everything is operating smoothly. You are welcome
29 to sell your catalogue on the opening night however we
30 advice that you will have someone responsible to be
31 handling the sale of the catalogue as 18 June will be a

1 very busy night for gallery personnel." Just stopping
2 there. Did you tell Lian Low to send that email to Lee-
3 Anne Raymond?---I really don't remember. I don't
4 remember this email at all.

5 Stacy Jewell was one of the volunteers at the gallery at the
6 time of this exhibition wasn't she?---Correct.

7 Sometime prior to the opening night did you tell Stacey Jewell
8 to tell the defendants that they could not sell or store
9 their catalogue on site?---No. No, I don't remember but
10 I don't remember any discussion about selling the
11 catalogues with Stacy.

12 So it might have happened but you just don't remember it?---I
13 don't think it happened.

14 But you're not sure?---I don't think it happened,
15 Mr Gilbertson.

16 The exhibition was open to the public wasn't it, Mr Cripps?
17 ---Yes.

18 You didn't charge an admission fee for people who wanted to
19 attend?---No.

20 Perhaps if you could close that court book please, Mr Cripps.
21 I'll just leave it with you and just if you could close
22 that volume.

23 HIS HONOUR: Mr Cripps, just close the folder.

24 MR GILBERTSON: Do you recall my learned friend Mr Dibb saying
25 this to Mr Vakras when he gave evidence - and for the
26 benefit of my learned friend it's at Transcript 276,
27 Lines 2 and 3. My learned friend Mr Dibb said this, "He
28 said he was against the Jewish state in Palestine." Do
29 you recall my learned friend Mr Dibb saying that to
30 Mr Vakras?---Yes, I think so.

31 What my learned friend Mr Dibb put to Mr Vakras was in

1 accordance with your instructions wasn't it?---Sorry, I
2 don't understand what you mean.

3 It's in accordance - - -

4 MR DIBB: (Indistinct) as a question, he said he was against
5 the Jewish state in Palestine, and that is, in other
6 words, are you saying he said he was against the Jewish
7 state in Palestine.

8 HIS HONOUR: I'd better look at it. What page was it?

9 MR GILBERTSON: 276, Your Honour.

10 HIS HONOUR: Lines 2 and 3.

11 MR GILBERTSON: Yes. "My learned friend, after Mr Vakras had
12 said the words, said to me that Jews have no right to be
13 in Palestine, my learned friend said he did not say that
14 did he?" "My learned friend then said he said it was
15 against the Jewish state in Palestine?" And Mr Vakras
16 answers.

17 MR DIBB: I've withdrawn that objection, Your Honour. I think
18 the question mark misled me. Now I recall it wasn't a
19 question.

20 HIS HONOUR: Fine. Ask the question again.

21 MR GILBERTSON: (To witness) It was in accordance with your
22 instructions to your lawyers wasn't it when my learned
23 friend Mr Dibb said to Mr Vakras that you had said that
24 you were against the Jewish State in Palestine?---No.
25 It wasn't?---I don't understand you.

26 HIS HONOUR: Perhaps I might assist you, Mr Cripps. The
27 expression instructions in this context does not mean
28 necessarily that you directed or gave a command or an
29 instruction in that sense to Mr Dibb to ask that very
30 question in that form. In this context what it means is
31 that you had a discussion with Mr Dibb for the purposes

1 of this case and during that discussion you told him
2 words to the effect that you had said during this
3 conversation that you were against the Jewish state, and
4 that having heard that from you Mr Dibb then asked that
5 question, which is consistent with what you told him in a
6 private conversation. That's the context in which this
7 question is being asked. So to rephrase it; when Mr Dibb
8 asked this question he made the statement in a question
9 form, he said he was against the Jewish state in
10 Palestine, did that reflect you having said that
11 statement to Mr Dibb? That's the question?---I disagree
12 with what's happening in Palestine.

13 Sorry, don't tell me know what your views are. The question
14 is; when Mr Dibb asked that question did that reflect
15 statements that you had made to Mr Dibb along the same
16 lines?---No.

17 MR GILBERTSON: You did say to Mr Vakras didn't you that you
18 were against the Jewish state in Palestine?---No.

19 You just said before that last answer that you disagree with
20 what's happening in Palestine?---Correct.

21 That expresses your opinion does it?---Yes, I disagree.

22 What do you disagree with about what's happening in Palestine?
23 ---What's happening in Palestine.

24 Yes. Explain to the court please what it is about what's
25 happening that you disagree with?---I think there's
26 unequal force used against the Palestinian people.

27 Unequal force by whom?---The Jewish state.

28 By the Jewish state you mean Israel do you?---Correct.

29 You don't like what the Jewish state is doing in Palestine do
30 you?---Correct.

31 You accept don't you that there's been a lot of problems over

1 the years in Palestine? You accept don't you that there
2 have been a lot of problems over the years in Palestine?
3 ---Yes.
4 There's been a lot of conflict hasn't there?---Yes.
5 You say do you that it was Mr Vakras who brought up Palestine,
6 is that right?---Yes.
7 You regarded the situation in Palestine as delicate didn't
8 you?---Yes.
9 You said to Mr Vakras didn't you that what he writes is
10 insensitive to that delicate situation in Palestine?
11 ---No.
12 You gave evidence before lunch that you said to the defendants,
13 firstly, you said this, "If it was anti Palestinian or
14 anti Zionist there could be a problem"?---Correct.
15 Then later you said, "It could be possible to misinterpret
16 their works as anti Palestinian or anti Israeli." Do you
17 remember saying that?---Correct.
18 As far as you're concerned Zionist and Israeli are the same
19 thing are they?---Yeah, yes, yes.
20 Just dealing with the first of those, which you've accepted
21 that you said this morning, if it was anti Palestinian or
22 anti Zionist there could be a problem. That wasn't put
23 by my learned friend Mr Dibb to Mr Vakras when he gave
24 evidence was it?---I don't, I don't remember.
25 You don't remember?---No, I don't remember.
26 I suggest to you, Mr Cripps, that you did not say that, either
27 of those, to Mr Vakras or to Ms Raymond.
28 HIS HONOUR: Do you agree that you did not say either of those
29 things to - - -?---Really I'm a bit lost as to what's
30 being argued here.
31 Sorry, you don't understand the question?---No. I needs - I

1 don't understand, I'm sorry.

2 MR GILBERTSON: All right, I'll assist you. I suggest that you
3 did not say to Mr Vakras or Ms Raymond that if it was
4 anti Palestinian or anti Zionist there could be a
5 problem?---I said that.

6 I suggest to you, you didn't say it could be possible to
7 misinterpret their works as anti Palestinian or anti
8 Israeli?---I think I said, yeah, I think that said.

9 You said both of them, is that right?---I think so.

10 What was it about the defendants work, Mr Cripps, that you
11 thought could be interpreted as anti Palestinian?---I
12 could not understand the essays.

13 So you couldn't understand them?---I couldn't comprehend what
14 the essays actually meant.

15 So you didn't understand them and you say nonetheless that
16 their works could be misinterpreted as anti Palestinian;
17 do I understand that correctly?---I think that's a
18 distinct possibility.

19 Yes, even though you didn't understand what Mr Vakras had
20 written?---And I was really honest and upfront about
21 that.

22 So you maintain do you that notwithstanding you didn't
23 understand Mr Vakras's essays you thought that they could
24 be interpreted as anti Palestinian?---Correct.

25 You're being serious with the court in answering in that
26 manner, Mr Cripps?---I'm being honest and open. Sorry,
27 what do you mean please?

28 All right, I'll move on. The conversation which you say was on
29 the first floor, and I'm asking you in particular about
30 the conversation on the opening night, what time of the
31 night do you say that occurred?---Somewhere near 8 p.m.

1 HIS HONOUR: Mr Cripps, as with the other main witnesses, I've
2 offered a break around this time. Do you need a break or
3 are you happy to continue until 4.15?---I just want to
4 get out of here. Go ahead please.

5 Thank you.

6 MR GILBERTSON: My recollection is, and correct me if I'm
7 wrong, that before lunch you said that there was one
8 other person on the fourth floor, is that right?
9 ---Weren't on the fourth floor, we were on the first
10 floor.

11 I'm sorry, I'll withdraw that. But there was one other person
12 on the first floor?---Possibly.

13 At the time the conversation took place was the bar still open
14 downstairs?---Yes.

15 You said this morning that there were about five to seven
16 people on the ground floor. Do you recall saying that?
17 ---Yes.

18 It's possible you're mistaken about that isn't it?---No.

19 From the first floor during this conversation you didn't keep
20 your eyes on what was happening on the ground floor did
21 you?---I could hear, I didn't see.

22 So you estimate the number by reason of what you could hear, is
23 that right?---Correct.

24 At the time this conversation took place was the other
25 exhibition still open downstairs?---Correct.

26 You said that, "At one point in this conversation I was getting
27 pretty grumpy." Do you remember saying that this
28 morning?---No, I don't.

29 But you did get pretty grumpy during this conversation didn't
30 you?---Which conversation?

31 This is the conversation on the opening night?---With who?

1 With Mr Vakras and Ms Raymond?---Towards, towards the, towards
2 8 p.m, yes.
3 You were more than grumpy weren't you; you were angry by the
4 way the conversation had gone?---No, not correct.
5 Were any voices raised during this conversation?---Yes.
6 Did you raise your voice?---Yes.
7 Did Mr Vakras raise his?---Yes.
8 And Ms Raymond?---Slightly.
9 Between the first and ground floors there were a number of
10 stairs, is that right?---Correct.
11 Roughly how many stairs were there?---There's about 12, 15 or
12 16 stairs in total I think.
13 15 or 16?---It covers four and a half metres of drop.
14 Four and a half metres, that's all?---A drop between the
15 floors.
16 Yes, I understand. And during the time when voices were raised
17 did you observe anyone come up the stairs from
18 downstairs?---No. If I remember correctly my back was to
19 the stairs.
20 Your back was to the stairs, and it remained that way through
21 the whole of this conversation?---Until, until we started
22 to, to talk in front of a work and then, then I was able
23 to see into the space.
24 You gave evidence this morning about talking in front of a work
25 during this conversation. I suggest to you that that
26 occurred in the later conversation and it was when you
27 and Ms Raymond went over to look at a work. What do you
28 say about that?---No.
29 You're clear that this occurred on the opening night are you?
30 ---Correct.
31 Before this conversation had you endeavoured to read any of the

1 essays that were pinned next to the artworks?---Yes.

2 They were difficult to read weren't they?---Yes.

3 They read like legalese, wouldn't you agree with that?---Yes.

4 I wonder if you could have a look please, Mr Cripps, at Tab 23

5 of that court book which I asked you to close. Have you

6 seen that catalogue before?---Yes.

7 I wonder if you could take the catalogue out of the - just so

8 it's easier to read if you could take it out of the tab

9 please. Would you open that, Mr Cripps, and go please to

10 p.26. You have p.26 do you?---Yes.

11 Ms Raymond gave evidence, Mr Cripps, that the essay that

12 appears at the top of p.26; 26 should be the left hand

13 page. She gave evidence that the essay which appears at

14 the top - do you see that essay at the top?---Yes.

15 She gave evidence that that essay was pinned next to the

16 picture which appears on the previous page, p.25. Do you

17 see that picture?---Yes.

18 If you go back please to p.26?---Yes.

19 You'll see at the bottom of that essay it says, "The Koranic

20 passages I quote are from four different translations I

21 own." Do you see that at the bottom of the words on

22 p.26?---Yes.

23 Did you attempt or actually read any of this essay?---I don't

24 think this is the one that we talked about.

25 No, I'm not asking you that. I'm asking you whether you read

26 this.

27 MR DIBB: I'd like to add something in fairness to the witness.

28 The essay on the top of p.26 are the notes to the essay

29 which actually starts on p.25 as I understood the

30 evidence.

31 HIS HONOUR: Yes, but they're footnotes.

1 MR GILBERTSON: Yes, I accept that. I should have explained
2 that. The words on p.26 at the top are footnotes to the
3 essay.

4 HIS HONOUR: Yes. They commence on the previous page at the
5 bottom. So Footnote 1 spread over pp.25 and 26.

6 MR GILBERTSON: You understand what I'm saying to you,
7 Mr Cripps?---Yes.

8 That these were footnotes to the essay?---Yes.

9 Did you read any of these footnotes?---No. Well, sorry, I may
10 have. I don't remember. I really don't remember.

11 Yes, I understand that. If you go back, please, to p.25, do
12 you see the words in the left hand column on p.25 that
13 commence, "The evolution of the figure as muse is
14 discussed in an earlier essay", do you see that?---Yes.

15 Then it says, "This muse is in the middle of a bomb created
16 landscape. The figure attached to mechanical devices is
17 assailed by war. The war is that of religion against a
18 secular society. The religions that assails secular
19 society today is Islam". Do you see that?---Yes.

20 Did you read those words prior to this conversation with
21 the - - -?---I've not read this. I've not read this.

22 You have no read this?---No.

23 Did you read or see in any of the essays any references to the
24 Koran?---I don't remember what I read but I'm pretty I
25 haven't read this.

26 All right. I'll ask you another question. Did you see in any
27 of the essays prior to this conversation on the opening
28 night references to the Koran?---I think I did.

29 Islam?---Yes.

30 Did you observe prior to this conversation on the opening night
31 any of the staff or volunteers reading or attempting to

1 read the essays?---Yes. I had a number of comments made
2 to me.

3 Did you observe their eyes glaze over as they read them or did
4 they tell you that?---That's figuratively. The
5 discussion was that it was really complex and they were
6 doing art history and they couldn't understand it.
7 Figuratively on your part or on the volunteers who told you
8 that?---Figuratively on my interpretation of what they
9 told me.

10 As at the time of this conversation on 18 June you thought the
11 defendants art was racist, didn't you?---No.

12 You thought the defendants were racist, didn't you?---Certainly
13 not.

14 Certainly not?---Certainly not.

15 Did you say during the conversation on the opening night that
16 the Muslims were victims of Jews in Palestine?---No.

17 Did you say there should be no Jews in Palestine?---No.

18 Did you say that the Jews in Palestine were causing the
19 problems?---No.

20 You hesitated there for a moment. Might you have said that?
21 ---I think the issue's compounded by both sides.

22 Might you have said that?---No.

23 HIS HONOUR: Just to remind you, Mr Cripps, we're not
24 interested in your current views as you sit here but what
25 you communicated at these meetings or these conversations
26 back then. If you could that in mind, please.

27 MR GILBERTSON: Did you say during this conversation that the
28 Muslims were reacting to what the Jews do to them?---Yes.

29 Did Mr Vakras mention suicide bombers on a school bus?---I
30 vaguely remember something but don't know the context.

31 Hitler was mentioned by Mr Vakras in this conversation, wasn't

1 he?---No, no, I've never had a conversation with Mr
2 Vakras about Hitler.

3 But you're sure, aren't you, that Mr Vakras said in this
4 conversation, "Robert, you're a man limited in your
5 erudition and of limited intellect", you recall him
6 saying that, don't you?---In relation to their work I
7 feel that.

8 You recall him saying that?---Yes, I do, yeah, and that's what
9 I feel.

10 Perhaps if you could put the catalogue back into the folder,
11 please, Mr Cripps, and just close that folder if you
12 wouldn't mind.

13 The labels which you say were on the pictures, were they about
14 100 by 50, which I assume is millimetres, with a few
15 lines of explanation?---That's right.

16 Could the witness be shown Exhibit D5, please, Your Honour?

17 HIS HONOUR: No, we appear not to have been given the official
18 Exhibits D3, 4, 5.

19 MR GILBERTSON: I'll hand this version over. There are no
20 markings on the one I've handed over. If that could be
21 substituted, Your Honour. If that could be replaced as
22 the exhibit.

23 HIS HONOUR: Sorry, do you mean we can retain that as the
24 exhibit?

25 MR GILBERTSON: Yes.

26 HIS HONOUR: When the exhibits are numbered, et cetera, on
27 Monday, if your instructors for both parties could
28 arrange for clean copies of them to be provided to my
29 associate I will use the copies that I've marked as we've
30 been going along from the court books as my working
31 copies but a clean set should be given to my associate.

1 They can be derived from a copy of the court book
2 retained provided it's clean but one way or another my
3 associate needs to have a complete set of all the
4 exhibits.

5 MR GILBERTSON: I'll attend to that, Your Honour.

6 HIS HONOUR: Yes. It's a practice that I've followed just in
7 case these matters go further. The Court of Appeal
8 insists on clean copies of all the exhibits.

9 MR GILBERTSON: We'll attend to that. (To witness) Mr Vakras
10 gave evidence, Mr Cripps, that this was a photo taken by
11 him at the time of the conversation that you had with
12 Mr Vakras and Ms Raymond after the opening night. Do you
13 understand what I'm saying to you?---Yes.

14 You'll see to the right of the photograph, do you see there are
15 three documents?---Yes.

16 And there are no labels on them, are there?---No.

17 If you could hand that back. I'll hand that to Madam
18 Associate. Next if I could take you, Mr Cripps, please,
19 to Exhibit D2.

20 HIS HONOUR: He has that.

21 MR GILBERTSON: Did you smile when you saw that, Mr Cripps?

22 ---Yes.

23 Why did you smile?---It expressed the views clearly of the
24 management and staff at the gallery.

25 Yes, but what made you smile?---This is the whole issue of this
26 whole case is this one sign. The whole issue of the
27 case.

28 Is that what you believe?---I believe that's the case.

29 This is a copy of the disclaimers that were put up at the
30 gallery, isn't it?---That's correct, standard for all art
31 galleries.

1 Did you say it's standard for all art galleries?---That is
2 correct.

3 To put up a document like this?---That's right. There's
4 absolutely nothing wrong with this document.

5 I'm not asking you that. I'm going to ask you some questions
6 about it. When were the disclaimers put up?---Possibly
7 Sunday or Monday after the exhibition opening, possibly.
8 Definitely no earlier, was it?---Well, these - no, I'm
9 guessing. I'm guessing not. I'm not quite sure when
10 they were put up but the gallery would have been open
11 Sunday and I'm assuming that that's when they were put
12 up.

13 They weren't put up on the opening night, were they?---No.

14 They weren't put up on the next day, the Friday, either were
15 they?---No.

16 Or the Saturday?---No.

17 You say they were put up on the Sunday or the Monday?---I think
18 so.

19 Who put them up?---Most likely myself and/or one of the gallery
20 staff. I think I would have played a role in putting
21 them up.

22 How many were put up?---Maybe three, two or three signs. Maybe
23 two or three. Well, one I can see definitely and I don't
24 know which page this is, but it's possible that there was
25 another one or two others.

26 Did you write the word that are contained in the disclaimer?

27 ---No, I didn't.

28 Were you shown this document before it was put up?---Yes, I
29 did.

30 Did you agree with the words that are in it?---Yes, I do.

31 Where it says, "The views and opinions expressed in this

1 exhibition", did you have any understanding as to what
2 that was referring to?---Yes, the views expressed within
3 the written material of the exhibition.
4 And in particular what parts or aspects of the written
5 material?---The whole lot.
6 The whole lot?---I had no ability to interpret what was
7 written. I did consult and I got glazed eyes at the
8 essays. I'm not an art historian. I have no ability to
9 analyse actually what's been written so I did what I
10 believed to be reasonable.
11 You were of the opinion prior to these being put up that the
12 views and opinions expressed in the material could be
13 anti Palestinian, didn't you?---I didn't know.
14 That it could be?---I didn't know.
15 Would you answer my question?---I didn't know what was being
16 expressed.
17 So you put this up because you didn't know what they had
18 expressed, is that your evidence?---That's correct.
19 I suggest to you, Mr Cripps, that you had formed the view that
20 the defendants were publishing material which you
21 considered was anti Palestinian, what do you say about
22 that?---I own the gallery and I supported the hanging of
23 the exhibition. I didn't take the exhibition down. If I
24 had have thought that I would have removed the
25 exhibition. I support the exhibition and I still do.
26 Is that a serious answer, Mr Cripps?---I support the
27 exhibition. I supported the exhibition then and I
28 support the exhibition now.
29 So throughout all of your conduct in dealing with the
30 defendants we should understand that as support by you to
31 them, is that right?---Correct. I'm an honourable man.

1 What's more you supported them throughout the whole time of
2 this exhibition, is that right?---I did so.

3 HIS HONOUR: Mr Cripps, can I just ask you, this disclaimer,
4 was this prepared specifically for the purposes of this
5 exhibition or is this a pro forma disclaimer that was in
6 existence beforehand which you have used for other
7 exhibitions as well?---It's been used in conjunction with
8 an RMIT after. It was sourced from the internet by a
9 person called Colin Reid who also sourced some other
10 information about filming and audio recording on the
11 premises so it all happened around the same time.

12 You asked Mr Reid to obtain it, did you?---I did.

13 MR GILBERTSON: You asked him after the opening night, didn't
14 you?---I did.

15 Perhaps if you could hand that back to Madam Associate,
16 Mr Cripps.

17 The next time you speak with the defendants you were working in
18 the office on the second floor when you received a phone
19 call from one of the volunteers on the ground floor,
20 didn't you, to say that the defendants had entered the
21 gallery?---Yes.

22 You say this was in the same spot, this conversation that is,
23 that subsequently took place, as the earlier conversation
24 we've referred to?---Yes, I do.

25 I suggest to you that you have no real recollection as to
26 whether the things said in the first conversation were in
27 that or in the subsequent conversation, what do you say
28 to that?---No.

29 You said to Mr Vakras during this later conversation, "You, I
30 want to talk to you", didn't you?---I think I may have
31 said that.

1 You said to him, "People saw you attack me", didn't you?---No.
2 You didn't say to Mr Vakras, "The staff don't want to deal with
3 you", did you?---Yes, I did.
4 And you were quite forceful, were you, in the way you said
5 that?---I was clear and concise.
6 You said this morning that you were forceful, didn't you?
7 ---Clear and concise.
8 More than that. You said this morning you were forceful,
9 didn't you?---I don't remember what I said this morning.
10 But you were quite forceful in the way you said it?---I was
11 clear and concise.
12 So you deny, do you, that you were forceful in the way you said
13 that?---I was very clear and concise.
14 What's the answer to my question?---I was clear and concise. I
15 don't remember what I said this morning.
16 If I could show you, please, one of your answers to
17 interrogatories, Tab 38. Just one moment, Madam
18 Associate. In fairness to you and I apologise to Madam
19 Associate, I should also hand you a copy of the
20 questions. Do you see that one of the documents I've
21 handed to you which should be Tab 36 in the plaintiff's
22 court book of the pleadings - no, just bear with me. It
23 should be - the answers are in Tab 16 and the
24 interrogatories in Tab 15 of the plaintiff's court book
25 of pleadings. Is that a document headed Interrogatories
26 of the Defendants for the Examination of the First
27 Plaintiff, do you see that? Do you see that document?
28 ---Yes.
29 Would you go, please, Mr Cripps, do Question 9 which should be
30 on p.5 of the questions. Do you see it says, "On or
31 about 24 June 2009 at the gallery did you, A, point your

1 finger at and near the first defendant's chest in a
2 threatening or intimidating manner", do you see that?
3 ---Yes.

4 A, "Say to the first defendant that you were not frightened of
5 him or words to that effect", do you see that?---Yes.

6 C, "Say to the first defendant that you had met wharfies and
7 truckies who were far scarier than him or words to that
8 effect", do you see that?---Yes.

9 Did you, D, order the defendants to leave the premises"?
10 ---Yes.

11 Now would you please go to your answer to Interrogatory 9 which
12 should be on p.5 of your answers to interrogatories.
13 When you answered these interrogatories you were careful
14 to make sure that you included everything that you
15 considered was relevant in answering the question, didn't
16 you?---I'm not sure about that. Whatever memory I had.

17 Do you see it says in answer to Interrogatory 9A-D, "On or
18 about 24 June 2009 I was working in the office on the
19 second floor of the gallery when the volunteer greeting
20 patrons at the front door rang to say that the first and
21 second defendants had entered the gallery on the way to
22 their exhibition space on the first floor of the gallery.
23 I went downstairs to the first floor space where the
24 first and second defendants were exhibiting their
25 artwork. I said to the first defendant words to the
26 effect that I had asked him to give us a ring when he was
27 coming in and I said he had chosen not to do that". Do
28 you see that?---Correct.

29 Perhaps if you just take a moment without my reading it all out
30 aloud to you, just read through the rest of your answer,
31 please?---I've read down to 10, is that what you want me

1 to read?

2 I beg your pardon?---I've read to 10, is that what you want me
3 to read?

4 Just to read the answer to 9, have you done that?---Yes.

5 So there's nothing in that answer, is there, that you said to
6 either Mr Vakras or to both Mr Vakras and Ms Raymond,
7 "The staff don't want to deal with you", is there?---I'll
8 have to read it again then. No, but it's implied in the
9 reasons why he should ring me.

10 You say it's implied by which part?---Me asking him to ring me.
11 We'd already had a communication with them, an email or a
12 telephone call requesting them to ring prior to coming
13 back into the gallery.

14 You say that we should understand that to mean or include that
15 the staff don't want to deal with you, is that right?
16 ---That's correct, yes.

17 You're serious in telling the court that, are you?---Yes.

18 Did you say to Mr Vakras at the time of this conversation after
19 the opening night that his essays were legalese?---Yes.

20 Did you say that in both conversations?---Yes. If my memory is
21 correct, yes.

22 I beg your pardon, what did you just say?---If my memory is
23 correct, yes, because this has been one of the thrusts of
24 the problems just attempting to interpret his essays.

25 It was very difficult to interpret them, wasn't it?---For me,
26 yes. You know, I've got third form education, you know.

27 But - I withdraw that. And that difficulty prompted you to
28 tell Mr Vakras on this occasion, "That's why I've got a
29 problem with you, Demetrios", wasn't it?---No, not at
30 all.

31 You told the defendants on this occasion that they were

1 trespassing, didn't you?---I did not.
2 You said that you'd call the police to evict them?---Did not.
3 Did Mr Vakras say to you words to the effect that he had
4 legally done nothing wrong?---In response to the
5 legalese, yes. He misinterpreted what I said.
6 Let's look at that. Four lines from the bottom of your answer
7 to Interrogatory 9 - I withdraw that. Five lines from
8 the bottom it says, "I said words to the effect that his
9 essays were like legalese. The first defendant send to
10 me words to the effect that he had legally done nothing
11 wrong". Do you see that?---Yes.
12 You say Mr Vakras said that in response to your saying that his
13 essays were like legalese, is that right?---That's
14 correct. I was a bit surprised.
15 Bit surprised that he would say that?---Yes.
16 He said that, I suggest to you, because you had said to them
17 that they were trespassing, isn't that right?---No.
18 You said to the defendants that they'd breached the contract
19 because of racism, didn't you?---I did not.
20 You said to him, "You threatened me, Demetrios", you said that,
21 didn't you?---yes, I did.
22 And you said you weren't frightened of him?---That's right.
23 And you said that pointing your finger at or near his chest?
24 ---Correct.
25 How far from his chest was your finger when you were pointing
26 it at him?---I would have been a metre away from him.
27 A metre away?---That's correct.
28 You call that near the chest, do you?---A metre away, half a
29 metre from him with your finger pointed.
30 And your voice was raised, wasn't it?---Yes, it would have
31 been.

1 You would accept, wouldn't you, that in this conversation you
2 were angry with the defendants?---I was disturbed, not
3 angry.

4 Disturbed, not angry?---Correct.

5 You have been keen during the course of your evidence,
6 Mr Cripps, I suggest to you, to dispel any suggestion
7 that you got angry in any of these conversations. What
8 do you say to that?---You're right.

9 You are trying to dispel that suggestion?---No, I didn't get
10 angry.

11 I've suggested to you that you have endeavoured throughout your
12 evidence to give the impression that at no stage did you
13 get angry in your conversations with the defendants, what
14 do you say about that?---I was forceful and I was strong
15 in what I had to say. I wasn't angry with them.

16 Not at any stage, is that what you say?---That's what I say.

17 Anger is an emotion that you do experience though, isn't it?

18 Isn't it?---Explain that, please.

19 I notice you're looking at me, Mr Cripps?---Yeah, I'm trying to
20 understand what you're actually saying to me.

21 Throughout most of my questions you have been faced to the
22 front and you are now looking at me?---Yes, I'm trying to
23 understand what you're saying to me.

24 Anger is an emotion that you experience, isn't it?---We all
25 experience anger.

26 And you're different from all the rest of us in that regard,
27 are you?---That's true.

28 And anger is something that you experienced in a number of your
29 conversations with the defendants, didn't you?---Not
30 correct.

31 You say, do you, that you remained calm the whole time?

1 ---Agitated but not angry.

2 So when you - - -?---When you have someone abusing you, sir,

3 you tend to get a little tense.

4 So when you said to Mr Vakras that you'd met wharfies and

5 employees truckies who were scarier than him you weren't

6 angry?---I was animated but I don't think I was angry at

7 him. I was probably pitying him I think.

8 So the type of adjectives that you've used in the course of

9 your evidence are the latest was that you were animated,

10 that's what relates to the statement that I just put to

11 you, is that right?---Someone had just abused me and

12 called me a range of things about my intelligence and my

13 incompetence. I'm sure I was animated but I wasn't

14 angry.

15 And at other times throughout your evidence you've said you

16 were grumpy, is that right?---Yes, yeah.

17 Still not angry, is that right?---No, I'm not angry.

18 It's during this second conversation - I withdraw that. It's

19 during this conversation that is after the opening night

20 that you and Ms Raymond went to discuss one of the

21 paintings separately, didn't you?---Sorry, can you say

22 that again?

23 Yes. It's during this conversation that you and Ms Raymond

24 went off separately to look at one of the pictures?

25 ---Which conversation, sorry?

26 This is the last of the conversations, if I can refer to it

27 that way?---When they came into the gallery to

28 photograph?---Yes.

29 Yes?---Yes.

30 It was in this conversation, not the one on the opening night

31 that that occurred?---I didn't go anywhere separately in

1 the third conversation with Ms Raymond.
2 Just so that we're clear, you say there were three
3 conversations. There's one in about January 2009, is
4 that right?---Well, when they first came to the gallery.
5 Yes, all right, I'll try not to use dates. The second was when
6 there was - the second was the opening night?---Correct.
7 And the third was when the defendants came to photograph the
8 disclaimers?---That's right.
9 And in the last of these conversations that was the one where
10 you and Ms Raymond went off separately to discuss one of
11 the pictures, wasn't it?---No. She was a bit closer to
12 me than Vakras but there's still three of us.
13 Yolande Pickett was present during the last of these
14 conversations, wasn't she?---I don't remember that.
15 In the last of these conversations did you say anything about
16 the Jews being the problem in Palestine?---I don't
17 remember that. I'd have to say no.
18 Why do you have to say no, I'm asking you did you?---I'm being
19 sort of clear and concise. I said no.
20 On 26 June you sent an email to Ms Raymond and copied to a
21 number of other people which I'll show you. Would you
22 look, please, at - could you close those answers to
23 interrogatories for the moment, please, and the
24 questions. Would you open the court book if you would
25 and look, please, at Tab 24. Would you go to the third
26 page of that tab, please, Mr Cripps, towards the bottom
27 of that page you'll see it says, "On 26 June 2009 Robert
28 Cripps wrote, "Hi Lee-Anne, thank you for your
29 communication. I disagree with your statements as per
30 the attached email". Do you see that?
31 HIS HONOUR: Have you got that, Mr Cripps?---Yes, sorry.

1 Sorry, I was reading it, 26th of the 6th, 12.30 p.m.

2 MR GILBERTSON: You have that?---Yes.

3 That was an email that you sent to Ms Raymond and a number of
4 other people wasn't it?---Probably not me writing it but
5 would have been sent in my name.

6 Sent in your name by whom?---Yolande would write for me, so
7 would some of the others, but ultimately I'm responsible
8 for what's written.

9 You agreed with what was in this email didn't you?---Yes, yes,
10 especially with the sentiments I do agree.

11 More than that, you agreed with the words didn't you?---I, I
12 get the wording on things wrong but I, I think I would
13 agree to the whole email. So I'm just re-reading it.

14 Yes, take your time to read the whole email?---Yes, I'm happy I
15 had a hand in this.

16 What hand did you have in it?---There would have been
17 discussion about, about what to write and most, most of
18 the time I would sit there while they typed it out for
19 me.

20 So do I understand that, by your answer, that these words were
21 indeed yours that you dictated to possibly Yolande to
22 write?---No, not dictated. The general sentiments and
23 knock it into shape and then, and then I'd probably read
24 it again.

25 Yes, and in this case you agree with it before it was sent?

26 ---Yes, I do agree with it.

27 Do you see on what should be the page that you have open on the
28 fourth last line there is a sentence, "We would
29 appreciate if you could also ensure that myself, gallery
30 staff and volunteers will also not be approached by
31 Demetrios without prior notification as he has made

1 myself, staff and volunteers feel very uncomfortable"?

2 ---Yes.

3 Do you see that?---Yes, I do.

4 So did you intend by that that Mr Vakras could not approach any
5 of the staff or volunteers without giving prior notice;
6 is that the way we should understand that?---I think you
7 should.

8 And notice to whom? Who did you understand the notice to be
9 given to?---To me.

10 To you?---Yes. My mobile number's on the next page.

11 So do you say what was really intended by these words is not
12 that gallery staff and volunteers will also not be
13 approached but rather whether Mr Vakras turned up or not;
14 is that what you intended by this?---No.

15 You didn't intend it to relate to this proposition; that before
16 Mr Vakras came to the gallery he had to telephone you.
17 That's not what you understood it?---We were seeking him
18 to do that.

19 To do that. So he would phone first before he came?---Yes, so
20 I would be on the premises because the staff and
21 volunteers didn't want to deal with him.

22 I suggest to you that by this stage you didn't want to deal
23 with him either. What do you say to that?---I found him,
24 I found him difficult but, you know, he had the right to
25 exhibit and I, I still respect that right. It's an
26 interesting exhibition. I, you know, I really respect
27 their right to exhibit. I don't have a problem with them
28 exhibiting.

29 But you wanted him to give you notice before he came so that
30 you could make sure you're there?---Correct.

31 And you understood didn't you that the arrangements you had

1 with the defendants included the open studio?---Yes.
2 Are you seriously telling the court that if Mr Vakras were to
3 come and use the open studio he had to ring you first and
4 you would make sure you were there?---That's correct.
5 The whole time he were using the open studio you would be
6 there?---Correct.
7 Is that what you understood?---Correct. I'd, I'd be on the
8 premises, yes. It's a perfectly acceptable proposition.
9 You say that's acceptable do you?---Yeah, that's a perfectly
10 acceptable proposition.
11 That you would make sure you're there the whole time he's
12 there?---That's right. It's my business, I run it. I
13 work 18 hours a day now, what's wrong with that?
14 And so if you, for example, had to go off somewhere else that
15 would just have to wait, is that right?---I would do my
16 best to be there when he was on the premises. Concern
17 was raised.
18 You see it goes over on the next page, it says, "If you wish to
19 have any further discussion please write to me to prevent
20 heated arguments causing further problems and to keep all
21 communication in writing." Do you see that?---Yes.
22 There were many heated arguments between you and the defendants
23 weren't there?---Three.
24 Yes. And during that - - -?---Two, I apologise, I'm wrong.
25 There were two.
26 HIS HONOUR: Sorry, there were two conversations or two heated
27 conversations?---No, there were three conversations in
28 all and I - and two, two had a - were heated.
29 MR GILBERTSON: That's right. The first when you met them
30 there was no heat in that conversation was there?
31 ---That's what I've just said.

1 Yes.

2 HIS HONOUR: Mr Gilbertson, I notice the time.

3 MR GILBERTSON: Yes, Your Honour.

4 HIS HONOUR: Can I just have an indication of how long you plan
5 to be?

6 MR GILBERTSON: I might be a little while. Three quarters of
7 an hour maybe.

8 HIS HONOUR: Does that make it untenable to stay back at this
9 time I think?

10 MR DIBB: I have a little bit of difficulty. I'm booked on a
11 flight, Your Honour, this evening.

12 HIS HONOUR: No, I'm saying it's untenable to continue beyond
13 now. We'll have to come back on Monday. I was inquiring
14 really if it was a matter of five minutes or so, because
15 Mr Cripps has expressed, understandably, the desire to
16 exit the witness box, but I don't think there's any way
17 around given the estimate and some re-examination no
18 doubt, that the evidence will have to continue on Monday.
19 Mr Gilbertson, is that a convenient time in terms of
20 where you're at, or were you just finishing off an issue,
21 a topic or theme? What do you want to do?

22 MR GILBERTSON: I will come back to this email on Monday,
23 Your Honour.

24 HIS HONOUR: All right, thank you. Mr Cripps, unfortunately
25 we're not able to complete your evidence this evening.
26 You'll have to come back on Monday. You are now in the
27 course of cross-examination and there are rules about
28 what discussions you can have with your legal team during
29 the course of the cross-examination. Mr Dibb no doubt
30 will explain that to you and I'm sure that that will be
31 honoured.

1 I will endeavour to deliver my ruling on the
2 application either on Monday or at the latest Tuesday,
3 but certainly before the commencement of final addresses.
4 It's substantially done but I've just got a few other
5 things to do on the weekend; I may not be able to finish
6 it before Monday morning. Is there anything the parties
7 wish to raise by way of preliminary observation or
8 anything like that before we adjourn until Monday
9 morning?

10 MR GILBERTSON: Not for my part, no.

11 MR DIBB: I think we might be in addresses til Tuesday now.

12 HIS HONOUR: I banked on that in any event, Mr Dibb. All
13 right, we'll adjourn now until 10.30 on Monday morning,
14 thank you, Madam Associate.

15 <(THE WITNESS WITHDREW)

16 ADJOURNED UNTIL MONDAY 24 MARCH 2014

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1 HIS HONOUR: Can I first raise two preliminary matters. Madam
2 Associate, can you please distribute to the parties the
3 draft order that I will make tomorrow. Just while that
4 is coming around, I have completed my ruling but it needs
5 some editing before it can be formally published. That
6 will occur at 10.30 tomorrow morning. In the meantime
7 what I've done is I've prepared the order that will
8 reflect the ruling which is what you've been given. You
9 might just take a couple of minutes just to look at that.

10 So basically I will accede to the plaintiff's
11 application to strike out the relevant words of the first
12 defendant's defence but that's without prejudice to
13 submissions that the parties might wish to make in their
14 final addresses about the extent to which, if any, I can
15 make use of the contents of that hyperlinked article in
16 terms of meaning or any of the defences, particularly the
17 two that Mr Gilbertson has referred to.

18 I won't make the order now. I'll make it tomorrow
19 morning at 10.30 and simultaneously I will publish the
20 ruling which is not very long, it's about nine pages,
21 which as I say has been finished but just needs to be
22 checked and so on. The draft order refers to the reasons
23 as having a VSC number. It does have a VSC number it
24 doesn't mean it's up on AustLii. It obviously won't go
25 up on AustLii until after it's published tomorrow.

26 MR GILBERTSON: If Your Honour pleases.

27 HIS HONOUR: Secondly, Madam Associate, can you please
28 distribute to the parties the exhibit list. What my
29 associate is distributing is the consolidated list of
30 exhibits of the defendants incorporating the first five
31 which were tendered in the course of the hearing and then

1 from D6 through to D43 being all but one of the exhibits
2 in the list provided by the defendants.

3 The exception is the hyperlinked article which I've
4 marked for identification Number 4 and I appreciate that
5 we'll have a further discussion about that. I have
6 indicated to the parties that my view at the moment,
7 subject to anything further Mr Dibb wants to put, that
8 that ought to be received absolutely. What use I can
9 make of it will depend on the submissions of the parties
10 and how I ultimately decide that in the course of
11 preparing my judgment. But at the moment it's not an
12 exhibit on the list. It's marked for identification
13 Number 4.

14 I've checked the text against the list that the
15 defendants have submitted. I've made some minor changes
16 only for correction of spelling errors and things like
17 that, nothing substantive at all. What will now occur is
18 that my associate will send an electronic version of this
19 list to the transcript provider and I now direct the
20 transcript provider to include at the end of today's
21 transcript the list of exhibits that my associate will
22 email to the transcript provider commencing with D6
23 through to D43 on the basis that D1 through to D5 are
24 already exhibits. So formally accept documents D6
25 through to D43 as exhibits that the defendants have
26 tendered. I hope that makes sense.

27 MR GILBERTSON: It does, Your Honour.

28 HIS HONOUR: Thank you.

29 MR DIBB: I just have some transcript matters I wish to raise
30 with Your Honour.

31 HIS HONOUR: Yes.

1 MR DIBB: Did Your Honour's transcript start renumbering at
2 some point, such that the first page of Day 5 is 94 or is
3 that just unique to me?

4 HIS HONOUR: Just one second. I haven't checked that. Is that
5 Friday's transcript do you mean?

6 MR DIBB: Friday's transcript, yes.

7 HIS HONOUR: No, mine starts at 350.

8 MR DIBB: In that case I'm going to have to add 256 to my
9 transcript references in each case. I don't quite know
10 why that's happened. On p.350 at Line 27 there's a
11 reference to a case. That word Coolio should be Trkulja,
12 T-r-k-u-l-j-a.

13 HIS HONOUR: That's pronounced variously in this court,
14 Mr Dibb.

15 MR DIBB: Mr Trkulja pronounced it something like that.

16 HIS HONOUR: He should know I guess, yes. All right. On Line
17 27 on p.350 of the transcript replace the name Coolio
18 with the name Trkulja, T-r-k-u-l-j-a.

19 MR DIBB: On my calculation I'm now going to p.360 at Line 3,
20 "It's in my submission a true cap, that is to say it's
21 just a guillotine, a case", that word, "Where" should be,
22 "Worth".

23 HIS HONOUR: I'm sorry, what line?

24 MR DIBB: Line 3, Your Honour.

25 HIS HONOUR: The word which?

26 MR DIBB: The word, "Where", at Line 3, at the end of Line 3, I
27 recall what I actually said was, "Worth".

28 MR GILBERTSON: That's my recollection.

29 HIS HONOUR: Yes, all right. I direct the transcript service
30 provider to make that change, Line 3, p.360, substitute,
31 "Worth" for, "Where".

1 MR DIBB: At 374, the last word on the page.
2 HIS HONOUR: Yes.
3 MR DIBB: Should be conscripted rather than subscripted.
4 HIS HONOUR: Yes. Page 374, Line 31 substitute, "Conscripted"
5 for, "Subscripted".
6 MR DIBB: At 386 at Line 11 there's a word omitted in my
7 submission, Your Honour.
8 HIS HONOUR: Yes.
9 MR DIBB: The witness said, "I think there was only one
10 person", the word "one", has been omitted.
11 HIS HONOUR: Yes, I agree with that. I direct that the word,
12 "One" be inserted on Line 11, p.386 after the word,
13 "Only".
14 MR DIBB: At 394, Line 9, I suppose it's not particularly
15 important, but the word, "Enervative", actually what he
16 said was, "Innovative", rather than tiring.
17 HIS HONOUR: Yes. Line 9, p.394, substitute, "Innovative" for,
18 "Enervative".
19 MR DIBB: At 398 at Line 20, a matter of rather more importance
20 this, at Line 20, after the word, "Form" the transcript
21 should indicate that that starts another question. "Did
22 you see that the first defendant pleads".
23 HIS HONOUR: Yes. On p.398, Line 20 the words, "Did you see
24 that the first defendant" should have a line break so
25 that it presents as a separate question.
26 MR DIBB: At 447 at Line 26 my learned friend's question Line
27 26, "And you're different from all the rest of us in that
28 regard, are you?" It's my recollection that my learned
29 friend asked, "And you're not different from all the rest
30 of us in that regard".
31 MR GILBERTSON: Yes, I was going to raise the same one.

1 HIS HONOUR: Yes, all right. Page 447, Line 26, insert the
2 word, "Not" after the word, "And you're".

3 MR DIBB: Those are the only ones I wish to raise. My learned
4 friend has others.

5 HIS HONOUR: Did you have any separate ones?

6 MR GILBERTSON: No, that covered the ones I had as well.

7 HIS HONOUR: Thank you.

8 MR GILBERTSON: Just two other brief preliminary matters. I
9 have clean copies, Your Honour, of Exhibits D3, D4 for
10 Your Honour's associate and the other matter is I saw
11 briefly on my learned friend's laptop a Google search.
12 We would like prior to the commencement of final
13 addresses just to receive the hard copies of the
14 documents to which these are intended to relate. As Your
15 Honour pleases.

16 HIS HONOUR: Thank you.

17 MR GILBERTSON: We're ready for Mr Cripps, Your Honour.

18 HIS HONOUR: Yes. When will your witness be interposed?

19 MR GILBERTSON: I've indicated to my learned friend that we're
20 having difficulty contacting her and if she's not here by
21 the time we're ready I don't propose to call her.

22 HIS HONOUR: All right, thank you.

23 MR DIBB: I've indicated to my learned friend that Ms Hua, I
24 would oppose Ms Low being called after Ms Hua. Ms Hua I
25 expect to be here at 12 o'clock. She had some difficulty
26 attending at all and we're getting her here at 12.

27 HIS HONOUR: This is quite a delicate issue about who I should
28 believe I guess, is that the reason for your proposed
29 concern about the sequence in which the evidence is
30 given?

31 MR DIBB: Yes, Your Honour. Ms Low is a witness in my learned

1 friend's case and I don't know that I would be able to
2 get Ms Hua back very easily to anything raised by Ms Low
3 in relation to Ms Hua. My learned friend would
4 effectively be splitting his case and putting what might
5 be an important witness on the other side of the evidence
6 that I'm calling on that issue.

7 HIS HONOUR: Yes. I think, Mr Gilbertson, I have some sympathy
8 for what Mr Dibb says.

9 MR GILBERTSON: I have no difficulty, Your Honour. If she's
10 not here by the time we need to call her and Ms Hua has
11 been called I will not be calling her.

12 HIS HONOUR: Fine, thank you. All right. Yes, Mr Cripps.

1 <ROBERT RAYMOND CRIPPS, recalled:

2 HIS HONOUR: Some water for the witness, thanks. When you're
3 ready, Mr Gilbertson.

4 MR GILBERTSON: Thank you, Your Honour. Mr Cripps, at various
5 times during your conversation with Ms Raymond and
6 Mr Vakras you felt agitated, didn't you felt agitated,
7 didn't you?---Correct.

8 And you felt disturbed?---Correct.

9 Animated?---Correct.

10 Upset even?---yes.

11 Grumpy?---Yes.

12 Dissatisfied?---Yes.

13 Disgruntled?---Yes.

14 But you never felt angry, is that right?---Frustrated, not
15 angry.

16 At times during your conversations with the defendants you were
17 forceful, weren't you?---Correct.

18 You were strong, weren't you?---Correct.

19 You felt you had to fight back, didn't you?---Correct.

20 You gave evidence on Friday that in relation to the
21 conversation when the defendants came to photograph the
22 exhibition you said, "I indicated to them that I'd
23 requested that they contact me personally before they
24 attended the gallery", do you recall saying that?---I do.

25 I want to show you, Mr Cripps, the email that I was showing you
26 at the end of the cross-examination on Friday. If the
27 witness could be shown the defendants court book, that's
28 Tab 24, Your Honour. Do you have Tab 24, Mr Cripps?
29 ---Yes, I think so.

30 If you could go, please, to p.3 of that - rather the third page
31 of that tab?---Yes.

1 Towards the foot is your email which I asked you some questions
2 about on Friday, do you recall that?---No, not really.
3 If you have a look at this, this is the email you sent on 26
4 June 2009, isn't it?---Um.

5 HIS HONOUR: I'm sorry, what was the answer?---Sorry, I'm
6 trying to work out which email we're talking about.

7 MR GILBERTSON: It's the one at the foot of the third page into
8 the document. It should say, "On 26 June 2009 at 12.13
9 p.m."?---Yes, yes, I see it.

10 Just take a moment to have a look at it again if you wouldn't
11 mind, Mr Cripps?---Yes, I've read it.

12 That's a copy of the email you sent, isn't it?---Yeah, I think
13 it is.

14 You'll see at the foot of p.3 it says in the fourth last line,
15 "We would appreciate it", so three pages in, the fourth
16 last line from the bottom.

17 HIS HONOUR: It's where you were at before, Mr Cripps?---Yes.
18 Just reading the last three lines.

19 MR GILBERTSON: I'll read them out to you. "We would
20 appreciate it if you would ensure that myself, gallery
21 staff and volunteers will also not be appropriated by
22 Demetrios without prior notification as he had made
23 myself, staff and volunteers feel very uncomfortable".
24 Do you see that?---Correct.

25 Over the page, the start of the second paragraph, it says,
26 "Please also notify me personally when you will be
27 attending the gallery so that I can make sure I am on
28 site as I am ultimately responsible as the director of
29 the gallery". Do you see that?---Correct.

30 What I suggest to you, Mr Cripps, is that when you gave
31 evidence on Friday that you told the defendants when they

1 came to photograph the exhibition that you indicated to
2 them that you requested that they contact you personally
3 before they attended that in fact you're confusing that
4 with what's in this email. What do you say about that?
5 ---It could be right. It's a while ago.

6 It could be right, it's a while ago, I didn't hear you quite?

7 ---It could be right, it's a while ago.

8 You told them on the opening night, didn't you, at the end that
9 you didn't want them in the gallery?---Wrong.

10 At the time you read the first of the articles that this
11 proceeding is about you gave evidence that Redleg did
12 extremely limited work, is that right?---I don't remember
13 the full context.

14 If I could perhaps put a rough date to you. If we could go
15 back to shortly after the exhibition, that is the
16 defendants' exhibition, at that time was Redleg doing
17 extremely limited work?

18 HIS HONOUR: Sorry, my understanding is the company had a
19 number of different businesses, are you focusing on a
20 particular business or across the board?

21 MR GILBERTSON: Across the board, Your Honour?---The Guildford
22 Lane Gallery was a Redleg project, art transport, art
23 equipment were Redleg projects. Be more specific,
24 please.

25 HIS HONOUR: I didn't quite hear that, I'm very sorry,
26 Mr Cripps?---Redleg - the Guildford Lane Gallery was a
27 Redleg project.

28 Yes, I heard that?---Art transport, art crating, art equipment,
29 installation, art storage are all Redleg projects and
30 various forms they continued.

31 MR GILBERTSON: But the transport work was limited at that

1 time, wasn't it?
2 ---Correct.
3 Redleg no longer owned trucks at that time, did it?---Correct.
4 It hired them, is that right?---Correct.
5 You were asked by my learned friend, Mr Dibb, on Friday about
6 the reference in Mr Vakras's first article to Adolf
7 Hitler, do you recall being asked about that?---No.
8 Perhaps if I can remind you. You said you were shocked and you
9 found it appalling, do you recall saying that?---No, I
10 don't, I'm sorry.
11 Transcript 396, Your Honour.
12 HIS HONOUR: Thank you.
13 MR GILBERTSON: His Honour asked you did you say appalling and
14 you said this, "Appalling I could say - I could say a lot
15 more clearly but that's not appropriate". Do you recall
16 saying that?---No, I was pretty distressed.
17 From time to time you hold yourself back from expressing your
18 real emotions, don't you, Mr Cripps?---Yes.
19 And at other times you do express your emotions, don't you?
20 ---Yes.
21 You gave evidence on Friday that at the opening night you said
22 to a woman who bought the work earlier in the night was
23 that her lovely bottom, do you recall giving that
24 evidence?---Yes, I do.
25 I suggest to you, Mr Cripps, that you were mistaken that it was
26 the woman who had bought the work earlier in the night,
27 what do you say about that?---It could be possible.
28 And you said in evidence on Friday that were you just being
29 sort of jovial. Do you remember saying that?---Correct.
30 Before you spoke to this woman on that night had you met her
31 before that?---Yes, I believe she was the woman that

1 bought the work.

2 But that was on the same night, wasn't it?---That's correct.

3 Before she bought the work had you met her before that?---No.

4 You didn't regard your comment as being inappropriate in any

5 way, did you, Mr Cripps?---No, not at all.

6 The disclaimers, did you ask Mr Reid to obtain those

7 disclaimers?---Yes, I did.

8 Were there disclaimers on display during the Stelarc exhibition

9 at the Guildford Lane Gallery?---No.

10 Roughly how many exhibitions were there, Mr Cripps, between the

11 Stelarc exhibition and the defendants exhibition?---I

12 couldn't tell you.

13 Was it one, five, ten, more than that?---I can't tell you.

14 No idea at all?---Correct.

15 Were disclaimers put up at any of those exhibitions?---No.

16 If I could now return you, Mr Cripps, to that email that's in

17 front of you, just bear with me one moment. In

18 particular the words on what should be the second page of

19 that email that I took you to just before, if you could

20 go, please, to the second page of the - not the tab, the

21 second page of the email. No, I think you're going back

22 the wrong way. Do you have the 20 - - -

23 HIS HONOUR: Where you were before.

24 MR GILBERTSON: Yes, where you were before. You have the 26

25 June 2009 email in front of you, do you?---25th of the

26 6th, "Lee-Anne Raymond wrote".

27 You're on the right page in fact. If you go tot he top of that

28 page, do you have the second paragraph which is the words

29 I put to you before, "Please also notify me personally

30 when you will be attending the gallery", do you see

31 that?---Correct.

1 And you wanted Ms Raymond to notify you personally so that you
2 made sure you were on site when she was there, didn't
3 you?---When they were both there.

4 In particular you were stating to Ms Raymond that you wanted to
5 be on - you wanted her to notify you before she attended
6 because you wanted to be there when she was there, didn't
7 you?---When they were there.

8 You wanted to keep an eye on them when they were at the
9 gallery, didn't you?---No-one wanted to deal with them.
10 It was left for me. The gallery needs to be supervised.
11 The volunteers didn't want to deal with them. The staff
12 didn't want to deal with them. It was my responsibility
13 and I was indicating that to them.

14 The gallery needs to be supervised. So did you tell them at
15 any prior to this that they needed to make sure there was
16 someone at the gallery when they attended?---There must
17 always be someone at the gallery, otherwise the gallery's
18 locked. It's not covered by insurance if that's the
19 case.

20 But this was more than that, wasn't it? You wanted to keep a
21 very close eye on these two by this time if ever they
22 came to the gallery, didn't you?---No, I don't believe
23 so.

24 Ms Raymond gave evidence that the works were removed from the
25 gallery on Sunday, 5 July. Did you speak to Ms Raymond
26 that day?---I don't remember.

27 Could you please turn to Tab 26 of that court book, Mr Cripps.
28 Do you have Tab 26?---"Timeframe for payment for sales".
29 That's it. Could you go to the second page, please. Do you
30 see at the top it says, "On 7 July 2009 at 2.39 p.m."
31 It goes on, "Dear Yolande, can you please advise of the

1 timing for Guildford Lane Gallery's acquittal of business
2 with our exhibition". Do you see that?---Yes.
3 It says down the bottom, "Many thanks, Lee-Anne". Did you see
4 that email at the time?---I don't remember there, no.
5 Did you have any conversations with Yolande Pickett in relation
6 to the acquittal of business?---Most likely but I don't
7 remember it.
8 Then if you go back one page, please. Do you see in the middle
9 of the page it says, "On Tuesday, July 7, 1428 manager
10 sent, Hi Lee-Anne, we generally tell exhibitors that the
11 refund and sales payments will be processed within two
12 weeks of the exhibition closing date. It's transferred
13 by direct deposit and we endeavour to do so" - I withdraw
14 that. "And we endeavour or to do so shortly (we have an
15 incredibly busy week so I cannot nominate a day at this
16 stage)". Did you see that email at the time?---I don't
17 remember it but it would seem valid.
18 I beg your pardon?---I don't remember the email but it would
19 seem valid.
20 Did you tell Yolande Pickett to make sure that the refund and
21 the sales payment was paid to the defendants as soon as
22 possible?---No.
23 If you could go forward, please, to Tab 27, do you see there's
24 an email at the top from leeanneart@iinet.net.au dated 21
25 July 2009, 10.06.49 a.m., it goes on, "Hi Yolande, there
26 is still no progress". Did you see that email at the
27 time?---I don't remember it.
28 Then go forward one more tab, please, Mr Cripps, to Tab 28.
29 This is an email from Lee-Anne Raymond to Yolande
30 Pickett, copy to Mr Vakras and you'll see it says in the
31 second last paragraph, "You are overdue in reimbursing us

1 for outstanding funds. We request immediate
2 reimbursement". Did you see that at the time?---Most
3 likely but I really don't remember these emails.
4 You knew at around about June and July 2009 that the defendants
5 were making demands for the repayment of the surety and
6 for the payment of the one work that had been sold,
7 didn't you?---Normally normal gallery trading terms are
8 three months. Guildford Lane Gallery paid amounts before
9 that period of time. 90 days is the industry norm.
10 I'm not asking you what the industry norm is?---The industry
11 norm is 90 days.
12 Just a moment, please. I'm not asking you what the industry
13 norm is. I'm putting to you that in July and late June
14 2009 you knew that the defendants were making demands for
15 the refund of the surety and for the payment of the one
16 work that had been sold, didn't you?---Yes, I would have
17 known but I would not have been monitoring these emails.
18 I would have been told that there was comment being made.
19 I had a lot to do.
20 And you didn't tell Yolande Pickett at any stage, did you, to
21 make sure that the money was paid to the defendants?---I
22 was the only person that could transfer money.
23 And you didn't take any step to respond to demands you knew
24 about at the time, did you?---No, I didn't.
25 If you could have a look, please, back to Tab 26. If you could
26 go to the third page of that tab, please, Mr Cripps. The
27 second half of that page there is a 6 August 2009 email
28 from you to Ms Raymond, isn't there?---Correct.
29 It says, "I am about to transfer the funds for the sale of your
30 painting and exhibition bond. Please confirm that upon
31 receipt of these funds", and then the following is in

1 bold, "There will be no issues outstanding between
2 yourselves and Guildford Lane Gallery", and then the
3 bolding ends. You added those words to this email in
4 bold didn't you, Mr Cripps, because you feared that the
5 defendants would have a legal claim against you didn't
6 you?---They were antagonistic.

7 And you feared that they would have a legal claim didn't you?
8 ---They were antagonistic.

9 Do you not understand my question?---The defendants, sorry,
10 whoever they are, were antagonistic. I wanted to make
11 sure that there were no further claims against the
12 gallery.

13 That's right. No one has said to you - I'll withdraw that.
14 Just bear with me one moment. No one has said to you
15 have they, Mr Cripps, that as a result of reading
16 Mr Vakras's article they believed that you are a
17 disgraceful individual who is to be avoided assiduously?
18 ---I have lost business because of those articles.

19 Did you understand my question?---And it's been said to me by a
20 number of people that there must be some truth in the
21 articles.

22 I'll ask you the question again and I would ask you if you
23 wouldn't mind answering my question. No one has said to
24 you that as a result of reading the first article by
25 Mr Vakras that they believed that you are a disgraceful
26 individual who is to be avoided assiduously have they?
27 ---Yes, they have.

28 They have? When was that said?---That was said by one of the
29 volunteers as she departed the gallery.

30 How long after the exhibition did she say that?---It was, it
31 was when the information was seen online.

1 So about 2009, would you agree with that?---I couldn't give you
2 the date.

3 No, I'm not asking you to give me a date. Just roughly. Was
4 it first became aware, you became of it being online?

5 ---Roughly I couldn't do it, I'm sorry.

6 I beg your pardon?

7 HIS HONOUR: Please don't talk over the questioner. Can you
8 ask the question again please.

9 MR GILBERTSON: Yes, Your Honour. (To witness) Was it about
10 the time you read the material online?---Yeah. No, a
11 little after.

12 When you say a little can you give us a rough idea how long
13 after; was it within weeks, months?---I, within a month
14 or so.

15 All right. I'm going to show you, Mr Cripps, the questions and
16 answers to your interrogatories which I asked you about
17 on Friday. I'll hand to you a copy of these documents.
18 These are Tabs 15 and 16 of the plaintiff's court book of
19 pleadings, Your Honour. Remember you said to the court
20 on Friday, Mr Cripps, that you swore that these answers
21 to interrogatories were true and correct; do you recall
22 saying that?---Yes.

23 I have another copy, Your Honour.

24 HIS HONOUR: I've got them here.

25 MR GILBERTSON: (To witness) Could you go please, Mr Cripps, to
26 the document containing the questions which is headed
27 "Interrogatories of the defendants for the examination of
28 the first plaintiff." Do you have that in front of you?
29 ---Yes.

30 Could you go please to p.3 of that document. Do you see
31 Question 5(a) at the bottom is, "Has anyone advised you

1 that as a result of reading the first Vakras article they
2 believed that (a) you are a disgraceful individual who is
3 to be avoided assiduously?" Do you see that?

4 ---Yes.

5 Now if you could go please to your answers. Do you have a
6 separate document with your answers, Mr Cripps. Go
7 please to p.4 of that document. Do you see it says in
8 answer to Interrogatory 5(a) you say, "No." Do you see
9 that?---Correct.

10 What I want to ask you is, which is wrong, that answer or the
11 evidence that you just gave that someone advised you that
12 as a result of reading the first Vakras article they
13 believed that you are a disgraceful individual who is to
14 be avoided assiduously; which one's wrong?---I think the,
15 the article that's been sworn.

16 I beg your pardon?---I think the article that has been sworn,
17 this one here; is that right?

18 You're saying that your sworn answer here is wrong?---Yes, I
19 think it's wrong.

20 Are there any other answers in these interrogatories that you
21 think are wrong, Mr Cripps?---Bree Trewin was the person
22 that actually said to me she thought less of me.

23 Are there any other others in these - - -?---I, I couldn't tell
24 you. You may have to go right through the whole lot and
25 my memory may serve me correctly next time.

26 No, I'm not going to take you through the whole lot, I'm just
27 going to take you through a few more. If you go back to
28 the questions please. Open that up again at p.3, and
29 I've taken you to 5(a) at the bottom. You see it goes
30 over the page, "You used economic duress to force the 1st
31 and 2nd defendants to agree to terms that were not in the

1 original contract for rental of space at the gallery."
2 Do you see those words?---Yes.
3 So the question you were asked was, "Has anyone advised you
4 that as a result of reading the first Vakras article they
5 believed that you used economic duress to force the first
6 and second defendants to agree to terms that were not in
7 the original contract for rental of space at the
8 gallery?" Do you see that?---Yes.
9 Have a look at your answer to Interrogatory 5B please. Do you
10 see you have answered no to that interrogatory?---Yes.
11 Was that answer correct?---Yes, I think so.
12 Go back to Question 5C please. Do you have the questions in
13 front of you, Mr Cripps?---Yes. Same page isn't it?
14 Yes, thank you. You will see it says in 5C the question is,
15 "Has anyone advised you that as a result of reading the
16 first article they believed that (c) you having made a
17 profit from the first and second defendants art
18 exhibition at the gallery," - I withdraw that - "You
19 having made a profit from the first and second defendants
20 art exhibition at the gallery then deliberately inhibited
21 the first and second defendants' capacity to promote the
22 exhibition causing it to fail." Do you see that?
23 ---Correct.
24 I beg your pardon?---Yes, I can see it.
25 Your answer to that Interrogatory 5C was also, "No"?---Correct.
26 Is that a correct answer?---Correct, that's right.
27 Question D, that you were "A dangerous racist who has embraced
28 the discredited views of national socialism?" Do you see
29 that question?---Yes.
30 You answered, "No," to that as well didn't you?---That's right.
31 Was that answer correct?---Yes.

1 You didn't take much care did you when you answered
2 Interrogatory 5A?---I beg your pardon?
3 You didn't take much care did you when you answered
4 Interrogatory 5A?---I beg your pardon?
5 You didn't take much care did you when you answered
6 Interrogatory 5A?---If you say so.
7 No, I'm asking you?---Well, I, I think I, at the time I
8 answered as to what my memory was.
9 You say your memory has improved since then in that regard, is
10 that what you say?---No, I don't.
11 You were shown by my learned friend the second article to which
12 this proceeding relates. Do you recall being shown
13 that?---I've been shown a number of articles but I don't
14 remember that.
15 Has anyone advised you that as a result of reading what's
16 referred to as the second Vakras article that they
17 believe that your pattern of intimidating behaviour has
18 left other artists too fearful to describe to the public
19 their own negative experiences with you?---No. You'll
20 have to explain a lot more than that. I really don't
21 understand what you're saying.
22 Yes, that's a fair point, Mr Cripps. Could you have a look
23 please at Question 20 in the questions?---Sorry, which
24 ones?
25 It should be the document which I think you had on the right
26 hand side which contains the questions, and would you
27 have a look please at Number 20 which should be on p.7.
28 Do you have Question 20?---"Has anyone advised you?"
29 Yes, "Has anyone advised you that as a result of reading the
30 second Vakras article they believe that your pattern of
31 intimidating behaviour has left other artists too fearful

1 to describe to the public their own negative experiences
2 with you?" Do you see that?---Yes.
3 Now could you go please to your answer to Interrogatory 20.
4 You see you've answered, "No"?---Correct.
5 Was that answer true and correct?---Correct.
6 Now please go to Question 26. If I could just give you a
7 moment, Mr Cripps, to read those questions to yourself
8 rather than my reading them out to you?---Sorry, which
9 question?
10 Question 26.
11 HIS HONOUR: "Has anyone advised you that as a result of
12 reading the Raymond article they believe that," (a) (b)
13 (c) (d) (e) and (f), that's what he's asking you to
14 read?---OK. Yes, I've read those.
15 MR GILBERTSON: Now would you have a look please at your answer
16 to various sub questions in Interrogatory 26, so would
17 you have a look at your answer to Interrogatory 26
18 please?---Sure.
19 Do you see you've answered, "No," to each of those six
20 questions? That should be in the answers, Mr Cripps?
21 ---That's right.
22 Are each of those answers true and correct?---Correct.
23 Your Honour, I intend to tender each of those three sets of
24 questions and answers.
25 HIS HONOUR: Just those rather than the whole documents?
26 MR GILBERTSON: Yes.
27 HIS HONOUR: All right. So can you prepare a redacted version?
28 MR GILBERTSON: I will.
29 HIS HONOUR: That's fine. I'll assign a number to them.
30 MR GILBERTSON: (To witness) Courtney Kim was the curator of an
31 exhibition which took place at the gallery wasn't she?

1 ---I'm not sure that she was a curator but she compiled
2 an exhibition.
3 She compiled an exhibition?---M'mm.
4 Was it in about April and May of 2010?---Possibly.
5 Her exhibition related to human rights for North Korean
6 refugees didn't it?---Yes.
7 After that exhibition she was owed money by the gallery wasn't
8 she for the sale of artworks that had been sold during
9 the exhibition?---Yes.
10 Somewhere in the region of four to \$5000 wasn't it?---I don't
11 remember.
12 You received emails from her demanding payment didn't you?---In
13 an unreasonable term - timeframe, yes.
14 You took over two months to pay her the money she was owed
15 didn't you?---I don't remember.
16 Guildford Lane Gallery used to have a website didn't it?---Yes.
17 Guildfordlanegallery.org, was that the website?---Yes, I think
18 so.
19 Did you arrange for that website to be taken down?---Yes.
20 Was it in about January this year?---I don't remember.
21 Could it have been this year or last year?---I think it's this
22 year but I don't remember which month it was.
23 As far as you know, Mr Cripps, the website was on the internet
24 between about March 2010 and sometime this year?---Yes.
25 As far as you know during that period that website was
26 accessible by search engines such as Google, as far as
27 you know?---Yes.
28 Did Guildford Lane Gallery have a Facebook page?---I - we most
29 likely did. I, I don't operate them.
30 I'm not asking you whether you operate these, I'm asking you
31 whether you know. Did Guildford Lane Gallery have a

1 Facebook page?---I honestly can't say whether it did or
2 it didn't. I have seen information to the effect that we
3 did. I never operate it and I don't operate the one we
4 currently have.

5 Yes, I understand that. Did Ruby's Music Room have Facebook
6 pages?---Yes, it does.

7 It still does you say?---Yes.

8 Did Ruby's Music Room have a Twitter feed?---Yes, it did.

9 Were there websites relating to Ruby's Music Room?---Yes.

10 I suggest to you, Mr Cripps, that in about March of this year
11 the Guildford Lane Gallery Facebook page, Ruby's Music
12 Room Facebook pages, Ruby's Music Room Twitter feed and
13 Ruby's Music Room websites were removed from the
14 internet. What do you say about that?---That, yes. Yes,
15 that's correct.

16 As far as you know, Mr Cripps, prior to the websites being
17 removed from the internet they were accessible by search
18 engines such as Google?---I suppose - I really don't know
19 anything about this so I, I just take you at your word.

20 Emily Kocaj was a manager at gallery in about 2009 wasn't she?
21 ---She was not a manager.

22 What was her position at the gallery?---She was to curate.

23 She was a curator, is that right?---That's correct.

24 She made a comment to you didn't she, Mr Cripps, about your
25 conduct in relation to Leila and Thao?---Never.

26 You say that she never told you that she thought what you were
27 saying to them was inappropriate?---Never.

28 Did you ever say to Ms Kocaj words to the effect that you
29 thought Leila and Thao enjoyed what you were saying to
30 them?---No comment was made to have that response.

31 All right. I have nothing further, Your Honour.

1 HIS HONOUR: No comment was made to elicit that response,
2 that's what he said, Mr Dibb.

3 MR DIBB: Thank you, Your Honour. Sorry, I struggle a little
4 sometimes.

5 HIS HONOUR: Yes, I understand. Now is your turn.

6 MR DIBB: Thank you, very much, Your Honour.

7 HIS HONOUR: (To witness) Do you want five minutes to stretch
8 your legs, Mr Cripps?---No. Just a bit tense, sorry.

9 MR DIBB: I'm going to be very brief, Your Honour.

10 HIS HONOUR: I just saw the witness stretching.

11 MR DIBB: Yes, Your Honour.

12 <RE-EXAMINED BY MR DIBB:

13 You were asked by my learned friend, and this is Transcript
14 p.452 at around Line 7 and thereafter, about you asking
15 the defendants to contact you if they were going to be at
16 the gallery. Do you remember that?---Yes.

17 You said you weren't there 18 hours a day. Do you remember
18 giving that answer?---Can you repeat that?

19 Where were you living at that time - - -

20 HIS HONOUR: No. You said that you were there for 18 hours;
21 that was the question, 18 hours a day?---Yes, yeah. Yes,
22 I, I lived on the premises, I ate on the premises, I
23 worked on the premises.

24 You're too soft I'm sorry, Mr Cripps?---Sorry. I lived on the
25 premises, I work on the premises and I, I ate my meals on
26 the premises.

27 MR DIBB: If the defendants had wished to be on the premises
28 how often do you think that - would that have been
29 impossible because you were absent?---No. There, there
30 was no problem with them coming onto the premises during
31 gallery hours and, and I just would have arranged my time

1 to cater for them.

2 My learned friend took you to an email of 26 June 2009 in which
3 you asked the defendants to contact you and suggested
4 that that was after the meeting of 24 June, at which you
5 had said, "I asked you to call me," on your evidence?

6 ---Yes.

7 Was there any other communication between you and the
8 defendants in which you'd asked them to contact you
9 before attending the gallery?---I feel, I, I've seen the
10 email, I feel that there was communication in between.
11 It, it just doesn't seem to run correctly.

12 That's the re-examination, Your Honour.

13 HIS HONOUR: Thank you very much. Mr Cripps, that concludes
14 your evidence. Thank you very much for your patience.

15 You may now leave the witness box. That material will be
16 taken, don't worry about it.

17 (Witness excused.)

18 <(THE WITNESS WITHDREW)

1 HIS HONOUR: Madam, can you return the interrogatories and the
2 book please.

3 MR DIBB: I call Mr Nicholas Murray.

4 <NICHOLAS JUSTIN MURRAY, sworn and examined:

5 MR DIBB: What's your full name, sir?---Nicholas Justin Murray.

6 Can we spell that for the transcript please?---N-i-c-h-o-l-a-s,
7 and Murray is spelt, M-u-r-r-a-y.

8 And Justin is J-u-s-t-i-n?---J-u-s-t-i-n.

9 What's your occupation, Mr Murray?---I am an architect and
10 sound designer.

11 Do you know the plaintiff Mr Cripps?---Yes, I do know
12 Mr Cripps.

13 When did you first come to know him?---I came to know him
14 during, it would have been about May or June 2010.

15 In what circumstances did you come to know him?---I was
16 completing my PhD at RMIT and RMIT had arranged the final
17 examinations which are in the form of an exhibition to
18 occur at the Guildford Lane Gallery.

19 Were you part of that exhibition or did you have an exhibition?
20 ---Yes, I was part of that exhibition. I was an
21 exhibitor.

22 HIS HONOUR: Mr Murray, you're jumping the gun a little bit?
23 ---I'm very sorry.

24 Just wait for Mr Dibb to finish his question and then state
25 your answer?---Sure.

26 MR DIBB: Thank you. You were part of that exhibition,
27 Mr Murray?---Yes, that's correct.

28 Had you heard of Guildford Lane Gallery before that?---I had
29 heard of Guildford Lane before that.

30 Had you heard of Mr Cripps before that?---I had heard of
31 Mr Cripps.

1 At that time - when had you first heard of Guildford Lane
2 Gallery and Mr Cripps?---I couldn't tell you precisely
3 but it would have been in the context of my time as a PhD
4 student so probably in the year or two preceding my
5 examination.

6 What was Mr Cripps's reputation in general terms?---In general
7 terms I had heard that he was prickly but I have heard
8 nothing that gave me any particular concerns.

9 Had you heard anything of a reputation in respect of racism?
10 ---No.

11 In respect of bullying?---No.

12 In respect of sexual harassment of his staff?---No.

13 How did you find your dealings with Mr Cripps?---My dealings
14 with Mr Cripps were professional, is probably the best
15 way I could describe it.

16 Have you become aware of any of the articles that are the
17 subject of these proceedings at any time?---I was only
18 made aware of these articles towards the latter part of
19 last week when I was asked if I would be prepared to
20 appear here today.

21 Did you read them all?---I didn't read any of them.

22 Have you heard anyone referring to the content of these
23 articles or the allegations made in them?---Again, not
24 until the end of last week or latter part of last week.

25 That's the evidence-in-chief, Your Honour.

26 HIS HONOUR: Thank you.

27 <CROSS-EXAMINED BY MR GILBERTSON:

28 In the year or two prior to your examination, Mr Murray, how
29 many people did you come across who knew Robert Cripps?--
30 -I couldn't answer that accurately. I had heard stories
31 about Guildford Lane as being the venue for the exams.

1 I'm not really sure what else I could
2 tell you about that.
3 So you'd heard stories about Guildford Lane, but had anyone in
4 particular spoken to you about Mr Cripps at that time?
5 ---Not particularly. The only thing I had heard was a
6 story about a black wall being painted in the gallery and
7 there being an argument that ensued over it but even then
8 I couldn't give you detail and I'd be struggling to tell
9 you who told me that.
10 But that's all you were told about Mr Cripps, is that right?
11 ---Yes, that's correct.
12 Yes, thank you.
13 HIS HONOUR: Any re-examination?
14 MR DIBB: No, thank you, Your Honour.
15 HIS HONOUR: Mr Murray, thank you for your appearance here and
16 for your evidence. You're now excused. You may go about
17 your business?---Thank you very much, Your Honour.
18 (Witness excused.)
19 <(THE WITNESS WITHDREW)

1 MR DIBB: I regret to tell you, Your Honour, that Ms Hua is not
2 yet here as I understand it. I'm expecting her at
3 12 o'clock, and I see that we have 25 minutes yet.

4 HIS HONOUR: Perhaps I could make the time useful by just
5 raising with the parties some questions if I may?

6 MR DIBB: Thank you, Your Honour.

7 HIS HONOUR: Is it common ground that the second plaintiff is
8 an excluded corporation for the purposes of the Act?

9 MR GILBERTSON: No, Your Honour.

10 HIS HONOUR: Perhaps the questions are more pertinent to final
11 addresses after the evidence is completed. I'll just
12 double check if there's anything else I can ask now.
13 Mr Dibb, do you wish to say anything further about MFI4,
14 which is the hyperlinked article, having regard to my
15 preliminary inclination to let it in absolutely subject
16 to submissions in final addresses?

17 MR DIBB: Yes, Your Honour. I will be developing a submission
18 that my learned friends foreshadowed reliance on that
19 article on the issue of the meaning conveyed by the
20 matter complained of, ought not be a matter that Your
21 Honour accepts as going to that meaning. The reason is
22 that context in this context, to use the word twice, is
23 what's present to the mind of the ordinary reasonable
24 reader at the time of reading.

25 HIS HONOUR: Can I just stop you there. If I were to allow the
26 document to be received as an exhibit that would not
27 preclude you from making those submissions in your final
28 addresses. In my judgment I will have to look at the
29 series of questions and answers, as you well know, and
30 among those is what is the meaning and what can I rely
31 upon. For that purpose of course I will be assisted by

1 the final addresses. It seems to me whether the document
2 remains a marked for identification document or an
3 exhibited document makes no difference because it's not
4 being received for the truth of its allegations, it's
5 being received as a document that there will be the
6 divergent submissions about what use I can make of it,
7 what weight I can give to it, whether I can look at it at
8 all.

9 It seems to me the fact that it is received, I mean,
10 it's already been put to Mr Vakras as I recall and I have
11 it. The fact that I have it doesn't mean that I will
12 necessarily rely upon it in any particular way. So my
13 question really is; is this an issue that I need to rule
14 upon in advance of final addresses or can it be deferred
15 to the final addresses?

16 MR DIBB: Your Honour could conveniently proceed by admitting
17 it as an exhibit on the understanding that that doesn't
18 involve my accepting either that it's relevant to meaning
19 or that it's admissible in respect of any defence.

20 HIS HONOUR: Absolutely, and that really is - - -

21 MR DIBB: We're not dealing with a jury.

22 HIS HONOUR: No, and that's really dealt with in the order.

23 I've specifically said striking out the words of the
24 defence doesn't preclude further submissions on the use,
25 and Mr Gilbertson has identified three uses; one as to
26 meaning, one as to fair comment and one as to honest
27 opinion. So there will be a debate about that in final
28 addresses.

29 MR DIBB: Yes, Your Honour.

30 HIS HONOUR: In that case I will admit MFI4 as an exhibit and
31 that will become Exhibit D44. MFI4 will become D44 and

1 it will do so on the basis that has just been discussed
2 between myself and Mr Dibb. I don't want to ask any more
3 questions in case it encroaches on remaining evidence.
4 I'll just save them for final addresses. If your witness
5 is not back until 12 then I think we'll stand the matter
6 down until the witness is here unless the parties wish to
7 raise anything in the meantime.

8 MR GILBERTSON: No, Your Honour.

9 HIS HONOUR: All right, we'll adjourn temporarily, Madam
10 Associate.
11 (Short adjournment.)

12 MR DIBB: Thank you, Your Honour. I call Ms Leila Hua.

1 <LI HUA, affirmed and examined:
2 MR DIBB: I think we may have your name slightly wrong. Could
3 you spell your name for us again please?---Yes. My name
4 is Hua Li. This is on my passport, the name, H-u-a L-i.
5 Is that all one word, H-u-a-l-i?---Separate. H-u-a is my given
6 name and Li, L-i, is my family name.
7 Thank you, Ms Li. What's your occupation?---Interior designer.
8 You say you are known as Leila?---Yes. That's my spare name,
9 another name, like friends know.
10 Your friends know?---Yeah.
11 How do you spell Leila?---L-e-i-l-a.
12 L-e-i-l-a?---Yeah.
13 Did you know anyone else called Leila at the gallery in the
14 time you were there?---Yeah. Well, I wouldn't say all of
15 people only know Leila, that's my name, yeah.
16 Were you the only Leila? Was there another Leila?---I think
17 so, yeah, I think so, I'm the only Leila in the gallery.
18 Thank you. Did you work at the gallery?---Yes, since 2009.
19 Sorry, must be 2010, 2011 I think, yeah.
20 What did you do there?---I was a volunteer in the gallery.
21 What work did that involve you doing?---Normally we have
22 exhibitors for their - come into gallery to, like, see
23 their artworks, so we have different volunteers to
24 helping on answering the questions and organise the
25 space.
26 Did you have any contact with Mr Cripps in that time?---Yes.
27 So I know Mr Cripps first time I was visiting the gallery
28 and at that time my English, like, I was improving my
29 English and they were having the staff meeting but I, I
30 just they having the art discussion so I sat down and
31 listened to it and at the end I found out that his

1 volunteer staff meeting and I asked Mr Cripps to, if they
2 have, like, opportunity to have more volunteers and then
3 he accept me. So that's how the first time we meet.
4 I see. In your dealings with Mr Cripps did he ever touch you
5 in a way that made you feel uncomfortable?---No, never.
6 Did he ever speak to you in a way that made you feel
7 uncomfortable?---No. He always encourage me to improve
8 my English. He was friend, friendly to me I would say,
9 yeah.
10 When you say he was friendly - I withdraw that. Did Mr Cripps
11 ever behave towards you sexually in a way that made you
12 feel uncomfortable?---No, no.
13 That's the evidence-in-chief, Your Honour, thank you.
14 <CROSS-EXAMINED BY MR GILBERTSON:
15 Ms Liquidator, English is not your first language is it?---No,
16 is not.
17 What is your first language?---Mandarin.
18 Mandarin?---Yep.
19 When did you come to Australia?---2009, February.
20 February 2009. How much English did you know before you came
21 to Australia?---Just the basic English and I passed,
22 passed Score 6 to come to Australia, yeah.
23 After you came to Australia did you engage in English language
24 classes to improve your English?---Yes, I did. We had
25 English class for five months in Swinburne.
26 At Swinburne. When was that?---From February to my semester
27 start in June, so from 2009, February to June 2009.
28 So from February to June 2009, is that right?---Yes.
29 Have you undertaken any English classes since that time?
30 ---Undertake.
31 Yes. Have you been involved in or participated in any English

1 classes after that time?---No. After that, no.

2 When you were a volunteer at the Guildford Lane Gallery how

3 often did you work there?---I was working on nightshift

4 every Friday but sometimes, like, I got to travel to

5 other, like, other cities and I will stop on that week.

6 When you worked nightshift on a Friday what were your usual

7 hours of being at the gallery?---From six to nine.

8 Six to 9 p.m.?---Yep, yeah.

9 During that time did Mr Cripps ever buy you a meal?---Yep, for

10 the - - -

11 How often would you say that occurred?---How often? Like,

12 probably every two weeks.

13 Every two weeks he would do that?---Yeah.

14 Was there another volunteer at the gallery at that time by the

15 name of Thao?---Yeah. Thao is the name is girl.

16 Yes?---Yep.

17 Did you know her at that time?---Only in the gallery is all.

18 I'm sorry?---Only in the gallery. I know her - - -

19 Only in the gallery?---Yeah.

20 I'm sorry, I didn't understand that. When Mr Cripps bought you

21 a meal did he also buy Thao a meal at that time?---Yeah,

22 together.

23 During the time you were a volunteer at the gallery did

24 Mr Cripps treat you well?---Yes.

25 He was friendly towards you, you said?---Yeah, friendly.

26 Did he compliment you on your work?---He sometimes will give

27 some advice, like, what's the better arrangements for the

28 space, yeah. But when you say compliment, no. My

29 English back to that time was not - it was very basic and

30 also in terms for culture, like, the environment, it's

31 not familiar to me so I was kind of a junior role.

1 Did you have difficulties from time to time in understanding
2 some things that Mr Cripps said to you?---Yeah, but he
3 will repeat slowly and make me to understand.
4 Then you understood it?---Yeah.
5 Did he ever say things about what you were wearing?---My
6 clothes, no.
7 Did he ever say anything about how gorgeous you were?
8 ---Gorgeous?
9 Yes?---I get this comment quite often. Yeah, he sometimes will
10 say you look gorgeous.
11 So you said you get those comments quite often, did I
12 understand you correctly?---Yes.
13 Did he ever say that you and Thao were his girlfriends?---No.
14 Yes, thank you.
15 HIS HONOUR: Any re-examination?
16 MR DIBB: I don't think so, Your Honour, no.
17 HIS HONOUR: I think you're the only one who does know,
18 Mr Dibb. Ms Li, thank you very much for your time for
19 your time for your attendance that concludes or finishes
20 your evidence. You can now go. Thank you?---Thank you.
21 You can leave that there. You can leave the cup?---Thank you.
22 (Witness excused.)
23 <(THE WITNESS WITHDREW)

1 MR DIBB: I call Liz Paul.

2 <ELIZABETH ANNE PAUL, affirmed and examined:

3 MR DIBB: What's your full name, please?---Elizabeth Anne Paul.

4 Could you spell that for the transcript, please?---The whole

5 name, yeah, Elizabeth?

6 Yes, please?---E-l-i-z-a-b-e-t-h, Anne, A-n-n-e, Paul, P-a-u-l.

7 What's your address, Ms Paul?---[REDACTED] Newport.

8 And that's New South Wales, is it?---New South Wales, 2106.

9 What's your occupation?---Director of a company, metal company.

10 You know the plaintiff, Mr Robert Cripps?---Yes.

11 How long have you known him?---Five years.

12 How did you come to know him?---I came to know him through

13 exhibiting in his gallery.

14 Do you remember when you first visited?---2008 I think it was.

15 Was there any particular reason why you visited the gallery

16 then?---I was in Melbourne for work. We were looking for

17 a gallery to show an exhibition in and I'd heard about

18 the gallery so went along and had a look at it.

19 What sort of exhibition was that that you had in mind?---It was

20 an exhibition we were running at that point, an annual

21 exhibition of jewellers who were clients of ours, which

22 consisted of about 250 people participating in an

23 exhibition. We were running them in Sydney and I wanted

24 to extend it to Melbourne because our work was - our

25 clients were from all over Australia.

26 How did you come to meet Mr Cripps, did you ring up the office

27 or go and see him?---I actually met him whilst having

28 dinner one night in Melbourne. I was with my business

29 partner and we just started talking to him and he

30 mentioned that he had a gallery. I then got his business

31 card and after that contact his business manager, Yolande

1 and went from there.

2 Had you heard of Guildford Lane Gallery before then?---No, I
3 hadn't.

4 Had you heard Mr Cripps before then?---No.

5 When did this exhibition take place that you mounted? Did you
6 mount an exhibition in the finish?---We did, yes.

7 When was that?---I think it was November 2009.

8 How did you find your dealings with Mr Cripps and Guildford
9 Lane Gallery at that time?---It was great. There were
10 250 people involved in it. I coordinated the exhibition
11 and set it up so there was 250 pieces of work plus and it
12 was jewellery so it's, you know, valuable. So we had to
13 have showcases. We had to get them there. We used the
14 ground floor. It was a big exhibition set up. It went
15 really well. We had great help from the gallery. Yeah,
16 it was a very successful exhibition for us.

17 HIS HONOUR: Was it just the ground floor?---Just the ground
18 floor that we used.

19 Sorry, Mr Dibb.

20 MR DIBB: Thank you, Your Honour. (To witness) Since then
21 would you regard yourself as having become friendly with
22 Mr Cripps?---Yes.

23 Might the witness be shown the first article marked A? (To
24 witness) Have a look at that article, please, Ms Paul.
25 Have you seen that article before?---Yes, I have.

26 In what form have you seen it?---I saw it on the internet when
27 I was directed to this.

28 When was that, Ms Paul, when did you first see it, do you
29 think?---After this exhibition had been on Robert told me
30 there'd been a problem and he said they put stuff on the
31 internet about it and I don't know when it was.

1 How did you actually get to the article itself?---All you had
2 to do was Google Guildford Lane or Robert Cripps and the
3 article would come up.

4 Do you remember which you did?---I did both to see if it would
5 work on both.

6 Have you seen that article or articles very similar to it more
7 than once?---Yes.

8 Do you have the bundle of all three articles, the second one is
9 marked B? The first article is seven pages?---Yes, that
10 is here.

11 That's substantially very similar to the first article but if I
12 take you to p.5 of 7 of B there is a portion from the
13 middle of the page down headed Addendum 2 April 2011.

14 Can I take you to the last couple of paragraphs, the last
15 paragraph on that page. This of course would be
16 continuous on the screen but the last paragraph on that
17 page, "I exhibited the show which was about human
18 rights". Could you read that portion, please?---"I
19 exhibited a show which is about human rights".

20 You needn't read it aloud, Ms Paul, just read it to yourself.

21 Can you tell the court on any of the occasions when you
22 accessed this article did you see that portion included
23 with its reference to sexually harassing staff and
24 volunteers?---Yes, I did.

25 Do you remember when that was?---Again Robert had told me that
26 there'd been some addition to what was on the website and
27 maybe I should have a look so I went and had a look and I
28 remember seeing it because I rang him about it and
29 because it said it was sexually harassing the staff and
30 volunteers which was new.

31 Could you turn to the third article which is marked C, please.

1 Have you seen that article before?---Yeah, I remember it
2 because of the misspelling of Guidford Lane on the top.
3 I hadn't noticed that. Do you remember when you saw that
4 article, Ms Paul?---No.
5 Again have you seen it more than once do you think?---Yes, I
6 have.
7 How many times do you think you might have checked back to look
8 at that article?---I probably checked back five or six
9 times to see if there was more information. Every few
10 months I'd have a look and see if it would come up and
11 you Google Robert's name.
12 Thank you. How would you describe Mr Cripps reputation as at
13 the time when you first knew him, that is, in November
14 2009?---Very good.
15 Had you heard anything regarding his being a bully?---No.
16 Has it been your experience that he's a bully?---No.
17 Had you heard anything regarding his sexually harassing his
18 staff?---No.
19 Have you ever seen him sexually harassing his staff?---No.
20 Had you then heard anything regarding him being a racist?---No.
21 Is it your view that he is a racist?
22 MR GILBERTSON: Objection. The witness's opinion about it is
23 not relevant.
24 HIS HONOUR: Mr Dibb?
25 MR DIBB: I don't press it, Your Honour.
26 HIS HONOUR: Yes, thank you.
27 MR DIBB: In the time since these articles were published have
28 you heard anyone referring to these articles apart from
29 Mr Cripps?---Yes.
30 Can you tell me the circumstances in which you've heard people
31 referring to these articles?---We've discussed it with

1 friends of Robert's but other people have contacted me,
2 friends of mine who have Googled Robert's name or the
3 gallery to have a look at it, have a look at what had
4 been on at the gallery, have a look at the gallery space
5 and they had come across these articles as well.

6 They've raised them with you, have you?---M'mm.

7 What have they said?

8 HIS HONOUR: Sorry, that's a yes?---Yes.

9 Thank you.

10 MR DIBB: What have they said?---They were concerned that
11 something like this would be about somebody on the
12 internet that if I knew Robert what did I think of it and
13 was any of it true.

14 That's the evidence-in-chief, Your Honour.

15 HIS HONOUR: Thank you.

16 MR GILBERTSON: Ms Paul, do you have the second of the articles
17 that my learned friend took you to.

18 MR DIBB: I'm sorry, Your Honour, before my learned friend
19 starts there is one other matter if I might?

20 HIS HONOUR: Yes.

21 MR DIBB: Your Honour will have seen that the email that's been
22 shown to witnesses in the past this actually is an email
23 that I wish to show to this witness in particular.

24 HIS HONOUR: Yes. Given the speed with which you arose I'll
25 allow you to continue.

26 MR DIBB: Thank you, Your Honour. Might the witness be shown
27 MFI3? (To witness) Looking at that email, have you seen
28 any of that before?---Yes.

29 The top portion, have you seen the top portion?---Yes.

30 I don't have a copy - yes, I have. There's a portion that's
31 from Robert Cripps to Reception, "The Ugly Truth About

1 Robert Cripps", forwarded, follow up completed. You've
2 seen that, have you?---Yes.
3 When did you see that?---I received this email and - - -
4 I just want to deal with the top portion?---Which is?
5 Up to "Begin forwarded message", that is, "From Robert Cripps,
6 Monday, 17 March to Reception. Subject, Forward, The
7 Ugly Truth About Robert Cripps"?---Have I seen that bit
8 before?
9 Yes?---No, because that wasn't sent to me, that top bit.
10 Thank you. From the "Begin Forwarded Message" to about one
11 third of the way down the page?---M'mm.
12 Have you seen the balance of that email?---Yes.
13 How did you come to see it?---I received the email, I thought
14 it was from Ruby's Music Room listing events that were
15 on. I opened it and it was not from Ruby's - well, it
16 was under that heading but it was what was then printed
17 out below, this information.
18 What made you think it was from Ruby's Music Room?---Because it
19 came up on the email Ruby's Music Room under what I
20 usually get my emails from Ruby's Music Room from, the
21 email address.
22 That email address, rubysinfo@rubysmusicroom.com.au?---Yes,
23 which usually comes out with a flyer. I recognised the
24 address so I opened it up.
25 Did you read the email?---Yes, I did.
26 Did you do anything about that?---I read the email was quite
27 upset and I forwarded - I rang Robert and I also
28 forwarded it to him and I forwarded it to another friend
29 of Robert's, Dana, wondering if she'd already received
30 it, if it was just an email that had gone out to
31 everybody's who was on the Ruby's Music Room listing.

1 Thank you, Your Honour. I tender that.

2 MR GILBERTSON: I object to the tender of that. If this is put
3 as going to the grapevine effect it's not relevant
4 because it adds that portion of the bottom of the first
5 page which there's no evidence that the defendants had
6 anything to do with so it's beyond any grapevine.

7 MR DIBB: Your Honour sees in that first text, first graphic
8 block Your Honour sees
9 <http://www.redlegvartists.com.au/fraudaddendum.html> and
10 it would be continuous on screen of course,
11 thehumanisttranshumanist.com, vakrasraymondvcat.html and
12 phantastart.com, vakrasguidfordgallerydisabledpage.html.
13 Those, as we've already had evidence, that those lead to
14 various complications that are, it's common ground, web
15 pages published by the defendants and insofar as this
16 email, regardless of what we can prove about its origin,
17 contains those links and spreads them directly to the
18 mailing list of Mr Cripps' present venture, Ruby's Music
19 Room. It's in my submission relevant on the question of
20 the spread of the liable.

21 HIS HONOUR: Yes. What else do you want to say, Mr Gilbertson?

22 MR GILBERTSON: I again press the objection. It goes well
23 beyond anything that could be said to be the grapevine
24 and for that reason it's irrelevant.

25 HIS HONOUR: I'll consider this objection. It will stay as an
26 MFI3 and I'll let you have an answer soon.

27 MR GILBERTSON: If Your Honour pleases.

28 <CROSS-EXAMINED BY MR GILBERTSON:

29 Ms Paul, I was asking you about the second of the articles that
30 my learned friend took you to. Do you have that in front
31 of you?---Article B?

1 Yes?---Yes.

2 You said in relation to that after my learned friend took you
3 to the passage, it should be the bottom of p.5 that you
4 saw that on the internet, that the reference to the
5 passage, "I exhibited a show which is about human
6 rights"?---Yes.

7 How many times did you see that article on the internet?---I
8 looked at it and then I relooked at it so I assume it's
9 the same article several times.

10 Over what period of time did you look at that article?
11 ---Probably 12 months.

12 Over 12 months?---M'mm.

13 Are you sure about that?---Approximately. It's hard to be
14 sure.

15 You gave evidence that you checked the websites every few
16 months?---M'mm.

17 Is that right?---Yeah, probably, yes.

18 Over what period were checking these websites?---When Robert
19 first told me about it, when I first had a look at it I
20 would come back to it and every now and again just Google
21 Robert's name so it was probably every couple of months I
22 would look at it and see if it was still there, if it was
23 still coming up.

24 Did he ask you to keep an eye on the websites?---No.

25 This period of looking at it every couple of months, has that
26 ended or are you still looking at these websites?---I
27 still have a look every now and again.

28 You have an involvement, do you, with Ruby's Music Room?---Yes.

29 What involvement do you have with it?---I had an involvement in
30 the beginning helping Robert when he was designing the
31 building. We were doing design work together.

1 Did you have any involvement after doing the design work?---I
2 showed some - I exhibited some work in the showcases
3 there.

4 When was that, do you recall?---It was there for the opening of
5 Ruby's Music Room and went on for three or four months.

6 Did you go on a trip to the Mona Art Gallery in Hobart?---Yes,
7 I did.

8 With Ruby's Music Room staff?---That's right.

9 When did you do that?---It was November, I don't know. I don't
10 know what the date was.

11 No, it's all right. What year was it?---I can't remember.

12 Was it within the last 12 months or was it before then?---I
13 think it was in the last 12 months.

14 Do you sponsor a piano at Ruby's Music Room?---No.

15 You had nothing to do with - no, I withdraw that. Would you
16 you've become a close friend of Mr Cripps?---Yes.

17 When you did the Google search of Robert Cripps name were there
18 other websites that came up on that Google search?---I
19 don't remember the websites coming up.

20 Don't remember other websites coming up. It was Mr Cripps who
21 told you that there'd been a problem, is that right?---In
22 regards to something being on the internet?

23 Yes?---Yes.

24 Did he mention the names of the people who had been the problem
25 as it were?---He may have said it, their names. He said
26 it was in regards to the exhibition that had been at the
27 gallery.

28 Yes, thank you.

29 HIS HONOUR: Any re-examination?

30 MR DIBB: No, Your Honour.

31 HIS HONOUR: Ms Paul, that completes your evidence. Thank you

1 for your attendance, you may now leave?---Thank you.

2 (Witness excused.)

3 <(THE WITNESS WITHDREW)

1 MR DIBB: I now Dana Czarski, that's D-a-n-a and Czarski is
2 C-z-a-r-s-k-i.
3 <DANUTA CZARSKI, affirmed and examined:
4 MR DIBB: Could you tell the court your full name, please, and
5 spell it?---Danuta Czarski, D-a-n-u-t-a, Czarski and I
6 like to be called Dana, D-a-n-a.
7 How do you spell Czarski?---C-z-a-r-s-k-i.
8 Good, I got it right. What's your address, Ms Czarski?
9 --- [REDACTED] in Niddrie.
10 What's your occupation?---I'm a teacher.
11 What do you teach?---I teach music.
12 How long have you been a music teacher?---20 years.
13 What did you do before that?---I studied music. I always have
14 been a music teacher.
15 How long have you known Mr Cripps?---Six years.
16 In what circumstances did you first come to know him?---We
17 dated in 2009 and then we remained friends after that.
18 So you met in 2009 first did you?---Yes.
19 And you dated?---Yes.
20 How long did you date for?---Maybe one and a half years.
21 You're not dating any more?---No.
22 Might the witness be shown the articles A, B and C?---I'll just
23 get my glasses.
24 You have before you a bundle of documents. There are in fact
25 three separate articles. The first one has got "A" and
26 it's seven pages long?---Yes.
27 Would you have a look through those, just those seven pages,
28 please, Ms Czarski and then I'll ask you some questions.
29 Have you seen that article before?---Yes, I have.
30 Have you seen it as a printout, or as a web page?---I have seen
31 it as a web page.

1 When did you first see it?---It was early 2010, probably
2 February, March, maybe April.

3 Have you seen it since then?---In a form similar, yes.

4 How often would you have looked at that article?---I would look
5 at the website quite a few times, every time Mr Cripps
6 would call me indicating that there is some action being
7 taken against it, would I please have a look and see what
8 is being changed or not changed. So I'd say five, maybe
9 six, maybe ten times, thank you.

10 Five, maybe six, maybe ten, did you?---M'mm.

11 Over what period of time have you looked at that web page those
12 number of times?---Ten, 11, 12, 13, so four years.

13 Up until when?---Up until now.

14 What would trigger you to go and see the page again?---Again or
15 in the first place?

16 When you say that you revisited the page what would cause you
17 to revisit it?---To revisit mostly Mr Cripps would ring
18 me and would say I'm taking an action or there might be a
19 change in the website, would you like to have a look
20 then.

21 Turn to the second article, the one marked B, and I'll take you
22 to p.5 of 7 of that article.

23 Do you see there's, at the middle of the page, Addendum 2 April
24 2011. Do you have that page?---Yes.

25 Look at the bottom paragraph on that page of this printout.

26 Could you read that paragraph to yourself please?---Do
27 you mean I exhibited a show which is - - -

28 That's the one?---OK.

29 Have you see that paragraph as part of this page on any of the
30 occasions you've looked at this website?---Yes, I have
31 seen it.

1 Are you sure of that?---Yes.

2 Turn to the third article. Have a look at that article. It's

3 short, it's only three pages. Have you seen that one

4 before?---Yes. I remembered that the model, a live model

5 reported to me he found Cripps's treatment was

6 unbearable.

7 How often would you have looked at that web page?---I've seen

8 it. I can't tell you how many times but I have seen it

9 definitely.

10 I didn't ask you about the second article. How often would you

11 have seen that web page including that allegation of

12 sexual harassment?---Once.

13 Do you remember when?---Yes. It was either the last day of

14 March or the first day or maybe second day of April.

15 HIS HONOUR: Which year?---2011. My mother was living - my mum

16 was visiting and then I was taking her back to, to the

17 airport, and Robert told me that there is an action being

18 taken again or some form of legal action and could I

19 please have a look at the website, whether there is any

20 change.

21 MR DIBB: Is that why you remember the date?---Yes.

22 Thank you. Had you heard of Mr Cripps before you first met him

23 in 2009?---Have I heard?

24 Had you heard?---Of Mr Cripps?

25 Mr Cripps?---No.

26 Had you heard of Guildford Lane Gallery before that?---Yes.

27 Had you heard of Redleg Museum Services?---No.

28 What was the reputation of Guildford Lane Gallery as far as you

29 were aware before 2009?---An amazing space for

30 exhibition, space that provided opportunity for many,

31 many different artists to exhibit. Well, as far as

1 reputation is concerned it was stellar.

2 How did you come to hear about Guildford Lane Gallery in that
3 period?---Probably through some of my friends who were
4 actually artists and they were, they were aware of all
5 the galleries that are in Melbourne.

6 In the period since these articles started appearing on the net
7 have you heard anyone refer to them apart from Mr Cripps?
8 ---No.

9 Have you heard anyone discussing Mr Cripps's reputation more
10 recently since the publication of these articles in a way
11 that suggested to you that they had heard, that they were
12 aware of these articles and their content?---No.

13 Could the witness be shown MFI3 please. You will see that
14 that's an email, and I don't want you to worry about the
15 first two parts, but about three centimetres below the
16 fold from, "Begin forwarded message," there's an email.
17 Did you get an email similar to this one? I'm talking
18 about half way down below the fold it says, "Begin
19 forwarded message," after the words - - -?---Yes. It's
20 from Liz Paul. Yes, I was forwarded this particular
21 email onto my, onto my computer, onto my email address.

22 Thank you?---Which read from Liz Paul.

23 You got it from Ms Paul?---Which read from Liz Paul, not from
24 Robert. Yes, that's right.

25 You didn't get this email direct then?---No.

26 Thank you. That's the evidence-in-chief, Your Honour.

27 HIS HONOUR: Thank you.

28 <CROSS-EXAMINED BY MR GILBERTSON:

29 Ms Czarski, after you stopped dating Mr Cripps did your remain
30 a close friend of his would you say?---Yes.

31 Did you check on the websites that my learned friend has taken

1 you to after Mr Cripps spoke to you? Was that your
2 practice?---No.

3 You did give evidence though that you checked on the website
4 after Mr Cripps told you that he was taking action or
5 something like that?---Yes. He would be taking or trying
6 to do something about it several times.

7 He spoke to you about the websites on a number of occasions
8 didn't he?---Yes. That's how he alerted me to it.

9 And after he alerted you to it he also spoke to you about the
10 websites many times didn't he?---Yes. He actually - we
11 were talking about the existence of, of the website and
12 how, how damaging it is to, to his name.

13 Yes. And he from time to time said things that had changed on
14 the websites, is that right?---That he was trying to
15 first of all take it off the, take it off the web, and
16 not actually change it but - because he had nothing to do
17 with either putting it on, but he, he was trying to, to
18 take an action in order to remove the website.

19 My learned friend took you to the second of the articles that
20 are the subject of this proceeding which should be
21 underneath the email that you were last taken to. The
22 second of the articles is headed B. Do you have that?
23 ---Yes.

24 You were taken to the foot of p.5, reference to, "I exhibited a
25 show which is about human rights"?---Yes. "I exhibited a
26 show which is about," yep.

27 Human rights. You see that?---Yes.

28 You said that you saw that once on the last day of March or the
29 first day of April 2011?---Yes.

30 You're sure about that?---Yes.

31 Thank you. Were you a sponsor of Friday Night Jazz at the

1 Guildford Lane Gallery?---Yes.
2 Did you donate a grand piano to the Guildford Lane Gallery?
3 ---Yes. It was a loan.
4 A loan?---Yeah.
5 Have you been involved in Ruby's Music Room?---Yes.
6 What's been your involvement with Ruby's Music Room?---I advise
7 on, on music program.
8 Did you provide a grand piano on loan to Ruby's Music Room as
9 well?---No.
10 Did you attend a trip to the Mona Art Gallery in Hobart with
11 Ruby's Music Room people?---Yes.
12 When was that trip?---2012.
13 Do you know a woman by the name of Ruth Leveson?---Pardon?
14 Do you know a woman by the name of Ruth Leveson?---No. I don't
15 recall the name.
16 Do you know anyone by the name of Emily Persac?---I know the
17 name Emily.
18 Yes. What about Emily Persac?---I don't recall the surname.
19 Do you know anyone by the name Rod Cooper?---No.
20 Emily Kocaj?---No. I mean, not as Kocaj. I know the name
21 Emily but that somebody - Emily was involved in, I don't
22 know, working for gallery.
23 Yes. You - - -?---I just don't remember the surname, I'm
24 sorry.
25 That's all right. You knew there was a person called Emily who
26 worked at the gallery?---Yes.
27 Have you ever had any conversations with her about Mr Cripps?
28 ---No.
29 Do you know a woman by the name of Katie Bowman?---No.
30 A woman by the name of Courtney Kim?---No.
31 A man by the name of Gavin Mickelson?---No.

1 A woman by the name of Josie Waddelton?---No.
2 Yes, thank you.
3 HIS HONOUR: Any re-examination, Mr Dibb?
4 MR DIBB: No, Your Honour.
5 HIS HONOUR: (To witness) Thank you very much for your
6 attendance and for your evidence, Ms Czarski?---Thank
7 you.
8 You're now free to go?---Thank you.
9 (Witness excused.)
10 <(THE WITNESS WITHDREW)

1 MR DIBB: Just before Your Honour rises. Your Honour's
2 question, one of Your Honour's questions as to whether
3 it's common ground that the second plaintiff is an
4 excluded corporation, of course puts me immediately on
5 notice that I failed to cover a matter with Mr Cripps on
6 which I ought to have asked him questions. I seek Your
7 Honour's leave to recall him to ask him a limited number
8 of questions about the number of employees.

9 HIS HONOUR: Mr Gilbertson, what do you say about that?

10 MR GILBERTSON: I don't oppose that application, Your Honour,
11 but I would ask that I be given leave to ask Mr Cripps
12 about two more interrogatories.

13 HIS HONOUR: There's a quid pro quo being offered, Mr Dibb.

14 MR DIBB: It's a deal, Your Honour.

15 HIS HONOUR: Fine, that's a sensible course to take. I asked
16 the question because I was conscious of the fact that no
17 questions were asked and I looked to see whether there
18 was anything in the materials that dealt with that issue
19 and I didn't see any. That's why I asked. In any event
20 do you propose to do that after lunch or before lunch?

21 MR DIBB: Whatever suits Your Honour's convenience. I see it
22 is 1 o'clock, but I don't know - - -

23 HIS HONOUR: Who are the remaining witnesses?

24 MR DIBB: I think we will comfortably get through them in the
25 course of the afternoon the way we're going. We have
26 just three remaining witnesses and I expect them to be
27 fairly short.

28 HIS HONOUR: Perhaps at the risk of putting my foot in it let
29 me ask you another question. It occurred to me; is there
30 a claim for special damages in respect of loss of profits
31 for the gallery?

1 MR DIBB: No, there isn't, Your Honour.

2 HIS HONOUR: There was in the particulars was there not? Trust
3 me, Mr Dibb, there was. Has that been abandoned? There
4 was a figure I think of \$50,000 and \$90,000 or
5 thereabouts. It was said that further particulars would
6 be provided from an accountant or something like that.

7 MR DIBB: Yes, Your Honour. It's very unusual to succeed in a
8 claim for special damage. We don't in my view - we're
9 not in a position to pursue that claim.

10 HIS HONOUR: All right, thank you very much. We'll adjourn now
11 until 2.15 thank you.

12 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.17 P.M.:

HIS HONOUR: Just before you continue, Mr Gilbertson, let me indicate my position on the objection to the tender of MFI3. I am going to allow the tender but only for the purpose of keeping open to the plaintiffs the opportunity to make submissions in their final addresses that the relevant email comes within the grapevine effect principles. I have had a quick look at the authorities and have formed the preliminary view that on the existing state of the evidence that there are difficulties in satisfying those principles but I don't want to shut the plaintiffs out from making further submissions with more detailed references to the relevant evidence and the authorities.

So it is on that understanding that I will allow MFI3 to be tendered as part of the tender documents of the plaintiffs.

MR GILBERTSON: As Your Honour pleases.

HIS HONOUR: Thank you.

MR GILBERTSON: There's just one matter that's arisen. My learned friend indicated before lunch that he would have an objection if Courtney Kim gave evidence after Ms Li.

HIS HONOUR: Yes.

MR GILBERTSON: I do propose to call Courtney Kim but none of the evidence that I propose to lead from her touches on the sexual harassment allegations that Ms Li was asked some questions about. It relates only to two other topics which have nothing to do with Ms Li's evidence.

HIS HONOUR: But I thought your position was that if she didn't arrive by 12 you would not call her. Has that now

1 changed?

2 MR GILBERTSON: She's just arrived, Your Honour.

3 HIS HONOUR: Yes. Have you indicated to Mr Dibb what those
4 other two matters are?

5 MR GILBERTSON: No, but I can do that now.

6 HIS HONOUR: If you would. Mr Dibb, what is your position?
7 Yes, of course.

8 MR DIBB: I don't object to that course, Your Honour, on that
9 basis.

10 HIS HONOUR: You don't?

11 MR DIBB: I do not, Your Honour. All right, thank you.

12 Mr Gilbertson, I give you leave to reopen the defendant's
13 case to call Ms Courtney Kim.

14 MR GILBERTSON: If Your Honour pleases. I call Courtney Kim,
15 Your Honour.

16 HIS HONOUR: thank you.

17 <HAE WON KIM, sworn and examined:

18 MR GILBERTSON: Is your full name Hae Won Kim?---Yes.

19 For the purposes of the transcript could you tell us how your
20 name is spelt?---H-a-e, W-o-n, K-i-m.

21 Are you know also as Courtney Kim?---Correct.

22 What is your address?---Current address?

23 Yes?---[REDACTED] Preston.

24 It's [REDACTED] is that right?---Correct.

25 What's your occupation?---I'm a creative director at Symphonic
26 Pixels, is that right?---(No audible response).

27 In April and May 2010 were you the curator of an exhibition at
28 the Guildford Lane Gallery?---Yes.

29 What did that exhibition relate to?---It was about

30 collaborative exhibition about North Korean human rights.

31 Are you North Korean in origin or South Korean?---I'm South

1 Korean.

2 Would you tell the court what happened after your exhibition?

3 ---In what - - -

4 In relation to the gallery?---So normally when the artwork's

5 sold the gallery is supposed to pay me for the artwork

6 minus the commission.

7 MR DIBB: I object to the conclusion of the normally. The

8 question was what happened after the exhibition.

9 HIS HONOUR: All right. Ms Kim, the way it works in court is

10 if you could just listen to the question and just answer

11 that question and if there's any further information that

12 is required you'll be asked another question?---OK.

13 Thank you.

14 MR GILBERTSON: Thank you, Your Honour. (To witness) What

15 happened after your exhibition in relation to payment?

16 ---I emailed one of the staff in Guildford Lane Gallery

17 asking about the payment on the email.

18 What do you say was owed to you?---In figure you mean?

19 Yes, and what it related to?---That was I sold about five

20 artworks and that was almost - I think I calculated an

21 amount of almost 4800.

22 \$4800?---Yeah, so I was asked to send them an invoice minus the

23 commission and I worked it all out myself whereas other

24 galleries that I worked with before they gave us the

25 paperwork and I got paid so yeah.

26 In this case after you sent the email what happened?---The girl

27 at the gallery told me it's going to be processed and I

28 was waiting.

29 How long did you wait?---A couple of months.

30 Did you get paid eventually?---Yes.

31 What do you say, Ms Kim, about your willingness to give

1 evidence in this court case?---I was asked to give

2 evidence a number of times by the artist.

3 What do you say about - - -?---I said, I'm not sure I can help
4 you.

5 Why did you say that?---Because it was such a long time ago. I
6 was a little bit reluctant because I didn't want to drag
7 this on.

8 Yes, thank you.

9 MR DIBB: No cross-examination, Your Honour.

10 HIS HONOUR: Thank you very much. Ms Kim, that completes your
11 evidence so thank you for your attendance and you're now
12 free to go?---Thank you.

13 <(THE WITNESS WITHDREW)

14 (Witness excused.)

15 MR DIBB: I'll recall Mr Cripps.

16 <ROBERT RAYMOND CRIPPS, affirmed and examined:

17 MR DIBB: Mr Cripps, what your relationship with Redleg Museum
18 Services, the second plaintiff?---I'm the director and
19 company secretary.

20 Have you always held those positions in that company?---Yes.

21 When was Redleg formed, can you recall?---No.

22 Was it before 2008?---No, I'm sorry, I can't, I can't, no, I
23 can't remember.

24 In approximately September, October 2009 were you at that time
25 the director and company secretary of Redleg Museum
26 Services?---Yes, I was.

27 At that time how many full time employees were there employed
28 by Redleg?---Two to three.

29 Who were they?---Yolande Pickett, myself and a number of, of
30 part timers whose hours were - - -

31 I'm just talking about full time employees at this stage,

1 Mr Cripps?---Well, two that I can distinctly remember.

2 So Yolande Pickett and?---Myself.

3 Yourself. Turning to part time employees who were paid, how

4 many of them were there?---There could be two to six.

5 How did that number vary? Was it seasonal?---Yeah. People

6 would present with skills that were, were usable and they

7 would be given some, some part time work to develop

8 particular projects.

9 At that time in late 2009 do I understand you to be saying that

10 sometimes there were two employees and sometimes there

11 were six employees who were paid for less than full time

12 hours?---No. No, sorry, I don't understand.

13 At any one time how many part time employees might there have

14 been employed by Redleg or were there?---Four, four to

15 six part timers.

16 At one time?---At one time.

17 How many hours did each of them work?---Two to three hours.

18 HIS HONOUR: Sorry, is that - - -?---Each.

19 Within what period, a week, monthly, what time period?---Oh,

20 weekly.

21 MR DIBB: In terms of volunteers the court's heard that you

22 used the services of a certain number of volunteers. At

23 any one time what is the maximum number of volunteers

24 employed in the gallery?---It could be 15 to 20.

25 How many hours would each volunteer work?---Approximately three

26 hours.

27 Is Redleg Museum Services Pty Ltd related to any other

28 corporation?---No.

29 Thank you. That's the evidence-in-chief.

30 <CROSS-EXAMINED BY MR GILBERTSON:

31 MR GILBERTSON: Mr Cripps, in relation to the volunteers there

1 could be a maximum of 20 working three hours each per
2 week, is that right?---It varied.

3 But that did occur, is that right?---It could.

4 So that's 60 hours of work; do you agree with me about my
5 calculation?---As a maximum. Mostly less than that.

6 Yes, I understand that. But from time to time you had 20
7 volunteers working three hours per week each?---That,
8 that could happen.

9 It could happen over the period from September, October 2009
10 through into when the Guildford Lane Gallery closed?

11 ---No. As soon as the Vakras articles were online the
12 volunteer numbers dropped off straight away. We
13 virtually had no volunteers.

14 You virtually had no volunteers after that time?---That's
15 correct.

16 Can I ask you about another matter. I'm going to show you
17 again, Mr Cripps, your interrogatories and your answers.
18 If I could direct you please to Questions 12 to 15, so if
19 you could open the document which has the questions on
20 it?---Which is?

21 Which is the document headed "Interrogatories of the defendants
22 for the examination of the first plaintiff." Could you
23 go please to Question 12. Do you see it says at Question
24 12, "Are you the registered holder of all the issued
25 shares in the second plaintiff?" Do you see that?---Yes.

26 Question 13, "If yes to Interrogatory 12, are those shares held
27 beneficially by you?" Do you see that?---Yes.

28 14, "Are you the sole director of the second plaintiff?" Do
29 you see that?---Yes.

30 And 15, "Are you the sole secretary of the second plaintiff?"
31 Do you also see that?---Yes.

1 Now if you could look please at your answers to Interrogatories
2 12 through to 15. That should be on p.6, Mr Cripps. Do
3 you have p.6?---Yes.
4 Do you see your answers to Interrogatories 12 through to 15 are
5 all yes?---Yes.
6 I tender those questions and answers, Your Honour. We will
7 arrange for - - -
8 HIS HONOUR: Just include it with the other exhibits as a
9 package.
10 MR GILBERTSON: We will that. Yes, thank you.
11 HIS HONOUR: Any re-examination?
12 MR DIBB: No, Your Honour.
13 HIS HONOUR: Thank you very much, Mr Cripps.
14 <(THE WITNESS WITHDREW)
15 (Witness excused.)
16 MR DIBB: I call Dr Matthew Piscioneri. I don't think I'll try
17 to spell that, Your Honour.
18 <MATTHEW PISCIONERI, affirmed and examined:
19 MR DIBB: Thank you, Doctor. Could you spell your name for the
20 transcript please, Doctor?---Sure. It's
21 P-i-s-c-i-o-n-e-r-i.
22 I would have got it right. Is Matthew with one T or with two?
23 ---Two Ts.
24 Thank you. What's your address, Dr Piscioneri?---Unit 35, 121
25 Rathdowne Street, Carlton.
26 What's your occupation?---I'm a lecturer.
27 What do you lecture?---Professional communication but my PhD is
28 in philosophy.
29 Where do you lecture?---Monash, Monash University.
30 Your PhD, you referred to a PhD?---In philosophy, yes.
31 In philosophy?---But I don't lecture in philosophy.

1 Where did you obtain your PhD?---University of Queensland.

2 Do you know the plaintiff Mr Cripps?---Yes.

3 How long have you known him?---Off and on for about 20, 20
4 years, since the early 1990s.

5 In what circumstances did you first come to know him?---Robert,
6 through - I was working in Sydney in the art transport
7 and packing industry and - - -

8 Stopping you there?---Yes.

9 Who were you working for at that time?---A company called TED,
10 Touring Exhibitions Design.

11 Touring?---Touring. Touring Exhibitions Design.

12 HIS HONOUR: Doctor, can you speak up a bit or place the
13 microphone - - -?---Sure.

14 Because it's not picking you up?---Sorry.

15 MR DIBB: So you were working for Touring Exhibitions Design
16 in Sydney?---Yes.

17 They were in the same line of business as Redleg were they?

18 ---Roughly, yes. I mean, the emphasis was mainly on art
19 packing but we also did some suburban and sometimes some
20 interstate transport movement, yeah.

21 Did you get to meet Mr Cripps personally?---At probably around
22 1994 I think was the first time I came to meet Robert
23 face to face.

24 How did that come about?---At that stage I was working as well
25 as running an art gallery in Sydney and I needed some
26 extra cash and I saw an ad Robert had in, I think
27 Australian Art News or something similar, requiring
28 occasional contractors to work in the field and so we
29 contacted each other and I think I did some work for him
30 at the University of Technology Sydney initially and then
31 after that we started to develop a friendship, an

1 acquaintance.

2 Have you been friends since?---Yes. As I said, over a, you
3 know, period of 20 years but with several years gap at
4 several times. So there were times when I was overseas
5 and lost contact with Robert, and renewed the friendship
6 again in early 2000s when I moved to Melbourne after
7 completing my studies.

8 When you say early 2000s can you be any more specific?

9 ---Probably 2003, 2004, early 2004.

10 Have you been in any way connected with the art transport
11 business in that period?---Well, mainly through Robert,
12 only through Robert in that, in that period.

13 What's your connection been?---In that? Well, I worked for
14 Robert.

15 What period did you work for him?---Again, in a sort of
16 sporadic way probably over 12, 12 to 18 months.

17 When you were working - TED was a competitor of Robert's was
18 it?---Yes, yes.

19 When you were working in the art transport business what was
20 the reputation of Mr Cripps and of Redleg in that
21 business?---This was based in Sydney so Robert was
22 primarily seen as being from Melbourne. Very much the
23 outsider. He was - what can I say - seen as a
24 competitor. I think there was a lot of commercial
25 rivalry and even to some extent personal rivalry between
26 the people who operated the company I worked for and some
27 of our close colleagues in the industry. It was a bit of
28 a closed shop, the Sydney scene.

29 No doubt. How would you respond to the proposition that in his
30 art transportation business Mr Cripps was universally
31 despised?---I don't think that's the case at all. I

1 mean, he sustained a business over that period and is one
2 of the reasons I was interested in working for Robert,
3 because he had been so strongly, well, put down by the
4 people I was working with and I was fascinated at how he
5 could maintain a viable business as well. He was - - -
6 How many companies operate in that area of commerce, art
7 transportation?---Well, back then there were two main -
8 the main players were Woollahra Art Transport. They were
9 a Sydney based transport business. They mainly got all
10 the business out of the Art Gallery of New South Wales.
11 As I said, we mainly did suburban movements but we worked
12 closely with Woollahra and the Art Gallery of New South
13 Wales. We did the packing often and then ultimately
14 Woollahra bought TED, took TED out, took them over. I
15 apologise for not being more certain, this is going back
16 20 years. I think Pat Corrigan from Corrigan had bought
17 Woollahra and then they bought TED. So did that answer
18 your question, sir, I'm not quite sure.

19 It sounds as though you're saying there weren't very many
20 companies involved in that area?---No, no, no, not in
21 that area. Not companies that would do interstate and,
22 you know, have the network of regional galleries as well.
23 So there would have been at the most two. But it was
24 mainly Robert and Woollahra who were the main players.

25 They were the main two?---They were the main two in the
26 transport but in the packing side of things TED tended to
27 be the Number 1 in terms of prestige.

28 Putting aside commercial rivalry, how would you describe the
29 reputation of Redleg in its art transportation business
30 when you were aware of it?---Well, most of my knowledge
31 of Redleg was informed by the hearsay of the directors of

1 TED and Woollahra and as I said, one of the reasons for
2 contacting Robert, I have a certainly entrepreneurial
3 bent as well and I was moving out of the work I was doing
4 and so I was interested in seeing what this fellow was up
5 to because he'd been castigated by the industry and given
6 the egos that operate in that industry I thought that
7 possibly he might have even been doing something right so
8 I was curious.

9 Have you in the period since 2009 been aware of any change in
10 Redleg's reputation?---Not directly I must admit, no. I
11 know through conversations with Robert that he certainly
12 felt that things have not been very conducive to himself
13 and the environment.

14 When you say not directly do you mean only through Robert or
15 somebody else?---Yes, yes, just through conversations.

16 That's the evidence-in-chief, Your Honour.

17 HIS HONOUR: Thank you.

18 <CROSS-EXAMINED BY MR GILBERTSON:

19 MR GILBERTSON: Dr Piscioneri, you said Mr Cripps had been
20 castigated by the industry?---By leading people in the
21 industry, yes.

22 Who were those leading people?---Am I able to mention names?

23 HIS HONOUR: Of course?---The director of both of the main - in
24 fact I think all three people are dead now unfortunately.
25 Edward Parfianowicz who was a director of Touring
26 Exhibition Design. He was my boss at that company. Libo
27 Maroun who is the chief registrar at the Art Gallery of
28 New South Wales and Barry. Sorry, I've forgotten Barry's
29 surname who was the director of Woollahra Art Transport
30 Company and - yes.

31 Mr Maroun, the chief registrar of what did you say in New South

1 Wales?---The art gallery, it's the main art gallery, the
2 government art gallery in New South Wales.

3 What did he say to you about Mr Cripps?---I can't remember
4 exactly but - - -

5 What was the substance of it?---The substance was that Robert
6 was, again, what's the word, someone who caused trouble I
7 guess, the troublemaker.

8 Did Mr Maroun say anything more about his reputation?---Not
9 precisely. Again I'm sorry to say I can't remember back
10 exactly 20 years except that there was a very negative
11 perception of Robert within the industry, within the
12 Sydney, let me emphasise that, and sometimes I thought it
13 may have even derived from a simple Sydney v. Melbourne
14 antagonism.

15 You had no knowledge, did you, at the time of how he was
16 regarded within the Melbourne industry?---No, no, none at
17 all, none at all.

18 Apart from Mr Maroun, I the time that you were associated with
19 the art transportation business did you speak to any
20 other museum registrars about Mr Cripps?---No, I can't
21 say that I can recall that, I'm sorry.

22 Do you know a registrar of Museum Victoria by the name of Ruth
23 Leveson?---No, no.

24 Do you know a former chairman of the Registrars Committee of
25 Australia by the name of Emily Persac?---Emily Persac,
26 no, I can't say I do.

27 Yes, thank you.

28 HIS HONOUR: Any re-examination?

29 MR DIBB: No, Your Honour.

30 HIS HONOUR: Thank you very much for your attendance, Doctor,
31 and for your evidence. You're now excused.

1 <(THE WITNESS WITHDREW)

2 (Witness excused.)

3 MR DIBB: I've been informed by my instructor that one of my
4 witnesses says they can't make it this afternoon now and
5 the other is expected in ten minutes.

6 HIS HONOUR: All right. I'll just leave the bench until the
7 witness arrives. So are there only two witnesses
8 remaining, is that correct?

9 MR DIBB: There are only two witnesses remaining, yes, Your
10 Honour.

11 HIS HONOUR: And the witness who is not able to come this
12 afternoon, are they able to come tomorrow?

13 MR DIBB: I've inquired, yes. My solicitor is waiting for a
14 response.

15 HIS HONOUR: Right.

16 MR DIBB: I think it's being done by SMS as we speak.

17 HIS HONOUR: All right. Perhaps you can give me an updated
18 when I come back.

19 MR DIBB: Thank you, Your Honour.

20 HIS HONOUR: I'll temporarily leave the bench. We'll adjourn
21 temporarily, Madam Associate.

22 (Short adjournment.)

23 MR DIBB: We have not been able to contact the witness. We got
24 a message that he was delayed in Dromana. I don't know
25 where Dromana is to be honest with Your Honour but we
26 hope that we'll be able to get hold of him and see if
27 he's able to appear first thing. He won't be a very long
28 witness at all. It would hardly interfere with tomorrow
29 if he were able to give evidence first thing but I'm not
30 yet in a position to say whether he can.

31 HIS HONOUR: Yes. So this is the witness we were expecting at

1 three, is that right?

2 MR DIBB: No, I have a witness here now.

3 HIS HONOUR: I see.

4 MR DIBB: This is the witness we were expecting at 3.30.

5 HIS HONOUR: I see. So he or she has arrived but the other

6 witness you're still having difficulty with?

7 MR DIBB: Yes, we've been unable to get through to him.

8 HIS HONOUR: All right, that's fine.

9 MR DIBB: I call Steve Sedergreen. That's S-e-d-e-r-g-r-e-e-n.

10 <STEPHEN LAWRENCE SEDERGREEN, affirmed and examined:

11 MR DIBB: What's your full name, sir?---As I said, Stephen


12 Lawrence Sedergreen.

13 Could you spell that for the transcript, please?---S-e-d-e-r-g-

14 r-e-e-n.

15 And Stephen is S-t-e-p-h-e-n?---That's correct, yes.

16 And Lawrence, L-a-w-r-e-n-c-e?---e-n-c-e.

17 What's your address, Mr Sedergreen?---

18 Richmond.

19 What's your occupation, sir?---I am a musician and a music

20 lecturer at Monash University and varying other different

21 schools, music teacher and musician.

22 Music teacher at Monash and what was the name of the school,

23 I'm sorry? Not quite so close to the - - -

24 HIS HONOUR: Just back I think, you're too close?---OK.

25 Blackburn High School I teach at, Victorian College of

26 the Arts Secondary College, a whole lot of numerous

27 places, private business as well.

28 Mr Sedergreen, you're talking a bit too fast I think. Just

29 slow down a bit, thank you.

30 MR DIBB: This wouldn't usually be a relevant question,

31 Mr Sedergreen, but are you of Jewish background?---Yes, I

1 am.
2 Your family is Jewish?---My father is Jewish and my mother's
3 Jewish.
4 Do you know Mr Cripps, the plaintiff?---Yes, I do.
5 How long have you known him?---Since about 2008.
6 How did you come to know him, Mr Sedergreen?---I was invited to
7 his gallery, Guildford Lane Gallery to perform as a
8 pianist, as a solo pianist.
9 Was that at the time of the Nancy Sellars and Stelarc
10 exhibition or was it later?---I think it was later.
11 Have you performed there since?---Guildford Lane, yes. Once I
12 came first and I came the next week and I did workshops
13 every Friday night until the venue stopped. These
14 workshops invited - encouraged people of all ages to come
15 see Robert's place to learn how to perform, how to become
16 a better musician and very inviting sort of energy.
17 HIS HONOUR: Sorry, very inviting?---Inviting sort of energy.
18 MR DIBB: In that role performing and running workshops at the
19 gallery did you come into contact or see Mr Cripps?
20 ---Yes, I did. I dealt with him directly.
21 Did you know of Mr Cripps before you first met him?---I did but
22 probably from - my father's a famous musician as well. I
23 think he knew that I was coming through the ranks as a
24 performer and musician but I haven't met him directly or
25 anything in that time.
26 But you'd heard of him?---Of course I have, yeah.
27 How would you describe his reputation before you met him?---His
28 gallery is a very well known gallery and a great place
29 for supporting artists and musicians.
30 Had you heard that he was a bully?---No.
31 Had you heard that he was a racist?---No.

1 Had you heard that he was anti-Semitic?---No.

2 Had you heard that he sexually harassed his staff?---No.

3 In your experience knowing Mr Cripps do you regard him as a
4 bully?

5 MR GILBERTSON: Objection.

6 HIS HONOUR: I think it's the same objection as last time,
7 Mr Dibb.

8 MR DIBB: Your Honour, it's been pleaded as truth. This isn't
9 just reputation. This is a question of what is the fact.

10 HIS HONOUR: And this witness's opinion is going to assist me?

11 MR DIBB: Whether someone is a bully, a concept like a bully is
12 really it's hard to see how it could be negated by
13 anything except the opinion of people who know him. In
14 the negative sense you might say, well, no convictions
15 for assaults or no suits but bullying isn't necessarily a
16 criminal form of activity or isn't necessarily go to
17 result in criminal convictions. How would one rebut the
18 suggestion that someone was a bully but by saying I saw
19 him and he wasn't a bully?

20 HIS HONOUR: Yes, but who has the onus in relation to this?

21 MR DIBB: The onus is borne by my learned friend.

22 HIS HONOUR: Yes, that's right.

23 MR DIBB: Indeed. I hear what Your Honour says. (To witness)

24 In the period since 2009 and the publication of these
25 articles have you yourself read any of the articles that
26 formed the basis of the defamation proceedings here?---I
27 have seen the articles but I have not read them. It was
28 too far fetched for me to even go there.

29 You haven't read them but you're aware of them?---Of course I
30 am.

31 In the period since the publication of those articles have you

1 heard people discussing Mr Cripps in a way that suggests
2 that they have read those articles?---Yes, I have just
3 recently. Robert has another venue that I'm involved
4 with which is called Ruby's Music Room. I run workshops
5 there on Saturdays from two to four and just last week
6 there was some email to his email lists. We saw
7 documentations and the people I deal with which are young
8 students and also adults we meet at a venue just outside
9 Robert's place each week after we do our workshops and
10 they were discussed about this email that was sent out.

11 Did you become aware of what allegations against Mr Cripps were
12 being discussed?---Not really, just that it was pretty
13 much related to when it was at Guildford Lane the same
14 sort of information. It distressed the people that it
15 was dealing with who knows who Robert is, how he's a
16 generous giving support of the arts, both in music and
17 art and it was quite distressing for them.

18 Have you in the period since the publication of these articles
19 become aware of any reputation or any change to
20 Mr Cripps' reputation with respect to anti-Semitism?

21 ---Personally there is no anti-Semitism from Mr Cripps.

22 MR GILBERTSON: Objection.

23 MR DIBB: I just ask you - - -

24 HIS HONOUR: Yes, that wasn't what you were asked?---Sorry.

25 That's fine. Just listen to the question and answer the
26 question?---Sure.

27 MR DIBB: To say whether you've become aware of any change in
28 his reputation in respect of that aspect of life?---Yes,
29 there has been a change in his reputation.

30 How would you describe that change?---Well, a cloud over his
31 head is something that would worry Robert with all his

1 positive behaviour towards us musicians.

2 HIS HONOUR: I'm sorry, can you just repeat that for me?---I

3 was talking about his positive towards us musicians and
4 artists and that would be hanging over his head as a
5 cloud.

6 MR DIBBS: Have you heard any change in his reputation with
7 respect to sexual harassment?---No, not at this stage.

8 With respect to being a bellicose bully?---No.

9 That's the evidence-in-chief, Your Honour.

10 <CROSS-EXAMINED BY MR GILBERTSON:

11 Mr Sedergreen, have you come across anyone in the visual arts
12 industry who knows Mr Cripps?---Not at this stage.

13 When you said that there's a cloud over Mr Cripps's head, it's
14 fair to say isn't it that what you've heard of the change
15 in his reputation is nothing further than that?---Can you
16 ask that question again?

17 Yes. When you said that, in relation to a change in
18 Mr Cripps's reputation, that there's a cloud over his
19 head, it's fair to say isn't it that you haven't heard
20 anything that's further than that in respect of the
21 effect on his reputation?---His reputation has been
22 affected by those allegations.

23 Yes, and in that manner that there's now a cloud over his head,
24 is that what you say?---Correctamundo.

25 Yes, thank you.

26 HIS HONOUR: Any re-examination?

27 MR DIBB: No, Your Honour.

28 HIS HONOUR: Mr Sedergreen, thank you very much for your
29 attendance and your evidence?---Thank you.

30 That concludes it; you're free to go. You can remain in court
31 if you choose.

1 <(THE WITNESS WITHDREW)

2 (Witness excused.)

3 MR DIBB: WE haven't yet had a response from our last witness.

4 No, we haven't' yet had a reply, Your Honour.

5 HIS HONOUR: What do you propose, Mr Dibb?

6 MR DIBB: Could I ask Your Honour to adjourn to 10.30 and if
7 the witness is available he will be very brief and we can
8 move to addresses and, if not, we can move straight to
9 addresses then. We will comfortably finish tomorrow
10 clearly.

11 HIS HONOUR: I've got the courtroom booked for tomorrow and
12 Wednesday. I'm a pessimist, Mr Dibb. Do you agree with
13 that course, Mr Gilbertson?

14 MR GILBERTSON: I don't know who the witness is so we'll have
15 to see in the morning.

16 HIS HONOUR: All right. In the morning I will pronounce the
17 order that I gave to the parties in draft and also will
18 publish my ruling at that point. Madam Associate, can we
19 please adjourn until 10.30 tomorrow.

20 ADJOURNED UNTIL TUESDAY 25 MARCH 2014

21 **CRIPPS & ANOR v VAKRAS & ANOR**

22

23 **EXHIBIT LIST**

24

25 **Defendants' exhibits**

26

No.	Date tendered	Approx. time	Description
D1	18/03/14	10:45	Aide memoire headed 'Exhibition Expenditure Demetrios Vakras and Lee-Anne Raymond'
D2		3:23	Two photocopied pages each containing a photograph of a document headed 'Disclaimer'
D3	19/03/14	10:37	Three photographs
D4		10:40	Two photographs
D5		12:41	Photograph of one of the paintings with three documents to the right of the painting
D6	24/3/14	10:30	Exhibition Proposal dated 21.9.2008

No.	Date tendered	Approx. time	Description
D7	24/3/14	10:30	Email Stacy Jewell to Lee-Anne Raymond 29.10.2008 1:03:18PM
D8	24/3/14	10:30	Letter to Lee-Anne Raymon(sic) dated 29.10.2008
D9	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 11.12.2008 3:11PM and reply of 12.12.2008 3:59:26PM
D10	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 29.12.2008 at 3:56PM Email Yolande Pickett to Lee-Anne Raymond 2.1.2009 12:55:33PM
D11	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 21.1.2009 12:33PM
D12	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 24.1.2009 8:44:04AM Email Yolande Pickett to Lee-Anne Raymond 10.2.2009 12:14:18PM
D13	24/3/14	10:30	Exhibition Agreement
D14	24/3/14	10:30	Email Robert Cripps to Lee-Anne Raymond 17.3.2009 10:27:17AM
D15	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 14.3.2009 12:55pm and reply of 17.3.2009 3:48PM
D16	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 1.5.2009 2:13:31PM
D17	24/3/14	10:30	Computer Screen print re event posting "that's melbourne"
D18	24/3/14	10:30	Email Yolande Pickett to Lee-Anne Raymond 4.5.2009 2:54:49PM
D19	24/3/14	10:30	Email Robert Cripps to Lee-Anne Raymond 5.5.2009 2:51:06PM Email Robert Cripps to Lee-Anne Raymond 5.5.2009 2:56:16PM
D20	24/3/14	10:30	Commonwealth Bank transfer money receipt 8.5.2009 for \$500
D21	24/3/14	10:30	Signed Exhibition Agreement
D22	24/3/14	10:30	Email Sarah, Guilford Lane Gallery to Lee-Anne Raymond 29.5.2009 5:35:15PM
D23	24/3/14	10:30	Various emails between Lee-Anne Raymond and Yolande Pickett, Lian Low, Melanie Trojkovic or Robert Cripps and between Demetrios Vakras and Robert Cripps from 30.5.2009 8:48 and 3.6.2009 7:23:49PM – regarding the failed 1 June 2009 meeting
D24	24/3/14	10:30	Email Lee-Anne Raymond to Lian Low 3.6.2009 8:51:10PM
D25	24/3/14	10:30	Email Demetrios Vakras to Lian Low 5.6.2009 6:35PM and reply
D26	24/3/14	10:30	Email Melaine Trojkovic to Lee-Anne Raymond 1.6.2009 2:04PM Email Lee-Anne Raymond to Melaine Trojkovic 8.6.2009 19:23:36 and reply email from Melaine Trojkovic to Lee-Anne Raymond 10.6.2009 12:56
D27	24/3/14	10:30	Emails between Lee-Anne Raymond and Lian Low from 11.6.2009 11:23AM to 12.6.09 11:13:57AM re installation timing and catalogue
D28	24/3/14	10:30	Catalogue – humanist transhumanist
D29	24/3/14	10:30	Various emails between Lee-Anne Raymond and Robert Cripps, and between Demetrios Vakras and Robert Cripps from 25.6.2009 7:14pm to 26.6.2009 6:30:19PM after 24 June 2009 Gallery meeting
D30	24/3/14	10:30	Emails between Robert Cripps and Lee-Anne Raymond from 3.7.2009 7:05PM to 3.7.2009 8:27:45PM re de-installation

No.	Date tendered	Approx. time	Description
D31	24/3/14	10:30	Various emails between Lee-Anne Raymond and Yolande Pickett or Robert Cripps from 7.7.2009 2:39PM to 11.8.2009 7:23:05PM – re acquittal of business
D32	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 21.7.2009 10:06:49AM
D33	24/3/14	10:30	Email Lee-Anne Raymond to Yolande Pickett 28.7.2009 9:53:14AM
D34	24/3/14	10:30	Email Demetrios Vakras to Robert Cripps and Yolande Pickett cc Lee-Anne Raymond 4.8.2009 7:37:14PM
D35	24/3/14	10:30	Guilford Lane Gallery Tax Invoice dated 17.3.2009 for \$1980
D36	24/3/14	10:30	Art Materials – tax invoices/receipts x 17 – Total \$2384.26
D37	24/3/14	10:30	Promotional tax invoices x 2 – Total \$407
D38	24/3/14	10:30	Printing of Catalogue receipt - \$3740
D39	24/3/14	10:30	Other printing - tax invoice/receipts x 5 – Total \$1054.53
D40	24/3/14	10:30	Art Works Framing - tax invoices/receipts x 2 – Total \$1350
D41	24/3/14	10:30	Transportation - tax invoices/receipts x 2 – Total \$251.19
D42	24/3/14	10:30	Miscellaneous expenses – tax invoices/receipts x 12 – Total \$301.82
D43	24/3/14	10:30	Price List - Humanist Transhumanist an Umbrella and Two Surrealists

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1 (RULING FOLLOWS)

2

(Unrevised)

(Kyrou J)

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3 R U L I N G

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10

1 MR GILBERTSON: If Your Honour pleases.

2 HIS HONOUR: My associate just informed me that the reasons
3 will be distributed shortly. Madam Associate, do you
4 have the order to give to the parties? How did you go
5 with your witness, Mr Dibb?

6 MR DIBB: I'm afraid I can't get the witness until this
7 afternoon and I don't propose to ask Your Honour to delay
8 for that long.

9 HIS HONOUR: All right. That's a matter for you, thank you.

10 MR GILBERTSON: Can I just raise one preliminary matter, Your
11 Honour?

12 HIS HONOUR: Yes.

13 MR GILBERTSON: We have prepared questions and answers to the
14 interrogatories on which we rely. I hand up a copy of
15 those documents.

16 HIS HONOUR: Thank you. Have you checked that, Mr Dibb? Is
17 that in accordance - - -

18 MR DIBB: I haven't checked it yet, Your Honour (indistinct).

19 HIS HONOUR: All right. There shouldn't be a difficulty. This
20 will become D45.

21
22 #EXHIBIT D45 - Interrogatories of the defendants for the
23 examination of the 1st plaintiff and
24 answers to those interrogatories.

25 MR GILBERTSON: If Your Honour pleases.

26 HIS HONOUR: Mr Dibb, upon reviewing them, if there is any
27 difficulty let me know but I wouldn't expect that there
28 would be any.

29 MR DIBB: Thank you, Your Honour. Could I ask first of all; I
30 prepared a document headed Further Particulars of
31 Aggravation which I will seek leave of Your Honour to add
32 to the further amended statement of claim. Paragraph 30
33 will become Paragraph 30(e). Your Honour indicated you

1 intend to proceed in a formal way in respect of this sort
2 of issue.

3 HIS HONOUR: Yes.

4 MR DIBB: I think it's common ground that all the conduct of
5 the defendants up to the time of judgment is examinable
6 in respect of aggravation. I seek by this material to -
7 by this amendment to add the particulars Your Honour sees
8 relying on the recent publications of the annexures,
9 particularly the annexures to the redleg-v-artists.com.au
10 website which it was admitted by the defendants to be run
11 by them jointly and to the, what we might almost describe
12 as stalking that becomes apparent when that material is
13 read.

14 Your Honour saw references to large scale data
15 mining and 180 folders in the desktop of the defendants,
16 and it's submitted my client can rely on those things as
17 increasing his hurt and concern and outrage of the
18 conduct of the defendants in these proceedings. So I ask
19 Your Honour's leave to amend the statement of claim to
20 incorporate those further particulars.

21 HIS HONOUR: Anything in relation to that?

22 MR GILBERTSON: I object to (f), Your Honour. I object to the
23 reference to constant electronic surveillance. Just
24 looking at that it looks like they're being watched like
25 a private detective would watch them. I think it's just
26 an infelicitous choice of words. That there had been
27 looking or searching for material in relation to
28 Mr Cripps is evident from those publications but it's not
29 constant electronic surveillance.

30 HIS HONOUR: Isn't that a matter for me to decide?

31 MR GILBERTSON: As Your Honour pleases.

1 HIS HONOUR: Yes, I'll allow the addition of Paragraphs (e) and
2 (f) to the particulars to Paragraph 30 of the current
3 statement of claim.

4 MR DIBB: Thank you, Your Honour.

5 HIS HONOUR: I think you should file a further amended
6 statement of claim incorporating those paragraphs and
7 serve that. I take a view that all matters that I decide
8 are liable to be taken to the court of appeal, but I'm
9 not saying that specifically in relation to this matter.
10 What I endeavour to do by having clean copies of exhibits
11 and the like is to ensure that any matter that does go to
12 the Court of Appeal can be presented without any
13 ambiguity about what was before me.

14 So in order for the pleadings to be up to date I
15 would ask your instructor, not necessarily today, it can
16 be done in the next few days or so, to file an amended
17 statement of claim incorporating those paragraphs and
18 also for it to accept all the previous amendments so that
19 the only mark up that is shown by way of amendment are
20 the additions of these two paragraphs to Paragraph 30.
21 Does that make sense?

22 MR DIBB: I understand, Your Honour. So that it's evident that
23 the only change is the addition of these paragraphs. I'm
24 sure my learned - - -

25 HIS HONOUR: The current statement of claim is the one that is
26 dated 22 May 2012 that was made pursuant to Order 36.03.

27 MR DIBB: Yes, Your Honour.

28 HIS HONOUR: That itself is marked up to show various changes,
29 which are sometimes difficult to read, particularly if
30 it's not in colour. That problem will be alleviated by
31 all current mark ups being accepted so that they form

1 part of the said text, and then the only mark ups will be
2 these new ones. Thank you.

3 MR DIBB: My solicitor will attend to that, Your Honour. The
4 second thing I'd come to is the plaintiffs' court book
5 tender list. I'll hand a copy of the proposed tender
6 list to my learned friend, copies to my learned friend
7 and Your Honour. My instructor has a tender bundle of
8 clean copies including, as I'm instructed, a reduced copy
9 of the internet material that Your Honour commented was
10 missing some characters at the end of each line.

11 HIS HONOUR: Yes, thank you.

12 MR DIBB: So that the whole of the text is visible.

13 HIS HONOUR: Yes. Mr Gilbertson, have you had a chance to
14 absorb that or do you want to - let me know if you have
15 any difficulties later.

16 MR GILBERTSON: Yes, I'd like a moment to peruse it, Your
17 Honour.

18 HIS HONOUR: Thank you. My associate is just giving out the
19 ruling. Mr Dibb, can your instructor please send a Word
20 version of this document to my associates so that I can
21 adopt - - -

22 MR DIBB: I see him nodding, Your Honour.

23 HIS HONOUR: Yes. I can adopt the same process as for the
24 defendants' list of exhibits.

25 MR DIBB: Yes, Your Honour. If Your Honour pleases, I'll now
26 commence my submissions. That's the case for the
27 plaintiffs in the defamation claim and the defendants in
28 the contract claim. If Your Honour pleases, I'll now
29 commence my submissions with respect to each of those
30 proceedings. I'll deal first, Your Honour, with the
31 contract claim because it's simpler and move on to the

1 tougher meat.

2 The statement of claim in respect of these
3 proceedings relies essentially on a couple of areas as
4 constituting a breach of an alleged agreement with the
5 defendants in these proceedings. They essentially relate
6 to the catalogue, the open studio and, well, I'll take
7 Your Honour to the pleadings themselves. The amended
8 statement of claim dated 24 August 2012.

9 HIS HONOUR: Just one second. It's 3 September 2013.

10 MR DIBB: Perhaps I'll ask my associate.

11 HIS HONOUR: I think the only changes were a recalibration of
12 some of the amounts.

13 MR DIBB: That's right, Your Honour, I recall.

14 HIS HONOUR: Paragraph 9.

15 MR DIBB: I actually just made the change by hand on my copy to
16 the amount for art materials to \$2384.26. That was the
17 only change.

18 HIS HONOUR: That's right.

19 MR DIBB: Yes, Your Honour. There were alleged terms that the
20 1st defendant, in Paragraph 3, that the 1st defendant
21 agreed to provide to the plaintiffs the use of the first
22 floor for the hire period. That's common ground. The
23 plaintiffs agreed to pay to the 1st defendant the total
24 hire fee of \$3960. That's common ground a well. The
25 plaintiffs agreed to pay a surety of \$500 to be
26 refundable at the end of the hire period, et cetera, also
27 common ground.

28 The 1st defendant agreed to ensure that the
29 plaintiffs have access to the gallery from 8 a.m. to
30 10 p.m. every day of the week during the hire period.
31 That's admitted and common ground. Agreed to provide the

1 use of the area known as the open studio during this
2 period. That's also common ground. The 1st defendant
3 agreed to sell or make available for sale a catalogue of
4 the plaintiffs' artwork at the gallery during the period,
5 and that's denied, Your Honour.

6 The remaining two particulars of the agreement are
7 also admitted. If I turn to the allegations of breach,
8 it's agreed, Paragraph 4, that the hire fee and surety
9 was paid. The allegations of breach are found in
10 Paragraphs 5, 6, 7 and 8. The first is that the
11 1st defendant refused to ensure the plaintiff had access
12 to the gallery from 8 a.m. to 10 p.m. every day of the
13 week during the balance of the hire period.

14 The particular pleaded in support of that is the
15 email dated 26 June 2009. Your Honour has seen that
16 email on a few occasions.

17 HIS HONOUR: Yes.

18 MR DIBB: It's the email in which Mr Cripps asks in what Your
19 Honour might consider fairly mild terms and conciliatory
20 terms that the plaintiffs contact him when they plan to
21 be - and inform him when they plan to be at the gallery.
22 He was always there, he wanted to be there to deal with
23 them personally for reasons that Your Honour has heard.
24 In Paragraph 6 it's alleged that the gallery didn't
25 provide the use of the area of the gallery known as the
26 open studio during the hire period.

27 As I understand the evidence we haven't really heard
28 anything in particular about the open studio. I would
29 submit that there's no separate evidence about any
30 failure to provide that area. I don't know if I have
31 missed something in the evidence but it seems to me that

1 the evidence is that insofar as the plaintiffs had use of
2 the first floor of the gallery they had use of the whole
3 of the first floor.

4 HIS HONOUR: I don't recall anyone saying that there was any
5 prevention of use of that area.

6 MR DIBB: No, Your Honour.

7 HIS HONOUR: But Mr Gilbertson no doubt will point out any such
8 evidence if it exists.

9 MR DIBB: Paragraph 7 is, "That wrongfully and in breach of the
10 term referred to in Paragraph 3(f) above, the first
11 ...(reads)... during the hire period", and that of course
12 as Your Honour knows, is in contention. Then in
13 Paragraph 8 there are some allegations particularised.
14 It's submitted that none of those allegations constitute
15 a breach of the agreement, Your Honour, and if they do,
16 if any one of them does on Your Honour's view and Your
17 Honour finds that it's established, they would be
18 relatively minor breaches and would sound in relatively
19 minor amounts of damages, but I'll deal with the evidence
20 and come back to that.

21 I take Your Honour to the evidence given by
22 Ms Raymond. I'm referring here to p.61 of the
23 transcript.

24 HIS HONOUR: Just one second, let me get the transcript.

25 MR DIBB: And thereafter, and I'm dealing here with the issue
26 of the catalogue, Your Honour.

27 HIS HONOUR: Yes.

28 MR DIBB: It will be my submission that there was in fact no
29 clear agreement as to the sale of the catalogue and that
30 the evidence would suggest to Your Honour that at some
31 stage the plaintiffs in these proceedings may have come

1 to the belief that their catalogue was going to be sold
2 by the gallery or they may not. But there was actually
3 no agreement and no promise made that their catalogue
4 would be sold by the gallery on their behalf and there
5 are reasons for thinking that there was no such promise
6 made, but we'll come to that.

7 Your Honour will see that there was discussion of
8 the catalogue and what it would be like according to
9 Ms Raymond's evidence and that's pretty much not in
10 dispute. The substantial suggestion that might be relied
11 on by the plaintiff's I suppose comes in Ms Raymond's
12 evidence at p.63 at Lines 21 and 22 where she said, "Then
13 Ms Pickett said we should get them in", and I think this
14 is referring to Carnivora, and print ups. Your Honour
15 will see print ups of the pages in Carnivora in which Mr
16 Vakras's work appears.

17 "We should get them in and support them alongside
18 your catalogue downstairs". There is then discussion of
19 Carnivora and whether a copy of Carnivora can be obtained
20 from the publisher and there's no evidence about whether
21 it was or it wasn't, but it's not to do with the
22 catalogue and that's not in my submission sufficient for
23 Your Honour to find that there was any agreement between
24 the parties that a catalogue would be sold.

25 HIS HONOUR: If there were an agreement for the catalogue to be
26 sold by the gallery and there were a breach to that
27 agreement the damages would be the loss of opportunity to
28 obtain proceeds of sale, not the printing of the
29 catalogue which is what is actually claimed.

30 MR DIBB: Your Honour, that's what he's claimed. I'm content
31 with that claim rather than the proceeds of sale on the

1 basis that Mr Vakras you will recall estimated that he
2 might have sold 200 copies. That sounds a wildly
3 exaggerated number to me, Your Honour, but that would
4 represent almost all of the costs of the printing,
5 whereas what's claimed is the cost of the printing of
6 \$3400 and his claim therefore would only be for 10 per
7 cent of that. So that's the way the case is pleaded
8 against, Your Honour.

9 HIS HONOUR: Yes, but that's not in accordance with proper
10 contractual principles, is it? If I agree to sell your
11 catalogue and contrary to that agreement I don't, my loss
12 would be the opportunity to sell the catalogue and what I
13 would have earned from the sale of the catalogue, not the
14 printing costs, isn't that right?

15 MR DIBB: If Your Honour wished to frame Your Honour's case in
16 those terms, yes, but the plaintiffs in this case have
17 elected to claim instead the printing cost and as on
18 their own evidence, only a small proportion of that cost
19 is referable on any view to a failure to sell the
20 catalogue if there was such an agreement, then that's
21 their claim, Your Honour.

22 HIS HONOUR: All right.

23 MR DIBB: On p.65 at Lines 3 to 5 Ms Raymond gives evidence
24 that she could help sell the catalogue out of that area,
25 that is, the open studio area - sorry, Demetrios it said
26 that he could help sell the catalogue out of that area,
27 the open studio area. Your Honour might think that was
28 some indication albeit a very slight one, that the
29 plaintiffs always knew it was their job to sell the
30 catalogue.

31 At p.79 at Lines 4 to 8 - no, I'm sorry, I think I

1 may have misled myself about the reference. It's
2 actually p.58. For some reason there are gremlins in my
3 computer that have, as Your Honour knows, caused the
4 transcript to start renumbering after about three days or
5 in the middle of the third day and I'm struggling to stay
6 up with the references as they occur in everyone else's
7 copies.

8 On p.78 Ms Raymond says at Lines 28 and over to the
9 following page, "I rang Demetrios and I said they're not
10 going to support the ...(reads)... confirming that to
11 Ms Low". This is after they've been told that by I think
12 Stacy Jewell that the gallery would not sell the
13 catalogue. At p.83 - sorry, no, p.83 is where Stacy
14 Jewell says, "You can't sell your catalogue or store your
15 catalogue on site because we've had issues with others".
16 But nowhere really in that material in my submission does
17 there emerge any clear agreement that beyond a vague
18 suggestion perhaps in early pre-contractual discussions
19 that the catalogue will be sold by the gallery and Your
20 Honour would not conclude that there'd been any
21 commitment made in those terms or any consensus ad idem
22 that that would be what would happen.

23 HIS HONOUR: When do you say that this contract was formed, is
24 it the date of the last signature being the signature of
25 the gallery?

26 MR DIBB: Yes, indeed, Your Honour. There is a formal
27 agreement. The agreement is expressed to be the whole of
28 the agreement between the parties and that agreement I
29 think is at Tab 2 in the defendants' court book.

30 HIS HONOUR: What I'm getting at is that the agreement was on
31 signed on different dates by the defendants and the

1 2nd plaintiff.

2 MR DIBB: Yes.

3 HIS HONOUR: What is pre-contractual, is it anything that was
4 said before the final signature or is it everything that
5 was said before the first signature, or doesn't it matter
6 in this case?

7 MR DIBB: I don't think it matters in this case, Your Honour,
8 no. My inclination would be to say that it was
9 everything that was said before the first signature. But
10 it might depend on the nature of what was said if between
11 the first signature and the second signature there were
12 some clarification sought by the person who hadn't yet
13 signed, then that might indeed be a pre contractual
14 discussion.

15 HIS HONOUR: One literal view of it would be that there was a
16 pro forma sent out which might be an offer, if you sign
17 this, that's the contract. That was actually amended and
18 sent back, which might be a counter offer, and then
19 ultimately when that was signed or some act done to
20 evince acceptance of it before signing that then is the
21 acceptance of the offer which constitutes the contract.

22 MR DIBB: Yes, Your Honour.

23 HIS HONOUR: So there are three points along that spectrum. It
24 may make no difference at all in that all the contentious
25 conversations took place before those steps.

26 MR DIBB: In January.

27 HIS HONOUR: In which case it won't matter. But I think that
28 would be sort the analysis that one might adopt.

29 MR DIBB: Excuse me, Your Honour. Too much material.

30 HIS HONOUR: Take your time, Mr Dibb.

31 MR DIBB: Thank you, Your Honour. At p.173 of the transcript

1 Mr Vakras gives - sorry, 174.

2 HIS HONOUR: Just one second.

3 MR DIBB: At 25 to 27.

4 HIS HONOUR: 173?

5 MR DIBB: 174, Your Honour, at 25 to 27.

6 HIS HONOUR: Yes.

7 MR DIBB: That really is the highpoint that. It's rather
8 firmer than the evidence given by Ms Raymond. As Your
9 Honour sees, it attributes to Yolande Pickett an actual
10 direct quote, "OK, you can do your own catalogue but
11 we'll bring this one in", speaking of Carnivora, "And we
12 can sell them both in tandem". That really is the high
13 point of the evidence with respect to any agreement to
14 sell the catalogue and Your Honour might think that a
15 remark like that made at that stage of the discussion
16 between the parties before any formal agreement had been
17 entered into was insufficient to found the allegation
18 that there was an agreement to sell the catalogue,
19 particularly given that the agreement itself purports to
20 be the full, the entirety of the agreement between the
21 parties.

22 With respect to the open studio as we've discussed,
23 there doesn't seem to be any separate evidence offered
24 that the open studio was not made available. The breach
25 that's pleaded, the principal breach that's pleaded in
26 relation to this claim in my submission is that they were
27 excluded by virtue of the email that we referred to
28 earlier that's pleaded at Paragraph 5. Your Honour has
29 seen the terms of that email. In my submission it does
30 not exclude the plaintiffs at all. It asks them quite
31 politely to take certain steps because of the concerns of

1 the gallery about the dealings between the plaintiffs and
2 the volunteers who are all young, inexperienced people,
3 as Your Honour would infer.

4 They tend to be students. Your Honour saw one of
5 them give evidence. They're not business people.
6 They're not managers of the business in any sense and
7 with a difficult client or difficult clients such as
8 Mr Vakras and Ms Raymond, it was reasonable of Mr Cripps
9 to ask them to allow him to be on the premises,
10 particularly given his evidence. I don't think the
11 evidence is really disputed that he was there all the
12 time. He lived there, he ate there, he worked there 18
13 hours a day and he could always organise his time to
14 accommodate their presence if they wished to.

15 There is in the pleading of the contract claim no
16 allegation that they were completely excluded. The
17 evidence has suggested that - or the evidence of the
18 plaintiffs in these proceedings has suggested that they
19 were banned as of the opening night because Mr Cripps
20 didn't want their racism in his gallery. I take Your
21 Honour to a matter that I hadn't really appreciated the
22 significance of until my learned friend took my client to
23 it in cross-examination.

24 Your Honour will recall yesterday in cross-
25 examination and I'm dealing here with I think p.463 and
26 the back of p.462, where my learned friend - does Your
27 Honour have that page?

28 HIS HONOUR: Yes, I do.

29 MR DIBB: Where my learned friend towards the bottom takes
30 Mr Cripps to the email of 26 June, reads it to him and
31 says, "May I suggest to you, Mr Cripps, is that when you

1 ... (reads)... what do you say about that?" Mr Cripps
2 very fairly said, "Well, it could be right it's a while
3 ago", and my learned friend to him, "You told them on the
4 opening night, didn't you, ... (reads)... didn't want them
5 in the gallery". Mr Cripps rejected that suggestion and
6 in re-examination said that he thought there may have
7 been some other communication.

8 I take Your Honour to the evidence of the plaintiffs
9 on this point, if I can find it. Ms Raymond at
10 Transcript 97 - no, I'm sorry, Ms Raymond at Transcript
11 96, on Lines 11 to 26 is giving evidence of the meeting
12 of 24 June and Your Honour will see that at Lines 14 to
13 16 Ms Raymond gives evidence that, "Mr Cripps said, 'You
14 and you, I want to talk to you ... (reads)... told you to
15 call me'". So Ms Raymond also gives evidence and again
16 at Line 20, "He said, 'I told you to call me'".

17 Mr Vakras, my transcript reference is 203 and I'll
18 just have to check that that's correct on the printed
19 version I have. Mr Vakras at transcript p.203, Lines 15
20 to 16 also gave evidence. "He's running, he's really
21 agitated ... (reads)... to call me'". So it appears to be
22 the evidence of all concerned and it was only the three
23 of them present, that that conversation did it indeed
24 open with the words, "I told you to call me", and that,
25 as my learned friend correctly pointed out, is two days
26 before the email asking that the defendants - that
27 Mr Cripps and Ms Raymond call before they attend.

28 The significance of that, I suggest to Your Honour,
29 is that he doesn't say you, you're barred, he doesn't say
30 I told you not to come here, he doesn't say I told you,
31 you and your racist art are not welcome in my gallery.

1 He doesn't say any of those things. He says, "I told you
2 to call me." Your Honour will infer from that - and
3 that's the evidence of all three parties - that he did
4 not bar the artists from the gallery on the opening
5 night.

6 If he had Your Honour might expect someone to have
7 given evidence that he made reference to that prohibition
8 when next they met. It appears to be common ground that
9 what he actually said was, "I told you to call me."
10 There's a sharp difference between the evidence given
11 about these conversations between the parties and it's
12 not very easy in a he says, she says, they said situation
13 like this to infer what the actual underlying facts might
14 be, but I suggest to you that this is quite a crucial
15 thing, and if there had been any actual barring that it
16 might have been referred to at that time by Mr Cripps and
17 would certainly have been referred to by the artists in
18 their evidence about that conversation.

19 Your Honour will be struck also by the fact that the
20 documentary evidence is quite at odds with what's alleged
21 to have been at the time of the verbal communications.
22 Mr Cripps is said always to have been angry and
23 aggressive but, in fact, the emails are really quite
24 reasonable. The angry, aggressive, quite improper emails
25 on one view come from Mr Vakras, who makes bold
26 assertions of being bona fide morons and liars and you
27 weren't there, and generally appears to jump quite
28 angrily to very, well, reasonably rude assumptions about
29 the conduct of everyone else on very little basis.

30 So Your Honour might be struck by that contrast,
31 that Mr Cripps is always said to be shouting and waving

1 his finger, when in fact on the evidence of the email
2 exchanges he is quite conciliatory and quite reasonable.
3 It's Mr Vakras who is not. Paragraph 8 of the statement
4 of claim, amended statement of claim, as I said before,
5 makes certain allegations. One is about the missed
6 meeting and whether Mr Cripps orally berated the
7 2nd plaintiff without justification.

8 In my submission that wouldn't amount to a breach of
9 the contract. It might be a breach of good manners if
10 Your Honour finds that it happened. It might be fairly
11 reasonable in response to the tone of the communications
12 from the artists themselves. But it's not, in my
13 submission, a breach of the contract.

14 The second of the particulars in Paragraph 8 is a
15 hotly contested matter. It's alleged that Mr Cripps said
16 that the plaintiffs' exhibition was racist and
17 insensitive. He says he didn't say that. It might be
18 wondered however if he had said, "I think your exhibition
19 is racist and insensitive," would that be a breach of the
20 contract? Would that be in some way a going back on the
21 promise to make the space available for the exhibition?
22 It clearly was available for the exhibition. The work
23 and indeed the essays and, according to Mr Cripps, the
24 labels attached to those paintings all stayed on display,
25 albeit alongside some disclaimers from the gallery
26 itself.

27 In my submission that wouldn't be a breach of the
28 contract. It might be a difference of artistic opinion
29 at most.

30 HIS HONOUR: Yes, but if it were said to visitors at the
31 gallery that would discourage some of them potentially

1 not to buy the artwork, that might be a breach. But if
2 it's a private conversation between the three individuals
3 that might not be.

4 MR DIBB: In my submission the exhibition agreement, which I
5 think is at Tab 16 but the legible version is at Tab 8,
6 the exhibition agreement makes it clear that the gallery
7 is not the agent or the marketing agent for the artists.

8 HIS HONOUR: I understand that, but that means that it doesn't
9 impose any positive obligations to market or to assist.

10 MR DIBB: Indeed.

11 HIS HONOUR: But can it not be implied in the agreement, and
12 I'm not saying that it's pleaded, but what is the whole
13 purpose of exhibiting the artwork? It's to provide
14 opportunities for people to look at them and buy them.
15 If there's an active campaign by the gallery owner to
16 undermine the artwork so as to discourage people from
17 buying it would that not be a breach of the underlying
18 purpose of the agreement?

19 MR DIBB: If there were an active campaign. If there were an
20 active campaign by which the gallery sought to dissuade
21 people from buying the artwork then that might well be a
22 breach of an implied term of the agreement.

23 HIS HONOUR: In that case it really depends on how far along
24 that spectrum one has to go before you get to that point.

25 MR DIBB: Yes, but Your Honour would have to go quite a long
26 way before it would pass from the quite reasonable
27 difference of opinion about a matter of artistic
28 expression to an active campaign to dissuade people.
29 There's no evidence, in my submission, that Mr Cripps was
30 trying to talk people out of buying these pictures.

31 HIS HONOUR: Yes. I was just responding to your comment that

1 to call someone else's artwork as racist is a difference
2 of opinion. It might be if it's a private conversation,
3 but if it's done in a very public way then it does raise
4 the other issue of - and I'm not saying one way or the
5 other, I'm just causing you to reflect on whether your
6 statement perhaps is too widely put.

7 MR DIBB: There were two occasions on which it's alleged he
8 said something along these lines. The first was the
9 opening night and the second was the 18th. On the 18th
10 only himself and the defendants, the artists were
11 present. It's suggested that Yolande Pickett may have
12 joined them towards the end. That's not the public. The
13 opening night the conversation's alleged to have taken
14 place at the end of the night.

15 It's not inconceivable that there might have been
16 someone there still thinking about buying one of the
17 works, depending on what Your Honour finds about the
18 location of the conversation, about whether there was one
19 person present or 30 or so, one person upstairs or 30 or
20 so downstairs. In my submission if Your Honour's been to
21 openings, the purchases tend to be made, they tend to be
22 made - it's not impossible that someone could still be
23 thinking, standing downstairs, not upstairs, but still
24 thinking about whether they might want to buy an artwork
25 from upstairs and that they might be deterred by the fact
26 that someone expressed a critical opinion.

27 I suppose it's possible, Your Honour. I'd submit
28 that if it sounded in damages it sounded very little.
29 The evidence in this case is that the - with great
30 respect to them, and I don't say it says anything about
31 their art or the quality of it, but their record of sales

1 was extremely limited. Mr Vakras himself described his
2 pretty bare cupboard when it came to sales. I think the
3 most sales ever made by either of them was three at one
4 exhibition.

5 So it's not as though this was the sort of thing
6 that was expected by anyone to sell in quantity, in my
7 submission, just going by the history of these things.
8 The artists themselves knew that it was controversial and
9 confronting work and it would be - Your Honour wouldn't,
10 in my submission, conclude on the balance of
11 probabilities that there was actually anyone planning to
12 buy a work present at the end of the opening night,
13 hadn't yet bought that work and was then dissuaded.

14 Your Honour would, on the balance of probabilities,
15 conclude that that probably didn't happen. With respect
16 to the third particulars, the lovely bottom comment,
17 well, I'd submit that that's not a breach of the
18 contract. On what term would that be a breach? That you
19 can't make flirtatious comments to people that come into
20 the gallery? It's the sort of thing that might
21 reasonably be said by someone who wished just to make
22 conversation.

23 HIS HONOUR: Not usually, Mr Dibb.

24 MR DIBB: I'm sorry, Your Honour?

25 HIS HONOUR: Not usually. It's not the - - -

26 MR DIBB: I'd have to examine my conscience but I may have said
27 things along those lines. The statute of limitations has
28 long expired on my offences of course, but I don't know
29 that I claim never to have said anything the least sexual
30 to a woman.

31 HIS HONOUR: It's a different age we live and work in now,

1 Mr Dibb. One needs to be very careful about comments
2 that may have been acceptable 20 years ago, 30 years ago.
3 It doesn't detract from your argument that it may not be
4 a breach but it's not a commonplace occurrence these days
5 for strangers to say to someone else, "Is that your
6 lovely bottom?"

7 MR DIBB: No, Your Honour. Perhaps he thought she was the
8 model, I don't know, Your Honour. He didn't give that
9 evidence. I withdraw that. It would be significant
10 also, in my submission, whatever one thought, say it was
11 interpreted as being a sexual overtone or a flirtatious
12 remark, it would be significant also that it's only the
13 one. It's not a repetition of an obviously unwelcome
14 approach, it's only the one.

15 Even in the modern world, as Benedict says, the
16 world must be peopled, people have to make approaches to
17 one another sexually, Your Honour, as a matter of
18 practical reality of life. And if it's only the one and
19 is not repeated then whether it's welcome or not, in my
20 submission, that would not be in any way a breach of this
21 contract.

22 The fourth is the disclaimers. A disclaimer in
23 those terms, Your Honour, stating no more than that the
24 views expressed are the opinions of the artist and not
25 representative of the gallery is just a statement of the
26 underlying fact. The gallery would not be expected to
27 censor it's exhibitions and to display only those artists
28 with whom it agreed and it must be entitled to say at
29 times this is confronting work, it's their opinion, it
30 doesn't represent our opinion.

31 It might well be that some sorts of artists might

1 have a great deal of trouble obtaining anywhere to
2 exhibit at all if that were not permissible. The alleged
3 confrontation on 24 June and exactly how it occurred is a
4 matter in which Your Honour will need to make a finding.
5 If it went no higher than the evidence suggests, which is
6 that at its most Mr Cripps is said to have been
7 aggressive and pointed his finger and said, "I'm not
8 scared of you," then it's entirely beside the contract
9 really.

10 They're only them present, he's not trying to
11 exclude them. He's just saying, "I'm not scare of you."
12 They're having an argument. People do have arguments.
13 Even people in contractual relations have arguments, and
14 it doesn't go beyond the bounds of an argument into
15 something that would sound in damages for the breach of
16 the contract.

17 The retention of the surety for a period of six
18 weeks, Your Honour might think that was ordinary business
19 practice, that it was - I don't know, Your Honour
20 probably doesn't send out bills any more, but if Your
21 Honour was talking about the modern world it's certainly
22 the ordinary experience that bills are not always paid as
23 promptly as might be desired by those who are waiting for
24 the money.

25 The evidence discloses that Mr Cripps said that he
26 had made a mistake and that he realised quite late on
27 that he did owe them some money and very soon after that
28 email in which he said he'd made a mistake he supplied
29 the money. The same applies to the last of those
30 particulars. Your Honour might conclude that the
31 plaintiffs were entitled to interest on the money held

1 for four weeks, Your Honour might conclude that depending
2 on whether the view Your Honour took of the agreement
3 with respect of the payment for the artwork.

4 The surety might be one thing and covered by the
5 agreement. The payment for the artwork might well be
6 covered Your Honour might think by the ordinary terms of
7 trade of galleries and artists in that area of commerce.
8 There's no real evidence about that except Mr Cripps's
9 own evidence which is 60 to 90 days is perfectly usual.
10 Those are my submissions in respect to the contract
11 claim, Your Honour.

12 I turn to the claim in defamation, which is very
13 much the meat of this matter. Your Honour knows that
14 it's alleged that three articles were published and that
15 Your Honour has A3 copies of them. Before I make
16 submissions about the legal principles applicable in what
17 is conveyed and what's defamatory I'd just return Your
18 Honour to the issue that's raised by my learned friend's
19 tender of the new-left Nazis document. Your Honour said
20 that you would hear further submissions on that. I take
21 Your Honour back to the authorities to which I referred
22 Your Honour in the earlier argument about that.

23 It's my submission that the meaning of the matter
24 complained of and the importance of how the matter
25 complained of is defined, the meaning of the matter
26 complained of is derived either from that matter itself
27 or if there are extrinsic facts pleaded, and this would
28 necessarily only be pleaded by a plaintiff, then it's
29 possible to add to the matter itself in the minds of some
30 fact that's known to the minds of the reader, what's
31 called the true innuendo.

1 In the case of Phelps Her Honour refers at Paragraph
2 13 to the judgment of Justice Hunt in Burrows v.
3 Knightley [1987] 10 NSWLR 651, where His Honour says in
4 respect of the pleading of material either separately or
5 all together, "It's not necessary to plead each partly
6 separately and to add true innuendoes where material
7 published on one occasion is relied upon to give a
8 statement published on another occasion a meaning beyond
9 that which it conveys when considered in isolation." And
10 that's how it works, Your Honour.

11 If you read outside the matter complained of then
12 you have to plead it was published someone who had in
13 their mind some external extrinsic fact and it has to be
14 proved that it is a fact and that it was published for
15 someone who had that fact in mind, if you want to extend
16 the meaning beyond the boundaries of the matter
17 complained of itself.

18 In the other case to which I referred, Your Honour,
19 which was Leighton v. Garnham, where His Honour Justice
20 Le Miere comes at Paragraphs 44 and on to consider what's
21 described as the strike in application, His Honour refers
22 to the judgment of the New South Wales Court of Appeal in
23 Australian Broadcasting Corporate v. O'Bede where Tobias
24 JA said, "The question is whether the matter complained
25 of was capable of ...(reads)... the meaning of what was
26 broadcast".

27 That's the point. The point is if it's unfair to
28 constrict it in that way, if there is something else that
29 ought to have been included because it affects the
30 meaning that's when a plaintiff will be forced to strike
31 in other material and it's because it affects the meaning

1 that a plaintiff will be forced to strike it in, because
2 it would be unfair to say these words convey this meaning
3 if some other part of what ought to be the whole matter
4 complained of would affect that meaning in some material
5 way.

6 Further on, "If that's the only view reasonably open
7 or if reasonable minds ...(reads)... were conveyed by
8 that matter". That again indicates to Your Honour the
9 boundaries where the meaning may be found. Just Le Miere
10 repeats pretty much that observation at Paragraph 53 of
11 his judgment where he says, "It is therefore open to the
12 plaintiff to plead the second article as a single
13 publication containing the whole of the context in which
14 to determine whether the pleaded imputations were
15 conveyed by that matter".

16 He goes on to say, "The fact that the plaintiff has
17 not included ...(reads)... to which it may be relevant",
18 and that's a separate question as we've said all along,
19 whether it is and I'll certainly be urging Your Honour to
20 take the view it isn't relevant to any defence, "But on
21 the question of defamatory meaning that meaning must be
22 found within the matter complained of itself. It can't
23 be supplemented by drawing in other material.

24 The meaning of allegedly defamatory material and I
25 fancy we're probably on common ground here with my
26 learned friend, the meaning of allegedly defamatory
27 material is conveyed to the ordinary reasonable reader
28 and the ordinary reasonable reader has a number of
29 attributes that we probably would not disagree about.
30 "He or she is a person of fair average intelligence,
31 neither added for scandal", one of those lovely

1 expressions that come from the old cases, "Nor a
2 Pollyanna who can and does read between the lines in the
3 light of his or her knowledge and experience of the
4 world".

5 Importantly the ordinary reasonable reader can
6 indulge in a little - is prone to indulge in loose
7 thinking, draws implications much more freely than a
8 lawyer and is said over and over again, defamation is a
9 matter of impression. The ordinary reasonable reader
10 forms a broad impression of what's being said but
11 detailed reasons or analysis come later if at all.

12 The ordinary reasonable reader is fair minded and as
13 I say, somewhere in the middle of the road between those
14 who see scandal in everything and those who think no-
15 one's ever been insulted. But the test is what would be
16 the most damaging imputation conveyed to that middle of
17 the road person. It's sometimes argued that it's the
18 middle of the road imputation. It's not the middle of
19 the road imputation, it's the most damaging imputation
20 that would be conveyed to the middle of the road, the
21 average person.

22 Responsibility is not really an issue in this case
23 but all who can induce in the publication of a libel -
24 are responsible for these principles is Webb v. Bloch
25 from the High Court. In this case the defendants submit
26 being responsible for the production of this material and
27 for its uploading onto the internet. Your Honour must -
28 I'll come to the issue of publication in a moment. As
29 far as defamatory meaning is concerned, in relation to
30 the first article there are several meanings pleaded.
31 The first is that, "The 1st plaintiff is a disgraceful

1 individual who should be avoided assiduously".

2 I won't read the whole of this article to Your
3 Honour. Your Honour will have read it and will no doubt
4 read it again. The ordinary reasonable reader however
5 has not of course been addressed about defamatory meaning
6 and does not ordinarily, although they can read the
7 material over and over again, the ordinarily reasonable
8 reader reads it and gets an impression of what's being
9 said and that's what's meant by what they say there,
10 "Defamation is a matter of impression".

11 Arguments almost beside the point about this
12 particular or several of these imputations. Your Honour
13 will put yourself in the position of the ordinary
14 reasonable reader. Your Honour will read the material
15 and Your Honour will reflect on whether as a matter of
16 impression Your Honour believes that charge, that
17 imputation has been conveyed. If we were dealing with a
18 jury I might go through and pick out the bits that would
19 suggest to the jury that they ought to find my way on
20 that issue, but with great respect to the pleadings in
21 this matter, it's pretty much not really arguable in my
22 submission that that imputation is not conveyed.

23 It says that avoid this gallery, it's run by Robert
24 Cripps, avoid it assiduously on the basis presumably that
25 it's run by him. "Have I been of him or had information
26 on him ...(reads)... would never have dealt with him.
27 There follows a list of words that can be used - or that
28 are used by the 1st defendant to describe Mr Cripps and
29 they're pretty strong. It's submitted that someone of
30 whom those things can be said that he's poisonous, vile,
31 repellent, malignant, racist, liar, bellicose, bully and

1 stupid, is a disgraceful and should be avoided
2 assiduously. It expressly says avoid this gallery
3 assiduously.

4 But as I say, it's a bottom, it's a matter for Your
5 Honour to ask yourself putting yourself in the position
6 of the ordinary reasonable reader, which of course none
7 of us are now and as lawyers never really can be. But
8 putting yourself in that position to ask yourself whether
9 that imputation or an imputation not substantially
10 different to it is conveyed. The not substantially
11 different imputation alleged by the defendants, the
12 defendants plead to that - I'll come to the defences
13 later but Your Honour will see that the defendants in
14 certain respects plead what are said to be Poly Peck or
15 Hore-Lacy nuance variations.

16 Some of them are in my submission and some of them
17 aren't but I'll come to that along the track. Where they
18 are, for example, it's common ground that (d), "The
19 1st plaintiff is a racists who holds views that are
20 similar to those of Adolf Hitler", we accept that that is
21 a nuance of the imputation that we plead and it is so
22 because we would be entitled to a verdict on the basis of
23 that nuance and that's the basis of the Hore-Lacy
24 position that it's a matter of fairness, that we would be
25 entitled to a verdict on the basis of the slightly
26 different imputation and they're entitled to defend on
27 the basis of that slightly different imputation. But I
28 will come to the Hore-Lacy issues slightly down the
29 truck.

30 The second imputation is that the 1st plaintiff used
31 economic duress to force the 1st and 2nd defendants to

1 agree to terms that were not in the original contract for
2 rental of the space at the gallery. That's expressly
3 stated. "He gained agreement by placing us under
4 financial duress, that he procured agreement by duress
5 renders this agreement legally voidable". "The
6 1st plaintiff having made a profit from the ...(reads)...
7 the exhibition to fail".

8 Just under that paragraph, "During the course of the
9 exhibition he by his actions circumvented our
10 ...(reads)... but he made a profit on it". In my
11 submission that paragraph on its in the context of the -
12 Your Honour will read the whole article of course, but
13 that paragraph conveys that imputation without more. The
14 salient imputation of course, the salient allegation in
15 this article is of course the fourth one, "The
16 1st plaintiff is a racist who has embraced the views of
17 national socialism". Under the photograph of the
18 interior of the gallery it says, "Cripps is a self
19 confessed racist, the new-left Nazis ...(reads)... new-
20 left Nazis".

21 Over the page or further down the page if we were on
22 the screen, there's a reference to, "Quoting the Koran is
23 insensitive to Palestine ...(reads)... his hatred of
24 Jews", three paragraphs further on, "That his hatred of
25 Jews is exposed for the outright racism that it is", and
26 three paragraphs further on, "The quotes from the Koran
27 though were not an opinion ...(reads)... what he is, a
28 racist". I don't think there could really be any serious
29 argument that Mr Cripps that is portrayed as a racist in
30 this article and that his racism is an adoption of the
31 position of the National Socialists, the Nazis.

1 HIS HONOUR: Why do you use the expression National Socialism?

2 MR DIBB: Because Nazis is an abbreviation.

3 HIS HONOUR: I understand that but why use that expression

4 given that the ordinary reasonable reader is more likely

5 to know and have heard of Nazism or Nazis as distinct

6 from the official non version. I mean the expression

7 National Socialism doesn't appear in the article itself

8 as I understand it, in that form, National Socialism as a

9 phrase is not used.

10 MR DIBB: Not in that form, no. Nazis is the form in which it

11 appears. If Your Honour concluded that what was conveyed

12 was who has embraced the views of the Nazis that that was

13 what was conveyed, not of National Socialism, that would

14 be an imputation of different substance at all.

15 HIS HONOUR: I don't think that Mr Gilbertson would disagree

16 with that given the alternative that is in the defence.

17 MR DIBB: Yes.

18 HIS HONOUR: But I'm really addressing you at this stage as to

19 why when all the references are to Nazis and Nazism and

20 new-left and all the rest of it, where the expression

21 National Socialism per se is not used, why plead that as

22 distinct from Nazism?

23 MR DIBB: Your Honour, I can't recall whether this imputation

24 was pleaded by me or by Mr Houghton, who was my SC or QC

25 I think, who was my predecessor in the brief. I think my

26 learned friend indicates perhaps it was pleaded by

27 Mr Houghton. I think probably - he thinks it was me, he

28 may well be right.

29 HIS HONOUR: Yes.

30 MR DIBB: Probably it's been influenced by the excessive

31 refinement that was forced on the pleading of imputations

1 by the old Defamation Act 1974 in New South Wales, an
2 area in which I've practised, or an Act under which I've
3 practised a good deal. Every possible objection was
4 taken to the form and capacity of imputations under that
5 Act and they ended up being expressed in the most formal
6 and precise language because the defendants would chase
7 you around the court forever arguing that it was improper
8 in form or it wasn't conveyed and so that's probably just
9 a hangover from that, Your Honour.

10 It's unnecessary and I agree with Your Honour that
11 Nazis, which of course means exactly the same thing, but
12 that Nazis might be the form in which it was conveyed to
13 the ordinary reasonable reader.

14 HIS HONOUR: Yes, all right.

15 MR DIBB: The fifth imputation is, "The plaintiff is a
16 bellicose bully". The words bellicose and bully occur a
17 couple of times. They occur on the first page. But in
18 particular on p.3 of 7 in the heading to - or caption to
19 a disclaimer. It's stated expressly he's a bellicose
20 bully, limited in erudition and of limited intellect and
21 no-one who read those words could reasonably say that the
22 accusation that he was a bellicose bully was not being
23 conveyed by this material in my submission.

24 The imputation alleged in respect of the 2nd
25 plaintiff by this first article is that the 2nd plaintiff
26 is owned and operated by the 1st plaintiff and because of
27 Paras 1 to 5, that is the imputations pleaded above, "The
28 2nd plaintiff is a disreputable company and not to be
29 trusted". I think that imputation could probably live
30 without the words because of Paras 1 to 5, Paragraphs 1
31 to 5.

1 Mr Cripps is described in very derogatory terms in
2 the article and at the bottom of the first page it says,
3 "Cripps also runs Redleg, a transporter of art, can you
4 trust Cripps Redleg". It's very often the case that a
5 question such as that isn't really a question at all.
6 It's is the Pope Catholic sort of question and that's my
7 submission in relation to this question. What's really
8 being said here is not can you trust Cripps Redleg but
9 Cripps is such a loathsome person that you cannot trust
10 Cripps Redleg, it's not a company to be trusted, it's
11 disreputable and not to be trust and that Your Honour
12 conclude that that imputation was conveyed of Redleg.

13 Talking of Redleg, I haven't dealt with the question
14 of whether it's an excluded corporation. I don't know if
15 given the evidence given by Mr Cripps and the fact that,
16 as I understood, there was no other evidence offered and
17 no challenge to that evidence, whether that's any longer
18 an issue between the parties.

19 MR GILBERTSON: No, it's not.

20 HIS HONOUR: Thank you very much.

21 MR DIBB: Thank you. I'll move on. The test of course for
22 whether those meanings are defamatory is the modern test.
23 There have been tests in the past along the lines that it
24 would hold the plaintiff up to hatred, ridicule or
25 contempt. The modern test is expressed to be whether it
26 has a tendency to lower the plaintiff in the view of
27 ordinary right thinking members of society. It's always
28 a jury question, defamatory meaning, but Your Honour is
29 the tribunal of fact and therefore it's a question for
30 you. It's a matter of applying modern standards, current
31 standards of the community to the conduct or the

1 condition alleged of the plaintiff.

2 Some things have changed, the great example is
3 homosexuality. It might once have been defamatory to
4 serve someone if they were homosexual. It would now - I
5 shouldn't think anyone would have the hardihood to make
6 the submission that it was defamatory to say that someone
7 was homosexual. These things do change. But in respect
8 of these imputations I submit that there's no real
9 question about community standards here. These are the
10 sorts of things that would always lower someone in the
11 thinking of ordinary right thinking members of society
12 and nothing controversial in my submission about that.

13 In relation to the second matter complained of which
14 is pleaded to be the addendum, 2011, "The imputations
15 alleged to be conveyed are that the first ...(reads)...
16 with the 1st plaintiff". This is relatively short this.
17 It arises - I'll read just this one paragraph, "Cripps
18 has become aware of this page, not that it was ever
19 ...(reads)... is his true", I take it that word is,
20 "Character". It's essentially from that passage that we
21 say that - or the 1st plaintiff says that arises the
22 imputation that his pattern of intimidating behaviour has
23 left other artists too fearful to describe to the public
24 their own negative experiences with the 1st plaintiff.

25 The allegation is that he has, insofar as he has a
26 reputation, it's a false one and it's been achieved only
27 because he's managed to harry, bully, threaten and cow
28 those who might otherwise have been prepared to denounce
29 him. The second and rather more serious imputation
30 conveyed comes from the last paragraph on that page, "The
31 1st plaintiff sexually harasses volunteers and staff at

1 his gallery". It baldly states he has been sexually
2 harassing staff and volunteers as well. "How do I,
3 because he's been telling to his staff the next day like
4 he's done something awesome". I suggest there couldn't
5 be any doubt that that imputation is conveyed. He has
6 said (indistinct) to have been sexually harassing his
7 staff and volunteers".

8 A number of meanings are pleaded in relation to the
9 Raymond article which is C. We don't yet have an exhibit
10 number but I imagine it's probably going to be P3, "The
11 1st plaintiff has repeatedly engaged in behaviour that
12 embarrasses the artists he represents". These
13 imputations actually do require that the whole article be
14 read I think and perhaps I'll briefly read it to Your
15 Honour. "Guildford Lane Gallery, a man's ethical
16 behaviour should be based ...(reads)... again and again",
17 and this reputation is part of what leads to the
18 repeatedly engaged aspect of some of these imputations.

19 20 September 2010, "Another artist reports to me
20 they were humiliated ...(reads)... be warned and beware".
21 6 June 2010, "A life model reported to me how he found
22 Cripps treatment ...(reads)... was victimised for it".
23 26 May 201, "An artist reports her reputation and
24 exhibition were ...(reads)... just keeps him in business
25 to do so". Under that which is not really terribly
26 visible here is a feature that we've seen in a number of
27 contexts of Robert Cripps with that ban or no entry sign
28 superimposed on it.

29 HIS HONOUR: What's that called?

30 MR DIBB: I don't know.

31 HIS HONOUR: It's must be a uniform accepted description of the

1 Bar because it's used so frequently now as a sign.

2 MR DIBB: It is, yes. I don't know if anyone has any
3 suggestions. I'll call it a no entry sign or a ban sign,
4 a ban sign. I think it's used if you see it on beaches
5 you'll see dogs with it and then ball games with it and I
6 think it signifies banned or not allowed.

7 HIS HONOUR: Or prohibition of an activity of some sort.

8 MR DIBB: "In my own experience let's see, at my exhibition
9 what ...(reads)... my co-exhibitor, Demetrios Vakras
10 here", and the pointer is to the other first matter
11 complained of I think - I withdraw that, is a pointer to
12 a page on vakras.com. The whole tone of this article in
13 my submission conveys not just that the director,
14 Mr Cripps, behaved poorly towards these artists but that
15 he behaves poorly towards everyone. That it says he's at
16 it again and again and again, it's a pattern of behaviour
17 and from that we derive the imputations pleaded.

18 "The 1st plaintiff has repeatedly engaged in
19 behaviour that embarrasses ...(reads)... and other
20 potential customers".

21 HIS HONOUR: You've left out (g) and (h) I think.

22 MR DIBB: (g) and (h), sorry Your Honour. (h) was struck out.

23 HIS HONOUR: The version I've got is (g) states, "The 1st
24 plaintiff by reason of his ignorance of art is not a fit
25 and proper person to be gallerist".

26 MR DIBB: Yes.

27 HIS HONOUR: And (h), "The 1st plaintiff is a creep who tries
28 to exploit his position as director of a gallery to
29 gratify his" - - -

30 MR DIBB: No, (h) by consent was struck out so (h) is not
31 relied on.

1 HIS HONOUR: That hasn't been reflected in an updated statement
2 of claim being filed, is that right?

3 MR DIBB: No, perhaps it is not, Your Honour, because if it was
4 Your Honour would have it but it's common ground between
5 my learned friend and myself that by agreement (h)
6 was - - -

7 HIS HONOUR: I've given you leave this morning to file a
8 further statement of claim to incorporate the two
9 particulars. Perhaps the opportunity can be taken to
10 strike through (h) so that that's beyond any sort of
11 ambiguity.

12 MR DIBB: It no longer appears as a pleading, yes, Your Honour.

13 HIS HONOUR: But (g) is still in, is that right? "The 1st
14 plaintiff by reason of his ignorance of art is not a fit
15 and proper person to be a gallerist."

16 MR DIBB: Yes, Your Honour. Yes, it is, Your Honour. Again,
17 Your Honour is aware of the principles applied and is
18 perfectly capable of asking yourself a relevant question;
19 whether to, Your Honour is sitting in the position of the
20 ordinary reasonable reader, these imputations or
21 imputations are significantly different from them are
22 conveyed and I won't weary Your Honour with submissions
23 about that beyond wanting again to - it says again and
24 again and again, and it's a pattern of behaviour and that
25 it's clearly alleged not just to be then, it's what he
26 always does. It states in terms that this will happen to
27 you. I might be finished by lunchtime, Your Honour.

28 HIS HONOUR: I want you to do justice to your case as I would
29 expect Mr Gilbertson to do so. I'd rather than
30 artificially finishing by a particular time. It's a
31 matter for you.

1 MR DIBB: The other matter on which the plaintiffs bear the
2 onus is proving that the matter complained of was
3 published, that's to say that it was communicated to
4 someone other than the plaintiff, him or itself.
5 Publication to one person will suffice, I don't know.
6 Capital and Counties Bank v. Henty (1882) 7 APP CAS 741
7 at 765. Each time a matter is communicated to a third
8 party there's a separate publication.

9 The evidence in this case, there's actual evidence
10 from some witnesses, as Your Honour knows, of them having
11 read the publication. It will be my submission also that
12 Your Honour can infer that the articles were published to
13 people who performed web searches either on Guildford
14 Lane Gallery or Redleg Museum Services or, particularly,
15 of course, Robert Cripps. Your Honour has seen that even
16 now this material or material very like it is generated
17 by those searches.

18 In the modern world, in my submission, it is every
19 bit as inevitable an inference that someone has brought
20 this up and read it as it was previously regarded as an
21 irrebuttable inference that publication in a newspaper
22 for example had been read by someone. That's so because,
23 as His Honour Justice Kay said in Trkulja v. Yahoo, in
24 the modern world people routinely investigate one another
25 and perform what you might call due diligence on one
26 another whenever they come to deal with new people by
27 performing Google searches on the name.

28 This has been a fast moving area. There is a view
29 and it's a view that I don't think is entirely correct,
30 but there is a view that in Dow Jones v. Gutnick the High
31 Court said that you had to show that someone had actually

1 done it, actually had to call a witness. In my
2 submission that's not what Dow Jones v. Gutnick says.
3 What Dow Jones v. Gutnick said was the unexceptionable,
4 in respect to their proposition, that communication is
5 completed when the material is downloaded and read and
6 that's the thing that completes publication just as
7 publication of a newspaper article or of a letter is
8 completed when it's opened and read, or in the case of a
9 letter when it's read, in the case of a newspaper article
10 it's a two stage operation, the material is made
11 available by the publisher and then it's read and
12 transferred to the understanding of a third party.

13 That, in my submission, is all that Dow Jones v.
14 Gutnick says on that issue. It's also relevant that Dow
15 Jones v. Gutnick is a 2002 case and that is very early on
16 in the history of the rise of the search engines. It
17 wasn't until October 2002 that Google opened an office
18 here. In fact it was only founded in 1998. It started,
19 as Your Honour might think, quite small.

20 So it will be my submission that Your Honour can
21 infer from the evidence that's been presented in this
22 case that people will have accessed this material by
23 performing Google searches and reading it as a result of
24 that investigation. But there is also direct evidence
25 from witnesses in the case.

26 Ms Curro gave evidence, and this, if my transcript
27 references aren't letting me down, is at 368 at Lines 17
28 to 369, Line 8. Now, I have to take off 256 to remember
29 what that's going to be on my version. Sorry, the
30 numbering is confusing me. At the bottom of p.368 the
31 witness was asked at Line 29, "Can I ask you to look at

1 the first matter complained of. Is that the article you
2 read?" In the previous passage of evidence at Lines 24
3 to 28 Ms Curro had said, "I'd heard about the
4 difficulties that Robert had had with some artists at
5 some point and so in my head I'd heard that so I thought,
6 well, I read it but it was so kind of disturbing that I
7 just set it aside because it wasn't my relationship with
8 Robert at all." And she subsequently identifies that
9 article as the article she read.

10 Ms Paul gave evidence at 490. At Line 23 on p.490
11 she was shown the first article marked A. She said that
12 she'd read that, she'd seen it before, seen it on the
13 internet when she was directed to it. She'd seen it
14 after the exhibition when Robert told her there'd been a
15 problem. She got to it by Googling both Robert Cripps
16 and Guildford Lane Gallery and she tried them both to see
17 if they would work.

18 She'd seen the article more than once. She
19 subsequently, at p.491, Lines 11 and onwards, positively
20 identified the addendum including the allegation about
21 sexual harassment, she confirmed that she'd seen that.
22 At the bottom of that page, the bottom of 491 and over
23 onto 492 she identified the third matter complained of
24 and said she'd seen that. She particularly remembered
25 that because of the misspelling of Guildford Lane on the
26 top. Again, she'd seen it more than once. She said that
27 she checked back five or six times to see if there was
28 more information. "Every few months I'd have a look and
29 see if it would come and you'd Google Robert's name."
30 That's Lines 7 to 11 on p.492.

31 In cross-examination on 496, Lines 7 to 27, she was

1 asked how many times she saw the article on the internet.
2 That's the second article at this point. "I looked at it
3 and then I re-looked at it so I assume ...(reads)... I
4 still have a look every now and then." So her evidence
5 is that, referring particularly in relation to the last
6 question asked by my learned friend, that she is still up
7 to recent times looking at these websites every now and
8 then.

9 Ms Czarski gave evidence that she'd read the first
10 article in February, March or April 2010. That's a
11 matter of some significance because the limitation period
12 in this case is relevantly a year. There's a possibility
13 to extend that. No application has been made. So the
14 statement of claim, the writ being filed on 1 April 2011,
15 the publication relied on must be in the preceding period
16 or since.

17 Ms Czarski gave evidence that she first read the
18 first article - this is at Transcript p.500 - in
19 February, March or April 2010. So it's not quite clear
20 that that's a publication to which Your Honour can have
21 regard. "Have you seen it since then?" "In a form
22 similar, yes." This is at p.500, Lines 3 and onwards.
23 "How often would you have looked at that article
24 ...(reads)... so four years." So Ms Czarski gives
25 evidence that she looked at the web page and looked at it
26 you might infer, Your Honour, with some care because
27 she's looking at it to see what has been changed or not
28 changed, looked at it with some care many times over the
29 four years, slightly less than four years since the
30 statement of claim was filed.

31 I'm sorry, four years since she first saw it. The

1 statement of claim was filed just under three years ago.
2 She gave evidence about seeing the second article at
3 p.501. She identified the article including that
4 allegation of sexual harassment and said she'd seen it
5 once. "It was either the last day of March or the first
6 day or maybe the second day of April," and she knew
7 roughly when it was because that was when something to do
8 with her mother going back to the airport.

9 It's submitted that that's clearly in accordance
10 with the document itself, which claims it had been put up
11 on 2 April 2011. Your Honour would have no doubt that
12 Ms Czarski did see that material at that time. She had
13 read the Raymond article, the third article, and
14 remembered the reference to a life model. The reference
15 to a life model of course was added in June 2010, so when
16 she read that article that was clearly within the 12
17 months preceding the filing of the writ, and clearly
18 therefore a publication to her of which Your Honour can
19 take account.

20 But over and above that of course beyond the formal
21 proof of these particular individual publications which
22 might not themselves if they were the only publications
23 that had ever occurred of this material might not sound
24 in very large damages Your Honour might think. Your
25 Honour will infer from the evidence about all the
26 volunteers in the gallery talking about the material,
27 from the evidence of Ms Curro about the matter being
28 referred to her by someone who said, "Are you aware of
29 this?" Your Honour will infer that there was actually
30 quite extensive publication and, indeed, we would expect
31 extensive publication to the people interested in

1 Mr Cripps.

2 This is the way in which the internet is so damaging
3 in a situation like this, because these were the pages
4 that came up if you queried on a search such as Google or
5 Bing, Google is much the most common, what's the world
6 saying about Robert Cripps? This is the material you
7 heard, this is what was put before you. In my submission
8 Your Honour will comfortably conclude that the material
9 was published, each of these articles was published.

10 I come now to talk about the defences. In the first
11 place, as Your Honour knows, the defendants plead Polly
12 Peck meanings in relation to the first matter complained
13 of. I argue that some of these are not Polly Peck
14 meanings within the limits set down by Hore-Lacy. I
15 think it's probably common ground that what's allowable
16 is a nuance or variant of the plaintiffs' meaning that is
17 no more serious.

18 The first of the Polly Peck meanings is that the
19 plaintiff treated the defendants in a disgraceful manner
20 and other artists should avoid him. In my submission
21 Your Honour will find that the meaning actually conveyed
22 is not restricted to treatment of the defendants, and
23 that by limiting the meaning in that way - excuse me, I'm
24 just getting to the imputations as pleaded. By changing
25 the imputation in that way it's significantly different.
26 It's not a nuance, it's a quite different imputation.
27 It's quite different from the assertion that he is a
28 disgraceful individual who is to be avoided assiduously,
29 not just by the defendants but by everyone.

30 The significance of course is that if Your Honour
31 found that what was conveyed was not the general charge

1 but the specific charge then that would very much alter
2 the basis on which Your Honour might find justification,
3 if Your Honour approaches justification or thinks the
4 evidence approaches justification even with the second
5 imputation, but taking it at its highest Your Honour
6 might think that the defendants' evidence might justify
7 that imputation.

8 It would not, in my submission, justify the
9 plaintiff's imputation and accordingly it's a matter of
10 some importance whether Your Honour regards that as a
11 mere nuance or subtle variant or whether in fact it's a
12 quite different imputation and therefore falls foul of
13 what was said in Chakravarti v. Advertiser Newspapers, in
14 that it raises a false issue.

15 The second - well, the way it's pleaded the second
16 imputation is alleged to be the same as the plaintiff's
17 imputation, that is to say, the imputation of 8(b), so
18 there's no distinction there. The third imputation, the
19 1st plaintiff profited from the defendants' art
20 exhibition notwithstanding that he inhibited the
21 defendants' capacity to promote the exhibition causing it
22 to fail.

23 What's been changed between the imputation as
24 pleaded by the plaintiff and that imputation as relied on
25 by the defendants is that what's been taken out is the
26 element of deliberateness. The imputation as pleaded is,
27 the 1st plaintiff having made a profit from the 1st and
28 2nd defendants art exhibition at the gallery then
29 deliberately inhibited the 1st and 2nd defendants
30 capacity to promote the exhibition causing the exhibition
31 to fail.

1 The defendants' imputation merely juxtaposes that he
2 profited from the exhibition and that he inhibited the
3 defendants' capacity to promote the exhibition causing it
4 to fail. It doesn't say that he did that deliberately.
5 In that sense, in my submission, it is more than a mere
6 variant. It takes out a very important part of the
7 defamatory sting such that if you take out the notion
8 that he deliberately inhibited the defendants and
9 postulate that perhaps it was accidental, that that
10 imputation is probably not defamatory I submit to Your
11 Honour, in that it doesn't impute to him any act or
12 condition that would cause him to be lowered in the eyes
13 of ordinary reasonable people.

14 By taking out the deliberateness of the inhibition
15 the defendants draw attention to that factor and invite
16 this imputation to be read as though it's not a
17 deliberate act. If that's the sense in which it's
18 intended and Your Honour is the judge of what the
19 imputation means, if that's the sense in which it's
20 intended then in my submission that wouldn't even
21 probably be defamatory, and if it were it would only be
22 quite weakly defamatory.

23 It's common ground that 8(d) and the defendants'
24 imputation are permissible variants and the defendant
25 pleads that its imputation is the same as the plaintiff's
26 imputation for 8(d). So in relation to (a) and (c) it's
27 my submission that Your Honour would strike those
28 imputations out of the defence on the basis they fall
29 outside the limits of the Polly Peck, Lucus-Box type of
30 pleading that's authorised and has come to be accepted
31 following the decision of the Victorian Court of Appeal

1 in Hore-Lacy.

2 HIS HONOUR: You say that I should strike them out?

3 MR DIBB: Yes, Your Honour. The defendant can't rely on them.

4 HIS HONOUR: I'm sorry?

5 MR DIBB: The defendant can't rely on those imputations - - -

6 HIS HONOUR: Can't I just make a finding to that effect in my
7 final judgment?

8 MR DIBB: My learned friend points out that it's not pleading
9 summons today. Yes.

10 HIS HONOUR: It's a matter of choosing between them isn't it as
11 part of my analysis of fact finding is it not?

12 MR DIBB: It is. In this case, Your Honour, in this case, no,
13 Your Honour, it's not quite a matter of choosing between
14 these two imputations.

15 HIS HONOUR: No, sorry, I expressed that badly. As part of the
16 writing of my judgment I will apply the principles to
17 which you have referred, the Court of Appeal has
18 authoritatively considered in Hore-Lacy, and I will make
19 a finding as to whether (a) and (c) are open under those
20 principles or not.

21 MR DIBB: Yes, Your Honour.

22 HIS HONOUR: But I don't actually go to the formal step of
23 striking anything out. That's what I'm saying.

24 MR DIBB: I expressed myself poorly. Once one gets past this
25 debate over the meanings conveyed the defences in
26 relation to the first matter complained of are truth,
27 qualified privilege, both common law and pursuant to
28 Defamation Act 2005.

29 MR GILBERTSON: I should just indicate one matter before
30 perhaps my learned friend continues, and that is, the
31 defendants are not persisting with the s.30 defence in

1 respect of any of the publications.

2 HIS HONOUR: So you're abandoning s.30 for all publications?

3 MR GILBERTSON: Yes. I should indicate that before my learned
4 friend continues.

5 HIS HONOUR: Thank you.

6 MR DIBB: I'm obliged to my learned friend. I had noted that
7 there didn't appear to be any evidence adduced that would
8 look like evidence of reasonableness but if (indistinct)
9 that would be why.

10 HIS HONOUR: All right. That makes your job a little easier
11 and mine a little easier.

12 MR DIBB: Slightly. Perhaps I'll deal with the qualified
13 privilege first because that defence fails in limine
14 because of the nature of qualified privilege. My learned
15 friend I understand is going to take Your Honour to
16 Roberts v. Bass. Your Honour will, if Your Honour
17 doesn't already know, learn everything you ever need to
18 need to know about qualified privilege from Roberts v.
19 Bass. It's quite a long judgment. It is an
20 authoritative statement and a useful one, with respect.

21 But what is clear from that is that the reciprocity
22 of duty and interest required, as is said, I think it's
23 in Roberts v. Bass itself, said that ordinarily most
24 often is for publication of a single individual. The
25 s.30 defence that substitutes the duty interest
26 relationship takes that out and replaces it with a
27 requirement of a reasonableness of conduct, is included
28 in the Act to expand the ambit of a qualified privilege
29 in that way.

30 It was intended I think, Your Honour, to make the
31 defence available to the mass media because mass media

1 publication is almost never. I can't think of a case in
2 which a publication in mass media, an indiscriminate
3 publication just to anyone at all has been held to be a
4 publication or an occasional qualified privilege. In
5 this case the idea that whoever wants to know about
6 Robert Cripps for example has an interest, a duty
7 interest relationship with the defendants such that they
8 are privileged to tell them whatever they wish to tell
9 them about him is simply untenable, Your Honour.

10 It's qualified privilege at common law. It just
11 couldn't apply in this case. If it did very briefly I
12 would submit that it would be defeated by malice. The
13 nature of the material itself, the persistence and the
14 energy with which it's been promoted and adapted and
15 supplemented over the years would themselves lead to the
16 inference that the dominant motivation for the
17 publication of this article was to damage Mr Cripps
18 insofar as it could possibly be done.

19 That would be inferred partly from the attack on the
20 transportation business about which the 1st defendant had
21 no knowledge or direct experience at all. It would be
22 inferred by the way in which Mr Cripps has been pursued
23 into Ruby's Music Room, a quite separate new venture,
24 that is indicative of the joie vivre like handling of
25 Mr Cripps by the defendants in this case and the sheer
26 unbridled venom of the material itself which goes well
27 beyond anything that could be regarded as valid criticism
28 in my submission.

29 HIS HONOUR: If I can just raise one issue at this point which
30 is relevant to the defences but more broadly, and I raise
31 it because I haven't done any research on the issue.

1 Perhaps the parties might think about it if there is no
2 short answer. The publications here first occurred in
3 2009 but because of the limitation period, as I
4 understand it, publication prior to April 2010, whenever
5 the 12 months prior to the filing of the writ occurred,
6 cannot found an action so the action is based on
7 publication from April 2010 and forward from that time.

8 MR DIBB: Yes, Your Honour.

9 HIS HONOUR: Does that mean that matters that are relevant to
10 the time of publication must be considered from April
11 2010 onwards as well? So for example if it's relevant to
12 consider what knowledge the defendants had at the time of
13 publication, it would appear that they had more knowledge
14 as at April 2010 about Mr Cripps and his activities
15 because they'd spoken to people and people wrote to them,
16 or whatever may have happened, than they did in August,
17 September 2009. So to make it relevant to your last
18 submission in relation to malice can I take into account
19 anything which was known or done by the defendants prior
20 to April 2010?

21 MR DIBB: I'd submit that you can, Your Honour, for this
22 reason; because publication is a two part process and the
23 composition of the material occurred in September,
24 October, November, whenever, in 2009, and that's the part
25 of the process that the defendants undertook. Then the
26 publications on which we rely are when it's downloaded
27 and read. Except insofar as the material has changed in
28 the interim Your Honour would assess the composition of
29 the libel according to the knowledge of the defendants
30 when they composed it.

31 HIS HONOUR: Is there any authority for this proposition?

1 MR DIBB: Not that I can think of off the top of my head.

2 HIS HONOUR: It could be a very important point because in a
3 sense your client's position is stronger as at the first
4 publication compared to later to the extent that people
5 have written to the defendants or they've spoken to
6 people and they've gathered more material if you like
7 that might go towards providing a factual foundation for
8 some of their allegations, or perhaps the fairness of
9 what they've said in the light of more material.

10 Take a hypothetical situation. If someone were
11 completely reckless and said something that they had no
12 knowledge about but which was very damaging at Point A,
13 insofar as their state of mind and knowledge at that
14 point is relevant to a defence then they'd be in a very
15 poor position. But later, if being threatened with
16 litigation, they've done a lot of research and they've
17 come up with an incredible amount of information which
18 supports what they've said and they continue to publish
19 on that basis, then depending on what point in time you
20 choose for your publication their analysis might be
21 different. It might not, I don't know.

22 But it just seemed to me that I need to consider
23 this aspect of the case carefully and I'd be assisted by
24 perhaps mature reflection on it.

25 MR DIBB: I'd make this submission, Your Honour. What the
26 defendants know or believe isn't relevant to the defence
27 of justification.

28 HIS HONOUR: I'm not making it referable to any particular
29 defence. I really was reacting to your malice submission.
30 But I have made it more broad because it's an artificial
31 situation under the Act, in that when you've got a

1 continuing publication you can only start the process at
2 a particular point in time. In a sense, even though the
3 defendants have done all that they need to do to make the
4 articles available for anyone to view them, a cause of
5 action here in a practical sense crystallised not when
6 the first person read them in 2009, because you can't sue
7 on that, so it's a cause of action but it's barred.

8 The only permissible cause of action given that
9 there's a separate cause of action each times there's a
10 separate publication, are for publications occurring
11 after April 2010. Does that mean, in a very simplistic
12 way, that everything gravitates towards that point and
13 going forward into the future at the expense of looking
14 back in any way?

15 MR DIBB: I think it might depend on the purpose for which the
16 inquiries are being made. As I say, it wouldn't be
17 relevant to justification.

18 HIS HONOUR: Yes, all right. Perhaps think about that.

19 MR DIBB: It might be relevant to comment. There is authority
20 that a commentator cannot rely on facts that they didn't
21 know when they made the comment.

22 HIS HONOUR: Without going too - that's the sort of thing I had
23 in mind because I have done some reading about the
24 principles, and I don't profess to have crystallised them
25 in a very comprehensive way in my mind, but I have a
26 broad working understanding of what we're talking about
27 and what I have to do.

28 MR DIBB: In practical terms however because the comment must
29 be based on facts truly stated or referred to or
30 notorious it's difficult to see how a commentator would
31 be in a position to rely on facts that they didn't know

1 because if they didn't know them they wouldn't have put
2 the facts in the defamatory material to start with.

3 HIS HONOUR: But the point is, Mr Dibb, the defendants here may
4 not have known something in 2009 but by April 2010 they
5 did. Because you're only suing for the publication post
6 April 2010 my question is; does that make any difference?
7 You might say based on principle it can't make any
8 difference. That may be so, I don't know. But I'm
9 asking the question because I'll have to actually come
10 down one way or the other it seems to me.

11 MR DIBB: Yes. If they found out something subsequently and
12 then incorporated that fact into the article, and there
13 have been additions here, then subject to all the other
14 problems that comment has in this case then they would be
15 able to rely on that additional fact that they've put
16 into the article in April 2010 as being proper material
17 as the basis for the comment that they made. Is that
18 what Your Honour has in mind?

19 HIS HONOUR: No. It's a broad question about how the
20 limitation period affects the issues, all of the issues
21 that I have to consider. I'm not limiting it to any
22 particular issue. It's something that perhaps you can
23 think about.

24 MR DIBB: Yes. Would I be correct in assuming that Your Honour
25 proposes to reserve judgment?

26 HIS HONOUR: I think that's a very fair assumption, Mr Dibb.

27 MR DIBB: I thought probably so. So it might be that if there
28 are issues like that we might be able to make written
29 submissions, brief written submissions.

30 HIS HONOUR: Yes, subject to anything Mr Gilbertson says, as
31 long as it's specific. I don't want to give general

1 liberty to make any submissions. That would be something
2 that if the parties are taken by surprise by me raising
3 it that I could allow a short period for written
4 submissions to be made and exchanged. We'll come back to
5 that.

6 MR DIBB: Perhaps at the close of submissions Your Honour might
7 identify any issues on which Your Honour would be
8 assisted.

9 HIS HONOUR: That's one of them. May I just continue raising
10 issues now that I've got the floor?

11 MR DIBB: Yes, Your Honour.

12 HIS HONOUR: It gives you an opportunity to think about these
13 things. Something that would only be relevant if I got
14 to the question of damages, and I know you haven't
15 commenced any submissions in relation to damages, again,
16 because I haven't looked at these issues in any detail
17 previously I would be assisted by submissions on how many
18 maximums apply in this case. Because we have the
19 1st plaintiff suing two defendants in respect of three
20 separate publications and we have the 2nd plaintiff also
21 suing two defendants in respect of three publications as
22 well, or two, I can't remember.

23 MR DIBB: Two I believe.

24 HIS HONOUR: Two. So just taking the plaintiff, the
25 1st plaintiff as an example, does the maximum apply in
26 respect of the 1st defendant so the 1st plaintiff as
27 defendant. Are there three maximums for each of the
28 publications?

29 MR DIBB: No, Your Honour. No, Your Honour. The maximum
30 applies to the proceedings.

31 HIS HONOUR: Yes.

1 MR DIBB: I anticipate that's going to be common ground. I
2 think it's a decision of this court, is it Buckley? Yes,
3 it's Buckley where in this court it was held that the
4 plaintiff could commence more than one proceedings
5 because if he didn't he'd be restricted to the one cap
6 and the Act is phrased in those terms. I don't think
7 that's going to be - I've got the Act somewhere. I don't
8 think it's going to be a matter of dispute between us,
9 Your Honour.

10 HIS HONOUR: So does that meant that the parties agree that as
11 between the 1st plaintiff and the 1st defendant,
12 notwithstanding that there were three publications,
13 there's only one maximum.

14 MR DIBB: As between the 1st plaintiff and both defendants in
15 relation to all the publications there is only one
16 maximum.

17 HIS HONOUR: Is there a separate maximum in respect of the
18 2nd plaintiff?

19 MR DIBB: Yes. I'm sorry, I'm just going to the Act itself.
20 Yes, in my submission there is a separate maximum for
21 each plaintiff.

22 HIS HONOUR: Where is that? What section are you referring to?

23 MR DIBB: We're dealing with s.35.

24 HIS HONOUR: 35.

25 MR DIBB: Your Honour will see in 35(1) the reference to the
26 maximum amount of damages for non economic loss that may
27 be awarded in defamation proceedings and it's that use
28 that of the expression proceedings rather than in
29 relation to any particular matter complained of.

30 HIS HONOUR: I see.

31 MR DIBB: Or any particular meaning that that's the maximum. I

1 don't commit myself to saying that there are separate
2 maximums for both plaintiffs in this matter actually,
3 Your Honour. Having had the matter disputed by my
4 learned friend I think I'd like to refresh my memory of
5 the - - -

6 HIS HONOUR: Fine.

7 MR DIBB: But it certainly isn't that there's one maximum for
8 each publication.

9 HIS HONOUR: That's fine.

10 MR DIBB: It certainly isn't that, Your Honour.

11 HIS HONOUR: All right. You can come back to me on that. That
12 was all that I had to ask you.

13 MR DIBB: I have while we're talking about damages, rather than
14 address Your Honour on damages I was going to hand up a
15 written submission that deals, because it's quite long,
16 I'd only have ended up reading this to Your Honour
17 anyway, that deals with the principles

18 HIS HONOUR: Yes, that's helpful.

19 MR DIBB: Your Honour will see on the last page a date, 6 March
20 2012, that will tell Your Honour this has been redacted
21 from a previous submission and it should be 25 March
22 2014.

23 HIS HONOUR: Thank you, and I'm sorry to have interrupted you.
24 It's just that it came up in the context of an
25 allegation - - -

26 MR DIBB: Not at all, Your Honour, not at all.

27 HIS HONOUR: - - - that the defence is defeated by malice.

28 MR DIBB: That the defence has qualified (indistinct) is
29 defeated by malice in the sense of a dominant being
30 actuated by a dominant motive foreign to the occasion.

31 HIS HONOUR: Yes.

1 MR DIBB: And in this case Your Honour would infer that the
2 dominant motive for the publication of the first matter
3 complained of was to damage Mr Cripps as much as possible
4 and Your Honour would infer that from the terms of the
5 matter complained. Your Honour would infer it in
6 particular from the cruel imputations or allegations
7 levelled against the volunteers, really quite outrageous
8 allegations levelled against the volunteers, that the
9 witness, Mr Vakras, admitted in his evidence he had
10 really no basis for Your Honour's drawing a quite - well,
11 a quite silly inference from the fact that they hadn't
12 chosen to distance themselves and side with him.

13 The recklessness and the violence of those
14 imputations against those people will colour Your
15 Honour's view of the honesty with which he held the views
16 in relation to Mr Cripps as well.

17 HIS HONOUR: so that I can understand your submission in
18 relation to malice, you say that I can take into account
19 matters preceding April 2010.

20 MR DIBB: Yes, Your Honour.

21 HIS HONOUR: that I can consider the terms of the publications
22 themselves.

23 MR DIBB: Yes.

24 HIS HONOUR: Whether they target Mr Cripps personally or others
25 involving the gallery.

26 MR DIBB: Yes, Your Honour.

27 HIS HONOUR: And is it your submission also that I can take
28 into account ongoing conduct by the defendants because
29 the publication is continuous?

30 MR DIBB: Yes, Your Honour.

31 HIS HONOUR: Or on general principles?

1 MR DIBB: Because the course of conduct will enable Your Honour
2 to infer that what the real purpose of these publications
3 is which is to do with Mr Cripps is the maximum of
4 damage.

5 HIS HONOUR: Yes. I ask that because in other areas of law
6 post say contractual conduct usually can't be taken into
7 account in inferring the contractual intention at the
8 time the contract was entered into but that's because the
9 contract is formed at a particular point in time, whereas
10 it's a bit artificial in this case I think to talk about
11 post publication conduct because the publication is
12 continuous.

13 MR DIBB: It's continuous, indeed.

14 HIS HONOUR: All right.

15 MR DIBB: And could have been removed from the - unlike, for
16 example, in the newspaper that gets out there and
17 escapes, could have been removed from the net by the
18 defendants at any time and although it would for some
19 period continue to show up in cache searches with the web
20 search, the big web search engines, that would quite
21 quickly fade away because those caches are refreshed by
22 the robot that call the web and index all the pages.

23 So that if the defendants had wished to cease making
24 these publications they could have done so and in any
25 event, they've made no effort to do so. They've only
26 augmented them. But the fundamental point is that the
27 defence of qualified privilege fails on the threshold
28 because it's not an occasion of privilege. Turning to
29 the defence of justification in relation to the first
30 matter complained of, there's a good deal of - I note the
31 time, Your Honour, it's two minutes to one. I'm about to

1 move onto - - -

2 HIS HONOUR: Yes, I did think you'd finish by lunch time,
3 Mr Dibb, and I've helped create (indistinct) by asking
4 you questions but - - -

5 MR DIBB: I don't think my 40 minute estimate was ever
6 practical.

7 HIS HONOUR: No, I didn't believe you at the time either. But
8 I will be inquisitive because it's no secret that I have
9 not written a judgment in the defamation jurisdiction in
10 this court. I did in practice have some involvement in
11 defamation work so I have a working knowledge but it is a
12 unique area in some respects both in respect to pleadings
13 and the interaction of various principles and so on. So
14 I want to get it right for all the usual reasons but I
15 tend to be very careful about these things and so it may
16 be that I'll ask more questions as you continue with your
17 submissions and as Mr Gilbertson presents his.

18 I think the revised estimate would be that we're not
19 going to finish today. I've allowed for that and I'm not
20 personally troubled by that. Of course every additional
21 day adds to costs and I do appreciate that it makes a
22 difference for the clients concerned. But insofar it
23 enables more fulsome submissions to be made to assist me
24 I think that's in everyone's interests. Can I just ask
25 before we break for lunch, Mr Gilbertson, have you had an
26 opportunity to consider the tender list or do you want to
27 come back to me after lunch?

28 MR GILBERTSON: No, subject to the matter Your Honour
29 foreshadowed yesterday that there would be an argument
30 about I think what is MFI3 concerning the grapevine
31 effect.

1 HIS HONOUR: Yes.

2 MR GILBERTSON: But otherwise no, Your Honour.

3 HIS HONOUR: Yes, I've already ruled that that can go in
4 subject to the issue that we discussed. So I will
5 formally accept the tender of the documents in the
6 plaintiff's list. Once the Word version of that is
7 received it will be presented in the same way as the
8 defendants list and then it will be sent to the
9 transcript writers so that that can be incorporated into
10 today's transcript.

11 My associate's informed me that yesterday's
12 transcript does incorporate the list of exhibits so the
13 system has worked to that extent. Just finally, can I
14 ask whether either of the parties has the three items
15 complained of in Word format of some sort whether that
16 could be obtained easily?

17 MR DIBB: I don't think that's even possible, Your Honour.

18 HIS HONOUR: You can cut and paste I think. If you go - I
19 don't want to be doing my own research and I don't want
20 to be doing my own research and I don't want to be going
21 to any websites and if I do I'll obviously disclose it to
22 the parties as I did last time when we ran into the issue
23 of whether one can access the Nazi new-left item on its
24 own. But my understanding of the way the internet works
25 is that if you go into a site you can actually copy the
26 content into a Word document and then supply the word
27 document.

28 MR DIBB: I think Your Honour might, with respect, I think Your
29 Honour might be thinking of the possibility of exporting
30 the website as a portable document format, PDF.

31 HIS HONOUR: Not a PDF, no, a Word version.

1 MR DIBB: A word version of course would - the website is
2 composed of lots of frames and blocks and rendered into a
3 Word document, (1), all the graphics of course will be
4 gone.

5 HIS HONOUR: I'm not interested in the graphics. What I'm
6 interested in is avoiding my associates having to copy
7 type particularly the third article because you've taken
8 me to the whole of it for what you say is the full
9 context. My judgment will have to recite quite a bit of
10 this material and I'm trying to avoid copy typing, that's
11 all.

12 MR DIBB: Yes.

13 HIS HONOUR: I'd be staggered if there's no way in which you
14 can not highlight the text of an article on the internet
15 and then copy it to a blank Word document and then supply
16 that document to my associates. All I'm asking is the
17 parties perhaps discuss this, one of you undertake the
18 task if it is doable to supply to my associates as much
19 of the wording of the three articles as possible with a
20 copy to each other so that everyone knows what is being
21 communicated so as just to make my judgment writing a
22 little bit easier, that's all.

23 MR DIBB: I'm sorry, I misunderstood Your Honour's purpose.
24 Obviously (indistinct) any sort of a substitute for the
25 matter complained of it would be quite different.

26 HIS HONOUR: No, no. Yes, it's just avoid the copy typing.

27 MR DIBB: Your Honour, now I understand what Your Honour wants
28 it for, yes, Your Honour.

29 HIS HONOUR: Thank you. Perhaps if I can ask the parties to
30 corroborate and then one of you to do that.

31 MR DIBB: I think we can pick up the text, yes.

- 1 HIS HONOUR: Thank you very much. We'll adjourn now until
- 2 2.15, Madam Associate.
- 3 LUNCHEON ADJOURNMENT

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UPON RESUMING AT 2.15 P.M.:

HIS HONOUR: Mr Dibb, before you commence. I formally sign Numbers P1 through to P20 for the plaintiff's exhibits and will now send the Word version of that to the transcript service so they can include that at the end of today's transcript.

MR DIBB: Thank you, Your Honour.

HIS HONOUR: Thank you. I was about to move onto the justification defence, Your Honour. In relation to all the defendants meanings concerning the first matter complained and Your Honour knows that there's an overlap between the defendants meanings and the plaintiffs meanings.

HIS HONOUR: Yes.

MR DIBB: In relation to the defendants meanings the defendants pleads that they are true in substance and in fact and therefore the defence under common law was substantially true in a defence under s.25 of the Defamation Act. I don't know that the difference between those concepts is going to be important in this case. It's a matter for Your Honour of course having heard the evidence to decide whether Your Honour is persuaded on the balance of probabilities that each of these is a matter of substantial truth.

What I could say about the first one, as Your Honour has heard my submission that that's not a Polly Peck variant, accordingly if Your Honour accepts that submission there is no defence of truth - there's no justification defence in relation to the meaning pleaded at 8(a) in the statement of claim. If Your Honour

1 doesn't accept that submission in my submission Your
2 Honour would not conclude that the 1st plaintiff treated
3 the defendants in a disgraceful manner, obviously they
4 did have some conflict.

5 I would suggest that Your Honour might well think
6 there may have been a little bit of prickliness and blame
7 on both sides but Your Honour would not accept that it
8 amounts to my client treating the defendants in a
9 disgraceful manner. I don't know that I can go any
10 further than that. It's not a matter on which I bear the
11 onus. It's difficult to prove a negative and no doubt
12 Mr Gilbertson will take you to the evidence that he says
13 establishes the truth of that.

14 Mr Cripps gives different evidence, as Your Honour
15 knows, and there are some reasons for thinking his
16 evidence might be preferable to those of those plaintiff
17 and those of the defendants, in particular the tone of
18 the exchanges of emails and that quite important matter
19 of what happened on the 24th. As my learned friend
20 pointed out, the 24th was the meeting before the email
21 behind Tab 18 in which he'd said please call me. All of
22 the parties say his first words were not I've banned you
23 or you're not to come here or anything like that.

24 Everyone agrees the first words he said were, "I
25 asked you to call me", or "I told you to call me", or
26 something along those lines and they are not suggestive
27 that he had banned anyone at that stage. Your Honour
28 might therefore think it was preferable, Mr Cripps
29 evidence was preferable to that of the plaintiffs - I'm
30 sorry, I call them the plaintiffs because of the way the
31 onus is around in relation to these matters, but the

1 artists.

2 The second imputation which is the same whether
3 we're dealing with the plaintiffs imputation or the
4 defendants imputations, is that the 1st plaintiff used
5 economic duress to force the 1st and 2nd defendants to
6 agree to terms that were not in the original contract.
7 In my submission there's no evidence of economic duress
8 in this case. The artists have given no evidence to the
9 best of my recollection that were in particularly
10 parlance financial circumstances at this time.

11 Your Honour knows that as a matter of law and given
12 that the assertion is made as a matter of law in the
13 matter complained of because it's asserted to make the
14 contract voidable. As a matter of law the concept of
15 economic duress is much more than pressure. The
16 authorities say that pressure, even overwhelming pressure
17 doesn't amount to economic duress. What's required is
18 that the will of the other party be overborne.

19 HIS HONOUR: Sorry, Mr Dibb, are you asking me to read that
20 part of the article as a lawyer rather than as - - -

21 MR DIBB: Not exactly, Your Honour. I'm asking you to read it
22 in the context of the matter complained of itself. If
23 Your Honour turns in the first article - - -

24 HIS HONOUR: No, I remember the context, because you said
25 you're taking me now to legal concepts and what a person
26 alleging economic duress at law must prove. Would an
27 ordinary reasonable reader know that and would their mind
28 go to the legal concepts?

29 MR DIBB: They would know that it was being asserted that by
30 economic duress it meant duress that would render an
31 agreement legally voidable because that's what the

1 article says.

2 HIS HONOUR: Yes, but they would know what as a matter of law
3 would bring about that result would they?

4 MR DIBB: They may well not know what the test for economic
5 duress. I don't submit that the ordinary reasonable
6 reader knows what the test for economic duress as a
7 matter of law is, no, I don't submit that. But it's more
8 the ordinary reasonable reader would gather from this
9 than merely they were under a bit of pressure. And they
10 haven't even given any evidence of financial pressure,
11 but it's more than just a matter of ordinary bargaining,
12 that there's some real misconduct here.

13 HIS HONOUR: What's alleged is that the moneys were withheld
14 unless and until the defendants agreed to a release which
15 was not part of the contract. So it's alleged that the
16 plaintiffs forced them to agree to something that they
17 were not bound to agree to as a matter of law under the
18 contract as a condition of getting the money that they
19 were entitled to, that's what they're saying. The
20 economic duress, at least in layman's terms, is that
21 financial pressure was put on them which was unwarranted
22 under the contract.

23 MR DIBB: I hear what Your Honour says and it is for Your
24 Honour to construe the meaning of the matter complained
25 of. Your Honour is the tribunal of fact in this case.
26 It's my submission that the reference to procuring
27 agreement by duress rendering the agreement legally
28 voidable perhaps goes further, but I don't cavil with
29 Your Honour's view.

30 Even then the evidence is not that they were put
31 under economic pressure. They were asked for a

1 confirmation that this would be the end of affairs
2 between them. There was a mechanism in the agreement for
3 bringing any disputes forward, first by writing about
4 them and then appointing representatives to discuss them.
5 In those circumstances it wasn't an improper withholding
6 of the money to say, well, is there a dispute which we
7 must submit to the procedure in Clause 10 of the
8 agreement? Or if there's no dispute, here's your money
9 and we go our separate ways. That's my submission, Your
10 Honour.

11 HIS HONOUR: Yes, but the ordinary reasonable reader wouldn't
12 know that would they?

13 MR DIBB: No, Your Honour. But we're dealing - I'm not dealing
14 now with whether the meaning's conveyed but whether it's
15 proved to be true by the evidence.

16 HIS HONOUR: I see.

17 MR DIBB: I won't repeat myself with respect to the third
18 imputation about the submission that that imputation is
19 not a permissible variant of the plaintiff's imputation.
20 The submission I do make is that the evidence would not
21 support the view that Mr Cripps deliberately inhibited
22 the 1st and 2nd defendants capacity to promote the
23 exhibition causing the exhibition to fail.

24 There are a couple of elements to that. The first
25 is that this deliberate inhibition would appear, or we
26 don't know, would appear properly to focus on the
27 catalogue and the allegation that they were banned from
28 the space, and neither of those propositions is made out
29 by the evidence. There was no agreement to sell the
30 catalogue. There was early discussion about the
31 catalogue and it may be there is one of the artists gives

1 evidence that Yolande Pickett said, oh, we'll sell it
2 alongside your catalogue downstairs, in quite a casual
3 way Your Honour might think.

4 For the rest it appears to have been an assumption
5 made, an assumption that was not borne out by the formal
6 agreement into which they entered. That's one element of
7 this inhibit the capacity to promote. The second is the
8 allegation that they were prohibited from attending the
9 gallery. Your Honour won't accept that because they were
10 never told they were prohibited from attending the
11 gallery in the written material. It seems very dubious
12 in the light of the conversation of 24 June where
13 everyone agrees that what he said was, "I asked you to
14 call me," that they were prohibited on the occasion of
15 the first conversation on 18 June as they allege.

16 If they had been so prohibited he would surely have
17 said, "You're banned, you're not supposed to be here."
18 That would have been the opening salvo, if he told them
19 that they couldn't come back. "What are you doing here?
20 I told you you're not allowed in," something along those
21 lines. It wouldn't have been, "I asked you to call," or
22 even, "I told you to call me." That's consistent with a
23 position exactly as subsequently outlined in the email of
24 the 26th, "Please let me know when you're going to be
25 here so I can make sure I'm on the premises." And that's
26 a very different proposition.

27 With respect to the fourth of these imputations, the
28 1st plaintiff is a racist who has embraced the views of
29 national socialism or Nazism, on the defendants' version,
30 the 1st plaintiff is a racist who holds views that are
31 similar to those of Adolph Hitler. I don't know what I

1 can say to Your Honour about that. It's such an
2 outrageous proposition, that there is no evidence at all
3 to suggest that Mr Cripps is in any general way a racist.

4 Adolph Hitler, as is well known, had a view of the
5 master race, of some Arian exceptionalism. Yes, he was
6 contemptuous of Jews and Gypsies and Slavs and many other
7 races as well. But to suggest that Mr Cripps is a racist
8 in that way even if, putting it at its highest, there was
9 some dispute about the rights and wrongs of what's
10 happening in the Middle East, even if that did happen and
11 even if it happened pretty much in the terms in which the
12 artists allege, even then it would be just wildly short
13 of supporting the truth of an imputation that Mr Cripps
14 is a racist to be compared in any way with Adolph Hitler.

15 It could not be, on the evidence before the court,
16 that this imputation is true, in my submission, Your
17 Honour, and the fact that it is persisted in as a defence
18 is greatly offensive and greatly aggravates the damages
19 to which Mr Cripps is entitled. The fifth imputation is
20 that the plaintiff, the 1st plaintiff is a bellicose
21 bully, and that's the same as the 1st defendant's variant
22 (e).

23 Again, it's difficult to argue a negative but I
24 would only say that there is evidence that he is
25 sometimes short tempered, but there is also evidence that
26 he is generally well regarded certainly by many of the
27 people who gave evidence before this court and regarded
28 as a good man, and he gave evidence himself that he
29 regards himself as a good man.

30 You would not be persuaded, in my submission, on the
31 balance of probabilities that it's been established that

1 he is a bellicose bully. In relation to those
2 imputations also there is a defensive comment, and the
3 defensive comment and/or honest opinion is very much an
4 issue in the case. In relation to that defence I take
5 Your Honour - I have made copies for Your Honour, and
6 Your Honour has no doubt seen this material, but I've
7 made copies of part of the Looseleaf Service, Tobin and
8 Sexton, Defamation Law and Practice in Australia, and
9 also of a section of Gatley on Slander and Libel, 11th
10 edition, which is most recent.

11 Your Honour has no doubt seen those but I'll just
12 take Your Honour to a couple of aspects. Then I propose
13 to take Your Honour just to one case and that case is the
14 case of Channel 7 Adelaide Pty Ltd v. Dr Colin Manock. I
15 have a copy of that for Your Honour and a copy for my
16 learned friends. My learned friend has it. Turning
17 first to the Tobin v. Sexton Service. On the front page
18 of that, the introduction, Your Honour will see and no
19 doubt Your Honour is aware that some important common law
20 concepts in relation to the defence of comment/honest
21 opinion, although they're not quite the same.

22 The first is whether it was an expression of opinion
23 as opposed to a statement of fact. Relevant to that is
24 the ability to see it as comment on facts stated or
25 referred to or otherwise notorious to the reader.
26 Whether the opinion related to a matter of public
27 interest - and we'll be saying more about that - whether
28 the opinion is based on material that's substantially
29 true on certain privileged material, and we would say
30 there's no issue of privileged material in this case. I
31 don't know if my learned friend will (indistinct) the

1 reverse. Perhaps he will. No, he won't, I'm told.

2 And whether the opinion was honestly held by the
3 defendants at the time of publication. Your Honour will
4 see on the second page in that second paragraph that the
5 learned authors take the reader almost immediately to the
6 decision of Justices Gummow, Hayne and Heydon in Channel
7 7 Adelaide Pty Ltd v. Manock, and that is the case to
8 which I will be taking Your Honour. I'll go straight
9 there, Your Honour, because I'm sure Your Honour has had
10 a look at those.

11 HIS HONOUR: I've had a look at the Looseleaf Service.

12 MR DIBB: You have had a look at the - - -

13 HIS HONOUR: Yes, generally.

14 MR DIBB: I didn't doubt Your Honour had. In the case of
15 Manock, as I'll call it, there are four judgments - three
16 judgments, sorry. There's the judgment of the learned
17 Chief Justice, the judgment of the majority, Justices
18 Gummow, Hayne and Heydon, and the judgment of Justice
19 Kirby. The judgment of Justice Kirby, I won't be taking
20 Your Honour to the judgment of Justice Kirby.

21 Justices Gummow, Hayne and Heydon pose a number of
22 questions that they say are the issues in this case and
23 they define really the offence of comment quite well, in
24 my submission. I've just lost my reference to them.
25 Yes, Paragraph 31, the first question is, "Is it comment
26 or a statement of fact?" "Are the facts on which the
27 supposed comment is alleged to be based sufficiently
28 identified?" If it's not it will be interpreted as a
29 statement of fact. "Is the meaning pleaded by the
30 plaintiff relevant to the defence of fair comment pleaded
31 by the defendant?" That's, I don't think, an issue in

1 this case because in each case the defendants plead that
2 the substance of the comment is the imputations - well,
3 in relation to the first matter complained of the
4 imputations as pleaded by the defendant but essentially
5 directed to the same area as the meaning pleaded by the
6 plaintiff.

7 "Even if the answer to (c) is yes would the number
8 and nature of the criticisms made in," of the particulars
9 of this particular case, "lead an honest person to agree
10 that the plaintiff had deliberately concealed evidence?"
11 That's quite an important issue, the degree to which the
12 comment must be such as might reasonably be made by an
13 honest person. It's an issue on which there's been a
14 good deal of debate over the years but, in my submission,
15 this case represents the decision of the High Court of
16 Australian on that issue and it differs perhaps somewhat
17 from the position in other areas.

18 With respect to the first question, Their Honours
19 are, if Your Honour hasn't already read this case - - -

20 HIS HONOUR: No, I haven't read this case particularly.

21 MR DIBB: Your Honour no doubt will read it. In respect to the
22 first question Their Honours set out the correct
23 approach, well, at least on a strike out basis, and that
24 is to look at whether the matter complained of conveys
25 the meaning as a comment or whether it conveys it as a
26 statement of fact to an ordinary reasonable reader.

27 At Paragraph 35, a distinguishing fact in comment in
28 Brent Walker Group plc v. Time Out Ltd, Bingham LJ said
29 at the end of that paragraph that, "Comment may only be
30 defended as fair if it is comment on facts," meaning true
31 facts, "stated or sufficiently indicated." And Their

1 Honours stress that point by adding emphasis to those
2 words in his Lordship's judgment.

3 They refer to the judgment of Chief Justice Jordan
4 in *Goldsborough v. John Fairfax*, and say, "It must be
5 indicated with reasonable clearness ...(reads)... about
6 facts which are, " and this again is a matter that Their
7 Honours in the High Court have emphasised, "which are at
8 the same time presented to or are in fact present
9 ...(reads)... fairly informed upon the facts."

10 Towards the end of Paragraph 35 continuing in the
11 same vein Their Honours say, and it's not in dispute,
12 that, "A comment may be a statement of fact and may be
13 held ...(reads)... to whom the words are addressed."
14 Here we are some distance removed from the idea of facts
15 being incorporated by a footnote or by a reference to
16 another article I add. "If a statement in words of a
17 fact ...(reads)... statement of fact."

18 An important issue in this defence is a clear
19 separation between that on which the comment is made and
20 the comment itself. If I take Your Honour to Paragraph
21 41 in dealing with the case before the court at that
22 time. They deal with the data, dates and documents that
23 don't add up. "Unlike the other three allegations this
24 may be more than a statement of fact ...(reads)... not
25 necessarily set out by him."

26 The last sentence of that quote is particularly
27 apposite, in my submission, in this case. "Any matter
28 therefore which does not ...(reads)... by the plea of
29 fair comment." And talking here about a reasonable
30 clearness in the sense of it being not mixed up with the
31 facts on which it's supposed to be based.

1 In the Smiths Newspapers v. Becker their Honours
2 refer to the judgment of Justice Evatt. Again at the end
3 of that first paragraph, "A clear separation of facts
4 from the defamatory expressions of opinion is
5 ...(reads)... materials is obscure", their Honours say in
6 Paragraph 42, their Honour suggest that the aspects of
7 the matter before them are obscure. "This obscurity
8 strongly suggests that while there may be ...(reads)...
9 intermingled with factual material.

10 Turning to Paragraph 44 or just above Paragraph 45,
11 their Honours deal with the second and a crucial point in
12 this case, "On the facts on which the supposed comment is
13 alleged to be based sufficiently identified". Paragraph
14 45 they say, "The facts on which it is based are stated
15 or indicated ...(reads)... or being notorious". As we go
16 through this judgment, Your Honour, Your Honour will see
17 that the majority in this case were concerned to
18 distinguish between comment based on facts and comment
19 based on topics and comment to be comment must be based
20 on facts. It can't be based on topics of public
21 interest. It must be based on true facts that are
22 matters of public interest.

23 Their Honours deal with the development or the
24 debate in this area of the law and deal with what was
25 said in the majority in Pervan v. North Queensland
26 Newspaper and with Kemsley v. Foot in the United Kingdom.
27 Ultimately their Honour say that in Pervan - - -

28 HIS HONOUR: Sorry, we're at what page?

29 MR DIBB: I'm sorry, I'm taking Your Honour now to p.32,
30 Paragraph 56. I'll take Your Honour to Paragraph 55
31 first. Justice Eady in Kemsley v. Foot gave three

1 examples of the distinction between facts and facts
2 stated referred to and notorious, "If the minister is
3 unfit to hold public office because he lied" - sorry, the
4 statement, "The minister is unfit to hold public office
5 ...(reads)... the facts are notorious". But none of
6 these are anything like what I anticipate and I have to
7 anticipate and I'll come to that matter later, will be
8 the argument of the defendants in this case. "So to
9 reason is to adopt the approach taken by the majority
10 ...(reads)... facts, not subject matter".

11 Ultimately at Paragraph 69 after dealing with the
12 judgment of Justice McHugh they say just after the
13 footnote at 108, "The majority would have changed the
14 fair comment ...(reads)... of what the majority have said
15 is not correct". That's the High Court, the majority in
16 this case in the High Court saying that the analysis of
17 Pervan that suggested that it had endorsed an approach of
18 basing comment on topics or substratum or something like
19 that is not an accurate analysis of Pervan on what is
20 required is the statement of facts. That's the classical
21 statement, facts truly stated and this is the High Court
22 endorsing that.

23 At Paragraph 72, "The correctness of the plaintiff's
24 attack need not be considered in this appeal
25 ...(reads)... any of these slides", and their Honours
26 referred to a slide from facts - sorry, at the end of
27 Paragraph 71, "Slides from facts to substratum of fact to
28 subject matter or topics ...(reads)... law very
29 radically", as indeed their Honours clearly say it would.
30 "The correctness of the plaintiff's attack need not be
31 considered ...(reads)... it must be applied".

1 That's the importance of that case, Your Honour, and
2 when we come to the pleading in this case Your Honour
3 will see the force of that because a couple of things
4 have happened in this case. The first is arguably the
5 defence of comment by both defendants fails at the first
6 hurdle because no facts are identified on which the
7 comment is based. I'll take Your Honour to Paragraph
8 8(b) of the second further amended defence of the
9 1st defendant which reads, "Further or alternatively, if
10 the first Vakras article ...(reads)... who exhibit their
11 work at the gallery".

12 In my submission, Your Honour, that falls squarely
13 foul of what's said in Manoc. That is not an allegation
14 of the fact. That's an allegation of a topic or an area
15 of interest or a substratum but there are no facts
16 alleged. In 8(c) there is a bare assertion that the
17 opinions related to a matter of public interest were
18 based on proper material and accordingly there's a
19 defence under s.31 of the Defamation Act.

20 I'll take Your Honour to the judgment of Justice
21 Beach. In this case - sorry. This was an interlocutory
22 application and there were a few orders sought and there
23 were some debate about whether matters would be struck
24 out, the usual sort of thing that happens in the
25 defamation list. I'll take Your Honour to Paragraphs 36,
26 37 and 38. In 36 His Honour said that, "The plaintiffs
27 are entitled to the best particulars the ...(reads)...
28 solicitor's letter of 3 July 2012".

29 Your Honour should have in the court book that
30 letter of 3 July 2012. Does Your Honour have a copy of
31 that?

1 HIS HONOUR: If you tell me where it might be I might try and
2 find it.

3 MR DIBB: Let me see if I've got another copy. It should be in
4 the court book.

5 HIS HONOUR: Just tell me where though.

6 MR DIBB: I'll hand up to Your Honour my copy. Do you have a
7 copy?

8 MR GILBERTSON: No, I don't.

9 MR DIBB: OK, well, I've got another copy so I'll find it for
10 you. Does Your Honour have the answers to the
11 particulars, the letter of 10 October 2010?

12 HIS HONOUR: No, it may be in the materials somewhere but I
13 haven't gone hunting for letters. I looked at the
14 requests for particulars in the formal court documents.

15 MR DIBB: Yes, Your Honour.

16 HIS HONOUR: So in this form, yes, I would have seen it.

17 MR DIBB: It's Paragraphs 8 and 9 of that letter of 3 July.

18 HIS HONOUR: Yes.

19 MR DIBB: In the further and better particulars and these
20 further and better particulars are referred to in the
21 defence. You will have seen in relation to the defence
22 of justification to the racism imputation that the
23 defendant relies on the particulars in these - - -

24 HIS HONOUR: I've looked at those, yes, in that context.

25 MR DIBB: Your Honour will see at Paragraphs 4 and 5 the
26 response given to that request and it is in effect we've
27 told you what we're going to tell you. The defence of
28 comment or honest opinion must be based on proper
29 material and proper material, as Your Honour knows, by
30 and large as facts truly stated it can be some other
31 things but by and large it's facts truly stated. We are

1 entitled to know what this defence is based on but
2 importantly, the defence just isn't maintaining if it's
3 not based on proper material and there has been no
4 particularisation of that material.

5 His Honour ordered a response. Now, I suppose it
6 could be regarded as a response to say you're not
7 entitled to the particulars you're asking for but I think
8 it might be implicit in His Honour's order that His
9 Honour regarded the provision of particulars as being
10 describable in this case. In my submission, Your Honour,
11 these defences of comment and honest opinion just aren't
12 maintainable with the way the defendants have opted to
13 plead and particularise their case.

14 What we have is no more than the identification of a
15 topic in relation to the s.31 defence, no identification
16 of any proper material at all. But in relation to the
17 common law defence, the material by the 1st plaintiff of
18 artists who exhibit the works at the gallery and at
19 Paragraph 9(b) on p.12 insofar as it's defamatory of the
20 2nd plaintiff, "Fair comment on a matter of public
21 interest, namely ...(reads)... could be trusted". No
22 facts there, Your Honour.

23 That's important, Your Honour, because if there were
24 facts alleged in this case had there been some
25 identification of the proper material, that is, the facts
26 truly stated or referred to or notorious on which the
27 comment was made, then evidence would no doubt have been
28 led in support of the truth of those facts and evidence
29 might have been led counter to those facts and I have to
30 guess. I guess perhaps that my learned friend might want
31 to take the court to some proposition from Mein Kampf and

1 assert that the fact that Adolf Hitler opposed the state
2 for Jews in Palestine perhaps is one of the facts on
3 which his comment is based.

4 I don't know and Your Honour don't know yet. But if
5 he did then there might have been a lively dispute about
6 whether that in the context of the book as a whole was a
7 fact whether that was indeed a correct interpretation of
8 what Mr Hitler's views were in relation to Palestine or
9 there might be other portions of Mein Kampf that might
10 qualify that or whether it's applicable to this debate at
11 all in any event because obviously the creation of Israel
12 postdates the death of Adolf Hitler. I'm guessing. I
13 don't know. I don't know what my learned friend is going
14 to suggest are the facts on which this comment is alleged
15 to be based. But if at some stage he applies - well, no,
16 I withdraw that.

17 In any event, and I haven't really been able to pick
18 out of this what might be alleged to be the facts and
19 what might be - well, we know what's alleged to be the
20 comment. The substance of the comment is the meaning of
21 the imputations. But what might be the facts that are
22 relied upon and the basis on which they are said to be
23 true I haven't really been able to pick out of this.

24 In any event, in my submission, if there are facts
25 in here they are so intermingled with the comment as to
26 fall foul of the authorities to which I took Your Honour
27 about the fate of a comment defence that's pleaded in
28 relation to material that's structured in that way. I
29 anticipate Your Honour was about to say something to me
30 then.

31 HIS HONOUR: No.

1 MR DIBB: In relation to the second matter complained of the
2 imputations pleaded are, "The first plaintiff's pattern
3 of intimidating behaviour has left other artists too
4 fearful to describe to the public their own negative
5 experience with the first plaintiff." The defence to
6 that is, firstly, truth and, secondly, qualified
7 privilege. There's no defence of comment in relation to
8 that article.

9 I repeat my submissions with respect to the defence
10 of qualified privilege. It fails in limine. It's not a
11 privileged occasion. The particulars pleaded in relation
12 to the truth of the first meaning are found on p.15 of
13 the defence at Paragraph 12(a) and the numbering seems to
14 start again, 1. "In relation to the meaning in Sub-
15 paragraph 12A(a) the first defendant relies upon the
16 following ...(reads)... specified in the contract."
17 There's been no evidence about that as far as I can see,
18 Your Honour.

19 "He also behaved in an aggressive and threatening
20 manner towards the exhibitor." "Following an exhibition
21 at the gallery in or about April or May ...(reads)...
22 sale of the exhibitor's artwork." We take it that that's
23 Courtney Kim that's referred to here. The evidence is
24 not that the plaintiff refused to pass on to her the
25 money for her artwork. She had been paid, as she gave
26 evidence, as she was paid about six weeks later I think.

27 The evidence, insofar as there is evidence, on the
28 practice of that industry in making payment suggests that
29 60 days or more is quite a common term for accounts to be
30 paid. "In or about January 2010 the first plaintiff
31 insulted and demeaned an exhibitor at the gallery in an

1 aggressive and threatening manner." I don't know what
2 we've had any evidence about that particular. I can't
3 identify which exhibitor that might be.

4 "Some or all of the exhibitors referred to above are
5 reticent to describe publicly their own negative
6 experiences with the first plaintiff." I don't recall
7 any witness giving any evidence in support of that
8 particular. In relation to the sexual harassment, very
9 serious sexual harassment allegation, "In or about April
10 or May 2009 the first plaintiff made several sexual
11 advances at the gallery to Leila, a woman who was a staff
12 member or volunteer at the gallery at that time."

13 Your Honour heard evidence from Leila; there were no
14 sexual advances. She was asked in cross-examination
15 whether sexual advances had been made and she said no.
16 The second particular is that, "In or about November 2009
17 the first plaintiff made sexual comments at the gallery
18 to Leila and Thao about their appearances and said to
19 each of them that he wanted to buy them dinner because
20 they were gorgeous or words to that effect." I'll put
21 that one to one side for a moment and go on to the third
22 one.

23 "In or about November 2009 the first plaintiff said
24 to a female staff member ...(reads)... shagging all night
25 or words to that effect." Well, her identity remains a
26 mystery. She wasn't called and no such evidence was
27 given. So what remains in support of that serious
28 imputation is the allegation that he made sexual comments
29 at the gallery to Leila. The only evidence of that is
30 that yes, he had called her gorgeous. Well, if that's
31 sexual harassment there's no hope for the world, Your

1 Honour.

2 That doesn't go anywhere near proving on the balance
3 of probabilities that the plaintiff sexually harassed
4 staff and volunteers at his gallery. It just doesn't get
5 anywhere near that. What is more, it raises once again
6 the question of aggravation, that the defendant should
7 have persisted in a defence of truth have in effect said
8 for the past three years it's true and we'll prove it,
9 from then til now and given very great publicity to these
10 proceedings and to the pleadings in these proceedings, as
11 Your Honour has seen, when the evidence that they
12 actually had was practically nothing, so little in fact
13 that the evidence of the first defendant is he took that
14 allegation off, he says because it wasn't about what had
15 happened to others.

16 But Your Honour might wonder whether that was really
17 his motivation. He took that allegation off quite
18 quickly, we don't know exactly how quickly. If he'd
19 proved all these three particulars Your Honour might
20 think nevertheless it was staggering cheek to persist in
21 an allegation of that seriousness on that basis. But
22 given the way that the evidence has actually been called,
23 in my submission that is a very - in the first place it's
24 clearly not defensible on the basis of justification. It
25 has not been proved to be true in substance or in fact or
26 in the balance of probabilities and it's a very serious
27 matter of aggravation, in my submission, Your Honour.

28 As I say, there is no defence of comment in relation
29 to those imputations. There is no defence, Your Honour
30 now knows, of statutory qualified privilege, a s.30
31 defence, no defence based on the reasonableness of the

1 conduct of the first defendant, no doubt because there's
2 no evidence of reasonableness and even the first
3 defendant wouldn't ask Your Honour to accept that his
4 conduct in this respect had been reasonable.

5 All that remains is the defence of qualified
6 privilege at common law. It's not a privileged occasion.
7 It's a publication to anyone who happens upon this
8 material as they can through searching for Mr Cripps's
9 name or his company's name. There is no duty, interest,
10 reciprocity in this case. If there were then any
11 allegation of a crime for example would be defensible as
12 qualified privilege.

13 We would say, well, there's an interest in all
14 members of society to know of an allegation of a crime,
15 and that is not and never has been anything like the law.
16 I take Your Honour, before I leave the first defendant's
17 defence, to p.18 of that defence where, in p.24 and 25,
18 and this is relevant to the question of honest belief in
19 relation to the first article and it's relevant to the
20 question of malice.

21 If Your Honour were minded to hold that there had
22 been an occasion of privilege it would be relevant to the
23 question of malice. "Save that he admits that he did not
24 take any steps to verify the accuracy of the first Vakras
25 article ...(reads)... otherwise does not admit to
26 Paragraph 24. Then, "Save that he admits that he did not
27 take any steps to verify the accuracy of the second
28 Vakras article ...(reads)... otherwise does not admit
29 Paragraph 25.

30 Your Honour will note the difference in those two
31 paragraphs, which is that in relation to the second

1 Vakras article and its important allegation of sexual
2 harassment to his staff and volunteers the words, "And
3 that given the nature of those matters that it was not
4 necessary for him to take any such steps," are missing
5 from Paragraph 25.

6 He published an outrageous allegation with no
7 evidence and without checking it. That essentially is
8 what it amounts to. At Paragraph 30 the first defendant
9 admits that he has continued to make available the first
10 Vakras article and the second Vakras article. In
11 relation to the Raymond article, again, there is the
12 Polly Peck pleading.

13 The imputations alleged to have been conveyed by the
14 plaintiff are in Paragraph 16 of the statement of claim
15 and the imputations alleged to be conveyed by the
16 defendant are in Paragraph - - -

17 HIS HONOUR: I think you said the second Vakras article. You
18 mean the third article?

19 MR DIBB: No. I have moved on to the Raymond article now,
20 sorry, Your Honour.

21 HIS HONOUR: I think that's what you said.

22 MR DIBB: I may have misled Your Honour, I beg your pardon.

23 I've moved on to the Raymond article. Paragraph 16(a) of
24 the second further amended defence of the second
25 defendant Your Honour will see the allegations that the
26 second defendant says are conveyed by that article, and
27 once again roughly we'll line them up. "The first
28 plaintiff as director of the gallery has repeatedly
29 engaged in behaviour that humiliates and embarrasses the
30 artists he represents." And the Lucas-Box, Polly Peck,
31 Hore-Lacy, whatever you wish to call it, imputation is,

1 "As the operator of Guildford Lane Gallery the first
2 plaintiff has repeatedly engaged in behaviour that
3 humiliates and embarrasses artists who exhibit their
4 works there." We do not say that that Polly Peck
5 imputation falls foul of the guidelines in Hore-Lacy.

6 HIS HONOUR: Does not?

7 MR DIBB: Does not. That was pretty much - it's hard to see
8 really why it's bothered to be re-stated, but it contains
9 the same elements. Imputation (b), "The first plaintiff
10 as director of the gallery has repeatedly engaged in
11 behaviour that bullies and abuses the artists he
12 represents." "As the operator of the Guildford Lane
13 Gallery," sorry, this is the second defendant's
14 imputation, "As the operator of the Guildford Lane
15 Gallery the first plaintiff has repeatedly engaged in
16 behaviour that bullies and abuses artists who exhibit
17 their works there."

18 The difference is between artists he represents and
19 artists who exhibit their works there, and we do not say
20 that that falls foul of the guidelines in Hore-Lacy.
21 I'll cut this short. Likewise (d), "As the operator of
22 the Guildford Lane Gallery the first plaintiff has
23 repeatedly engaged in behaviour that sullies the
24 reputations of the artists he represents." That again
25 does not differ significantly from the plaintiff's
26 imputation. It is a meaning, if there be a difference in
27 meaning, on which the plaintiff could ask for a verdict
28 and therefore we don't say that that one is not a
29 legitimate alternative except insofar as we say it's not
30 really an alternative at all, it's the same meaning
31 really.

1 "The plaintiff has failed to support and has
2 sabotaged the exhibitions of some of the artists who have
3 exhibited their works at the Guildford Lane Gallery," as
4 against the plaintiff's imputation, the first plaintiff,
5 "A professional gallerist ceases to support and actively
6 sabotages the artists he represents once he can no longer
7 make any further profit from them." We do say that that
8 differs too much from the plaintiff's imputation,
9 Imputation (e) in Paragraph 16(a) of the second further
10 amended defence of the second defendant.

11 We do say that that is too different to be a Hore-
12 Lacy imputation. The plaintiff's imputation, "The first
13 plaintiff in his arts transportation business is
14 universally despised. The first plaintiff is a person
15 who is widely despised." That's again a very different
16 concept, partly because the plaintiff's imputation is
17 with respect to the arts transportation business, where
18 the defendants' imputation is wider and more serious
19 therefore for that reason being more serious breaches the
20 permissible latitude in Hore-Lacy but also because it
21 doesn't meet the sting of the plaintiff's imputation that
22 he is universally despised.

23 It is quite different from saying that he's widely
24 despised. One might be wide, you know, know wide is
25 wide, how long is a piece of string? One might be widely
26 despised, but universally despised is a rather different
27 idea almost. People have enemies and they have
28 supporters, and it will be apparent from the evidence in
29 this case that Mr Cripps is, just like the rest of us in
30 that respect, there are people who think he's a splendid
31 chap and there are some people who perhaps have not the

1 best opinion of him. But universally despised is really
2 quite a different idea.

3 HIS HONOUR: Did you deal with (c)?

4 MR DIBB: I'm sorry, Your Honour?

5 HIS HONOUR: Did you deal with (c)?

6 MR DIBB: Did I not? If I did not I intended to indicate that
7 that's an acceptable variant.

8 HIS HONOUR: It is acceptable?

9 MR DIBB: Yes, an acceptable variant.

10 HIS HONOUR: Thank you.

11 MR DIBB: I may have missed it, I'm sorry, Your Honour. Unless
12 I'm misunderstanding the proceedings, Imputation (g)
13 doesn't have a co-relative in 16(a) of the second further
14 amended defence of the second defendant and accordingly
15 does not appear to have a justification defence pleaded
16 in respect of it. I don't know if that's deliberate or
17 not given the approach of the defence. One suspects it
18 might not be but it is what it is. At 16B we have a
19 comment defence based it seemed on - - -

20 HIS HONOUR: Sorry, I don't have a 16B.

21 MR DIBB: Page 7. 16B, p.7 of the second further amended
22 defence of the second defendant.

23 HIS HONOUR: I'm sorry, I was looking at the wrong bit. "Those
24 expressions are fair comment on a matter of public
25 interest, namely the poor treatment of the defendants and
26 others by the first plaintiff who was the manager and
27 operator of the gallery." Again what we have at its
28 highest is the indication of a topic or area of interest.
29 We don't have any facts pleaded at all.

30 At 16C there is the equivalent statutory defence.
31 It says it was based on proper material. We don't know

1 what it is. At 16D again we have the - actually no, 16E
2 is the statutory qualified privilege that has been
3 abandoned by my learned friend. 16D is common law
4 qualified privilege. I won't repeat the submission.
5 There's no occasion of privilege here.

6 In relation to the second plaintiff the pleading
7 meaning is that, "The second plaintiff is operated by the
8 first plaintiff and by reason of the matters in Paragraph
9 16 above," that is the imputations pleaded by the first
10 plaintiff, "the second plaintiff is a disreputable
11 company to be avoided by artists and other potential
12 customers." The variant meaning pleaded at 17A is, "The
13 article meant was understood to mean the second plaintiff
14 is a company of questionable repute and should be avoided
15 by artists."

16 The difference is whether there's a difference
17 between the imputation being conveyed with respect to
18 artists and other customers or just with respect to
19 artists. I don't say that that's a difference of any
20 great substance and I accept that that's a variant on
21 which we would be entitled to a verdict and accordingly
22 that the defendant is entitled to defend. I quote
23 another question, whether Your Honour would find that
24 there was evidence justifying that meaning as is alleged
25 in that paragraph.

26 17B is the comment, again, "Whether in its dealings
27 with artists who exhibit their works at the gallery the
28 second plaintiff is a company of good repute." 17C is
29 the statutory honest opinion. Proper material is again
30 alleged but there isn't any proper material pleaded or
31 identified in the particulars. In the absence of such

1 material the defence can't succeed.

2 That's not to say if Your Honour were to accede to
3 an application to amend at this stage I'd have something
4 to say about that based on Aon Risk Services and so
5 forth. But if Your Honour were to accede to such an
6 application that's not to say that this comment,
7 "Defences would then succeed." They are not also as a
8 public interest as it happens, and it would be a lively
9 debate whether whatever is identified as being the facts
10 on which this comment is based were truly facts and we'd
11 no doubt have to go back into evidence to see whether
12 they could be established or whether they were disputed.

13 At this stage given the information that I've been
14 given in this case I can't really take the matter any
15 further than that. Again, in this pleading on p.12 at
16 Paragraph 26, "The second defendant admits that she did
17 not take any steps to verify the accuracy of the Raymond
18 article beyond satisfying herself that her recollection
19 and understanding of the matters contained in the Raymond
20 article was accurate. She otherwise does not admit
21 Paragraph 26."

22 That, insofar as there might be an issue of malice
23 in relation to the qualified privileged argument, if Your
24 Honour were to find an occasion of privilege that might
25 be a relevant consideration, Your Honour's consideration
26 of malice. I think I've got to the end of what I wanted
27 to say to Your Honour. I'll just have a quick word with
28 my solicitor and of course ask if there's any further
29 assistance. My solicitor has given me a bundle of clean
30 copies for the tender bundle.

31 HIS HONOUR: Of the?

1 MR DIBB: Clean copies of the tender documents.

2 HIS HONOUR: Yes, please.

3 MR DIBB: Unless there's anything else I can assist Your Honour
4 with? I think there probably is, is there?

5 HIS HONOUR: Yes, I do have some questions, and of course these
6 questions apply to both counsel. I've read your piece on
7 damages and the cases appear to place some emphasis in
8 part at least on the impact of the alleged defamatory
9 publication on the plaintiff.

10 MR DIBB: Yes, indeed, Your Honour.

11 HIS HONOUR: Is there any discussion in the cases about whether
12 the so called eggshell skull principle apply in the law
13 of defamation such that if the plaintiff is particularly
14 vulnerable for some reason and therefore is more
15 traumatised by a defamatory article than perhaps somebody
16 who is not unusually vulnerable that that sounds in
17 higher damages for the plaintiff? Has there ever been
18 any discussion along those lines?

19 MR DIBB: Not immediately call to mind a decision that
20 discusses that directly.

21 HIS HONOUR: So you don't or you do?

22 MR DIBB: I don't, Your Honour, no.

23 HIS HONOUR: It's a well known principle as you would be aware
24 in personal injury cases.

25 MR DIBB: Indeed, Your Honour, and in general tort fees
26 (indistinct) as he or she finds them. The law of
27 defamation has not been astute to protect people from
28 accidental defamation. For example my favourite example
29 of a true innuendo case is the case of Kate Fitzpatrick,
30 the actress, who was said in a Sydney Morning Herald
31 article to have attended a particular party, and of

1 course there was nothing defamatory about saying she'd
2 attended that party, unless you knew that she'd gone home
3 from filming that day claiming to be too ill to continue.

4 She had not in fact attended the party. One might
5 think, well, there's a small amount of fault on the part
6 of the newspaper, but often in a true innuendo case a
7 person can be defamed without the defamer having any
8 intention to do any such thing, and I think the famous
9 case - - -

10 HIS HONOUR: This is a different principle though.

11 MR DIBB: The only reason that the law would depart from the
12 ordinary rules of tort liability one might think is that
13 it wasn't fair in this situation. But the law of
14 defamation has not been particularly concerned to protect
15 that notion of fairness in that way in defamation cases.
16 There are not uncommonly - and in the other way, as has
17 been observed, the law of defamation sometimes shows a
18 rough edge to a plaintiff who loses on the basis that
19 something is found to be published on occasion of
20 privilege even though it be quite negligent and very
21 damaging and yet nevertheless he loses. But I can't call
22 to mind an authority on that particular issue.

23 HIS HONOUR: All right. If there is anything further let me
24 know. The next question is, particularly having regard
25 to the way that you've described that the cap operates in
26 relation to aggravated damages and so on, and given that
27 in this case we've got three publications, given that
28 judges now assess damages, not juries, since the passage
29 of this Act, is it the practice to break down damages in
30 respect of different publications or just one global
31 damages figure is awarded?

1 MR DIBB: The cause of action is the publication of the matter
2 complained of and, in my submission, for a number of
3 reasons, including the possibility that a particular
4 portion of the verdict might be reduced or overturned on
5 appeal, it would be that Your Honour would award damages
6 for the individual publication.

7 HIS HONOUR: Is there any authority for that? Again, I'm very
8 keen to make sure that we're not just acting on instinct
9 here.

10 MR DIBB: Your Honour, I don't know if my learned friend will
11 be able to - - -

12 HIS HONOUR: That's usually not the case. I mean, generally
13 with general damages it's just one figure, but not having
14 had great experience as a judge in this area I want to
15 call on whatever learning there is to make sure that
16 something which is preventable, it doesn't lead me into
17 error. Perhaps you can come back on that.

18 MR DIBB: I will, Your Honour.

19 HIS HONOUR: Of course Mr Gilbertson can address on all these
20 issues as well.

21 MR DIBB: I hadn't realised how ignorant I was, Your Honour.

22 HIS HONOUR: I'm sorry?

23 MR DIBB: I hadn't realised how ignorant I was of the
24 authorities in this area.

25 HIS HONOUR: I'm neither confirming or denying that, Mr Dibb,
26 but I'm certainly admitting that I have some experience
27 in some of these matters that I'm raising and that's of
28 course why I'm raising it. The next issue relates to
29 this, and the fact that I'm raising damages only means
30 that I've read your document and these questions have
31 arisen from it. I haven't jumped the gun and I don't

1 want you to assume that damages will be awarded in this
2 case.

3 You talk about aggravated damages and some types of
4 aggravated damages, some conduct which may give rise to
5 aggravated damages is subject to the maximum and some are
6 not.

7 MR DIBB: Yes, Your Honour.

8 HIS HONOUR: I think the cases you quote or the principle that
9 you state - in fact it's in Paragraph 16 of your
10 submission. You talk about post publication period.

11 What is the post publication period here? Is there one?

12 MR DIBB: Yes. In this context, Your Honour, it's post the
13 period when the defendant took its - performed its role
14 in the production of the defamatory material, in my
15 submission, rather than an inquiry into - with the
16 publication of a book or the internet, what the situation
17 was when each individual ex hypothesi separate cause of
18 action arose as each individual person in the matter
19 complained of was published read it or saw it or
20 whatever.

21 Post publication conduct in that context, in my
22 submission, is after the time at which the defendant does
23 what it does, writes, prints, uploads, whatever.

24 HIS HONOUR: So in this case, taking the first article, it's
25 back in August, whenever it was, that the first article
26 was put up on the internet?

27 MR DIBB: The first article we understand - we didn't know
28 about it then but, yes, we understand it was August or
29 September 2009.

30 HIS HONOUR: So everything that happened in relation to the
31 first article, you say that everything that happens after

1 that in terms of conduct of the defendants is post
2 publication?

3 MR DIBB: And wouldn't affect the cap, that's right, Your
4 Honour.

5 HIS HONOUR: All right. Because of that is there any case law
6 on whether the component of aggravated damages needs to
7 be singled out from the general amount of damages?

8 MR DIBB: Because there are no exemplary damages of course,
9 Your Honour, and aggravated damages, circumstances of
10 aggravation entitle the court to look higher up the
11 scale.

12 HIS HONOUR: Go up to the top of the scale rather than towards
13 the middle, I understand that.

14 MR DIBB: Certainly there have been judgments in which a
15 separate component has been identified and there have
16 been judgments in which no separate component has been
17 identified, and I don't know that there's any principle
18 basis on which that choice is made. It may be that if
19 Your Honour was concerned, if Your Honour regarded the
20 circumstances in this case as entitling the plaintiff or
21 either of them to an award of aggravated damages Your
22 Honour might want to identify the amount Your Honour
23 would have awarded had there not been those circumstances
24 of aggravation, just for the convenience of an appeals
25 court if the matter went further. But in principle - - -

26 HIS HONOUR: So you say there are cases where that has been
27 done?

28 MR DIBB: Yes, certainly.

29 HIS HONOUR: It would not be contrary to principle to - - -

30 MR DIBB: It certainly would not be contrary to principle to do
31 that, no, although it's not in theory a separate head of

1 damage.

2 HIS HONOUR: Yes. It's compensatory rather than punitive.

3 MR DIBB: Yes.

4 HIS HONOUR: I think you've covered this issue already. Is the
5 correct approach to assess damages by initially ignoring
6 the maximum, in other words, apply the principles, apply
7 the evidence, apply the law, determine on the appropriate
8 amount, and if that amount happens to be above the
9 maximum then it automatically defaults down to the
10 maximum?

11 MR DIBB: That's my submission. There's one authority, Hocken
12 v. Morris, in Queensland.

13 HIS HONOUR: This is in Paragraph 14 of your - - -

14 MR DIBB: Yes. It flows from the structure of the Act itself
15 in my submission, Your Honour. The Act says that if
16 there are circumstances of aggravation that Your Honour
17 can ignore the cap. But we know that aggravated damages
18 are aggravated compensatory damages. All that's
19 happening is Your Honour is perhaps looking further up
20 the scale. It's implicit in that that the scale may in
21 some cases go beyond the cap otherwise there'd be no
22 utility in the provision.

23 But there's no identification, there's no datum
24 point identified in the Act. If the Act were intended to
25 be a scaling exercise, sort of so much per cent of a most
26 extreme case, as Your Honour would be familiar with in
27 other areas, the one thing that would have to be provided
28 would be the datum point against which Your Honour might
29 measure it. All we know is that the scale may go north
30 of \$355,500. We don't know how far. Is it 400, 500,
31 600? Against what upper limit would Your Honour be doing

1 the scaling?

2 Also it follows as a matter of implication from the
3 way the Act has been structured in that the parliamentary
4 draftsmen and the attorneys general who negotiated this
5 agreement between the states and territories for the
6 Uniform Act must be presumed surely to be aware of the
7 areas of law in which a percentage or a scaling exercise
8 is engaged in, and they have not done so. It's a branch,
9 I would submit, of the principle that important common
10 law rights are not abrogated except by clear terms.

11 If a person is entitled to \$355,000 as their damages
12 then if parliament intended to restrict that amount in
13 some way it would say so. All it has said is it may not
14 go higher than \$355,500.

15 HIS HONOUR: So are you saying that the only case that has
16 looked at this issue is just based on the citation there
17 of a Queensland District Court case?

18 MR DIBB: The only one I'm familiar with, yes, Your Honour.

19 HIS HONOUR: Just finally. Has there been any resolution of
20 the issue that I raised before lunch about getting a Word
21 version of - - -

22 MR DIBB: My solicitor is shaking his head.

23 HIS HONOUR: If the answer is no - - -

24 MR DIBB: It's just to save typing isn't it?

25 HIS HONOUR: Yes, that's all. Rather than my associates copy
26 typing from the hard copy document, just to get the text
27 of the words, that's all.

28 MR DIBB: A complication might be whether the web page as it
29 presently appears on the net is exactly the same as the
30 matter complained of.

31 HIS HONOUR: If it's essentially the same it's a time saving

1 exercise, it would be proof read against the item
2 complained of so that it would truly reflect the item
3 complained of, not what is on the net at the moment.

4 MR DIBB: I have great sympathy with that. I'm sure we'll be
5 able to do something, Your Honour. I haven't myself
6 addressed that issue.

7 HIS HONOUR: Before you do anything speak to Mr Gilbertson to
8 make sure that there's no dispute about what's to come
9 and what form and so on.

10 MR DIBB: We'll pick up what we can, translate it into a Word
11 format and discuss it with Mr Gilbertson before it comes
12 to Your Honour's associate.

13 HIS HONOUR: All right. At this stage I've identified a number
14 of things where you I think would benefit from some
15 further consideration, and perhaps after I heard from
16 Mr Gilbertson I might just summarise what those matters
17 are and ask the parties whether they would wish an
18 opportunity to make further written submissions.

19 MR DIBB: Thank you.

20 HIS HONOUR: If not then that's fine. If so then I'll impose a
21 deadline of some sort.

22 MR DIBB: Thank you, Your Honour.

23 HIS HONOUR: Thank you, Mr Dibb. Mr Gilbertson?

24 MR GILBERTSON: Thank you, Your Honour. What I propose to do,
25 Your Honour, in the time remaining this afternoon is to
26 deal with some of the matters that have been raised out
27 of my learned friend's submissions and discussion with my
28 learned friend and Your Honour has had and I'll return
29 tomorrow morning to the detailed submissions.

30 HIS HONOUR: Yes.

31 MR GILBERTSON: If I could deal firstly with an issue that my

1 learned friend raised in relation to the particulars of
2 comment. When this matter came on before His Honour
3 Justice Beach the detailed parts of the request for
4 particulars in relation to comment for example were not
5 the subject or focus of the application. Had it been I
6 would have made submissions, which I'm about to take Your
7 Honour to as to what the law in this state is in relation
8 to particulars with respect to a rolled up plea of fair
9 comment.

10 Instead the focus was on the matters that His Honour
11 dealt with and what His Honour ordered was that the
12 defendants provide a response. They did provide a
13 response and, in our submission, if the matter were to be
14 re-argued their response was entirely proper.

15 I don't want to say too much more about this other
16 than the plaintiffs have never pursued this issue so if
17 it's said that the defendants did not comply with His
18 Honour's order they should have taken that matter up
19 because in my submission they did comply with the order
20 and had the issue been raised I would have referred the
21 court to a case that I appeared in a long time ago called
22 Watt v. The Herald & Weekly Times Ltd (1998) 3 VR at 740.

23 Unlike the position in New South Wales which arose
24 under the 1974 Defamation Act, the position in this
25 state, subject to a qualification that I'm about to make,
26 is that what still represents the law and that is a
27 defendant who relies upon a rolled up please of fair
28 comment is not required to state what are the facts and
29 what is the comment in the article. So there was never
30 argument about that request before His Honour Justice
31 Beach and the qualification that I should say is that

1 there's another case called Anderson v. Nationwide News.
2 I don't have the citation. It was in the Court of Appeal
3 in which the Court of Appeal dealing with Watt, put Watt
4 to one side and said, well, in any event a defendant is
5 required to state the substance of the comment.

6 That's why the pleas as they are in our submission
7 conform to the law in this state, that is the particulars
8 of the substance of the comment was given but particulars
9 of identifying what's fact and what's comment were not.
10 That's all I wish to say in relation to that matter. If
11 I could turn to an issue that arose yesterday or the day
12 before and that is the grapevine effect. It's our
13 submission that the effect of the authorities is
14 that - - -

15 HIS HONOUR: Mr Dibb has not made any submissions on that.

16 MR GILBERTSON: He hasn't but it goes to the weight that Your
17 Honour can give to what is now Exhibit P5, what was MFI3,
18 that is the email.

19 HIS HONOUR: Yes. My point is that I expressed a preliminary
20 view that based on my cursory view of the authorities it
21 didn't seem to me that it met the principles and I gave
22 Mr Dibb the opportunity to make further submissions by
23 reference to the cases or the evidence that would further
24 inform that preliminary view and he hasn't taken up that
25 opportunity.

26 MR GILBERTSON: I don't say any more.

27 HIS HONOUR: So my point is I don't think there's anything for
28 you to meet, is there?

29 MR GILBERTSON: I don't say anything in relation to that, Your
30 Honour.

31 HIS HONOUR: Mr Dibb, have I been unfair to you?

1 MR DIBB: No, you haven't.

2 HIS HONOUR: Thank you. So I think you can move from that.

3 MR GILBERTSON: Thank you, Your Honour. My learned friend

4 before the luncheon break said to Your Honour that when

5 the ordinary reader reads articles like this it's a

6 matter of impression. As a general proposition we don't

7 cavil with that but the authorities do say that the mode

8 of publication is relevant to how the ordinary reasonable

9 reader might go about forming the meanings which are

10 conveyed and this is discussed in Dr Collins book and I

11 apologise, I don't have a copy of this particular passage

12 but I can tell Your Honour where it is.

13 HIS HONOUR: If you tell me where it is I've got the book in my

14 chambers.

15 MR GILBERTSON: It's Paragraphs 815 and 816 of the third

16 edition of Dr Collins book. I'll just read out the

17 relevant parts. "The learned author says as with

18 identification the nature ...(reads)... quick impression

19 of the meaning. Then in the next paragraph, 816, the

20 learned author says, "Application to the Internet", and

21 Dr Collins says, "As a general rule it seems likely that

22 the ...(reads)... by the words used as a question of

23 fact". So in this case I wish to say more about this

24 tomorrow, there may be an issue as to with what degree of

25 care the ordinary reasonable reader would read these

26 articles. In answer to a question Your Honour raised

27 with my learned friend prior to the luncheon adjournment

28 about when malice is determined, this is also dealt with

29 in Dr Collins book at Paragraph 15.09 in relation to

30 qualified privilege and doesn't assist my clients. It

31 assists my learned friend, because what the learned

1 author says is, "The circumstances from which malice can
2 be inferred are infinite ...(reads)... complained of in
3 the proceedings".

4 The learned author refers in the relevant footnote
5 which is Footnote 22, to Horrocks v. Lowe (1975) Appeal
6 Cases 135 at 151.

7 HIS HONOUR: Do you accept that as being a correct principle?

8 MR GILBERTSON: I accept that as being a correct statement of
9 the law.

10 HIS HONOUR: Thank you.

11 MR GILBERTSON: However, when I go through the detailed
12 submissions we will be submitting to Your Honour that in
13 this case that has no practical difference because of
14 Ms Raymond's evidence in particular as to when these
15 additions were made to her article. I can partly deal
16 with the issue that Your Honour raised before the
17 luncheon break as to how many maxima there are. A
18 plaintiff is limited to the cap regardless of how many
19 causes of action there are and my research over lunch and
20 I want to have another look tonight, does not find an
21 answer to Your Honour's particular question as to what
22 happens if there are two plaintiffs suing in respect of
23 the same publications.

24 In relation to the first proposition that I put to
25 Your Honour and my learned friend was right when he said
26 it's Buckley v. The Herald & Weekly times (2009) 24 VR
27 129 and I can hand up a copy of Buckley and to save Madam
28 Associate making two trips I'll also include a case
29 referred to in Buckley which is Davis v. Nationwide News.

30 HIS HONOUR: One would have thought that when you've got two
31 plaintiffs who are said to have been defamed in the same

1 publication, for example, leaving aside any relationship
2 between them as is the case here and in accordance with
3 normal pleading and joinder rules they can sue in the
4 same proceeding because there's overlap of facts and law,
5 et cetera, that each would be entitled to their own
6 maximum.

7 MR GILBERTSON: Yes.

8 HIS HONOUR: But I say that without being informed by any
9 authority.

10 MR GILBERTSON: The complicating factor here is the operation
11 of s.35(1) which I think my learned friend took Your
12 Honour to, that unless the court orders otherwise under
13 Sub-s.2, the maximum amount of damages for non economic
14 loss that may be awarded in defamation proceedings is
15 250,000 or any other amount adjusted, et cetera. I'll
16 endeavour overnight to see if I can find an authority. I
17 have looked at where Buckley has been referred to and
18 none of them seem to assist on this question.

19 Your Honour will see, if I could take Your Honour to
20 Buckley, one of the issues in Buckley was whether in
21 response to an application for consolidation of
22 proceedings the plaintiff could object on the basis that
23 he or she would lose their cap and Justice Nettle says
24 this at Paragraph 4, "Section 35 has been construed in
25 New South Wales to mean that the limit ...(reads)... in
26 the proceeding", and there's a reference to Davis v.
27 Nationwide News.

28 If that is correct His Honour said, "As at present
29 advised I am respectfully inclined to ...(reads)... to
30 impose a cap". That doesn't answer Your Honour's
31 particular question about where there are multiple

1 plaintiffs and I'll endeavour to see whether further
2 research can illuminate that overnight.

3 HIS HONOUR: Yes. Otherwise if you're told to apply two
4 separate plaintiffs suing in the proceeding the mechanism
5 the plaintiffs will rely upon if they are said to have
6 been defamed in the same article, for example, is to
7 institute separate proceedings and then have them not
8 consolidated as such but heard concurrently with an order
9 that evidence in one case be evidence in the other.

10 MR GILBERTSON: And this issue arises quite commonly where
11 there are multiple publications and plaintiffs issue
12 separate proceedings. I plan to return to this issue
13 tomorrow, Your Honour.

14 HIS HONOUR: Thank you.

15 MR GILBERTSON: May I just make two comments in relation to my
16 learned friend's submissions on damages and I'll be
17 saying more about damages in the morning, another case in
18 which I appeared was Hore-Lacy v. Cleary. It was a jury
19 trial so it was a case prior to the enactment of the
20 uniform defamation laws. The imputation in that case was
21 that Mr Hore-Lacy had manufactured a defence of
22 provocation for Ramage and in our submission to say that
23 of any lawyer let alone a senior barrister is a
24 particularly serious matter and - - -

25 HIS HONOUR: Are you responding to the last - - -

26 MR GILBERTSON: Yes, the last paragraph.

27 HIS HONOUR: I wouldn't have accepted that.

28 MR GILBERTSON: As Your Honour pleases.

29 HIS HONOUR: Subject to anything further Mr Dibb would say, I
30 don't think that the allegations here are more serious
31 than to say that of an experienced senior barrister that

1 they have engaged in that sort of conduct.

2 MR GILBERTSON: If Your Honour pleases. The only other comment
3 I wish to make in relation to my learned friend's
4 submissions at the moment is that we agree that the
5 relevant post publication period is after uploading.
6 This in reference to Paragraph 16 of my learned friend's
7 submissions.

8 HIS HONOUR: (Indistinct) loading meaning August and?

9 MR GILBERTSON: August and September 2009.

10 HIS HONOUR: All right. That's agreed, thank you.

11 MR GILBERTSON: So that is subject to the cap. Excuse me a
12 moment, Your Honour.

13 HIS HONOUR: Yes, we're talking about the principle rather than
14 the - - -

15 MR GILBERTSON: Yes. Just one matter. I notice the time, Your
16 Honour, and rather than opening with large detailed
17 submissions about the evidence I just propose if it's
18 convenient to just raise one short matter.

19 HIS HONOUR: Sure.

20 MR GILBERTSON: I have seen cases where separate figures are
21 given for aggravated damages and a global figure. There
22 does not seem, at least in my experience, to be a
23 particular practice in that regard. Either way it does
24 not seem to us to be contrary to principle.

25 HIS HONOUR: Good, thank you. The more things that I can get
26 agreement from you the better. Thank you.

27 MR GILBERTSON: If it's convenient they're the submissions for
28 today.

29 HIS HONOUR: Can I just raise the administrative thing and I
30 don't want to elevate to an importance it doesn't have.
31 If there's a way of copying these articles onto a Word

1 format would there be any objection from your side to
2 that being provided to my associates, only so that they
3 can find their way into the judgment, proof read it so to
4 make sure that every single word and formatting reflects
5 the articles, because otherwise someone's going to spend
6 about three hours copy typing, to the extent that I
7 consider necessary for the full article, full text to be
8 included.

9 MR GILBERTSON: Yes. We have no difficulty in principle but my
10 instructions are that it would be practically impossible
11 to obtain from anywhere on the internet, not the least of
12 which because the articles have changed right since the
13 original publications.

14 HIS HONOUR: Right.

15 MR GILBERTSON: It may well end up that someone on our side or
16 the other has to do the exercise.

17 HIS HONOUR: No, I wouldn't want that. It's my responsibility
18 to do that.

19 MR GILBERTSON: I'll obtain some further instructions, Your
20 Honour.

21 HIS HONOUR: I hadn't appreciated or at least the evidence
22 didn't suggest that there was any material change. I got
23 the impression from the evidence that the matter
24 complained of is substantially maintained on an ongoing
25 basis, but of course I haven't looked to see whether
26 that's the case or not. I'll rely on the evidence and
27 the evidence is now closed. I want to raise this again,
28 if the parties are able to reach agreement and text can
29 be provided, if that can be provided say tomorrow because
30 if it's doable from a technical point of view it's just a
31 matter of highlight with one's mouse the text and then

1 copying onto a Word version.

2 My associates do it all the time for items that are
3 not controversial and not part of evidence, et cetera,
4 when I'm writing a letter to someone and quoting
5 something so I know it can be done. Whether there are
6 other reasons of the sort that you've mentioned, Mr
7 Gilbertson, that would make that inappropriate then I
8 would accept that if that's the conclusion that's come
9 to.

10 MR GILBERTSON: I'll obtain some more instructions, Your
11 Honour.

12 HIS HONOUR: All right. Given where we are at the moment do
13 you feel comfortable that you will finish tomorrow in
14 time to allow any reply by Mr Dibb so we can finish
15 tomorrow?

16 MR GILBERTSON: I do, I do. I'll be handing up an extensive
17 document that I'm hoping will make things move more
18 quickly.

19 HIS HONOUR: Good, that would help. All right. Thank you very
20 much, we'll adjourn now until 10.30 tomorrow morning.

21 ADJOURNED UNTIL WEDNESDAY 26 MARCH 2014

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
MAJOR TORTS LIST**

No. SCI 2011 1484

BETWEEN

ROBERT RAYMOND CRIPPS

First Plaintiff

and

REDLEG MUSEUM SERVICES PTY LTD (ACN 105 986 829)

Second Plaintiff

and

DEMETRIOS VAKRAS

First Defendant

and

LEE-ANNE RAYMOND

Second Defendant

PLAINTIFFS' COURT BOOK TENDER LIST

Exhibit Number	Description	
P1	A3 version of Annexure A of Further Amended Statement of Claim	
P2	A3 version of Annexure B of Further Amended Statement of Claim	
P3	A3 version of Annexures C of Further Amended Statement of Claim	
P4	Photograph of a doorway	
P5	Six A3 pages with the first page commencing "Reception"	
P6	Document titled http://www.redlegartists.com/directory.html : Redleg Museum Services run by Robert Cripps sues artists over exhibition at Guildford L...	
P7	Document titled http://art-leaks.org/2012/02/17/atrists-exhibition-critical-of-religion-declared-racist-by-gallery-owner... And 20 comments print out	
P8	Document titled http://leeaneart.blogspot.com.au/2011/10/slapp.html	

	with comments	
P9	Copies of document titled http://www.redlegatrists.com/cripps-lies.html	
P10	Copies of email from Sandy Tortoni to liquor@justice.vic.gov.au	
P11	Google search result on "Robert Cripps" carried out on 19 March 2014	
P12	Document titled http://www.redlegartists.com/directory.html	
P13	Document titled http://humanistranshumanist.com/vakras-raymond-VCAT-claim.html	
P14	Document titled http://www.phantastart.com/vakras/guildford_lane_gallery-disabled-page.html	
P15	Bing search on "Robert Cripps" carried out on 19 March 2014	
P16	Photographs of Ruby's Music Room	
P17	Document titled http://www.redlegartists.com/directory.html	
P18	Document titled http://www.redlegartists.com/your-lovely-penis.html	
P19	Document titled http://www.redlegartists.com/ycripps-hideous.html	
P20	Document titled http://www.redlegartists.com/2_March_2014_Cripps_pulled_his_sites/index.html	

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1 MR DIBB: Just before we start, Your Honour, I've
2 raised a matter with my learned friend. I resile from
3 Paragraph 14 of my submission on damages, aggravated
4 damages.

5 HIS HONOUR: Paragraph 14?

6 MR DIBB: Paragraph 14 was my ingenious argument about the fact
7 that it's a true cap. It unfortunately is contradicted
8 by a judgment of Justice Nicholas referring to a judgment
9 of no less than Justice Bell saying quite differently, of
10 which I was not aware. I'll hand Your Honour a copy of
11 Kim and Ahmed v. Harbour Radio, a decision of 19 December
12 2010 (indistinct).

13 HIS HONOUR: Let me just check Paragraph 14. So strike out 14?

14 MR DIBB: Yes, strike out 14, Your Honour. It's quite long.

15 HIS HONOUR: Thank you. Perhaps before you commence,

16 Mr Gilbertson, I'll just raise a couple of things.

17 Mr Dibb, yesterday you handed up a letter dated 3 July
18 2012 which sought further and better particulars of the
19 statement of claim, and Mr Gilbertson then explained sort
20 of the background and reasoning as to why the further
21 particulars took the form that they took. I'm just
22 asking about that letter. You haven't tendered it. I
23 won't look at anything that's not tendered and accept it
24 as a tendered document so unless you say anything further
25 I'm going to hand it back.

26 MR DIBB: Your Honour, I understood it was part of the court
27 documents.

28 HIS HONOUR: It's a letter. It's not.

29 MR DIBB: The second further amended defence of the 1st
30 defendant makes reference to his answers to particulars
31 and, in my submission, it's hardly possible to comprehend

1 the answers without the questions, but I tender that
2 document.

3 HIS HONOUR: That's really what I'm getting at. Whilst the
4 requests for further and better particulars that are in
5 the court form have been filed and I can find them in the
6 court file. This letter to my knowledge has not been
7 filed.

8 MR DIBB: I see.

9 HIS HONOUR: So you seek to tender it, is that right?

10 MR DIBB: I do, Your Honour.

11 HIS HONOUR: Mr Gilbertson? It's without prejudice to your
12 arguments. It's just so that the chain of documents is
13 complete, that's all.

14 MR GILBERTSON: I have no difficulty with that tender.

15 HIS HONOUR: All right, very well. I assign Number P21.

16
17 #EXHIBIT P21 - Letter from Tao Jiang Lawyers to Media
18 Arts Lawyers dated 03/07/12.

19 MR DIBB: Does the reply - - -

20 HIS HONOUR: I've already got the reply. The reply is in the
21 form of further particulars, which I've already got.

22 MR DIBB: Yes.

23 HIS HONOUR: Again, Mr Dibb, is there any evidence in the
24 tendered documents, because I don't recall any oral
25 evidence on this issue as to when the gallery actually
26 closed. There's evidence that it's no longer operating,
27 that it's closed, you might want to think about that.
28 You might want to think about that. I'm not asking you
29 to give me more evidence, or unless it's common ground by
30 the parties that it closed on a particular date, in which
31 case of course I'll accept that as a fact.

32 MR DIBB: Your Honour will have noticed that the witnesses in

1 this case were all extraordinarily vague about
2 dates. I'll see what I can see in the transcript but I
3 don't think there is any evidence.

4 HIS HONOUR: Yes, and I'm not sure whether the documents
5 indicate that either. Can I just remind you, Mr Dibb,
6 that your instructor is to file the amended statement of
7 claim by the end of the week.

8 MR DIBB: Yes, Your Honour.

9 HIS HONOUR: Along the same lines, Mr Gilbertson, can your
10 instructor file an amended defence on the part of the 1st
11 defendant striking out those words in Paragraph 5.

12 MR GILBERTSON: Yes, Your Honour.

13 HIS HONOUR: Thank you. That's all I have.

14 MR DIBB: Progress has been made, Your Honour, in relation to
15 Your Honour's requests for a Word document reflecting the
16 present state of the web pages. There are however some
17 differences in the present form of the web pages from the
18 matters complained of in this case. My solicitor has
19 done a lot of work on tidying those up but it's proposed
20 that the solicitors will agree a version at some stage.

21 HIS HONOUR: Yes. I won't receive it unless it's an agreed
22 version, let me make that quite clear. If there's any
23 dispute, no matter how minor, then I don't want to see
24 the document. We'll just have to spend a couple of hours
25 copy typing it.

26 MR DIBB: Much progress has been made, Your Honour.

27 HIS HONOUR: Thank you.

28 MR GILBERTSON: I'm confident that we will reach an agreed
29 position about that. I'll have my instructor talk to my
30 learned friend's instructor.

31 HIS HONOUR: Thank you very much.

1 MR GILBERTSON: Your Honour, I should formally hand up a
2 clean copy of the defendant's court book for the purposes
3 of the exhibits.

4 HIS HONOUR: Yes, if you've got that.

5 MR GILBERTSON: The volume that I'm about to have handed up has
6 removed from it Tab 39, which was the second of the
7 articles that were linked.

8 HIS HONOUR: I didn't closely cross check the list of tender
9 documents with the tabs in the original court book. My
10 impression was that not all of the contents of all of the
11 tabs were tendered. I don't mean the one that you've
12 just referred to but other ones where there are multiple
13 emails. The list of tender documents seem to be
14 selective about which emails were tendered. Am I right
15 about that?

16 MR GILBERTSON: There were some that were not referred to but
17 most of them were.

18 HIS HONOUR: That's fine, all right. But this reflects - this
19 is not just a wholesale movement of things from the court
20 book into this book as distinct from this matching
21 literally the list of exhibits. That's all I want.

22 MR GILBERTSON: I'll have to have that handed back, Your
23 Honour, and I'll have my instructor double check that it
24 matches the exhibit list descriptions.

25 HIS HONOUR: It shouldn't take long but I just want to
26 emphasise once again I just will not rely upon any
27 document that is not tendered unless it's referred to in
28 oral evidence and evidence is given about it, in which
29 case the oral evidence itself of course I'll rely upon.
30 All right, thank you.

31 MR GILBERTSON: I have handed to Your Honour and my learned
.SB:HW 26/03/14 FTR:1-4A DISCUSSION
Cripps

1 friend an outline of submissions. It's a lengthy
2 document, Your Honour, but I have done it with the
3 intention of taking all time today referring to
4 transcript references and citations.

5 HIS HONOUR: I find written outlines very useful and I'm not
6 troubled by length at all. It's quality that I'm really
7 interested in.

8 MR GILBERTSON: I understand, Your Honour. There's no
9 controversy as I understand it in relation to the
10 relevant test for determining meaning, that it's to be
11 determined objectively and by what the ordinary
12 reasonable reader would regard the words to mean. I've
13 extracted from Justice Beach's judgment in Gant the
14 principles that were referred to by Justice Hunt in
15 Farquhar v. Bottom, and as I am passing through this
16 particular topic I ask Your Honour to note, and this is
17 in reference to some characteristics that my learned
18 friend referred to yesterday as to the ordinary reader,
19 that, "The ordinary reader is a person of fair average
20 intelligence who is neither perverse, morbid or
21 suspicious of mind nor avid for scandal."

22 Consistent with what my learned friend said
23 yesterday, "This ordinary reasonable reader does not we
24 are told live in an ivory tower ...(reads)... greater
25 than that of a lawyer," and the authorities are set out.
26 Moving to the test as to what's defamatory. In our
27 submission the right thinking person test that my learned
28 friend put yesterday is in fact not the position.

29 HIS HONOUR: Yes, I'm aware of the change.

30 MR GILBERTSON: I have set out there the relevant judgment from
31 Radio 2UE Sydney v. Chesterton, and in particular in

1 Paragraph 5 where Their Honours say, "The common law
2 test of defamatory matter ...(reads)... right thinking
3 members of the community." This is the part I wish to
4 emphasise, Your Honour. "The general test stated as
5 whether the published matter is likely ...(reads)...
6 think less of the plaintiff."

7 Before I turn to the submissions in relation to
8 justification and Polly Peck I wish to say a number of
9 things about the conversations that are disputed and also
10 the question of credit. It's our submission that Your
11 Honour should prefer the defendants' evidence in relation
12 to the conversations with Mr Cripps on the three dates in
13 question; 23 January 2009, the opening night 18 June, and
14 the 24 June 2009 conversation.

15 Mr Cripps acknowledged in evidence that he was
16 useless at dates and, in our submission, he had limited
17 recollection of the key conversations. As a matter
18 indicative of that, although he was present during
19 Mr Vakras's evidence he couldn't, until he was prompted
20 by my learned friend, remember what Mr Vakras's
21 publication was called. He thought it started with a V
22 and he thought it was called Victorious.

23 The court should be satisfied, in our submission,
24 that at the first meeting on 23 January 2009 Ms Raymond
25 said that they would be producing a catalogue. That is
26 when Mr Cripps said, "Would it be like the one at the
27 Orange Gallery?" In his evidence Mr Cripps made what
28 might have appeared to be a minor slip but, in our
29 submission, is significant. He said, "From my memory
30 there was very little about the catalogue, Carnivora,
31 sorry."

1 We say, Your Honour, that a discussion
2 about the catalogue is consistent with the emails that
3 preceded it and those which followed it. The emails in
4 Exhibit D9, which is the defendants' court book, Tab 4,
5 the 11 December 2008 email towards the bottom of that
6 page from Ms Raymond to Yolande Pickett says, "Hello
7 Yolande, just wondering if the gallery uses a preferred
8 printer. Demetrios and I are looking into it now as we
9 want to produce a catalogue in time for the exhibition
10 next year."

11 Ms Pickett responds on the next day, "Hi Lee-Anne,
12 as a new gallery and one that doesn't generally get
13 printing done ourselves I couldn't speak from personal
14 experience. I'm more than happy to chase this up with
15 some of our recent exhibitors but I'll have to do it next
16 week." The emails that follow it, Your Honour, that
17 follow the 23 January conversation that is, in Exhibit
18 D26, which is in the defendants' court book, Tab 21.

19 This is the two emails in relation to the plinths.
20 On the third page of that Tab 21 is the email from
21 Ms Raymond to Melanie Trojkovic of 8 June 2009. "Hi
22 Melanie, I think we would like to use two small plinths
23 or a small table on which to place gallery copies of the
24 illustrated catalogue if something like this can be
25 available." Ms Trojkovic responds one page back. The
26 email actually starts at the bottom of the first page on
27 Wednesday 10 June, "Hi Lee-Anne, that should be no
28 problem about using the plinths. I shall check with
29 Robert to make sure they're enough for your use."

30 We rely upon Mr Vakras's evidence, which I'll come
31 to in a moment. When I put to Mr Cripps about whether

1 Melanie Trojkovic checked with him about the
2 plinths he said he didn't remember. Ms Raymond's
3 evidence was that at this first meeting Mr Cripps asked
4 would the catalogue be like the one at the Orange
5 Gallery, and Mr Cripps gave evidence that he spoke to the
6 defendants about the Orange Gallery and about Alan
7 Sisley, the manager.

8 In particular I rely upon Mr Vakras's evidence at
9 Transcript 174, Lines 19 to 20 where he said, "I said we
10 want to publish our own catalogue and Yolande said OK,
11 you can do your own catalogue but we'll bring this one in
12 and we can sell them both in tandem." That's a reference
13 to the Carnivora document. I'll come back to this
14 discussion later, Your Honour.

15 At this first meeting, in our submission Your Honour
16 should accept that there was a discussion about the open
17 studio. Ms Raymond said they would have to have that
18 space as well. Mr Cripps's evidence was he doesn't
19 remember a discussion about the open studio. Mr Vakras
20 said that Yolande Pickett had said at the first meeting
21 that they could order Carnivora in for the defendants.
22 Again, Mr Cripps said he doesn't remember Yolande Pickett
23 saying that they could order Carnivora in.

24 By Mr Vakras's evidence Mr Cripps had said that they
25 can post volunteers outside the National Gallery of
26 Victoria during the Dali exhibition. When I put that to
27 Mr Cripps he said it was a lie. According to Mr Vakras
28 Ms Pickett said, "That's what we have volunteers for."
29 In relation to the failed meeting it's our submission
30 that Your Honour should accept that there was no sign
31 outside the door containing the gallery's landline or

1 mobile telephone numbers.

2 The significance of that, in our submission, is that
3 goes to Mr Cripps's state of mind and in particular that
4 he was angry when he spoke to Ms Raymond on 5 June. I'll
5 take Your Honour through the evidence in relation to what
6 we say gives rise to the inference or conclusion in
7 relation to the sign. Mr Cripps conceded that the signs
8 were all about the same size. He said that they were A4
9 heavyweight plastic sleeves.

10 There's no evidence, Your Honour, as to how these
11 signs that he said were fixed were in fact fixed. If one
12 looks at Exhibit P5, which is the photograph which
13 Mr Cripps said was taken when the gallery opened it's
14 evident that there's a horizontal line across at least
15 the three signs at the top. That is confirmed, in our
16 submission, if one looks at Exhibit D3, which Mr Vakras
17 said was obtained by him from the Guildford Lane Gallery
18 Twitter page. If I could take Your Honour to Exhibit D3.

19 HIS HONOUR: Yes, I've got that.

20 MR GILBERTSON: If one looks at the plastic sleeves all of them
21 have what appears to be a horizontal line at the top,
22 they're all about the same size, and one can also see, in
23 our submission, that there are air pockets in at least
24 the top left sign in the bottom right corner, and there
25 are air pockets in a sign on the top right towards the
26 left hand side of that page, consistent we say with those
27 signs being removable sleeves in which A4 pages had been
28 inserted.

29 Mr Cripps's evidence was he couldn't recall whether
30 the landline number was on the top left or the top right,
31 and in light of all that evidence we invite the court to

1 infer that the landline number was in a plastic
2 removable sleeve that on 1 June 2009 when the defendants
3 attended the gallery had been removed. There was also
4 evidence in relation to the gallery itself. Mr Cripps
5 said it was very, very big, it was over floor levels, the
6 ground, the first, the second and the third floors.

7 The ground floor had two rooms that could be closed
8 with a door. The first floor had two storage chambers
9 with three doors. The third floor in which was located
10 Mr Cripps's office and a storage area had also
11 Mr Cripps's residence on that third floor and part of the
12 second floor connected by stairs.

13 Mr Cripps's evidence was that the mobile number was
14 turned off at night and the landline put to an answering
15 machine. We invite the court to find that Mr Cripps was
16 on the premises at the time the defendants were outside
17 the building on 1 June and that he did not hear the
18 telephone ring. It's that background which we say gives
19 colour to what occurred on 5 June.

20 Ms Raymond's evidence was she went to the gallery
21 that day and Mr Cripps said, "You, I want to talk to
22 you," and her was, according to her evidence, very cross,
23 pretty cranky. He said to her he didn't like being
24 spoken to that way by Vakras, he said Vakras's emails
25 were unacceptable and he didn't like being spoken to like
26 that.

27 I want to come now to Mr Cripps's description of his
28 state of mind or emotional state. He said, when I put to
29 him that he was angry about the emails that Mr Vakras had
30 sent, he said, "Really dissatisfied, angry, disgruntled,
31 not angry." In fairness to Mr Cripps, in our submission

1 where he first said angry should in the transcript
2 have a question mark after it. So it was though he was
3 posing himself a question.

4 HIS HONOUR: Yes, I remember that evidence. He said in
5 evidence he probably didn't understand the difference
6 between all these concepts. If one looks at the six
7 different descriptions that he gave - I've set them out
8 in Paragraph 30 and by reference to the particular
9 transcript pages and the discussions to which they
10 relate. He said he was grumpy, dissatisfied,
11 disgruntled, agitated, disturbed and animated and never
12 angry he said.

13 He did however give evidence that during those
14 conversations he was forceful and strong and at time that
15 he needed to fight back. There was a significant point
16 also, in our submission, in relation to Mr Cripps's
17 demeanour on this point. Throughout most of my
18 questioning he looked straight ahead, but when I put to
19 him as to whether anger was an emotion that he
20 experienced he turned directly to me and, in my
21 submission, that demeanour can be taken into account with
22 his evidence in support of a submission by us that his
23 evidence that he did not get angry should be rejected.

24 That Mr Cripps can and does experience anger was
25 corroborated, in our submission, by other evidence, in
26 particular Mr Mishriki's evidence that when it was
27 suggested that there need not be a bar, according to
28 Mr Mishriki, "Mr Cripps became visibly angered and yelled
29 that he had decided to have a bar." When Yolande Pickett
30 was asked by Mr Mishriki if the contract could be made
31 more reasonable, on the eve of the performance

1 Mr Mishriki is at the gallery installing for his
2 evidence, Mr Cripps according to Mr Mishriki, "came down
3 the stairs yelling without introduction that I was going
4 to sign a contract on the spot," and that, "I'm not going
5 to fuck around any more, no more bullshit, you're going
6 to sign this contract right now."

7 Katie Bowman's evidence we rely upon in this regard
8 as well, Your Honour. She said that on Sunday 10 January
9 2010 Mr Cripps proceeded to angrily berate her in
10 relation to ceiling fans that had been installed the
11 premises. "He repeatedly called me a liar," she said.
12 Mr Mickelson, who was the life model, gave evidence that
13 in May 2010 after he informed Mr Cripps that he needed to
14 lock his bike the conversation, Mr Mickelson said, got
15 aggressive very quickly.

16 Josie Waddelton's evidence we also rely upon, that
17 in relation to her exhibition in 2010 when a friend of
18 hers started to pour himself a drink Mr Cripps flew into
19 a rage. It's anger, we suggest, that Mr Cripps
20 experienced and expressed when he spoke to Ms Raymond on
21 5 January 2009, on the opening night on 18 June and in
22 the 24 June conversation. It really beggars belief that
23 Mr Cripps experienced these six emotional states but
24 never anger.

25 Ms Raymond's evidence in relation to the 5 June
26 conversation was that Mr Cripps scowled at her basically.
27 She said that Mr Cripps had said that they should have
28 called and in our submission his statements to her during
29 this conversation amount to a berating of her. If I
30 could turn to the opening night, we invite the court to
31 find that this conversation occurred downstairs where

1 there are about 30 to 40 people in the bar area.

2 In our submission Mr Cripps confused the 18 June
3 conversation with that on the 24th or had no independent
4 recollection of it when he said that the last
5 conversation was pretty much the same spot as the
6 previous conversation, that is, on the first floor. If
7 that conversation had occurred on the first floor, as
8 Mr Cripps claimed, with raised voices which he conceded,
9 then it's difficult to believe in our submission that
10 none of the five to seven people which he said were on
11 the ground floor and in respect of whom he said he could
12 hear voices, didn't come upstairs to find out what was
13 going on.

14 The defendants' evidence was that at about 8 p.m. an
15 older lady came between Mr Vakras and Mr Cripps and said,
16 "It's about some time that someone gave it to the
17 Muslims". Mr Vakras said to Mr Cripps, "You realise it's
18 not what she's saying". Mr Vakras's own evidence was
19 that he wanted to explain to Mr Cripps that that was not
20 what the exhibition was about. According to Mr Vakras
21 Mr Cripps said, "I have a problem with what you write
22 because of the sensitivity with Palestine".

23 Ms Raymond's evidence in this regard was that
24 Mr Cripps said, "What you write is insensitive to the
25 delicate situation in Palestine". According to Mr Vakras
26 Mr Cripps said, "Your opinions on the Koran are racist".
27 Mr Cripps's own evidence was that she saw in the essays
28 references to both the Koran and Islam. Ms Raymond's
29 evidence was that Mr Cripps said that to critique Islam
30 was racist because it was insensitive to Muslims and the
31 problems that Israel caused in Palestine.

1 Mr Cripps said according to Ms Raymond, "It's
2 because of what the Jews are doing in Palestine". He
3 said, "The Jews should not be in Palestine. They are the
4 cause of the conflict. It's the Jews that caused the
5 problem", and Mr Vakras according to Ms Raymond mentioned
6 Hitler during this conversation. Mr Vakras also gave
7 evidence that Mr Cripps said, "Your quotes from the Koran
8 give the impression that the Jews are victims of the
9 Muslims. Your opinions on the Koran are racist. Muslims
10 are the victims of the Jews in Palestine. I don't like
11 the Jews, I don't like the Jews state in Palestine".

12 Mr Vakras gave evidence that Ms Raymond said,
13 "Robert, you're saying you don't like the Jews. That of
14 itself is racist". Mr Cripps responded according to
15 Mr Vakras, "Yes, what of it". At the end of the
16 conversation Mr Cripps said, "I want you out. I want
17 your racist art out of my gallery". Mr Vakras's evidence
18 in that regard was that Mr Cripps said, "You're racist.
19 I want you and your racism out of my gallery".

20 It doesn't matter in our submission how this
21 discussion started, that Mr Cripps made these statements
22 is in our submission consistent with his own views
23 disclosed in his evidence about Palestine Zionism and
24 what he called the Jews state in Palestine. Mr Cripps
25 said in evidence that he disagreed with what was
26 happening in Palestine, unequal force was used he said
27 against the Palestinian people by Jewish state.

28 He said that he didn't like what the Jewish state
29 was doing in Palestine that he accepted that there had
30 been a lot of problems over the years in Palestine and a
31 lot of conflict and he regarded the situation in

1 Palestine as delicate and Zionism in Israel he
2 regarded as the same thing. Mr Cripps gave evidence,
3 just digressing for one moment, in relation to what he
4 said was the labelling and his evidence was that it may
5 be possible for misinterpretation to take place, if it
6 was anti Palestinian or anti Zionist there could be a
7 problem.

8 The evidence in our submission discloses that there
9 was no labelling. There were essays pinned next to the
10 exhibits that had a title but there was no labelling and
11 we say that's evident from Exhibit D5. Later in his
12 evidence-in-chief Mr Cripps said that he told the
13 defendants that it could be anti Palestinian or anti
14 Israeli. Now, none of that was put in our submissions to
15 either of the defendants and we invite Your Honour to
16 find that those statements were not made and by that I
17 mean is evidence that if it was anti Palestinian or anti
18 Zionist it could be a problem and his evidence if it was
19 anti Palestinian or anti Israeli there could be a
20 problem.

21 When I put to Mr Cripps what was it about the
22 defendants works that he thought could be interpreted as
23 anti Palestinian he said he couldn't understand the
24 essays. That in our submissions has a degree of
25 unreality about it because if he couldn't understand them
26 then there's no basis to say, we submit, that they could
27 be interpreted as anti Palestinian or anti Israeli. He
28 did at one point in his evidence admit that during the
29 conversation he said that the Muslims were reacting to
30 what the Jews do to them.

31 It's difficult to believe that that was the only

1 thing he said in this regard. He vaguely remembered
2 something about suicide bombers on a school bus and we
3 say that the disclaimers are consistent with Mr Cripps
4 making these statements because the evidence discloses
5 that the disclaimers were put up only after the opening
6 night and they had not been put up at any prior
7 exhibition.

8 It's also hard to believe in our submission that
9 discussion about racism, Mr Cripps views about Palestine,
10 the Jews and the Jews state in Palestine did not occur at
11 this or the 24 June conversation notwithstanding the
12 defendants extensive evidence about these topics and
13 Mr Cripps accepted views about the Jews state in
14 Palestine, and by accepted I mean accepted by him. It's
15 also our submission that Your Honour should accept the
16 defendants' evidence as to what was said in the 24 June
17 conversation which I'll come to in a moment.

18 If I could turn to the justification and Polly Peck,
19 please, could I take Your Honour first to the further
20 amended statement of claim. The first meaning 8(a), "The
21 1st plaintiff is a disgraceful individual who is to be
22 avoided assiduously". In our submission that meaning
23 does not arise and the relevant passage we submit is not
24 the words used on the first page which my learned friend
25 referred to and which I will come back to, but the words
26 that appear on p.4.

27 About the middle of the page, the paragraph under
28 the screenshot, the final words of that paragraph are,
29 "Cripps conduct throughout was thoroughly disgraceful".
30 So the actual word was used, not something taken from the
31 words which appear on the first page which I'll take Your

1 Honour back to. On the first page towards the bottom
2 it says, "There are several words with which I can
3 describe Cripps poisonous ...(reads)... bellicose bully
4 stupid".

5 Those words in our submission have meanings which to
6 the ordinary reader are distinct from disgraceful and in
7 particular the last word stupid is not something that
8 would in the mind of the ordinary reader convey a meaning
9 of disgraceful and what we say is that in determining the
10 relevant meaning when one looks at the words on p.4,
11 "Cripps conduct throughout was thoroughly disgraceful",
12 that it's Mr Cripps conduct that is relevant, not whether
13 he in the present tense is a disgraceful individual.

14 Can I then take Your Honour to the Polly Peck
15 meaning, Paragraph 8A(a), "The 1st plaintiff treated the
16 defendants in a disgraceful manner and other artists
17 should avoid him. In our submission that is a meaning
18 that is no more injurious than - I withdraw that, no more
19 serious than and not substantially different from the
20 plaintiff's meaning. The adverb assiduously in the
21 plaintiff's meaning in our submission adds nothing to the
22 sting and that his conduct, that is, his treatment of the
23 defendants is not substantially different from his being
24 described as a disgraceful individual and I'm hoping not
25 to hand up all of these authorities but if it would
26 assist Your Honour I have copies of Hore-Lacy which I can
27 hand up.

28 HIS HONOUR: Yes, I don't mind receiving authorities.

29 MR GILBERTSON: And a copy of David Syme & Co Ltd v. Hore-Lacy
30 to Your Honour and my learned friend. One needs in our
31 submission to be careful about the use of language in

1 this area and my learned friend on several occasions
2 referred to the alternative meanings as being nuances.
3 That's not in our submission the description that's used
4 by the court in Hore-Lacy. The description used as I put
5 to Your Honour before.

6 If one goes to Paragraph 52 in the judgment of
7 Justice Charles which was agreed with in Paragraph 23 of
8 the judgment of Justice Ormiston. In Paragraph 52,
9 referring to Chakravarti His Honour Justice Charles said,
10 "From these passages it would seem that all members of
11 the court ...(reads)... allowing that meaning to go to
12 the jury". If I could then go to the next paragraph,
13 Paragraph 52, "The principal criticisms of the practice
14 sanctioned in Polly Peck ...(reads)... and Justice McHugh
15 in Chakravarti".

16 This is the part that I wish to emphasise, "The
17 setting up of false issues by the defendant in
18 ...(reads)... pleaded by the plaintiff". As to whether a
19 meaning is fact or comment, and I'll come back to this in
20 relation to the fair comment defences, but the general
21 proposition is that the material is a comment if it would
22 be considered as such by the people to whom it's
23 published. As I understand my learned friend's
24 submission, he was as I recall it, to the same effect and
25 I can hand up copies of the relevant page from the third
26 edition of Dr Collins book, The Law of Defamation and the
27 Internet at Paragraph 10.04.

28 Your Honour will see in Paragraph 10.04, "The
29 defence of fair comment applies only to comments
30 ...(reads)... to whom its published", and there's a
31 reference in Footnote 13 to Gretsch v. Odhams Press and

1 London Artists v. Littler and Smith Newspapers
2 v. Becker. The learned author goes on, "A statement may
3 be either fact or comment depending on the context". The
4 context in our submission in the first Vakras article are
5 two bald statements, which one I've taken you to, "Cripps
6 conduct throughout was thoroughly disgraceful", and the
7 capitalised words on the first page, "AVOID THIS GALLERY
8 ASSIDUOUSLY".

9 We say that first Polly Peck meaning is true in
10 substance and in fact. The hiring agreement in Exhibit
11 D13 and D21 provides for the use of the first floor at 20
12 to 24 Guildford Lane, Melbourne. The first floor
13 includes the open studio and it's common ground it was on
14 the first floor and it seems to be common ground that it
15 was part of the agreement and I have also made reference
16 but I don't seek to rely on it, in relation to Yolande
17 Pickett's email of 10 February. "It was a term of the
18 hiring agreement that the hirer would ...(reads)... to
19 its original condition".

20 In our submission that's the effect of Clauses 2(b)
21 and 9(a), if I could take Your Honour to a copy of the
22 hiring agreement which appears, it's in Exhibit D13, it
23 should be Tab 8 of the defendants court book. Clause
24 2(b) provides, "\$500 is as a surety for the
25 abovementioned gallery ...(reads)... Clauses 9(a) and
26 9(b) of this agreement". Then if Your Honour goes to
27 Clause 9(a), "At the end date of the hire term the hirer
28 will ...(reads)... original condition", and I'll come
29 back to this later.

30 Just focusing for the moment on the defamation
31 proceeding, it's our submission that there was an

1 agreement or arrangement between the defendants and
2 Mr Cripps acting on behalf of Redleg for the gallery to
3 sell a catalogue of the defendants' artworks at the
4 exhibition. We rely upon the 23 January 2009
5 conversation, in particular Mr Vakras's evidence as to
6 what Yolande Pickett said and we rely upon the emails
7 before and after that conversation which I've taken the
8 court to.

9 In our submission that evidence discloses an
10 agreement, or if Your Honour is not persuaded that there
11 was an agreement, that there was at least an arrangement
12 which was accepted by all the parties that the gallery
13 would sell the defendants catalogue at the exhibition.

14 HIS HONOUR: Sorry, how can I use an arrangement not amounting
15 to a contract in this context? What does it mean?

16 MR GILBERTSON: I've probably used that word - on reflection I
17 have used that word incorrectly. We say that there was
18 an agreement.

19 HIS HONOUR: You say it was part of the agreement?

20 MR GILBERTSON: Yes.

21 HIS HONOUR: A collateral agreement sitting side by side with
22 the written agreement?

23 MR GILBERTSON: No, that it's all part of one agreement we say.

24 HIS HONOUR: So this agreement is not just a written agreement
25 but partly written, but partly oral.

26 MR GILBERTSON: Yes.

27 HIS HONOUR: And that what you're referring to now is the oral
28 component of that agreement.

29 MR GILBERTSON: Yes.

30 HIS HONOUR: All right.

31 MR GILBERTSON: What happened after this conversation and the
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1 earlier June emails is that the defendants were
2 informed shortly prior to the prior to the exhibition
3 that the gallery would not sell their catalogue and
4 that's the 12 June 2009 email from Lian Low to Lee-Anne
5 Raymond which is Exhibit D27, "You are welcome to sell
6 your catalogue on the opening ...(reads)... for gallery
7 personnel". Ms Raymond's evidence was that after she
8 read that email she rang Mr Vakras and told him they're
9 not going to support the catalogue.

10 Mr Vakras's evidence was that on 17 June, that is
11 the day before the opening night, Stacy Jewell said, "No,
12 you can't store them there". In relation to the 5 June
13 conversation we ask Your Honour to accept that there was
14 no sign outside the door and that Mr Cripps was angry in
15 relation to the 18 June conversation. We rely upon the
16 defendants' evidence that Mr Cripps said, "I want you
17 out. I want your racist art out of my gallery".

18 We refer to the lovely bottom incident which was
19 admitted by Mr Cripps. Mr Raymond's evidence was that on
20 25 June 2009 her line manager at her work Museum Victoria
21 said, "Oh maybe it was him", and her line manager told
22 her that an older guy asked her is that her lovely bottom
23 in the painting. Mr Cripps evidence was that he was just
24 being sort of jovial and that this was the woman who had
25 purchased the work earlier in the night. He conceded he
26 hadn't met that woman before then and his evidence was
27 she told him that she was Ms Raymond's employer.

28 So there's a real likelihood we say on Mr Cripps own
29 evidence that that conversation would have found its way
30 back to Ms Raymond. We also rely, Your Honour, on the
31 disclaimers and Mr Cripps evidence that these were

1 standard for art galleries should in our
2 submission be rejected. They were not put up until after
3 the opening night. He said he asked Mr Reid to obtain
4 them and they were not put up at any prior exhibitions.

5 HIS HONOUR: Sorry, you say you rely on them?

6 MR GILBERTSON: Yes.

7 HIS HONOUR: As what, a breach of the contract? In what sense
8 do you rely upon them?

9 MR GILBERTSON: In that they are all - this is evidence relied
10 upon in support of the first Polly Peck meaning.

11 HIS HONOUR: I see. You don't rely upon it as a breach of the
12 contract, is that right?

13 MR GILBERTSON: Yes, I will be relying upon them as a breach.

14 HIS HONOUR: It's very hard to see how that is a breach. I
15 mean if you look at any DVD of any movie that's the first
16 thing that you see. It stands to reason, does it not,
17 that the person who makes their space available for an
18 activity doesn't necessarily endorse that activity.

19 MR GILBERTSON: I accept that. But in this case this wasn't a
20 permanent sign at the gallery.

21 HIS HONOUR: No, it was specially done for this exhibition
22 presumably because Mr Cripps saw the essays as being
23 somehow capable of conveying a message that might not be
24 agreeable to some viewers, I don't know. I'll have a
25 look at the evidence carefully. But accepting for the
26 moment that this was not standard practice and it was
27 done specifically for this exhibition and not from the
28 beginning but at a particular point in time during the
29 course of the exhibition, how is it a breach of the
30 contract?

31 MR GILBERTSON: Because it's a lack of good faith or a lack of
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Cripps

1 cooperation, we say.

2 HIS HONOUR: So the gallery is obliged to endorse and agree
3 with the exhibition?

4 MR GILBERTSON: No, but - - -

5 HIS HONOUR: And if doesn't agree with it or has concerns about
6 it, it must conceal how it feels about it?

7 MR GILBERTSON: No, but to put them up after the opening night
8 puts in our submission an entirely different complexion
9 on them. That is, it conveys at least to the defendants
10 that Mr Cripps does not agree with their views disclosed
11 in the works and the essays.

12 HIS HONOUR: Yes, accepting that, so?

13 MR GILBERTSON: It's evidence a lack of cooperation on his
14 part.

15 HIS HONOUR: What is the contractual obligation to cooperate
16 that that goes against?

17 MR GILBERTSON: To cooperate in relation to the obligation
18 relating to the use of the gallery space.

19 HIS HONOUR: Assume for the moment that he permitted them
20 access which is of course a disputed issue, assuming
21 that, does the mere presence of the disclaimer interfere
22 with their use of the space under the hiring agreement?
23 It's standard practice across a whole variety of things
24 for people that are not in collaboration with somebody
25 else and who might be concerned that they might be sued
26 or roped into some dispute or whatever to make it clear
27 that all they're doing is allowing the space to be used
28 and it's the people using the space that take
29 responsibility for the acts or statements that are made
30 in it.

31 I mean, as I said, you watch any movie on DVD that's

1 precisely what you see even though the promoters,
2 producers and other people who disclaim association with
3 a view actually you want you to buy it and see it and so
4 on. All right. But you can say whatever else you want
5 on that but I'm struggling at the moment to see how it's
6 a breach. I'll come back to it.

7 HIS HONOUR: Sure.

8 MR GILBERTSON: If I could turn to the 24 June conversation, my
9 learned friend emphasised a number of times the evidence
10 of Mr Cripps and of the defendants that Mr Cripps said,
11 "I told you to call". In our submission that evidence is
12 equivocal. The evidence wasn't I told you to call before
13 you came, it was just, "I told you to call". There's no
14 evidence that Mr Cripps in fact told the defendants to
15 call them before this meeting and it is not inconsistent,
16 we say, in relation to Mr Cripps saying to the defendants
17 on the opening night, "I want you and your racist art out
18 of the gallery".

19 It is an opening salvo that might have lots of
20 possible means. In relation to the conversation on 24
21 June Ms Raymond said that Mr Cripps had said that he had
22 known more serious people in the past like truckies and
23 wharfies and Mr Vakras said that Mr Cripps pointing at
24 him and coming within about two inches of his chest said,
25 "I deal with trucks and wharfies and they're tougher than
26 you". Mr Cripps evidence was that he was about a metre
27 away when he said that and not consistent, we say, with
28 that being near Mr Vakras's chest.

29 There are a number of times in Mr Cripps when I put
30 questions to him, he didn't answer them, I put them again
31 and he didn't answer them and so on. Ms Raymond said

1 that Mr Cripps had said they were trespassing and that
2 he would call the police to evict them and Mr Vakras said
3 that they had hired the space and that they were
4 legitimately in the space. In oral evidence when I put
5 to Mr Cripps the question and answer to Interrogatory 9
6 and I don't tender that interrogatory but I rely upon
7 Mr Cripps evidence that Mr Vakras said that they will
8 legitimately in the space, after Mr Cripps had said that
9 their essays read like legalese.

10 In my submission that beggars belief and rather,
11 Mr Cripps evidence that Mr Vakras has said that they were
12 legitimately in the space is consistent with Mr Cripps
13 saying that they were trespassing. When Mr Cripps was
14 asked by Ms Raymond what was racist he gestured the
15 entire exhibition, "This", and Ms Raymond said that
16 Mr Cripps took her over to a particular painting, Secular
17 Muse and said all of it was racist. She said he became
18 angry at her and he said that it was indeed racist.

19 According to her Mr Cripps said, "It's the Jews that
20 are the problem. The Jews should not be in Palestine.
21 It was because of the Jews that the Muslims were
22 reacting". When Ms Raymond said to Mr Cripps that that
23 of itself is racist Mr Cripps responded, "Yes, so". Then
24 if I could turn to the 26 June email and I emphasise,
25 Your Honour, that all of this is relied upon in support
26 of Polly Peck Meaning 8A(a).

27 It's our submission that the conversations on 18
28 June, 24 June and the 26 June email amount to an
29 effective exclusion of the defendants from the gallery
30 commencing from 18 June. Ms Raymond's evidence was that
31 at the end of the conversation on the 18th Mr Cripps said

1 and I've already taken the court to this evidence, "I
2 want you out. I want you racist art out of my gallery".
3 On 24 June the evidence is, as I've got in the
4 submissions and I don't wish to repeat them, in relation
5 to the email it's our submission that that email of 26
6 June which is part of Exhibit D29, purports to impose
7 conditions on the defendants use of or access to the
8 gallery space, conditions which in our submission are
9 inconsistent with Clauses 1 and 4 of the exhibition
10 agreement.

11 If I could take Your Honour first to the email, it
12 should be in court book Tab 24.

13 HIS HONOUR: 24.

14 MR GILBERTSON: Three pages in, towards the foot, "On 26 June
15 2009 email from Robert Cripps to Ms Raymond". Commencing
16 four lines from the bottom, "We would appreciate it if
17 you could also ensure that myself ...(reads)... feel very
18 uncomfortable". So Mr Vakras was not to approach anyone.
19 That is, Mr Cripps, gallery staff or volunteers without
20 prior notification. In relation to Ms Raymond, if Your
21 Honour goes over the page, "Please also notify me
22 personally when you will be ...(reads)... as the director
23 of the gallery".

24 So she had to give notice when she will be attending
25 the gallery and none of that is consistent, we say - I
26 withdraw that - that that email is inconsistent with the
27 right of access contained in Clause 1. Clause 1 of the
28 agreement says, "The gallery agrees to provide the hirer
29 with the use of first floor of 20 to 24 Guildford Lane,
30 Melbourne". Clause 4 says, among other things, "The
31 gallery ensures that the hirer has access to the venue

1 from 8 a.m. until 10 p.m. seven days a week during
2 the hire term". Nothing in there about notice.

3 HIS HONOUR: Your submission would have more force if it said
4 give us notice and we will make a decision on a case by
5 case basis as to whether we will give you access. It's
6 not necessarily inconsistent with yes, you can come but
7 let us know first. That's in relation to Ms Raymond.
8 The statement in relation to Mr Vakras has additional
9 features than merely just notice.

10 MR GILBERTSON: That's so. But in relation to Ms Raymond it is
11 a condition that does not appear in the agreement.

12 HIS HONOUR: But is it a breach of - what is passive access,
13 you can use that space within these hours. What this
14 letter says is when you exercise that right under the
15 contract just let us know first before you come. It
16 seems to me that that is not necessarily inconsistent -
17 sorry, that's not necessarily a breach of the contract.
18 It would be a breach if it said contrary to the
19 contractual right for you to have access, we will only
20 give you access if you give notice and if we decide
21 that's suitable for us at the time that you notify us.

22 MR GILBERTSON: In our submission access means during the hours
23 referred to, unfettered access, without the requirement
24 to give notice. In relation to the open studio, we say
25 that an effective exclusion from the conversations on 18
26 and 24 June and that email constitutes a failure by
27 Redleg to make the open studio available for use by the
28 defendants during the exhibition.

29 HIS HONOUR: Sorry, how is that, I'm lost about this? Where is
30 there any specific conversation or email that in any way
31 refers to or restricts access to the open studio?

1 MR GILBERTSON: There isn't.

2 HIS HONOUR: Then how can I find that the plaintiffs precluded
3 the defendants from using the open studio?

4 MR GILBERTSON: Only by the condition which I say is attached
5 to the 26 June email.

6 HIS HONOUR: But that applies to the whole space.

7 MR GILBERTSON: That's so.

8 HIS HONOUR: Why single out the open studio in particular then?

9 MR GILBERTSON: Can I back to this point, Your Honour?

10 HIS HONOUR: Sure.

11 MR GILBERTSON: We say that the surety was not paid immediately
12 upon the gallery space being returned to its original
13 condition or if it's implied, within a reasonable time.

14 HIS HONOUR: At this point, Mr Dibb, can I ask you, it seems to
15 me that the contract did require payment of the surety at
16 the end of the hiring period as long as the space was
17 left in the same condition and whilst it doesn't specify
18 the same day as the exiting or anything like that at the
19 very least it would be within a reasonable time. There
20 is no provision anywhere for there to be a superimposed
21 requirement that a release be granted as a condition or
22 receipt of the money. Is it conceded that there was a
23 breach of the obligation to refund this?

24 I think you acknowledge that it might sound in
25 interest, that's a separate issue, or do you maintain
26 that there is no breach in relation to the late payment?

27 MR DIBB: The agreement provides that it should be - - -

28 HIS HONOUR: That's all right. If there's no ready concession
29 I'll just allow Mr Gilbertson to continue. Yes. I'm
30 really flagging that it seems to me there's some force in
31 what Mr Gilbertson is about to say and you might come

1 back to it in your reply.

2 MR DIBB: There does, yes.

3 HIS HONOUR: Sorry, Mr Gilbertson, I thought there may be - I
4 may be circumventing your submission by getting a
5 concession but it hasn't been forthcoming so move on.

6 MR GILBERTSON: Yes, and in relation to that point, I hope I am
7 going to say what Your Honour anticipated, that is, that
8 the failure to pay the surety immediately or within a
9 reasonable time but rather to demand that the defendants
10 give a release is in our submission a breach of the
11 agreement.

12 HIS HONOUR: It seems to me that way on a preliminary view but
13 I won't shut out further submissions from Mr Dibb on this
14 issue.

15 MR GILBERTSON: I don't need to take Your Honour to the terms
16 of the 6 August 2009 email in that regard.

17 HIS HONOUR: I remember it well.

18 MR GILBERTSON: We say by reason of all these matters,
19 commencing with the terms of the agreement and then
20 moving to the conversations that it is true,
21 conversations and emails, it is true that Mr Cripps
22 treated the defendants in a disgraceful and that other
23 artists should avoid him. In relation to the second
24 meaning in which the defendants adopt the plaintiffs
25 meaning, that is, that the 1st plaintiff economic duress
26 to force the 1st and 2nd defendants to agree to terms
27 that were not in the original contract for rental of
28 space at the gallery.

29 In our submission given that the ordinary reasonable
30 reader is a layperson, not a lawyer, that person would
31 understand the relevant passage in the article to mean

1 that Mr Cripps placed the defendants under financial
2 pressure that was not supported by the agreement and
3 there was discussion with my learned friend and Your
4 Honour yesterday in relation to this.

5 HIS HONOUR: Yes.

6 MR GILBERTSON: And the economic duress we say consisted on
7 retaining of the surety for approximately five weeks and
8 the refusal to pass that on unless the defendants agree
9 to the release. Turning to the third imputation, the
10 plaintiff pleads in Paragraph 8(c), "The 1st plaintiff
11 having made a profit from the first and ...(reads)...
12 causing the exhibition to fail". In our submission that
13 meaning does not arise for two reasons, one, it is a
14 juxtaposition of the words that are used in the article.

15 If I could Your Honour to the first Vakras article,
16 p.2. In the second paragraph underneath the Redleg box,
17 "During the course of the exhibition he by his actions
18 ...(reads)... but he made a profit on it". It's not,
19 having made a profit from the 1st and 2nd defendants' art
20 exhibition at the gallery, then deliberately inhibited
21 the 1st and 2nd defendants' capacity to promote the
22 exhibition causing it to fail.

23 Secondly we say that there's nothing in those words
24 about it being deliberate and the sting we say is not in
25 its deliberateness but rather in the inhibiting of the
26 defendants capacity to promote the exhibition causing it
27 to fail and for that reason we say that the defendants
28 Polly Peck meaning, the third of the defendants'
29 meanings, is less injurious and not substantially
30 different from the 1st plaintiff's imputation and this
31 is, "The 1st plaintiff profited from the defendants art

1 ...(reads)... causing it to fail", and in our
2 submission that meaning is true.

3 The deposit was paid about 17 March 2009, the
4 balance in May and Mr Cripps is beneficially entitled to
5 all of the shares in Redleg and accordingly in our
6 submission having regard to this being a meaning conveyed
7 to the ordinary reader. We say it is true that he
8 profited from the defendants art exhibition and in
9 relation to the inhibiting the defendants capacity to
10 promote the exhibition we rely upon the failure to sell
11 the catalogue, the disclaimers and the 26 June email.

12 If I could turn to the Nazi imputation. The
13 plaintiff's meaning is the 1st plaintiff is a racist who
14 holds view that a similar - I withdraw that, that's ours.
15 That the 1st plaintiff is a racist who has embraced the
16 view of National Socialism. I think it was it was
17 conceded by my learned friend in argument that that could
18 refer to the Nazis rather than National Socialism and I
19 don't think this is in dispute, that the defendants Polly
20 Peck is not substantially different from the plaintiffs
21 meanings, that is in regard to the defendants meanings,
22 "The 1st plaintiff is a racist who holds views that are
23 similar to those of Adolf Hitler".

24 Your Honour will see I had passages in the
25 submission in relation to National Socialism that seems
26 to have gone away.

27 HIS HONOUR: I think so. Let me just say that I think on this
28 particular issue the Polly Peck meaning has much to
29 commend it.

30 MR GILBERTSON: If Your Honour pleases. If I could deal first
31 with meaning, as to whether the defendants meaning is

1 conveyed to the ordinary reader, we rely upon two
2 matters. Firstly, the words in the first Vakras article,
3 "He is a manifestation of the New-Left who have adopted
4 ...(reads)... is a justifiable one". We also rely upon
5 some passages on the first page of the New-Left Nazis
6 article and accepting that the relevant words have been
7 struck out from the defendants defence, we say that that
8 this is part of a context.

9 It's clear from the authorities in our submission
10 that context is a matter that the defendants are entitled
11 to have the court take into account and I hand up an
12 extract from the 11th edition of Gatley on Libel and
13 Slander, Paragraph 3.29, Your Honour, on the right hand
14 page, "Context and circumstances of publication. It is
15 necessary to take into ...(reads)... context of the
16 words", and there's reference to the authorities in
17 Footnote 308. This often arises in cases involving true
18 innuendos or headlines but it is a proposition we submit
19 that is of general application.

20 We say that the links referred to in that part of
21 the first Vakras article make the New-Left Nazis article
22 part of the context and the passages that I wish to rely
23 upon on the question of meaning from the New-Left Nazis
24 article, if I could take Your Honour to that it should be
25 - I don't recall the exhibit number but it's tab 38 of
26 the defendants court book. Your Honour will see it says,
27 "Hitler disciples, the new racism of the political
28 ...(reads)... owner/director Robert Cripps", and then it
29 says, "Refer exhibitions", so just pausing there.

30 So the first Vakras article refers to this and this
31 refers to the exhibition and refers back to the first

1 Vakras article. So putting aside the question of
2 the strikeout, in our submission these words and the
3 words in the first Vakras article and the link make this
4 part of the context. It goes on, "Criticism of" - I'll
5 start again at that sentence, "According to this gallery
6 owner/director Robert Cripps ...(reads)... of their good
7 conscious".

8 So the ordinary reader reading at least to this part
9 would in our submission form the view that the article
10 means that the 1st plaintiff is a racist who holds views
11 that are similar to those of Adolf Hitler. I also rely
12 upon the further words on this page down to the end of
13 the first sentence in the 2nd paragraph, I should read
14 out just for clarity what those further words are, "Neo-
15 Hitlerism", I'm having difficulty pronouncing some of the
16 ism's today, "is a phenomenon of the European
17 ...(reads)... directly from Mein Kampf", and they are the
18 words which in our submission are combined with the words
19 in the first Vakras article which I've taken Your Honour
20 to give rise to this meaning.

21 HIS HONOUR: Is this a real issue, Mr Gilbertson, because
22 Mr Dibb has accepted that the Polly Peck meaning is
23 consistent with the principles in Hore-Lacy?

24 MR GILBERTSON: Yes, I may have been jumping at a false issue.

25 HIS HONOUR: Mr Dibb yesterday in the context of a discussion
26 about National Socialism and so on said that he agreed
27 that in relation to this particular imputation the
28 defendants Polly Peck meaning is consistent with the
29 Hore-Lacy principles and so is that the only - so I know
30 you wish to rely upon this hyperlinked article for a
31 couple of your defences, but to the extent that you rely

1 upon it in relation to meaning it seems that you
2 don't have to because as I said to you before, subject to
3 anything further Mr Dibb wants to say about it, it seems
4 to me that the defendants meaning is pretty much on the
5 ball so far as this is concerned.

6 MR GILBERTSON: In which case I probably have wasted a few
7 minutes of the court's time.

8 HIS HONOUR: It may be that you'll come back to it in relation
9 to the defences, I'm not sure.

10 MR GILBERTSON: Yes, I will do, Your Honour. Now, what is
11 racist? We rely on the Shorter Oxford Dictionary
12 definition which I'll hand to Your Honour and my learned
13 friend. The Shorter Oxford English Dictionary defines
14 racism as, "Belief in adherence to or advocacy of the
15 theory that all members of each race ...reads)...
16 antagonism based on this". In our submission the
17 statements of Mr Cripps on the 18th and 24 June which the
18 defendants have referred to in their evidence ascribe
19 characteristics and/or responsibility to a race people
20 identifiable as Jews and therefore in our submission they
21 are racist.

22 In relation to the evidence in that regard, I have
23 referred to this evidence before but I wish to highlight
24 it, according to Ms Raymond, Mr Cripps said on 18 June,
25 "'It's because of what the Jews are doing in Palestine'.
26 Mr Cripps said that, 'The Jews should not be in
27 Palestine, they are the cause of the conflict. It's the
28 Jews that caused the problem'".

29 Mr Vakras's evidence was that Mr Cripps said, "Your
30 quotes from the Koran give the impression that the Jews
31 are victims of the Muslims. Muslims are the victims of

1 the Jews in Israel. I don't like the Jews. I don't
2 like the Jews state in Palestine". In relation to the 24
3 June
4 conversation Mr Cripps said, "It's the Jews that are the
5 problem. The Jews should not be in Palestine. It's
6 because of the Jews that the Muslims were reacting".

7 Those views, in our submission, are similar to those
8 of Adolph Hitler, and two of them we submit are
9 notorious, that is, anti-Semitism and disdain for the
10 Jews. But there is further indication in the context
11 document as to what those views are, and this is where we
12 may not be on common ground.

13 HIS HONOUR: I suspect not.

14 MR GILBERTSON: Just excuse me a moment, Your Honour. The
15 following passages that I'm about to take Your Honour to
16 which is on the third page of the new-left Nazis article,
17 and my recollection is when we had the argument in
18 relation to the strike out application that I indicated
19 to Your Honour I relied upon the first page down to the
20 words Mein Kampf, and these quotations which appear on
21 p.3.

22 HIS HONOUR: I've marked what appears in my ruling, is on p.3,
23 starts from the top, "In the Mein Kampf Hitler writes,"
24 all of that paragraph, all of the next paragraph, all of
25 the next paragraph to the end of the quote which finishes
26 at p.278, "A Reckoning, Mein Kampf, the Manheim
27 translation." We then skip the next paragraph and we
28 resume, "Thus a Christian Hitler writes," to the end of
29 that paragraph finishing at "translation."

30 MR GILBERTSON: That is so, Your Honour. In relation to those
31 passages we say they also contain references to the views

1 of Hitler in relation to anti-Semitism and disdain for
2 the Jews. The first paragraph says, "In the Mein Kampf
3 Hitler writes the Zionists try ...(reads)... removed from
4 the intervention of other states." At p.294, "A
5 Reckoning, Mein Kampf, Manheim translation." Two
6 paragraphs further down, the third line, "Hitler wrote
7 the Jews life is only for this world ...(reads)...
8 Manheim translation."

9 The last passage relied upon, "Thus a Christian
10 Hitler writes ...(reads)... p.60 Mein Kampf Manheim
11 translation." Our primary submission in relation to the
12 views of Adolph Hitler, anti-Semitism and disdain for the
13 Jews, is that they are notorious.

14 HIS HONOUR: They're notorious to this extent are they not,
15 Mr Gilbertson? Hitler didn't just hate the Jews, he
16 believed that they should be exterminated and he in fact
17 took steps to terminate them. So when you call someone a
18 racist and you say that they've adopted or hold views
19 similar to Adolph Hitler does the sting not extend to
20 having those views to that extent? It's not just a
21 passive hatred or a preference of one race over another
22 but that Jews ought not to be just hated but exterminated
23 because they've got no legitimate role to be present on
24 this planet.

25 Wouldn't the ordinary reader who hears the word
26 racist and Hitler in the same breath bring up almost
27 instinctively the extreme and vile views of Hitler?
28 Hitler happens to be one of the most reviled individuals
29 of all time. Any list of the ten most hated people in
30 the world throughout history, he would feature on there
31 and feature quite prominently. So to link someone to

1 Hitler is probably one of the worst things you can
2 say about them is it not?

3 MR GILBERTSON: In relation to the words used in the article,
4 no, in our submission, because the words are, "He's a
5 manifestation of the new-left who have adopted the
6 sentiments Hitler expressed in his Mein Kampf."

7 HIS HONOUR: Yes, but the imputation is that the 1st plaintiff
8 is a racist who holds views that are similar to those of
9 Hitler."

10 MR GILBERTSON: Yes, but it's not the views of Hitler, it's
11 views that are similar to.

12 HIS HONOUR: That's right.

13 MR GILBERTSON: And that doesn't, in our submission, go as far
14 as Your Honour is indicating.

15 HIS HONOUR: You've taken me to authorities that say that the
16 reader is not one who takes an academic and a studious
17 view of the article but acts on sort of overall
18 impression subject to the qualifications that the
19 authorities refer to. Isn't it consistent with that,
20 that the views of Hitler are the views which are
21 notoriously violent in their manifestation of his racism
22 towards the Jews?

23 MR GILBERTSON: Had the words in the imputation been used in
24 the article then there might be a case for what Your
25 Honour has indicated. But the words used in giving rise
26 to that imputation are relating to the sentiments that
27 Hitler expressed in Mein Kampf.

28 HIS HONOUR: Yes, but you can't just read those words. You
29 have to move on to the next page of the first article.
30 That provides more immediate and relevant context I think
31 for the statement that, "Jews killed in Israel are the

1 victims of Islamic intolerance, that Jews have
2 not brought the situation, that his hatred of Jews is
3 exposed with outright racism that it is," et cetera. If
4 you look at all that and then you look back at the
5 earlier part, "A self confessed racist who has adopted
6 the same sentiments," why wouldn't it go that far in the
7 minds of the hypothetical reader that has the
8 characteristics that the authorities say that he or she
9 has?

10 MR GILBERTSON: Because that reader is not avid for scandal.
11 That reader will look at a website like this with a
12 greater degree of care, we submit, than the meaning they
13 would take from a transient publication and would look at
14 these words with a degree of care that will not take them
15 to the meanings that Your Honour has suggested. For
16 those reasons we submit that it is true that, "Mr Cripps
17 is a racist who holds views that are similar to those of
18 Hitler."

19 If I move then to the fifth imputation, which is in
20 the defence pleaded as the same as what's in the further
21 amended statement of claim, that, "The 1st plaintiff is a
22 bellicose bully." If I could hand up Macquarie
23 Dictionary definitions, given that at least the word
24 bully is more likely to be an Australian type word than
25 perhaps an English one. Starting first with bellicose.
26 "Adjective. Inclined to war-like, pugnacious." Bully,
27 "Noun, (1) a blustering, quarrelsome, overbearing person
28 who browbeats smaller or weaker people." Then there are
29 meanings which seem to us, Your Honour, not to be
30 apposite, but if I could go to meaning Number 8. It
31 says, "To be loudly arrogant and overbearing."

1 In our submission it's true that Mr Cripps was a
2 war-like pugnacious person who was quarrelsome,
3 overbearing and was loudly arrogant and overbearing. We
4 rely upon the conversation with Ms Raymond on 5 June. I
5 don't rely on the disclaimers in this regard, Your
6 Honour, that's in Paragraph 104. It should have the
7 disclaimers removed.

8 I rely upon the 24 June conversation. I also rely
9 upon the 26 June email. Subject to further argument I'm
10 going to make later, that a failure to make the open
11 studio available and the retention of a surety until the
12 release was given. The particulars in support of the
13 truth of this imputation in the 1st defendant's second
14 further amended defence also incorporate two
15 subparagraphs of the particulars relied upon by
16 Ms Raymond. I should indicate where that cross
17 referencing takes one to. If Your Honour looks at the
18 second further amended defence of the 2nd defendant.

19 HIS HONOUR: Yes, I have that.

20 MR GILBERTSON: In the particulars to Paragraph 16A those
21 numbered 1(vi) and (vii) they appear on p.5 of my copy.

22 HIS HONOUR: Yes, I have that.

23 MR GILBERTSON: Thank you, Your Honour. (vi) "Further, in or
24 about January 2010 the 1st plaintiff falsely accused an
25 exhibitor of the gallery of being a liar and berated her
26 in relation to electric fans that the 1st plaintiff had
27 without the consent of the exhibitor installed at the
28 gallery thereby disrupting the art exhibitor's artworks
29 which were suspended from the ceiling." That's the
30 evidence of Katie Bowman.

31 And (vii) "During an exhibition at the gallery in

1 August and September 2010 the 1st plaintiff was
2 rude and aggressive towards friend of the exhibitor who
3 were setting up the exhibition and during the opening
4 night of the exhibition the 1st plaintiff shouted in a
5 rude and aggressive manner at the exhibitor and the
6 person who was pouring himself a drink." That's the
7 evidence of Josie Waddelton.

8 Now if I could move to fair comment and honest
9 opinion. The requirements - and I suspect we're on
10 common ground with my learned friend in this regard - the
11 elements are, "(1) The impugned article must amount to
12 comment as opposed to a statement of fact." I have
13 Buckley. Would it assist Your Honour if I handed that
14 up?

15 HIS HONOUR: I was given Buckley yesterday.

16 MR GILBERTSON: I apologise. "It must relate to a matter of
17 public interest. (3) The comment must be based on facts
18 stated in the article are notorious." My learned friend
19 took Your Honour yesterday to Manock, that is, that the
20 facts must be stated in the article or indicated. "The
21 facts on which the comments based must be true." In
22 relation to the next point I suspect that my learned
23 friend and I do depart.

24 There's no question of reasonableness of the
25 opinion. "The opinion must be fair and it will be fair
26 if it could honestly be held by a fair minded person even
27 if the opinion is objectively grossly exaggerated or
28 prejudiced, outrageous and ridiculous, wrong or even
29 violent, irrational, stupid or obstinate, expressed in
30 ironical, bitter or even extravagant language or
31 uncourteous or even offensive or vituperative." I hand

1 up to Your Honour the relevant extract from Dr
2 Colin's book.

3 HIS HONOUR: I'm not sure that Mr Dibb did say anything that
4 was contrary to that. I don't recall him using the word
5 reasonable in this context.

6 MR GILBERTSON: I must say, I apologise, I have misunderstood.

7 HIS HONOUR: Perhaps we'll clarify this.

8 MR DIBB: I took Your Honour to passages of Manock approved by
9 the High Court that refer to it being - I don't wish to
10 misquote - but an opinion that could honestly be held by
11 a reasonable person, something along those lines. I'll
12 have to go back to - - -

13 HIS HONOUR: That's fine. You can have - - -

14 MR DIBB: I took Your Honour to the quotes from Manock, and
15 Your Honour will see the form of words approved by the
16 High Court there.

17 HIS HONOUR: Thank you. Mr Gilbertson, I said that I have
18 Buckley, but just looking at it I think there might have
19 been a number of Buckleys along the way.

20 MR GILBERTSON: Yes. Your Honour has the Buckley in relation
21 to - - -

22 HIS HONOUR: The damages.

23 MR GILBERTSON: Yes.

24 HIS HONOUR: So if you do have a copy of that, that would be
25 very handy.

26 MR GILBERTSON: This is [2009] 21 VR 661.

27 HIS HONOUR: Thank you.

28 MR GILBERTSON: In Paragraph 9 in the judgment of the court
29 consisting of Justices Nettle, Ashley and Weinberg, Their
30 Honours say, "The law as to the common law defence of
31 fair comment ...(reads)... expression of opinion by the

1 publisher." Which is also a matter that my learned
2 friend took Your Honour yesterday to in relation to
3 Manock.

4 I wish to hand up to Your Honour the passage from
5 Dr Colin's book that I have quoted in the submissions.
6 At Paragraph 10.17, "A comment will be fair if it could
7 honestly be held by a fair minded person even if the
8 opinion is," and this is the words that I read out to
9 Your Honour before, "objectively grossly exaggerated or
10 prejudiced, outrageous and ridiculous, wrong or violent,
11 irrational, stupid or obstinate, expressed in ironical,
12 bitter or even extravagant language or uncourteous or
13 even offensive or vituperative."

14 So even if the opinions, which I'm about to take
15 Your Honour to, held by Mr Vakras could be described as
16 exaggerated, irrational, outrageous, they still, in our
17 submission, qualify as comment. On the question of
18 public interest it is clear, in our submission, that
19 matters of public interest are not narrowly confined. If
20 I could take Your Honour to a decision of the Hong Kong
21 Final Court of Appeal, which is also relevant to malice,
22 Cheng v. Tse Wai Chun [2000] HKCFA 35. I'll hand up a
23 copy of that decision.

24 This was in the Court of Final Appeal of the Hong
25 Kong Special Administrative Region, the principal
26 judgments give by Lord Nicholls at Birkenhead, and in
27 relation to malice, sitting in the Privy Council I think.
28 I'll take Your Honour later to a decision. His Honour
29 refers to what His Honour says in this judgment. Just
30 for present purposes if I could take Your Honour to
31 Paragraph 16 where His Lordship says, "In order to

1 identify the point in issue ...(reads)... within
2 narrow limits today. He refers to Lord Denning's
3 judgment in London Artists v. Littler at p.391.

4 In our submission the matter of public interest
5 identified in Paragraph 8B of Mr Vakras's defence
6 qualifies as a matter of public interest, that is, the
7 treatment by Mr Cripps of artists who exhibit their works
8 at the gallery is, in our submission, within the broad
9 principles as to what amounts to a matter of public
10 interest.

11 Next if I could take Your Honour to the facts which
12 we say are stated in the article and are true and, in our
13 submission - - -

14 HIS HONOUR: Sorry, do you wish to say anything further about
15 public interest? I accept that the matter of public
16 interest is not to be narrowly confined but is there any
17 case similar to this where someone has published on the
18 internet contractual dealings between him or herself and
19 somebody else by way of warning to others who may deal
20 with that person in the future, that that constitutes
21 public interest?

22 MR GILBERTSON: Not in those terms, Your Honour, no, I'm not
23 aware of any.

24 HIS HONOUR: It doesn't seem to come within the general notion
25 of what is in the public interest so I would be assisted
26 more by examples of types of analogous circumstances
27 which have been held either within the public interest or
28 not rather than a general statement that public interest
29 isn't to be construed narrowly, because that really
30 doesn't help me.

31 MR GILBERTSON: I'll endeavour over the luncheon adjournment to
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Cripps

1 see if I can find some.

2 HIS HONOUR: Thank you.

3 MR GILBERTSON: In our submission the facts which I'm about to
4 take the court to are; (1) stated in the article, (2) are
5 not so intermingled with comment as to be impermissible
6 and (3) are true. If I could take Your Honour to the
7 first article. In support of a comment consisting of the
8 first imputation in the 1st defendant's defence, that is,
9 that relating to disgraceful manner and other artists
10 should avoid him, the passages are, firstly, "This has
11 turned out to be a waste of money." I'll just make sure
12 I can find all these references.

13 It is the second sentence of the second page. The
14 first sentence is, "Much money was spent by myself and my
15 co-exhibitor Lee-Anne Raymond to make this show a
16 success." The next sentence which I rely on is, "This
17 has turned out to be a waste of money." We say that
18 that's true. The second fact stated in the article upon
19 which we rely is, "The owner," the next sentence, "The
20 owner Robert Cripps had at the time of writing this still
21 not paid us for work that sold during the show. Payment
22 was eventually made over six weeks later after we sought
23 legal advice." The reference to, "Cripps at the time of
24 writing this has still not paid us for work that was sold
25 during the show. Payment was eventually made over six
26 weeks later," we say is true.

27 The next sentence, "Payment of moneys owed was only
28 secured when we were forced into agreeing to terms which
29 were never in the original contractual agreement with
30 Cripps but which he demanded we agree to." Again, we say
31 that's true. The next paragraph, in our submission,

1 constitutes a statement of fact in support of this
2 opinion. "During the course of the exhibition he by his
3 actions circumvented our capacity to promote our work.
4 Cripps turned the exhibition into an expensive debacle
5 for us but he made a profit on it."

6 No, I don't rely upon what appears in the second
7 last bullet point on p.24 of my submissions, Your Honour,
8 that is, the last bullet point - - -

9 HIS HONOUR: Under 108A?

10 MR GILBERTSON: Yes.

11 HIS HONOUR: "According to Cripps my essays were
12 unintelligible."

13 MR GILBERTSON: Yes. I don't rely upon that, Your Honour.

14 HIS HONOUR: Thank you.

15 MR GILBERTSON: In relation to the second of the imputations in
16 the 1st defendant's defence on the question of comment we
17 rely upon the reference to, "Cripps had at the time of
18 writing this still not paid us for work that was sold
19 during the show. Payment was eventually made over six
20 weeks later. We were forced into agreeing to terms that
21 were never in the original contract agreement with
22 Cripps." That founds, in our submission, the basis for
23 an opinion that, "Mr Cripps used economic duress to force
24 the 1st and 2nd defendants to agree to terms that were
25 not in the original contract for rental of space at the
26 gallery."

27 The third imputation as comment in relation to he's
28 profited, that is C, "Profited from the defendants' art
29 exhibition notwithstanding that he inhibited the
30 defendants' capacity to promote the exhibition causing it
31 to fail." I'd rely upon the reference in the article to,

1 "He by his actions circumvented our capacity to
2 promote our work."

3 If I could move then to the question of racism, the
4 racist imputation. The passages that I rely upon in
5 support of the ordinary reader taking this opinion - I'll
6 withdraw that. The passages that I rely upon in support
7 of this opinion are, firstly, the reference in the first
8 Vakras article to, "He is a manifestation of the new-
9 left, who have adopted the sentiments that Hitler
10 expressed in his Mein Kampf," and the words in the new-
11 left Nazis article which appear at the top of that first
12 page of that article.

13 The passage I wish to rely upon is in the first main
14 paragraph on the first page of that new-left Nazis
15 article, that is, these words. "In the exhibition of my
16 works held during June-July 2009 I was criticised for the
17 sentiments which underline my works by the owner of the
18 gallery in which my works were being exhibited." Just
19 pausing there. That fact we say is true, that according
20 to Mr Vakras, Mr Cripps said at the 18 June 2009 meeting,
21 "Your quotes from the Koran give the impression that the
22 Jews are victims of the Muslims." That, we say, is a
23 criticism for the sentiments which underlie his works by
24 the owner of the gallery.

25 The new-left Nazis article goes on, "According to
26 this gallery owner/director Robert Cripps, refer
27 exhibition, criticism of Judaism or Christianity or
28 Zoroastrianism is acceptable but any criticism of Islam
29 by citing the Koran in the same way that I cite Biblical
30 passages to criticise Judaism/Christianity is, as he
31 claimed, racist because if applied to Palestine would

1 mean that the Muslims and not Jews are responsible
2 for what ails the region."

3 The fact is the part, "any criticism of Islam is
4 racist because if applied to Palestine it would mean that
5 the Muslims and not the Jews are responsible for what
6 ails that region." We say that they were matters said by
7 Mr Cripps on 18 June when he said, "Your opinions on the
8 Koran are racist. Muslims are victims of the Jews in
9 Palestine. I don't like the Jews, I don't like the Jew
10 state in Palestine. Mr Cripps said it was the Jews that
11 are the problem, the Jews should not be in Palestine. It
12 was because of the Jews that the Muslims were reacting."

13 And the reference to Ms Raymond saying to Mr Cripps,
14 "That of itself is racist," and Mr Cripps responding,
15 "Yes, so?" The next passage containing a fact upon which
16 is relied in support of this defence of comment is the
17 reference to - it should be the second main paragraph,
18 second sentence, "Nevertheless this conscientious left
19 have adopted what Hitler wrote in the Mein Kampf." And
20 Hitler's views, which we rely upon, it's in the new-left
21 Nazis article. All of these references are in that
22 article.

23 We rely, Your Honour, on the quotations on the third
24 page of this article from the Mein Kampf as exhibiting to
25 the ordinary reader anti-Semitism and racism. What we
26 say about all this is that these views, the evidence
27 discloses, are views held by Mr Cripps and that they are
28 - I'll withdraw that. And that the opinion conveyed to
29 the ordinary reader is that Mr Cripps is a racist who
30 holds views that are similar to those of Adolph Hitler.

31 HIS HONOUR: This is in relation to your fair comment defence?

1 MR GILBERTSON: Yes.

2 HIS HONOUR: You say that these facts are stated in the article
3 or the - - -

4 MR GILBERTSON: The new-left Nazis article.

5 HIS HONOUR: So you rely on them as facts supporting the
6 opinion in the matter complained of in relation to this
7 imputation?

8 MR GILBERTSON: That's correct, Your Honour.

9 HIS HONOUR: Some of them appear to be opinions themselves,
10 Mr Gilbertson, rather than facts. It's tantamount to
11 Mr Vakras relying on his opinions published elsewhere to
12 support his opinion published in the article complained
13 of. It's one thing to say, well, there's a quote from
14 the Koran and that's a fact because it's there.
15 Mr Vakras's interpretation or take on it is not a fact,
16 it's an opinion.

17 MR GILBERTSON: Yes, I hear what Your Honour says about that.

18 I don't wish to say any more about that.

19 HIS HONOUR: Thank you.

20 MR GILBERTSON: In relation to bellicose bully we rely upon the
21 facts in the first Vakras article as follows, on the
22 second page, the paragraph that I've already taken Your
23 Honour to, the first paragraph, this sentence. "Payment
24 of the moneys was only secured when we were forced into
25 agreeing to terms which were never in the original
26 contractual agreement with Cripps but which he demanded
27 we agree to. He gained agreement by placing under
28 financial duress."

29 And the reference on the second page at the foot of
30 that page, "According to Cripps my essays were
31 unintelligible, lacked essence, whatever that might mean,

1 and read like legalese." We say that those facts are
2 true. That's all I wish to say about fair comment. I
3 make one point in relation to honest opinion under s.31
4 of the Act, and it arises this way. If any of the facts
5 upon which the comment is said to be based are false then
6 the authorities make it clear that fair comment will not
7 be made out, and I concede that. However s.31 operates
8 differently. Section 31(6) in particular - - -

9 HIS HONOUR: Are you taking me to the Act?

10 MR GILBERTSON: Yes, Your Honour.

11 HIS HONOUR: I've got that, thank you.

12 MR GILBERTSON: Your Honour will see, "An opinion does not
13 cease to be based ...(reads)... as is proper material."
14 This provision was inserted into the uniform laws because
15 of what was seen to be the harshness of the position at
16 common law with respect to fair comment. So I make
17 global submission as it were that if any of these facts
18 are not established to be true then it may be that the
19 opinions can nonetheless be supported by the other facts
20 upon which we rely so long as the opinion might
21 reasonably be based on such of the material as is true.

22 If I could turn now, Your Honour, to qualified
23 privilege. "The usual duty interest form of qualified
24 privilege requires ...(reads)... in receiving that
25 material." I refer to Dr Colin's book and one of the
26 principal authorities in that regard is *Adam v. Ward*
27 (1917) AC 309. Reply to attack, in our submission, is a
28 subset of common law qualified privilege. I wish to take
29 Your Honour to *Harbour Radio v. Trad.* What it says,
30 relying upon what Justice Dixon said in *Penton v. Calwell*
31 is that, "The foundation of qualified privilege relating

1 to reply to attack ... (reads)... has sought to
2 affect." I'll take Your Honour to Harbour Radio v. Trad.

3 I might hand up Harbour Radio v. Trad and the
4 relevant passage from Dr Colin's book in relation to the
5 proposition that I just put.

6 HIS HONOUR: It's got tabs in it.

7 MR GILBERTSON: Sorry, I've handed up the wrong copy.

8 Dr Colin's proposition which I read out to Your Honour is
9 at Paragraph 12.05. The rationale for reply to attack is
10 referred to in Harbour Radio v. Trad, at Paragraph 3 in
11 the judgment of Justices Gummow, Hayne and Bell, where
12 Their Honours say, "The statement of principle by Justice
13 Dixon at first instance ... (reads)... attacking party has
14 sought to affect."

15 In our submission Harbour Radio v. Trad itself is
16 indicative that for the purposes of reply to attack
17 there's a broad approach taken as to what the same
18 audience is. The facts in Harbour Radio v. Trad are
19 sufficiently revealed from the passages commencing at
20 Paragraph 5 of the judgment of Their Honours, and it's
21 headed The Peace Rally. It said, "Approximately one week
22 after the Cronulla riots ... (reads)... actions of
23 predominantly one radio station". Then what happened,
24 Your Honour, is that 2GB responds.

25 If Your Honour looks at Paragraph 6, "In a program
26 that went to air on Radio 2GB at about 10.05 a.m.
27 ... (reads)... by Trad is set out", their Honour say, in
28 the reasons of the Court of Appeal. If I could take Your
29 Honour to Paragraph 7, "In his amended statement of claim
30 Mr Trad alleged ... (reads)... while all this was going
31 on". It goes on, "There is about ten minutes of this

1 bile about how evil and ...(reads)... not alone in
2 thinking this".

3 Then if Your Honour goes to Paragraph 36 where their
4 Honours make conclusions in respect of qualified
5 privilege they say this, "Mr Trad had attacked 2GB by
6 placing at least part of the ...(reads)... about his
7 personal safety". So the comments made by Mr Trad a
8 public peace rally in Hyde Park which are responded to by
9 a talk back radio announcer was held to be an occasion of
10 qualified privilege. I accept that this case is
11 different but there are aspects which in my submission
12 make the defendants' publications fall within these
13 principles.

14 Those aspects are the gallery was open to the
15 public. There were no charges made for admission. There
16 were about 40 to 50 people on the defendants' evidence
17 who overheard the conversation which occurred on 18 June.
18 The disclaimers were on public display for any member of
19 the public attending to see those disclaimers and in our
20 submission responding on the internet on what we say are
21 specialist websites and I'll expand on that submission
22 after lunch, is sufficient to constitute the same
23 audience for the purposes of reply to attack.

24 On the question of reciprocity of duty and
25 interest, that is, the umbrella principle of common law
26 qualified privilege I wish to take Your Honour to two
27 English authorities which consider the question of
28 qualified privilege applied to the internet. They are
29 Vassiliev v. Frank Cass, a decision of Justice Eady, and
30 Trumm v. Norman, a decision of Justice Tugendhat. I hand
31 up both of those decisions.

1 HIS HONOUR: I've got two copies.

2 MR GILBERTSON: I apologise. Turning first to Vassiliev
3 starting at Paragraph 1, Mr Justice Eady says, "There now
4 follow my rulings on the issue of qualified ...(reads)...
5 perhaps professional, perhaps academic" - I withdraw
6 that. "Readers of the journal have a specialist interest
7 ...(reads)... was convicted of perjury in 1950". If we
8 go down, Your Honour, two paragraphs further on to
9 Paragraph 4, "Mr Vassiliev complains a selected passage
10 from a section in the ...(reads)... United States and
11 decrypted by Venona".

12 If Your Honour then goes to Paragraph 9, "Quite
13 apart from the journal itself the words complained
14 ...(reads)... in particular". Just interposing there,
15 I'll be making submissions after lunch, Your Honour, in
16 relation to the Google and Bing searches.

17 HIS HONOUR: All right.

18 MR GILBERTSON: If one then turns - or perhaps is this a
19 convenient time, Your Honour?

20 HIS HONOUR: Yes. I just want to inquire how you're tracking
21 we're at p.27 to 40 effectively and I need to hear also
22 from Mr Dibb as to anything he wants to say. What is
23 your estimate?

24 MR GILBERTSON: I am going more slowly than I had thought. I
25 would - - -

26 HIS HONOUR: I'm asking questions as well which inhibits your
27 progress.

28 MR GILBERTSON: Your Honour, I could be another hour.

29 HIS HONOUR: That's fine. Mr Dibb, how long do you think you
30 will need in reply?

31 MR DIBB: If my learned friend is only another hour that will
.SB:KE 26/03/14 FTR:16-17D DISCUSSION
Cripps

1 leave me an hour and that will be adequate, Your
2 Honour.

3 HIS HONOUR: Yes Will it inconvenience anyone if we resumed at
4 two just to give ourselves a bit more time?

5 MR DIBB: That's sounds a good course, Your Honour.

6 MR GILBERTSON: That's fine, Your Honour.

7 HIS HONOUR: All right. We'll adjourn until 2 p.m. this
8 afternoon, thank you.

9 LUNCHEON ADJOURNMENT

(Kyrou J)

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UPON RESUMING AT 2.00 P.M.:

HIS HONOUR: Yes, Mr Gilbertson?

MR GILBERTSON: Thank you, Your Honour. Before I return to where I was immediately before the luncheon adjournment I'd like to say something more about the question of public interest. If I could hand up to Your Honour an extract from Gatley at Paragraph 12.40. Paragraph 12.40 is headed Public Performances and Performers. It says, "A public ball or any exhibition or show to which the public have a right of admission is a matter of public interest." Then it goes on, Your Honour, to say that not only is it the performance or exhibition itself but it's also the management that is relevant.

Your Honour will see it says, "So also is the management of a public theatre ...(reads)... are also matters of public interest." So what we say in relation to that is; that what happened at the exhibition and Mr Cripps in his capacity as management in dealing with the defendants make the pleaded matter of public interest indeed a matter of public interest.

HIS HONOUR: All right, thank you.

MR GILBERTSON: I have taken Your Honour to the first of the English cases on the question of qualified privilege and the internet. The second is a decision of Justice Tugendhat in Trumm v. Norman. The facts sufficiently appear from the first two paragraphs of the judgment.

HIS HONOUR: Just one second please. Yes, thank you.

MR GILBERTSON: Thank you, Your Honour. It says in Trumm v. Norman, Paragraph 1, "The claimant is a train driver ...(reads)... www.aslef.org.uk." His Honour deals with

1 public interest - with qualified privilege rather, in
2 particular at Paragraphs 33, 36 and 37. Taking Your
3 Honour to Paragraph 33, "The extent of publication
4 through the ASLEF website ...(reads)... complained of on
5 the website." Paragraph 36, "On the facts of the present
6 case ...(reads)... who was not a member of ASLEF."

7 That's a little different to Vasiliev because it's a
8 union website, a union association website. I'll
9 withdraw that and I'll come back to that in a moment. In
10 our submission Mr Vakras had a social or moral duty to
11 warn other artists or exhibitors about the defendants'
12 negative experiences in exhibiting their works at the
13 Guildford Lane Gallery and dealing with the plaintiff.
14 Mr Vakras, in our submission, had an interest to the same
15 effect by reason of his being one of the exhibitors.

16 It's made clear in Bashford, which I'll hand up to
17 Your Honour in a moment, that one must look at all the
18 particular circumstances of the case in order to identify
19 what is said to be the occasion of privilege. I think I
20 have destroyed several trees in producing these bundles.
21 Bashford is long and I apologise for not having just
22 extracted the relevant pages but I will hand up Bashford.
23 The relevant passage is at Paragraph 11 in the judgment
24 of Chief Justice Gleeson and Justices Hayne and Heydon.

25 Perhaps before I do that I'll take Your Honour to
26 Paragraph 10, headed Reciprocity of Duty or Interest is
27 Essential. "These principles are stated at a very high
28 level ...(reads)... events leading up to and surrounding
29 the publications." Then Their Honours say, "The primary
30 judge's reasons did not identify ...(reads)... one of
31 qualified privilege." In this case the websites of both

1 the defendants relate to their art. In our submission
2 they are likely to be read by persons with an interest in
3 art or a connection with Mr Cripps.

4 They are not likely to be read by the casual web
5 surfer. They are specialist websites, not newspaper or
6 media sites. It's our submission that a person who
7 undertakes a Google search or Bing search of the name
8 Robert Cripps is not a casual web surfer, that they
9 either know him or they want to find out information
10 about him. Even if that's wrong, in our respectful
11 submission the court should be cautious in drawing
12 inferences from Mr Dibb's Google search which he
13 conducted in court last week.

14 There's no evidence as to how Google ranks its
15 results. The search in particular shows the mirror site
16 as Item 9 in the list of the search. Mr Cripps gave
17 evidence that prior to January this year the Guildford
18 Lane Gallery had a website, Ruby's Music Room had
19 websites prior to March of this year, therefore it's
20 perhaps not surprising that Redleg v. Artists, the
21 transhumanist site and the mirror site are what appears
22 on the Google search.

23 When one looks at the document in the first Redleg
24 v. Artists set of articles that was tendered by my
25 learned friend and one looks at the third, that is, the
26 transhumanist.com VCAT claim documents, there are no
27 links in those documents to either the matters complained
28 of or the mirror site. So even assuming one could infer
29 from that that a web surfer who entered the name Robert
30 Cripps would be directed to information about the
31 proceedings, about Mr Cripps, there can be, in our

1 respectful submission, no inference drawn that they
2 would have been taken to the matters complained of.

3 The only evidence in relation to a Google search was
4 of Ms Paul, whose evidence was that she conducted a
5 Google search after she was told by Mr Cripps that there
6 had been a problem and he said they put stuff on the
7 internet about it. I apologise, Ms Czarski did say
8 something in this regard but not in relation to a Google
9 search. She said that she'd look at the website every
10 time Mr Cripps would call indicating that there's some
11 action being taken.

12 We don't know anything, in my submission, about Bing
13 and how it operates and, in our submission, no inference
14 can be drawn in relation to that search.

15 HIS HONOUR: Why is this a specialist website?

16 MR GILBERTSON: Because it relates to the defendants'
17 surrealist art.

18 HIS HONOUR: Yes. What does that mean in terms of people
19 having access to it? Isn't this issue of qualified
20 privilege the individuals who are likely to read the
21 matter complained of and whether there is some
22 reciprocity between them and the maker of the alleged
23 defamatory statements?

24 MR GILBERTSON: Yes.

25 HIS HONOUR: So in what sense is it a specialist website in
26 terms of the audience that it might have?

27 MR GILBERTSON: Because it's likely to be read, in our
28 submission, by people who have an interest in art
29 generally or who have an interest in surrealism, that
30 they are the people who are more likely to come across
31 these websites than someone who conducts a Google search

1 for example.

2 HIS HONOUR: But if the evidence is that persons who know of or
3 wish to know of or want to perhaps deal in a business
4 sense with Mr Cripps and who Google him to find out some
5 information about him to the extent that they are taken
6 to the matter complained of, and I hear what you say
7 about this lack of the evidence, but just for the moment,
8 if the search engines work in such a way that anyone
9 wishing to invest in or do business with Ruby's Music and
10 they Google Mr Cripps and get directed to the website
11 they would be all manner of people would they not, not
12 necessarily interested in any form of art or Mr Vakras
13 for that matter or Ms Raymond for that matter, but
14 Mr Cripps and his interests, not Mr Vakras or
15 Ms Raymond's interests.

16 MR GILBERTSON: If the evidence disclosed that such a search
17 would take one to articles contained in links to the
18 matters complained of then, yes, I would agree with Your
19 Honour.

20 HIS HONOUR: I thought that I had when you took to me to that
21 passage from Gatley and I know that this was research
22 that you conducted over lunch and you may not have had an
23 opportunity necessarily to delve into the supporting case
24 law. To what extent do exhibitions and cinema
25 presentations and the like operate in the public interest
26 in the relevant sense after the matter shown by way of a
27 film or an exhibit concludes? What I mean by that is if
28 the evidence is and I'm just testing the proposition
29 rather than indicating any finding at this stage, but I
30 think Ms Raymond's article itself says that something
31 like in the order of five minutes after the conclusion of

1 the exhibition.

2 So is it the period of time that the exhibition is
3 publicly available? Does it include things that are
4 really in the aftermath of a public exhibition or does
5 anything that happen within a cinema or an art gallery
6 attract this public interest component?

7 MR GILBERTSON: If it relates to the conduct of the management
8 then in my submission the release goes that far?

9 HIS HONOUR: Because that is referred to in Gatley?

10 MR GILBERTSON: Yes.

11 HIS HONOUR: All right, thank you.

12 MR GILBERTSON: Could I turn to the claims by the second
13 plaintiff against Mr Vakras. It's pleaded in Paragraph 9
14 that in relation to Redleg in its natural and ordinary
15 meaning the first Vakras article meant and was understood
16 to mean that Redleg is operated and owned by Mr Cripps
17 and I think my learned friend said the following words
18 were unnecessary. It then goes on, "Redleg is therefore
19 a disreputable company and not to be trusted". In our
20 submission that imputation does not arise.

21 The relevant words at the foot of p.1 of the first
22 Vakras article says, "Cripps also runs Redleg, a
23 transport of art. Can you trust Cripps Redleg?" Nothing
24 in our submission about disreputable. Polly Peck Meaning
25 9A that the second plaintiff is a company of questionable
26 repute and not to be trusted in our submission is not
27 substantially different from the plaintiffs imputation
28 and is true and we rely upon the evidence of Ms Leveson
29 who said at Transcript 294, she said she was told by the
30 President of the Council of the Australian Museum
31 Registrars Committee that on no account should she deal

1 with Mr Cripps or Redleg in her professional work.

2 If I could now turn to the second Vakras article,
3 Mr Vakras's evidence was that this was on the internet
4 for 24 to and 36 hours. That's at Transcript 21. We
5 submit that that's consistent with the evidence of
6 Ms Czarski that she saw the article on 31 March 2011 or
7 the next day. Ms Paul's evidence in that regard was that
8 she assumed it was the same article that she saw several
9 times and in our submission Mr Vakras's evidence is to be
10 preferred in this regard. He was the person in control
11 of the website and his evidence about the period over
12 which this article was available for downloading was not
13 challenged by my learned friend.

14 Imputation 12 in the further amended statement of
15 claim pleads firstly, "The first plaintiff's pattern of
16 intimidating behaviour has left ...(reads)... with the
17 plaintiff". The defendants rely upon the evidence of
18 Ms Courtney Kim. She said when she was asked to give
19 evidence she was a little bit reluctant because she did
20 not want to drag this on. I accept that there's no other
21 evidence to reticence than Ms Kim's.

22 Imputation 12B, "The first plaintiff sexually
23 harassed volunteers and staff at his gallery", in our
24 submission doesn't arise. It uses the present tense,
25 "sexually harasses volunteers and staff at his gallery",
26 and what the words in the article say, this is p.5 of
27 Annexure B, fourth last line, "Robert embarrassed the
28 directors and executives as well ...(reads)... volunteers
29 as well". Imputation 12A(b), that is the Polly Peck
30 imputation, in our submission arises and is true and is
31 not substantially different form the plaintiffs

1 imputation.

2 Imputation 12A(b) is, "The first plaintiff has
3 sexually harassed volunteers and staff at his gallery".
4 In relation to the particulars concerning that, on p.15
5 of the second further amended defence of Mr Vakras I
6 concede that it's only Paragraph 2B to which any evidence
7 related. That is, "In or about November 2009 the first
8 plaintiff made sexual ...(reads)... or words to that
9 effect.

10 Ms Kocaj's evidence was that in relation to Leila
11 and Thao that she witnessed conversations between
12 Mr Cripps and Leila and that in relation to both Leila
13 and Thao Ms Kocaj says Mr Cripps - or gave evidence
14 rather, "Mr Cripps would buy them a meal a lot of the
15 time and he would make comments such as these are my
16 girlfriends or he'd make comments about what they were
17 wearing". In relation to Ms Li's evidence her native
18 language is Mandarin, her English is limited and as
19 Ms Kocaj said in her evidence, "These two young ladies
20 were international students. Their language skills at
21 that stage were probably still advancing so they might
22 not have had a great degree of comprehension of the
23 subtext in terms of the conversation".

24 If I could now turn to the Raymond article and
25 dealing first with the claims by Mr Cripps and the truth
26 and Polly Peck meanings, Imputation 16A is, "That in
27 relation to the first plaintiff in its natural
28 ...(reads)... the artists he represents". The defendants
29 rely upon their own evidence in relation to the matters
30 particularised under Paragraph 16A of Ms Raymond's
31 defence and the two passages that I took the court to

1 prior to the luncheon adjournment in (vi) and (vii)
2 on p.5 they relate to the evidence of Ms Bowman and
3 Ms Waddelton.

4 Imputation 16B in the amended statement of claim,
5 "The first plaintiff as director of the gallery has
6 repeatedly engaged in behaviour that bullies and abuses
7 the artists he represents". The defendants meaning, the
8 second defendant's rather, is, "As the operator of the
9 Guildford Lane Gallery the first ...(reads)... who
10 exhibit their works". I think my learned friend
11 indicated yesterday that not significantly different from
12 what the plaintiff has pleaded in any event.

13 HIS HONOUR: Yes, he did.

14 MR GILBERTSON: And the evidence relied upon in relation to the
15 truth of that imputation is the evidence that I have just
16 referred to with the addition of what is in Sub-paragraph
17 5 of the particulars in Paragraph 8A of the further
18 amended defence of the first defendant. Sub-paragraph 5
19 of the particulars to Paragraph 8A pick up a number of
20 the paragraphs - a number of the Sub-paragraphs contained
21 in the particulars to Mr Vakras's defence.

22 Imputation 16C, "The first plaintiff as director of
23 the gallery has repeatedly engaged in behaviour that it
24 destroys the exhibitions of the artists he represents and
25 Polly Peck imputation in that regard is that, "As the
26 operator of the Guildford Lane Gallery the first
27 plaintiff has repeatedly engaged in behaviour that
28 destroys the exhibits of the artists who exhibit their
29 works there", not substantially or materially in our
30 submission different from the plaintiffs imputation.

31 The defendants rely on their own evidence as to

1 their experience as well as the evidence of Katie
2 Bowman and Josie Waddelton. Imputation 16D is, "The
3 first plaintiff as director of the gallery has repeatedly
4 engaged in behaviour that sullies the reputations of the
5 artists he represents". Similarly 16A(d), that's the
6 Polly Peck meaning, "As the operator of the Guildford
7 Lane Gallery the first plaintiff has repeatedly engaged
8 in behaviour that sullies the reputations of the artists
9 he represents".

10 I'm not sure now that I think about it - I'll
11 withdraw that. In our submission that meaning is not
12 substantially different and is true and the defendants in
13 that regard rely upon their evidence in respect of what's
14 contained in the particulars to Paragraph 8A of
15 Mr Vakras's defence and the evidence of Ms Bowman and
16 Ms Waddelton. Imputation 16E in our submission does not
17 arise and there's nothing in our submission in the
18 Raymond article which gives rise to that meaning and
19 Polly Peck Meaning 16A(e) that, "The first plaintiff has
20 failed to support and has sabotaged the exhibitions of
21 some of the artists who have exhibited their works at the
22 Guildford Gallery", is firstly not substantially
23 different because in our submission the sting is one of
24 sabotage and secondly, that that is true.

25 In relation to Imputation 16F it's our submission
26 that that does not arise either, that, "The first
27 plaintiff in his arts transportation is universally
28 despised". Nothing in the Raymond article which we
29 submit gives rise to that meaning. Polly Peck Imputation
30 16A(f) on the other hand, "That the first plaintiff is a
31 person who is widely despised", firstly, arises and

1 secondly, is not substantially different. When
2 one looks at the plaintiff's meaning that the first
3 plaintiff in its arts transportation business is
4 universally despised and one compares that with that the
5 first plaintiff is a person who is widely despised in our
6 submission there is not substantial difference between
7 them.

8 The evidence that's relied upon, apart from the
9 defendants' evidence, is that of Ms Bowman, Ms Waddelton,
10 Mr Mishriki in relation to the Found Sound Exhibition,
11 Mr Mickelson in relation to his dealings with Mr Cripps
12 when he was a life model there and the evidence of
13 Courtney Kim. I deal just broadly with fair comment and
14 honest opinion in relation to the Raymond article. Fair
15 comment and honest opinion are not relied upon in respect
16 of Imputation 16F. That is, the first plaintiff in its
17 arts transportation business is universally despised and
18 that exception is in the particulars to Paragraph 16B.

19 In relation to the fair comment defence what's
20 pleaded in 16B in relation to the matter of public
21 interest, it is the poor treatment of the defendants and
22 others by the first plaintiff who is the manager and
23 operator of the gallery and we would rely upon the
24 passage in Gatley in that regard. The second defendant
25 also relies upon qualified privilege at common law and I
26 don't need to repeat the submissions that I made this
27 morning in that regard.

28 HIS HONOUR: Do you say that she was responding to an attack on
29 her as well?

30 MR GILBERTSON: Yes. In relation to the claims by Redleg
31 against Ms Raymond, Paragraph 17 pleads, "That in

1 relation to the second plaintiff in its natural
2 ...(reads)... and other potential customers". We say
3 that that imputation does not arise. The article doesn't
4 say anything about Redleg being disreputable.
5 Alternatively, meaning 17A arises and is not
6 substantially different and is true and we rely upon the
7 evidence of Ms Leveson.

8 Ms Raymond also relies upon qualified privilege in
9 respect of the claim by the second plaintiff and there
10 are fair comment and honest opinion defences as well in
11 respect of the claims by the second plaintiff against
12 Ms Raymond. Could I turn to the question of malice, Your
13 Honour. The replies are quite specific as to the grounds
14 upon which malice is alleged. My recollection is that
15 the replies are identical in this respect.

16 It's said in Paragraph 2, "The publication of the
17 words comprising the words in", depending on which reply
18 one's looking at, the Raymond article or the Vakras
19 articles, "was actuated by malice". What's relied upon
20 is knowledge that the words were false, alternatively
21 reckless indifference as to whether the words were true
22 or false, and secondly, that the relevant dominant motive
23 in publishing the words was to smear the plaintiffs and
24 maximise the damage to their reputations and their
25 business interests.

26 There's no plea in the replies of failure to verify
27 the accuracy of the information contained in the
28 publications. As I understood my learned friend and I
29 might be wrong, but I did understand my learned friend to
30 put yesterday that he could reply upon that on the
31 question of malice.

1 HIS HONOUR: He did.

2 MR GILBERTSON: In our submission for the purposes of fair
3 comment firstly, the plaintiffs must show and they have
4 the burden that the defendants did not at the time of
5 publication honestly hold the opinions they expressed and
6 the principles are summarised by Dr Collins at Paragraph
7 10.21. If I could hand up a copy to Your Honour.

8 HIS HONOUR: Thank you.

9 MR GILBERTSON: Your Honour will see in Paragraph 10.21, "The
10 defendants are actuated by malice for the purposes of the
11 ...(reads)... beliefs are genuinely held". Then in
12 Paragraph 10.22, "It is now clear that defendants are not
13 actuated by malice ...(reads)... to injure the claimant".
14 In Footnote 65 the learned author says, "Malice has a
15 different meaning for fair comment than for the purposes
16 of qualified privilege", and there's a reference to Tse
17 Wai Chun which is the same case that I took Your Honour
18 to earlier, Branson v. Bower and two cases later, Panday
19 v. Gordon. If I could just take Your Honour to the
20 relevant passage in Tse Wai Chun, Chen v. Tse Wai Chun.

21 HIS HONOUR: yes.

22 MR GILBERTSON: Paragraph 75 after a significant exposition by
23 His Honour of the relevant authorities - His Lordship I
24 should say, says this at Paragraph 75.

25 HIS HONOUR: Sorry, just one second. Is that the case - is
26 that the Hong Kong case?

27 MR GILBERTSON: Yes.

28 HIS HONOUR: Yes, very well. What paragraph?

29 MR GILBERTSON: 75, Your Honour.

30 HIS HONOUR: 75.

31 MR GILBERTSON: "My conclusion on the authorities is that for
.SM:KE 26/03/14 FTR:21-24BB DISCUSSION
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1 the most part the relevant ...(reads)... such as
2 damages", and my recollection is that Your Honour
3 referred me to that principle during my opening address
4 where Your Honour indicated that those types of matters
5 such as actuation by spite, animosity or intent to injure
6 may go to the question as to whether or not the belief is
7 genuinely held.

8 HIS HONOUR: Yes.

9 MR GILBERTSON: In my submission the evidence is clear that
10 both defendants did hold the opinions which they
11 expressed in the articles and which are contained in the
12 imputations pleaded in their defences and that even if
13 Your Honour were to find that they had an intent to
14 injure Mr Cripps and to cause him maximum damage, that
15 does not on the evidence in our submission disclose that
16 those opinions were not genuinely held.

17 This was a decision of the Court of Final Appeal of
18 Hong Kong. Subsequently the Privy Council in *Panday v.*
19 *Gordon*, I'm not sure I referred to it in the submissions,
20 I should give the citation. It's (2005) UKPC 36 is the
21 media neutral citation. The authorised report is (2006)
22 1 AC 428 and I hand up a copy of *Panday v. Gordon*. The
23 judgment of their Lordships was delivered by Lord
24 Nicholls of Birkenhead and his Lordship states, Your
25 Honour, at Paragraph 12.

26 HIS HONOUR: Yes, I've got that.

27 MR GILBERTSON: It's nine lines down from the top of that
28 paragraph. Perhaps I should read out the words before it
29 to make this clear, "The constitutional issue calls for
30 more extended consideration ...(reads)... on matters of
31 public interest", and this is the part I wish to

1 emphasise. "This defence of honest comment is
2 available even ...(reads)... to damage his political
3 opponent". Hid Lordship to Cheng v. Tse Wai Chung and
4 Branson v. Bower (200) Queen's Bench 737.

5 If one contrasts the position in relation to fair
6 comment with that in relation to qualified privilege,
7 Roberts v. Bass in our submission is authority for this
8 proposition, that the plaintiffs must show that a
9 dominant motive of the defendants which actuated the
10 publication was a motive that was foreign to the occasion
11 of the privilege. I take Your Honour to two of the
12 passages in Roberts v. Bass.

13 This is a long paragraph in Paragraph 76 but I wish
14 to read it out. It's a passage that's been referred to
15 since many times. Their Honours Justices Gaudron, McHugh
16 and Gummow at Paragraph 76 say this, "Improper motive in
17 making the defamatory publication must not ...(reads)...
18 by an improper motive". Then the rest of that paragraph
19 I don't need to read out. At 104 their Honours say,
20 "Finally in considering whether the plaintiff has proved
21 ...(reads)... dominant reason for the publication", and
22 there's a reference to Chief Justice Jordan's judgment in
23 Godfrey.

24 Just one matter before I put the general submission.
25 If one looks, Your Honour, at Paragraph 107, Roberts v.
26 Bass itself concerned the publication of three matters
27 which were relied upon and they were distributed
28 throughout an electorate on the occasion of a state
29 election in the case of one of the publications which was
30 a how to vote car. What Their Honours say in relation to
31 malice in this case has, in our submission, relevance to

1 the allegation of malice in this case.

2 At Paragraph 107 Their Honours say, "Publishing
3 material with the intention of injuring ...(reads)...
4 qualified privilege to such publications." Then Their
5 Honours refer to other matters that I don't need to take
6 the court to. What I submit in relation to this case is
7 that warning other artists or exhibitors about the
8 defendants' negative experience in exhibiting their works
9 at the Guildford Lane Gallery and dealing with Mr Cripps
10 implies, in our submission, an intention to injure his
11 reputation.

12 That is, if they are trying to warn other people
13 about how they experienced their dealings with Mr Cripps
14 it must say, in our submission, something disparaging
15 about Mr Cripps's conduct and his reputation. Were it to
16 have been shown to have - the articles that is - shown to
17 have been published for some completely separate motive
18 foreign to the occasion of the privilege then, in our
19 submission, malice would be made out.

20 Could I turn, before I deal with the contract claim,
21 to the question of damages. My learned friend has
22 already dealt with Ahmed v. Harbour Radio. I don't wish
23 to say anything further in relation to that. The three
24 purposes of an award of general damages are well known
25 and I've extracted them in Paragraph 166 of the
26 submissions.

27 In our submission Mr Cripps's evidence as to hurt
28 feelings was moderate. He said he was really, really
29 upset, shocked, appalled, had immense concern and really
30 concerned by aspects of the first and second Vakras
31 articles. We don't say that those feelings were not

1 genuine but what we do say about them is that
2 throughout that evidence his demeanour was measured and
3 controlled in contrast to - and we make no criticism of
4 this - Mr Cripps's demeanour when his service in Vietnam
5 was raised. What we say is that on the scale of hurt
6 feelings Mr Cripps's evidence is somewhere towards the
7 middle.

8 HIS HONOUR: I think he also indicated on a number of occasions
9 he finds this so unpleasant he can't bear to read the
10 articles as well.

11 MR GILBERTSON: Yes, he did say that.

12 HIS HONOUR: That's consistent with him being very severely
13 traumatised by the publication of these articles I would
14 have thought.

15 MR GILBERTSON: I don't say anything further in relation to
16 that, Your Honour. There's only limited evidence, in our
17 submission, in relation to the people who spoke to
18 Mr Cripps about the articles. In relation to the first
19 Vakras article there's only a limited number of people
20 that Mr Cripps said had spoken to him about that. He
21 said, "It was all of the gallery staff talked about it
22 all the time, my friends talked to me about it." No
23 evidence that anyone spoke to Mr Cripps about the second
24 Vakras article, and that, we say, is consistent with the
25 second Vakras article being on the internet for only
26 between 24 and 36 hours. Mr Cripps did give evidence
27 that his solicitor at the time took him to the article.

28 In relation to the Raymond article Mr Cripps said
29 that, "There would be a good, a good handful of people
30 who would have spoken to him about it." Redleg doesn't
31 have any hurt feelings and can only be injured in its

1 pocket. No claim for special damages, damages for
2 general loss of business or Andrews damages, and
3 Mr Cripps's evidence was that at the time he became aware
4 of the first Vakras article Redleg did extremely limited
5 work as an arts transportation company.

6 HIS HONOUR: But it still operated at the gallery though.

7 MR GILBERTSON: It did. Aggravated damages are allowed where
8 the conduct of the defendant has increased the subjective
9 hurt suffered by the plaintiff. I've referred in
10 Paragraph 176 to Rookes v. Barnard and David Syme and
11 Mayba. I might just, without referring to those
12 passages, hand up Mayba, Your Honour.

13 HIS HONOUR: Thank you. Mr Gilbertson, to the extent that you
14 have copies of these authorities I'd prefer for you to
15 hand them up because I will be reading very extensively.

16 MR GILBERTSON: As Your Honour pleases.

17 HIS HONOUR: If you don't give me the cases I'll have to get my
18 associates to print them. So if you've already killed a
19 few trees then I shouldn't kill more trees.

20 MR GILBERTSON: Yes, I understand, Your Honour. Perhaps at the
21 end if there are others I see in the pile I might hand
22 those up.

23 HIS HONOUR: That would be convenient, thank you.

24 MR GILBERTSON: While I'm there I will also hand up a copy of
25 Triggle v. Feeney. The general proposition which my
26 learned friend put is that for an award of aggravated
27 damages the conduct of the defendants must be
28 unjustified, improper or lacking in bona fides. That's
29 Triggle v. Feeney at p.514. In our submission there was
30 nothing unjustified or improper, and this was on the
31 assumption that these defences fail, about the

1 maintenance of the justification defences.

2 I rely in particular on the passage at Paragraph 46
3 in Ahmed in which His Honour refers to his earlier
4 decision in Haertsch v. Channel Nine Pty Ltd (2010) NSWSC
5 182 at 154. We also submit, Your Honour, that there's
6 nothing improper, unjustified or lacking in bona fides
7 about the first of the Redleg v. Artists article which is
8 contained in Exhibit P6. In our submission that article
9 does not indicate that the defendants pursued Mr Cripps
10 into Ruby's Music Room.

11 It says, "Redleg Museum Services now runs Ruby's
12 Music Room and that Redleg Museum Services Pty Ltd was
13 the respondent to objections raised in VCAT regarding his
14 Ruby's Music Room." The evidence discloses that both
15 those statements are true. In relation to the, "Is that
16 your lovely penis," reference, what I say in relation to
17 that is that - and I'll take Your Honour to the exhibit
18 in a moment. This is in relation to the lovely bottom
19 comment in which there is a statement in the Redleg v.
20 Artists article about whether this would be said of a
21 man. If I could take Your Honour to the exhibit.

22 HIS HONOUR: Yes, I've got that.

23 MR GILBERTSON: Your Honour will see the photograph on the
24 first page is of three women, one of whom looks like
25 Ms Raymond, but I'm not sure. It says, "Is that your
26 lovely bottom?" Then the text at the bottom of the page,
27 "Though entirely inappropriate he is suing me for
28 defamation over what he's admitted to having had
29 happened." Then it goes over and it has the picture, "Is
30 that your lovely penis?" At the top of it, it says,
31 "Would Cripps have asked a male a similar question?"

1 In our submission that is not unjustified, not
2 improper and not lacking in bona fides. It's not clear
3 what the red symbol with the line in it is. I concede
4 that it's not complimentary but it's not clear what that
5 means, in our submission. We submit that Your Honour
6 should infer that the matters complained of were provoked
7 by Mr Cripps's conduct towards the defendants.

8 There's no subjective evidence about that. It may
9 not have been admissible in any event but it's a matter
10 of inference, we say, from the defendants' evidence as to
11 their dealings with Mr Cripps and what they wrote in the
12 articles. I might hand up to Your Honour as a bundle the
13 decisions in *Webb v. Louie*, *Judd v. Sun Newspapers*,
14 *Cassell v. Broome and Roux*, or at least some of them.
15 Would Your Honour bear with me a moment while I do this.
16 If I could hand those up.

17 Most of these cases, Your Honour, deal with the
18 general principle of provocation but don't deal with it's
19 application in the particular case. *Webb v. Louie*, Your
20 Honour will see from the headnote, "In an action for
21 slander the defendant was alleged to have spoken of the
22 plaintiff as an adulteress ...(reads)... the verdict was
23 not reasonable." The reference to provocation is in the
24 judgment of the Chief Justice at p.737 in the third line
25 down. "In consequence of the charges made by the
26 defendant ...(reads)... impossible to award her damages."

27 In the fifth last line of that judgment the Chief
28 Justice says, "If the jury believe that this woman
29 foreswore herself ...(reads)... ought to have found."
30 The relevant passage in *Judd v. Sun Newspapers* has just
31 the general statement at p.299, Your Honour, second

1 paragraph, six lines from the foot of that
2 paragraph, "Damages which a jury may award a plaintiff
3 ...(reads)... conducted his case in court."

4 There's one small passage in Cassell v. Broome at
5 p.10,071. I have not copied the whole of this case.
6 When I said 10,000 I meant 1071. Commencing at (e) where
7 Lord Hailsham said, "This is why it is not necessarily
8 fair ...(reads)... malice of the defendant." This is the
9 sentence I wish to emphasise. "The bad conduct of the
10 plaintiff himself may also enter into the matter where he
11 has provoked the libel or where perhaps he has libelled
12 the defendant in reply."

13 Justice Byrne in Roux v. Australian Broadcasting
14 Commission at p.602 under the heading Pre Publication
15 Conduct of the Plaintiff, the second paragraph, "My
16 researchers have disclosed that there are cases
17 ...(reads)... David Syme and Mayba." That's all I wish
18 to say, Your Honour, in relation to provocation.

19 HIS HONOUR: Thank you.

20 MR GILBERTSON: If Your Honour were to find that some of the
21 meanings conveyed are statements of fact and are true
22 then, in our submission, partial justification can be
23 relied upon in mitigation. I'll hand up to Your Honour
24 Hallam v. Ross, which is a recent decision of the
25 Queensland Supreme Court, which I need to find. I'll
26 look for it when I sit down, Your Honour.

27 HIS HONOUR: That's fine, thank you.

28 MR GILBERTSON: In relation to bad reputation it's established
29 that evidence of good or bad reputation is limited to
30 that part of a person's life that is put in issue by the
31 defamatory publication. There's a reference there to

1 Tobin v. Sexton and Plato Films v. Speidel. I
2 don't have copies of those, Your Honour.

3 HIS HONOUR: I've got the Looseleaf Service.

4 MR GILBERTSON: We submit that the part of Mr Cripps's life
5 that's put in issue by the publications is his conduct as
6 the owner and operator of the Guildford Lane Gallery and
7 the relevant sphere of Redleg's operations is that of an
8 arts transportation company. If I deal just briefly with
9 the evidence on behalf of the plaintiffs in that regard.
10 Ms Curro's evidence was, in relation to reputation, "He's
11 got a great venue." Mr Murray's evidence, we submit, is
12 consistent with Mr Cripps having a bad reputation.

13 Mr Murray said he'd heard he was prickly, he had
14 heard stories about Guildford Lane but no one had
15 particularly spoken to him about Mr Cripps at the time.
16 It's relevant, we submit, that both Ms Paul and
17 Ms Czarski are personal friends of Mr Cripps. Ms Paul
18 described his reputation as very good but gave no
19 evidence as to the relevant sphere in which that
20 reputation was said to apply.

21 Ms Czarski's evidence was that, "The reputation of
22 Guildford Lane Gallery in 2009 was an amazing space for
23 exhibition, space that provided for many different
24 artists to exhibit. Well, as far as I was concerned it
25 was stellar." In our submission that's evidence about
26 the gallery.

27 We rely on Dr Piscioneri's evidence. He said
28 Mr Cripps had been castigated by leading people in the
29 industry including, Dr Piscioneri said, the chief
30 registrar of the Art Gallery of New South Wales. What
31 Mr Sedergreen said was that, "Mr Cripps's gallery is a

1 very well known gallery, a great place for supporting
2 artists and musicians." In our submission Your Honour
3 should accept the evidence of Ms Kocaj that, "Mr Cripps's
4 reputation in early 2010 in relation to the way he
5 treated artists and exhibitors at the Guildford Lane
6 Gallery was that they weren't treated with respect, some
7 of them experienced bullying and other artists commented
8 they felt uncomfortable with Cripps's conduct of a sexual
9 nature towards them."

10 Ms Kocaj went on to give evidence that, "Depending
11 on the person it would be anything from slightly
12 inappropriate sexualised behaviour to extremely offensive
13 behaviour in terms of comments about women's
14 appearances." Ms Waddelton's evidence was that she'd
15 heard from other people that Cripps was quite sleazy.
16 Mr Mishriki's evidence was that prior to the publication
17 of his exhibition in January 2009 there was general talk
18 about Cripps's reputation and it was a bad reputation.
19 He said that he was told, "There's word about town this
20 guy's a bit of an arsehole."

21 Ms Leveson gave evidence that she was told by the
22 president of the council of the Australian Museum
23 registrar's committee that on no account should she deal
24 with Mr Cripps or Redleg in her professional work. The
25 defendants, and I accept there's a matter going to weight
26 here because the person described as Steve from Art
27 Stretchers wasn't called, however I do rely upon the
28 defendants' evidence that the man from Art Stretchers
29 told them that Cripps is universally despised, and
30 Ms Raymond gave evidence that he also said that many
31 artists over the years had experienced, I should say in

1 my submission, issues with him.

2 Finally could I deal with the contract claim.
3 Thinking about this over the luncheon break, the
4 agreement which we say was in relation to the catalogue
5 could only be a collateral agreement. We submit that
6 that was an agreement reached between Redleg and the
7 defendants in January 2009 and consisted in the
8 conversations with Yolande Pickett.

9 HIS HONOUR: As a separate agreement to the written agreement?

10 MR GILBERTSON: Yes.

11 HIS HONOUR: What's the consideration for it?

12 MR GILBERTSON: The undertaking of the work in the preparation
13 of the catalogue.

14 HIS HONOUR: But that didn't benefit the gallery.

15 MR GILBERTSON: I beg your pardon, Your Honour?

16 HIS HONOUR: What's the consideration flowing to the
17 plaintiffs?

18 MR GILBERTSON: The detriment suffered by the defendants. I
19 don't rely upon a benefit flowing to the plaintiffs, I
20 rely upon a detriment suffered by the defendants in the
21 expenditure on the preparation of the catalogue.

22 HIS HONOUR: Yes, but the consideration must flow both ways for
23 a contract to exist. So the promise is we will display
24 your catalogue, that's the consideration by the
25 plaintiffs. What's the consideration by the defendants?

26 MR GILBERTSON: Only the undertaking of the work, that's all.

27 HIS HONOUR: But that doesn't benefit - consideration must flow
28 to the other party. There's got to be a quid pro quo in
29 order for there to be a contract.

30 MR GILBERTSON: I'll move on, Your Honour.

31 HIS HONOUR: All right.

1 MR GILBERTSON: It seems to be accepted at least by my
2 learned friend that there were implied terms in relation
3 to good faith and cooperation in the contract. In our
4 submission the first defendant to the contract claim,
5 which is Redleg, breached the term in relation to access
6 by the 26 June 2009 email and in particular by the
7 imposition of the condition on Mr Vakras, that he was not
8 to approach Mr Cripps or any of the gallery staff or
9 volunteers without prior notification.

10 We also submit that in the conversations on - I'll
11 withdraw that. In the conversations on 18 and 24 June
12 and 26, 2009 email and the 6 August email constitute a
13 breach of the implied terms of good faith or of
14 cooperation in relation to the performance of the
15 obligation in relation to the hiring of the space. We
16 claim reliance damages, Your Honour.

17 We say that the defendants wasted the expenditure
18 set out in Exhibit D1 by reason of the breaches by Redleg
19 of the terms of the contract. We've also pleaded loss of
20 a chance and inducing breach of contract. They're the
21 matters I wish to put.

22 HIS HONOUR: Thank you. Just before you sit down. Have you
23 had a chance to consider the eggshell skull principle or
24 was that something that both of you wished to have an
25 opportunity to file written submissions about?

26 MR GILBERTSON: I haven't had an opportunity, Your Honour,
27 to - - -

28 HIS HONOUR: I'll give you leave to do that. I'll do that at
29 the end. What about the statutory cap, whether it
30 applies to the plaintiffs jointly or severally?

31 MR GILBERTSON: I haven't found any cases.

1 HIS HONOUR: Is there anything useful that you think you
2 might add if I gave you leave to make submissions on that
3 or should I just do the best I can with the words? I
4 mean, on the face of it, it seems to apply to the
5 proceeding, and this is a single proceeding, not a dual
6 proceeding. I'll give you leave and it may be that you
7 just don't make any submissions. By granting you leave
8 I'm not obliging you to make any submissions, it just
9 gives you the opportunity to do so. It will take me some
10 time to write the judgment in this. I'll give you a week
11 or so there will be plenty of time for me to take it on
12 board.

13 MR GILBERTSON: I would want to look at the explanatory
14 material. My recollection of the explanatory material in
15 relation to s.35 is that it doesn't touch on any question
16 like this.

17 HIS HONOUR: Yes. It may well be there's nothing further to
18 add. Just finally, I think it was yesterday, by giving
19 me a bundle of cases which led to Mr Dibb resiling from
20 paragraph whatever it was of his damages - - -

21 MR GILBERTSON: 14.

22 HIS HONOUR: Do I take it from that that the authorities say
23 that the cap acts as a scaling or a moderating influence,
24 that the maximum is reserved to the most extreme cases?

25 MR GILBERTSON: The short answer to that is yes and no. The
26 last proposition it seems to be rejected, that is, that
27 the maximum is not limited to the worst possible case you
28 can think but those two authorities do seem to say that
29 there is a scaling process that's undertaken. In fact
30 the words are - - -

31 HIS HONOUR: I must say that surprises me because there are

1 caps in the Accident Compensation Act and the
2 Wrongs Act in the personal injuries area and you just get
3 the verdict and if the verdict is \$1.5 million you just
4 only get 650, whatever the maximum is. I would have
5 thought that's how it should operate but I have to
6 obviously have regard to the authorities and whatever I'm
7 bound by.

8 MR GILBERTSON: Justice Nicholas's words are, "Section 35 fixes
9 the outer limit of damages for non economic loss in cases
10 that do not warrant an award of aggravated damages and
11 awards for non economic loss are to find a place within a
12 range marked out in that way."

13 HIS HONOUR: I don't know what that means. Maybe upon a second
14 reading it might be lucid. Is there any authority of an
15 intermediate court that binds me or am I free to depart
16 from anything that I consider to be wrong? Are these
17 single judge decisions or not?

18 MR GILBERTSON: They are.

19 HIS HONOUR: That gives me a bit more room to consider what I
20 think is appropriate.

21 MR GILBERTSON: As Your Honour pleases.

22 HIS HONOUR: Thank you, that was all I had.

23 MR DIBB: Thank you, Your Honour. They are single judge
24 decisions but the decision of Attrill is a decision of
25 Justice Bell. As we know, it's moved on.

26 HIS HONOUR: She was a single judge at the time.

27 MR DIBB: She was a single judge at the time, indeed, Your
28 Honour. I made an argument yesterday that if it were
29 intended to be - in the first place it doesn't mark the
30 outer limit and it doesn't say what the outer limit is.
31 If it were intended to be a scaling exercise it would

1 have to do that otherwise the court just
2 doesn't know where to look for a datum point against
3 which the scale - each made of it. I make that argument
4 but, Your Honour, Your Honour is of course free to depart
5 from the rulings that I've handed up to Your Honour given
6 that they are single judge decisions if Your Honour's
7 convinced they're clearly wrong.

8 On the subject of the caps or the eggshell skull,
9 there's a case *Ali v. Nationwide News*, in which the New
10 South Wales Court of Appeal - it's not exactly on point
11 but they refer to evidence that Mr Ali believed that he
12 wasn't getting jobs because of what had been published
13 about him, that he was collecting funds for terrorists.
14 The Court of Appeal said that his belief was relevant, it
15 wasn't a question whether it could be proved to be true,
16 his belief sounded in damages because that's part
17 of - - -

18 HIS HONOUR: It's a different point, Mr Dibb.

19 MR DIBB: It is a somewhat different point.

20 MR GILBERTSON: The point, just so the parties are aware why
21 I'm raising the point, and again this is going to be
22 quite a lengthy complicated judgment because I will be
23 going through everything in quite some detail and that's
24 why it's going to take me some time to do, so I'm
25 thinking ahead. We don't get to the point of damages
26 unless you satisfy all of the preliminary matters that
27 you need to satisfy and Mr Gilbertson fails on his
28 defences.

29 But I have to assume for the moment in terms of
30 getting maximum assistance from you in writing this
31 judgment, which I'll start next week, that I may get to

1 that point. So I need to know how these principles
2 operate. The reason why I asked the question is that it
3 seemed to me that Mr Cripps was traumatised by his
4 experience in Vietnam.

5 MR DIBB: Yes, Your Honour.

6 HIS HONOUR: That was evident from the manner in which he gave
7 evidence. It seemed to me that because of that
8 experience he may be more sensitive to particular types
9 of criticisms than perhaps an ordinary person of greater
10 fortitude in these matters. If that were the case and
11 the impact of these articles was more severe or traumatic
12 for him as distinct from some other gallery operator then
13 do I take Mr Cripps as I find him for that purpose and
14 award him greater damages than someone else might have
15 been entitled to receive who was able to brush it off
16 more than he was? So that's the eggshell principle
17 operating in a true sense, not because of some subjective
18 belief or anything like that. It's the constitution of a
19 person and the impact of the tort, if one is found to
20 have existed.

21 MR DIBB: I'll keep looking, Your Honour. I've been mining the
22 wisdom of my colleagues and they, somewhat to my
23 surprise, don't seem to be able to come up with a case
24 directly on point.

25 HIS HONOUR: It would seem to me that the eggshell skull
26 principle is a principle of general application to tort.

27 MR DIBB: To tort law, yes.

28 HIS HONOUR: A tortfeasor must take the plaintiff as they find
29 the tort victim. I don't see - although the law of
30 defamation is unique and quirky in lots of ways I'm not
31 sure that there's anything in it that would displace this

1 principle.

2 MR DIBB: It may be that if there's no case that says the
3 contrary that that's the significant thing, that there's
4 no case that says - - -

5 HIS HONOUR: Again, you know, defamation has been in the law
6 books for a long, long time. I'm surprised that this
7 issue has not been looked at. But there you are. So
8 that's why I raise it. Perhaps that might guide your
9 research a bit more.

10 MR DIBB: Likewise with the question of how many caps apply
11 where there are different plaintiffs, the Act refers to
12 an award of damages for non economic loss. In my
13 submission that is ambiguous. It could be an award
14 obviously is made to each successful plaintiff but one
15 could equally well say that an award is made in respect
16 of each cause of action.

17 It has been held that proceedings in that case in
18 the Act means the whole proceedings. In Davis, I think,
19 Davis v. Nationwide News. However, in Jackson v. Channel
20 Nine for example there were ten plaintiffs. Would they
21 be restricted to \$35,000 each? It seems an extraordinary
22 interpretation given the quick, just and cheap approach
23 to modern litigation. It would mean everyone would have
24 to start separate proceedings.

25 HIS HONOUR: Yes.

26 MR DIBB: It seems contrary to the general thrust of modern
27 case management and approach to issues of justice.

28 HIS HONOUR: Yes. Where you have a single plaintiff and
29 multiples defendants there's a single judgment - and
30 they're joint and several, there's joint liability -
31 there's a single judgment for the plaintiff and it's a

1 matter for the defendants if they're called
2 contributions claims against each other to work out who
3 pays what, but there's only one judgment because there's
4 only one loss.

5 Whereas if you have two plaintiffs say suing one
6 defendant or multiple defendants you would have of
7 necessity two separate judgments. You don't have joint
8 entitlements. You have joint obligations. You can't
9 have double recovery. Anyway I'm thinking aloud because
10 of your reference to the award. An award is normally an
11 individual award. But the reference to the proceedings
12 as a unit is counter to that.

13 It may be all academic in this case at the end of
14 the, (a) because no damages are awarded or; (b) if there
15 are and it's well within the cap, so it may not arise.
16 But I just need to think ahead.

17 MR DIBB: If Mr Cripps was successful on the racist who has
18 adopted the views of Adolph Hitler and/or the sexual
19 harassment of his staff and volunteers imputations, in my
20 submission the cap would be a consideration.

21 HIS HONOUR: Yes, all right.

22 MR DIBB: Turning to my learned friend's submissions.

23 HIS HONOUR: How do you respond to Mr Gilbertson's contrast
24 between your submissions in relation to malice and what
25 you have pleaded?

26 MR DIBB: There's an admission, I took Your Honour to it, in
27 both the defences that the defendants did not investigate
28 the truth of the matters complained of beyond satisfying
29 themselves that their memory was correct.

30 HIS HONOUR: That's true but, as I understand it, what

31 Mr Gilbertson is saying is that you can't use that for

1 the purposes of malice because you haven't pleaded
2 that aspect. That's what I think he's saying.

3 MR DIBB: In the reply.

4 HIS HONOUR: Yes.

5 MR DIBB: It's a matter of the evidence from which Your Honour
6 infers malice and given that it is an admission it's a
7 matter that Your Honour can take into account.

8 HIS HONOUR: The principles are that the parties are bound by
9 the manner in which they've conducted their case.

10 MR DIBB: Yes, Your Honour.

11 HIS HONOUR: And not strictly bound by pleadings to the extent
12 that they've travelled beyond the pleadings in conducting
13 their case. On the other hand it's always best to ensure
14 that the case travels within the pleadings so that one is
15 always aware of where one is at and what claim one is
16 dealing with. It's a matter for you. I'm just
17 raising - - -

18 MR DIBB: It seems I should ask Your Honour perhaps for leave
19 formally.

20 HIS HONOUR: I'm not saying that. I'm just - - -

21 MR DIBB: No.

22 HIS HONOUR: I don't want to leave things assumed or
23 unaddressed, that's all.

24 MR DIBB: I ask Your Honour for leave to incorporate as a
25 further particular malice reliance on the admissions in
26 the second further amended defences of the first and
27 second defendants that they made no inquires beyond
28 satisfying themselves that their memory of events was
29 correct.

30 HIS HONOUR: I'm not sure whether that comes within the
31 principles or not. What do you say to that application,

1 Mr Gilbertson?

2 MR GILBERTSON: That's opposed, Your Honour. It can't be
3 relevant to fair comment in my submission. As to whether
4 it can be relied upon as malice in answer to qualified
5 privilege - just bear with me one moment.

6 HIS HONOUR: Sorry, can I just ascertain, are you opposing it
7 because you don't think it can be made out or are you
8 opposing it because the lateness of the application
9 causes you prejudice?

10 MR GILBERTSON: Both. I would have led evidence from the
11 defendants in relation to this issue notwithstanding
12 what's in their defences and in particular those parts of
13 the articles which might have called for them to make
14 inquiries and in my submission my clients are prejudiced
15 by the lateness of this application and secondly, I
16 submit it can't be relevant to fair comment and I have a
17 recollection that it also - - -

18 HIS HONOUR: Just let me make it clear, to the extent that you
19 say it can't be made out or can't be relevant that's a
20 separate issue because I'll decide that for myself.

21 MR GILBERTSON: If Your Honour pleases.

22 HIS HONOUR: I'm really focusing on whether there's any
23 prejudice whether you would have conducted your case
24 differently had the reply at the outset raised this
25 issue.

26 MR DIBB: Can I just raise with Your Honour the question of
27 whether the reply at Paragraph 4(iv)B doesn't raise the
28 issue of no reasonable attempt to verify the accuracy?

29 MR GILBERTSON: That's in relation to statutory qualified
30 privilege.

31 HIS HONOUR: Yes, it goes to a different point. Can I just ask
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Cripps

1 you directly, Mr Gilbertson, if Paragraph 2
2 included a third subparagraph under the particulars
3 that's identical to 4(iii)B, "Made no or no reasonable
4 attempt to verify its accuracy", whether you would have
5 conducted your case any differently.

6 MR GILBERTSON: Yes, I would have.

7 HIS HONOUR: Can you tell me how?

8 MR GILBERTSON: I would have asked Ms Raymond, for example,
9 where she says in Paragraph 26 of her defence, she admits
10 she didn't take any steps to verify the accuracy of the
11 Raymond article beyond satisfying herself that her
12 recollection and understanding of the matters contained
13 in the Raymond article was accurate and I would have
14 taken Ms Raymond in evidence through which aspects of the
15 matters contained in the Raymond article fall within
16 those descriptions. That is, what was her recollection
17 that she relies upon in support of parts of the article,
18 what is her understanding of other matters and that may
19 well bear upon the weight to be given to this admission.

20 HIS HONOUR: What's the admission made in response to by way of
21 mitigation of damages?

22 MR GILBERTSON: It's part of the aggravation plea I recall.

23 HIS HONOUR: What paragraph is it, sorry?

24 MR GILBERTSON: 26. I'm looking at the further amended
25 statement of claim.

26 HIS HONOUR: Of the?

27 MR GILBERTSON: So it's the further amended statement of claim.

28 HIS HONOUR: Yes.

29 MR GILBERTSON: And 26 is in respect of Ms Raymond. It said,
30 "The second defendant did not at any time prior to the
31 publication of the Raymond article ...(reads)...

1 concerned the plaintiffs". This is relied
2 upon in support of aggravated damages whereas if it were
3 pleaded in relation to malice I would have conducted the
4 case differently.

5 HIS HONOUR: Mr Dibb, what do you say about that?

6 MR DIBB: Your Honour, it sounds as if Mr Gilbertson says he's
7 prejudiced by the application and would have conducted
8 the matter differently. I don't suggest he wouldn't have
9 done.

10 HIS HONOUR: I have to accept what he says.

11 MR DIBB: Indeed, Your Honour.

12 HIS HONOUR: So I'll have to reject your application.

13 MR DIBB: As the court pleases. Mr Gilbertson raised the
14 matter of the 24 June conversation and the issue of the
15 first words spoken being, "I told you to call me" and
16 suggested there might be a range of possible meanings.
17 In my submission Your Honour wouldn't accept that. It's
18 implicit in that statement that I told you to call me
19 before you came and indeed that's the basis on which
20 Mr Gilbertson put that conversation to Mr Cripps in
21 cross-examination and suggested that he confused the
22 timing because of the email of 26 June when he makes
23 exactly that request, "Call me before you attend".

24 The reference to the passage of evidence where
25 Mr Cripps says he said, "The essays read like legalese",
26 and Vakras said in response, "I am legitimately in this
27 space", Mr Cripps said that that seemed to be a mistake
28 and I suggest to Your Honour that that's got the
29 unmistakable ring of truth about it. Mr Vakras has
30 thought what was being said was he was in breach of some
31 legal provision and he said I'm legitimately in this

1 space in response to they read legalese. It's just
2 the kind of thing that no-one would make up, if I may put
3 it that way, Your Honour.

4 The evidence that Ms Raymond said to Mr Cripps,
5 "That's racist", and he replied, "Yes, so", significantly
6 is not given by Ms Raymond and is denied by Mr Cripps.
7 It was only given by Mr Vakras. The question of an
8 unfettered access, Your Honour, it's true there's nothing
9 about notice in the agreement but there's also nothing
10 about, for example, keys. We know from the evidence that
11 the gallery is not open every day and it's not open until
12 10 p.m. It wouldn't be a breach of the agreement to say,
13 well, if you want to come on a Monday you'll have to ring
14 me and I'll have to open the door.

15 The agreement wouldn't have been interpreted by
16 anyone as an agreement for unfettered access if there was
17 no-one on the premises or the premises weren't open,
18 there might be things that need to be done to gain
19 access. That's not a breach of the agreement in my
20 submission, Your Honour. The reliance by my learned
21 friend on the New-Left Nazis article is very problematic.
22 I've made submissions to Your Honour about that.

23 My learned friend appears to want to rely on it both
24 for meaning, for justification and as proper material and
25 in particular as proper material. I've taken Your Honour
26 to the authorities that I handed up in relation to strike
27 in applications and the boundaries of the material and I
28 suggested to Your Honour that they show that the meaning
29 must be found within the matter complained of unless it
30 is pleaded as a true innuendo as an extrinsic fact
31 present to the minds of people reading the material and

1 it's proved that it was published to people knowing
2 that extrinsic fact, that could only be done by a
3 plaintiff and Your Honour will not in my submission,
4 ought not in my submission look outside the matter
5 complained of for the meaning of the articles at all.

6 If there is some evidence, and I just put
7 justification to one side and I'll come to proper
8 material when I get to that section. As Your Honour
9 points out, the sting of this allegation of being a
10 racist with views similar to Adolf Hitler is it raises in
11 the mind of the ordinary reasonable reader to Auschwitz
12 long before it raises the Mufti of Palestine and there is
13 nothing about - there is nothing to dispel that in my
14 submission in the article itself.

15 On this issue of reasonableness and this came up in
16 relation to the defence of comment and Your Honour asked
17 a question. The case of Manock that I handed to Your
18 Honour at Paragraph 90 has a quite clear passage - it's a
19 paragraph - well, it starts really at Paragraph 87.

20 HIS HONOUR: Which case, which case?

21 MR DIBB: This is Manock, Channel 7 Adelaide v. Manoc in the
22 High Court.

23 HIS HONOUR: In fact there's a few of them.

24 MR DIBB: This is (2007) HCA 60.

25 HIS HONOUR: Just give me one moment. Sorry, what was the
26 paragraph?

27 MR DIBB: I'll begin at Paragraph 87 or just under Paragraph
28 87. There's a heading, "Could the criticisms in
29 Paragraphs 319 to 339 lead an honest person to think that
30 the plaintiff had deliberately concealed evidence". At
31 Paragraph 88 their Honours say, "The defendant submitted

1 that an honest person allowing for the ...(reads)...
2 on the part of the plaintiff". Their Honours say, "This
3 submission must be rejected". "First, the test
4 propounded does not accord with the ...(reads)... might
5 not reasonably", and their Honours emphasise the
6 reasonably, "form upon the facts on which it is put
7 forward as being ...(reads)... not be treated as comment.
8 Again their Honours emphasise, add an emphasis on the
9 word reasonably.

10 "In final address it was submitted for the defendant
11 that on appeal ...(reads)... how many there were". In my
12 submission that paragraph makes it quite clear that the
13 majority of the High Court is saying that it can't be
14 fair comment if it's not comment that a person might
15 reasonably base on the proper material. It's been -
16 well, Your Honour has my submission. It's been a matter
17 that has attracted a lot of attention over a long period
18 of time and this is the majority in the High Court in
19 this case saying reasonably, it must be reasonably based.

20 HIS HONOUR: Is this the last word on that issue by the High
21 Court?

22 MR DIBB: It's the last word on that issue by the High Court of
23 which I'm aware, Your Honour, yes. No, my learned friend
24 concurs this is the most recent authoritative analysis of
25 the defence and there it is. In relation to the question
26 of public interest London Artists v. Littler is seen as
27 pretty much the high watermark of that concept, in that
28 case three stars and a minor actor in a successful West
29 End play had all resigned from the play at once and that
30 was held to be a matter that could attract comment. It
31 was a matter of public interest.

1 It's rather different from this situation,
2 Your Honour, very different. When we get to the
3 submissions with respect to what's proper material Your
4 Honour knows that proper material for comment is facts
5 truly stated referred to or notorious, facts truly stated
6 in the article, referred to or notorious. Many of the -
7 and I'm going here to Paragraph 108 of my learned
8 friend's submissions and onwards, many of the supposed
9 facts are not facts at all and much of what's relied on
10 in relation to 8A(d) the racism imputation, everything
11 outside of the statement, "He is the manifestation of the
12 New-Left who have adopted the sentiments that Hitler
13 expressed in his Mein Kampf".

14 In the first place, "He is the manifestation of the
15 New-Left who have adopted the sentiments that Hitler
16 expressed in Mein Kampf", Your Honour, is not a fact
17 that's been proved in this case. It's not a fact at all.
18 He is not a manifestation of the New-Left and I come back
19 to a point that I raised yesterday and which my learned
20 friend made some submissions last night with respect to
21 the particularisation and my learned friend said last
22 night, I'll take Your Honour to the transcript reference,
23 at p.625, he said, "When this matter came before His
24 Honour Justice Beach ...(reads)... the defendants provide
25 a response.

26 I hand up to Your Honour some material. I'll give
27 my learned friend a copy. That's a copy of the summons
28 by which the matter came before Justice Beach and my
29 submissions which I handed up in relation to that summons
30 and gave them to my learned friend and the case, the
31 relevant case to which I refer in those submissions and

1 the relevant case is - - -

2 HIS HONOUR: Mr Dibb, where is this submission heading? Assume
3 that you're right and that the particulars that were
4 provided were not in compliance with Justice Beach's
5 order.

6 MR DIBB: Yes, Your Honour.

7 HIS HONOUR: You now have in the written submissions the facts
8 said to have been the ones upon which the comments are
9 based. You've made submissions about those. What is the
10 point of going back over the history? I'm not being
11 critical in you doing so. I just want to understand
12 where you're heading.

13 MR DIBB: The point is, Your Honour, that if Your Honour were -
14 I don't know if Your Honour is minded to the view that
15 there's any evidence at all in support of as a fact that
16 Mr Cripps is a manifestation of the New-Left have adopted
17 the views of Adolf Hitler, but it ought to have been a
18 matter on which I was able to adduce evidence from
19 Mr Cripps or from other sources. If these are said to be
20 the facts truly stated on which this defensive comment
21 relies then I ought to have been able to address them
22 before now and not having been able to address them in my
23 submission Your Honour would not permit the argument to
24 rest upon them.

25 I submitted yesterday that in effect there were no
26 facts alleged to form the proper basis for comment in
27 this case and that continues to be my position that this
28 submission is directed to that contention.

29 HIS HONOUR: Yes.

30 MR DIBB: Your Honour will see that the summons sought a number
31 of orders including Order 6, and order that, "The

1 defendants provide the further and better
2 ...(reads)... of 3 July 2012", and Your Honour has a copy
3 of that letter. In the submissions at Paragraph 12,
4 "Again the submissions with respect to Order 6, "The
5 defendants shall provide the particulars requested of
6 the plaintiffs solicitor of 3 July" - - -

7 HIS HONOUR: I'm sorry, I'll just make sure that I'm looking at
8 the right document. The first document is a summons.

9 MR DIBB: Yes.

10 HIS HONOUR: The next document is submissions of the
11 plaintiffs.

12 MR DIBB: Yes.

13 HIS HONOUR: And you are taking me to Paragraph 12?

14 MR DIBB: Yes, Paragraph 12, 13 and 14.

15 HIS HONOUR: Where were you reading from?

16 MR DIBB: It's about the middle of the page. I'm afraid my
17 copy's not numbered.

18 HIS HONOUR: Neither is mine. Paragraph 12 is towards the
19 bottom. It starts, "The second problem with the
20 contextual truth defence", is that the one you mean?

21 MR DIBB: No. At Paragraph 12 of my submissions. Yes, on the
22 following page, Your Honour. The numbering seems to
23 have - - -

24 HIS HONOUR: Yes, it seems to resume. All right.

25 MR DIBB: Yes. The second Paragraph 12, the particulars
26 requested fall into three categories, 13 is particulars
27 related to qualified privilege but at 14, "The third
28 category of particulars sought relates to the defences
29 ...(reads)... on which the comment is based", and I refer
30 to Hore-Lacy v. Cleary [2007] VCA 314. "Similarly they
31 are entitled to particulars of what facts truly

1 ...(reads)... pursuant to the honest opinion
2 defence". If Your Honour looks Hore-Lacy v. Cleary it is
3 a unanimous decision that Aga Khan is the case on which
4 my learned friend referred last night to Watt v. Herald &
5 Weekly Times.

6 Aga Khan was a decision I think from 1929 that a
7 plaintiff could not be ordered to provide those
8 particulars of a rolled up plea of comment. As their
9 Honours say in this Hore-Lacy the rules of court were
10 changed in the 1940's in Britain to reverse that outcome
11 and in just about all other jurisdictions in Australia at
12 Paragraph 94 His Honour Justice Ashley says, "I earlier
13 expressed the conclusion that Aga Khan should not be
14 followed if it is ...(reads)... in the particular case".

15 His Honour in fact refers at Paragraph 99, actually
16 refers to Watt as following Aga Khan. Justices Neave and
17 Redlich agree, Justice Redlich says at Paragraph 105, "I
18 also agree with Ashley JA that ...(reads)... should not
19 be followed". So I agree with my learned friend that the
20 focus of oral argument before Justice Beach was not on
21 that area of the application but it's inherent and I read
22 to Your Honour from Justice Beach's judgment in the
23 matter that he had come to the view that all the
24 particulars that we had requested ought to be supplied
25 before the trial to avoid surprise at the time of the
26 trial and he so ordered.

27 I understand that we are criticised for not having
28 taken further steps to obtain those particulars but at
29 some point having asked for them and been refused them
30 and said, well, we'll make an application and been
31 refused them and made the application and got the order

1 and been refused them, at some point the
2 responsibility for that has to settle on the defendants
3 in my submission. That's the way they've elected to
4 conduct the matter and the result is that they're not
5 entitled to rely at this stage up any proper material in
6 this case in my submission.

7 HIS HONOUR: I won't make a ruling on that. I'll hear anything
8 that Mr Gilbertson wishes to say and I'll just deal with
9 that in the judgment I think.

10 MR DIBB: Yes, Your Honour. Passing on, and I've made in my
11 first submissions the submission that these imputations
12 were conveyed as statements of fact and that they don't
13 relate to a matter of public interest. But in particular
14 the racist imputation, if it is a comment and if Your
15 Honour concludes it's conveyed as a comment and it's not
16 so mixed up with fact that it can't be defended as a
17 comment, is based entirely on what is said to be facts,
18 apart from the first fact, is, "The manifestation of the
19 New-Left ... (reads)... in his Mein Kampf", which really
20 is just to restate the imputation, just about.

21 Apart from that all the rest are not facts stated in
22 the article. They are not facts that are notorious by
23 any means. The question becomes are they facts referred
24 to in the sense in which that expression is used in the
25 law related to comment and honest opinion. In my
26 submission they're not. Your Honour saw the examples
27 given yesterday what he said in the House of Commons last
28 week that's a reference to the fact. But a footnote or a
29 pointer of this sort is not a reference to a fact. It
30 doesn't make clear what the comment is based on at all.

31 Still this is a reference to a fact where it's a

1 reference to an article that is said to contain
2 amongst many other things these statements of fact. It
3 doesn't make clear that this is a comment based on these
4 facts at all.

5 HIS HONOUR: Are you talking about the hyperlinked article?

6 MR DIBB: I am talking about the hyperlinked - - -

7 HIS HONOUR: There's very little in the hyperlinked article
8 which is a fact. They're just Mr Vakras's views of the
9 world.

10 MR DIBB: Quite, indeed. I don't have much more I want to add.
11 The question of qualified privilege and reply to attack,
12 my learned friend took Your Honour to Trad. In Trad the
13 attack was made at a rally attended by 5000 people at
14 which representatives of the media were present. It's
15 quite unlike this case and at Paragraph 33 of Trad the
16 judgment refers to the statement of principle by Justice
17 Dixon in Penton and says, Justice Dixon said, "The
18 foundation of the privilege is the necessity
19 ... (reads) ... has sought to affect".

20 In this instance it's assumed to be the entire
21 public, in the instance being dealt with then. "The
22 purpose is to prevent the charges ... (reads) ... if it be
23 commensurate with the occasion". This is not in any
24 sense commensurate with the occasion. If Your Honour
25 finds that there was a defamatory attack on the
26 defendants and that's very much a matter of contention
27 and that it was published to some few people at the
28 gallery, this is not a reply that is commensurate with
29 the occasion. It passes way beyond anything that might
30 be said to be a vindication of their position.

31 It becomes a counter attack. As Justice Dixon said,

1 and it's done bona fide for the purpose of
2 vindication. In my submission it's self evidently not
3 bona fide for the purpose of vindication in this case.
4 It's important to note that in Trad what was held to be
5 covered by the reply to attack privilege were only some
6 of the imputations. At Paragraph 40, with respect to
7 Imputation H their Honours says, "The Court of Appeal was
8 correct in deciding that to publish ...(reads)... to the
9 attack on 2GB".

10 Your Honour might question whether even if there had
11 been a suggestion that the picture - not the pictures but
12 the essays were racist in tone whether that justified
13 imputations that he was a bully, that he was sexually
14 harassing his staff in my submission fall well outside
15 any proper reply even if Your Honour found that there was
16 an attack. Bashford v. Information Australia Newsletters
17 is a case that deals with a newsletter published to
18 people responsible for occupational health and safety.

19 Your Honour will see that Justice McHugh in dissent
20 regards the decision as - well, he says, "When New York
21 Times v. Sullivan was decided Alexander ...(reads)...
22 that newly privileged group of publishers", and His
23 Honour goes on to make a fairly robust dissent as to the
24 extent of the privilege recognised in Bashford. Even
25 there I doesn't recognise indiscriminate publication to
26 all and sundry to anyone who happens to have any interest
27 in Mr Cripps on the basis that this might catch the very
28 small audience before whom an allegedly defamatory attack
29 has been made.

30 Panday v. Gordon is really a case in which the Privy
31 Council is moving towards Long Hy type constitutional

1 defence on matters of political free speech and
2 indeed their Honours refer to Long Hy in the case and a
3 test of reasonableness as opposed to duty and interest.
4 It is in my submission not a case really that's on point
5 in this
6 case at all.

7 There are some interesting things in a couple of
8 English cases. The judgment of Justice Tugendhat in
9 Trumm v. Keith Norman, it's interesting that His Honour
10 says and I go to Paragraph 43.

11 HIS HONOUR: Just one second. Which are the cases?

12 MR DIBB: This is the case of - - -

13 HIS HONOUR: Trumm v. Norman?

14 MR DIBB: Trumm v. Norman, yes.

15 HIS HONOUR: Yes, I have that. Which paragraph?

16 MR DIBB: I take Your Honour to Paragraph 43 and ultimately to
17 46.

18 HIS HONOUR: Yes.

19 MR DIBB: His Honour points out in 43, that it's common ground
20 that so far as publication of members the union are
21 concerned that this is an occasion of qualified
22 privilege. He said earlier that there are 202 people to
23 whom the journal was published, I think it was 202, who
24 were not members of the union but some of them may be
25 related and he says here, "It may be that in relation to
26 some of the non members there may also be the reciprocal
27 ...(reads)... as set out in Reynolds", and Reynolds do
28 not form part of the law of Australia and he says, "In
29 any event no Reynolds defence is available or has been
30 raised in the case".

31 If Your Honour goes to Paragraph 46, "In my judgment

1 but I would seek Your Honour's leave to briefly
2 revisit the question of the quid pro quo for the
3 collateral of contract.

4 HIS HONOUR: Yes.

5 MR GILBERTSON: There's something that I have recalled. In my
6 submission the benefit flowing to the gallery was the
7 advertising and promotion of the exhibition that would be
8 contained in the catalogue as in fact it does contain
9 that. The final page on the back cover of the catalogue
10 contains a reference to this very exhibition.

11 HIS HONOUR: Yes, but was that the agreed consideration?

12 MR GILBERTSON: There's no evidence that - well, there is
13 evidence in relation to the promotion of - no, I'll
14 withdraw that. There's no evidence of any discussion in
15 relation to the catalogue containing a reference to the
16 exhibition, no.

17 HIS HONOUR: All right. Just so that I can understand the way
18 the case is put. It's accepted that the written
19 agreement does not contain an obligation by the
20 plaintiffs to distribute or make the catalogue available.
21 You seek to impose liability on the plaintiffs by virtue
22 of a separate oral agreement dealing with the provision
23 of the catalogue at the gallery during the exhibition, is
24 that correct?

25 MR GILBERTSON: Yes.

26 HIS HONOUR: It was in that context that I raised the question
27 of consideration for that separate agreement, and this is
28 the additional submission that you wish to make about
29 that aspect?

30 MR GILBERTSON: Yes.

31 HIS HONOUR: Anything else?

1 MR GILBERTSON: No, Your Honour.,

2 HIS HONOUR: All right, thank you very much. I'm just going to
3 make the following order. I won't authenticate it
4 because it's really just for the assistance of the
5 parties and myself. Paragraph 1 of the order is that by
6 4 p.m. on 4 April 2014 the parties have leave to file and
7 serve written submissions on the following issues: (a)
8 The applicability of the eggshell skull principle to
9 defamation proceedings; (b) whether the statutory cap on
10 damages applies to each plaintiff separately or
11 collectively and; (c) the effect of the cap on assessment
12 of damages and in particular whether it has a scaling
13 effect.

14 Paragraph 2 of the order. By 9 April 2014 the
15 parties have leave to file and serve written submissions
16 in reply. This is facilitative only. It does not bind
17 the parties to do anything. Just in case the parties
18 become aware of anything or wish to elaborate on
19 submissions that they've already made on those three
20 specific issues then I will receive it as part of the
21 submissions that I'll take into account for the purposes
22 of the proceeding. Is that clear?

23 MR GILBERTSON: Yes, Your Honour.

24 HIS HONOUR: As I say, I won't go to the trouble of
25 authenticating an order to that effect but obviously it
26 will appear in the transcript. If it's not in the
27 transcript as it will presumably be distributed then an
28 edited version of it will be.

29 Can I thank counsel and solicitors for the
30 professional way and the very helpful way in which this
31 case has been presented. As a judge hearing my first

