

FEDERAL COURT OF AUSTRALIA

Schiff v Nine Network Australia Pty Ltd (No 2) [2022] FCA 1120

File number: NSD 1086 of 2021

Judgment of: **JAGOT J**

Date of judgment: 23 September 2022

Catchwords: **DEFAMATION** — separate questions — whether TV broadcast and/or article conveyed defamatory meanings — where tone, film techniques and music created high drama and intrigue contributing to defamatory meanings — TV broadcast carried imputations — related article did not carry imputations due to qualified language of probe and investigation

Legislation: *Defamation Amendment Act 2020* (NSW)
Defamation Act 2005 (NSW) ss 9, 25, 26

Cases cited: *Australian Broadcasting Corporation v Chau Chak Wing* [2019] FCAFC 125; (2019) 271 FCR 632
Bazzi v Dutton [2022] FCAFC 84; (2022) 402 ALR 219
Besser v Kermode [2011] NSWCA 174; (2011) 81 NSWLR 157
Chakravarti v Advertiser Newspapers Ltd [1998] HCA 37; (1998) 193 CLR 519
Chase v News Group Newspapers Ltd [2002] EWCA Civ 1772; [2002] All ER (D) 20
Corby v Allen & Unwin Pty Ltd [2014] NSWCA 227
Cummings v Fairfax Digital Australia & New Zealand Pty Ltd [2018] NSWCA 325; (2018) 99 NSWLR 173
David Syme & Co Ltd v Hore-Lacy [2000] VSCA 24; (2000) 1 VR 667
Favell v Queensland Newspapers Pty Ltd [2005] HCA 52; (2005) 221 ALR 186
in *Amalgamated Television Services v Marsden* [1998] NSWSC 4; (1998) 43 NSWLR 158
Lewis v Daily Telegraph Ltd [1964] AC 234
McMahon v John Fairfax Publications Pty Limited (No 3) [2012] NSWSC 196
Nassif v Seven Network (Operations) Ltd [2021] FCA 1286
Palmer v McGowan [2021] FCA 430
Radio 2UE Sydney Pty Ltd v Chesterton [2009] HCA 16;

(2009) 238 CLR 460

Ross McConnel Kitchen & Co Pty Ltd v John Fairfax & Sons Ltd [1980] 2 NSWLR 845

Rush v Nationwide News Pty Ltd (No 7) [2019] FCA 496

Schiff v Nine Network Australia Ltd [2022] FCA 658

Stocker v Stocker [2019] UKSC 17; [2020] AC 593

Toben v Milne [2014] NSWCA 200

Triguboff v Fairfax Media Publications Pty Ltd [2018] FCA 845

Division:	General Division
Registry:	New South Wales
National Practice Area:	Other Federal Jurisdiction
Number of paragraphs:	145
Date of hearing:	4 August 2022
Counsel for the Applicant:	Ms S Chrysanthou SC and Mr N Olson
Solicitor for the Applicant:	Kennedys (Australasia) Partnership
Counsel for the Respondents:	Mr D Sibtain and Mr M Lewis
Solicitor for the Respondents:	MinterEllison

ORDERS

NSD 1086 of 2021

BETWEEN: **PETER DAVID SCHIFF**
Applicant

AND: **NINE NETWORK AUSTRALIA PTY LTD ACN 008 685 407**
First Respondent

THE AGE COMPANY PTY LTD
Second Respondent

NICHOLAS MCKENZIE (and others named in the Schedule)
Third Respondent

ORDER MADE BY: JAGOT J

DATE OF ORDER: 23 SEPTEMBER 2022

THE COURT ORDERS THAT:

1. The separate questions contained in annexure A of the orders of 1 June 2022 be answered as set out in the reasons for judgment published today.
2. The parties are to confer and, within seven days, are to submit agreed or competing proposed orders for the future conduct of the matter.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

JAGOT J:

1. THE SEPARATE QUESTIONS

1 On 1 June 2022 I made orders and gave reasons for the separate determination of certain questions in this proceeding. The separate questions concern: (a) whether the matters complained of convey the alleged imputations or imputations not different in substance, (b) if so, whether those imputations are defamatory of the applicant, Peter Schiff, (c) whether the matters complained of convey the alleged alternative meanings on which the respondents rely, and (d) if so, whether those alternative meanings are capable of constituting contextual imputations: *Schiff v Nine Network Australia Ltd* [2022] FCA 658.

2 The matters complained of are a segment of the first respondent's (**Nine Network** Australia Pty Ltd's) "60 Minutes" television program entitled "Operation Atlantis" broadcast on 18 October 2020 (the **broadcast**) and a newspaper article the second respondent (the **Age** Company Ltd) published on the same day in both online and print format (the **article**). The publications concerned the applicant and the bank he established in Puerto Rico, **Euro Pacific**.

3 I have concluded that the broadcast conveys pleaded imputations (as they appear in the statement of claim) 8.1, 8.2, 8.3, 8.4, 8.5, 8.11 and 8.12, each of which is defamatory. I have concluded that the article does not convey any of the pleaded imputations.

2. PRINCIPLES

4 The parties were on common ground in respect of the applicable principles.

2.1 Imputations conveyed

5 The relevant issue is the imputations in fact conveyed, not the imputations capable of being conveyed. This difference is fundamental.

6 In *Rush v Nationwide News Pty Ltd (No 7)* [2019] FCA 496, incorporating the earlier work of Hunt CJ at CL (with whom Mason P and Handley JA agreed) in *Amalgamated Television Services v Marsden* [1998] NSWSC 4; (1998) 43 NSWLR 158 at 164–166, Wigney J provided a summary of the general principles which may be adopted:

- (1) whether the alleged defamatory imputations were conveyed by the publication in question is a question of fact which an applicant bears the onus of proving, on the balance of probabilities: [72]–[73];
- (2) the question is whether the publication, read and understood as whole, would have conveyed the alleged imputations to an ordinary reasonable person who is a person of fair to average intelligence, experience and education, fair-minded and not perverse, morbid, suspicious of mind, or avid for scandal, not a lawyer examining the publication “overzealously”, but a person who may view the publication casually, is prone to a degree of “loose thinking” (the extent of which may be affected by the nature of the publication), can and does “read between the lines” in light of their general knowledge and experience of worldly affairs, is likely to be influenced by the overall tone or tenor of the publication, and draws implications, especially derogatory implications, more freely than a lawyer would: [74]–[80];
- (3) while a publication may in some cases be reasonably capable of bearing more than one meaning, the tribunal of fact, whether it be a jury or a judge sitting alone, must ultimately determine whether the alleged defamatory meaning was in fact the single natural and ordinary meaning of the words complained of: [83]; and
- (4) the intention of the publisher is irrelevant, as is the manner in which a person actually understood the publication: [84]–[85].

7 In *Rush*, Wigney J also explained that the question whether a publication conveys an imputation of a suspicion of guilt of some wrong is to be determined according to the standard of the ordinary reasonable reader having regard to the context of the publication as a whole: [86]. At [87] Wigney J cited *Lewis v Daily Telegraph Ltd* [1964] AC 234 at 285 where Lord Devlin said:

It is not, therefore, correct to say as a matter of law that a statement of suspicion imputes guilt. It can be said as a matter of practice that it very often does so, because although suspicion of guilt is something different from proof of guilt, it is the broad impression conveyed by the libel that has to be considered and not the meaning of each word under analysis. A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done. One always gets back to the fundamental question: what is the meaning that the words convey to the ordinary man: you cannot make a rule about that. They can convey a meaning of suspicion short of guilt; but loose talk about suspicion can very easily convey the impression that it is a suspicion that is well founded.

8 At [88] Wigney J cited the High Court in *Favell v Queensland Newspapers Pty Ltd* [2005] HCA 52; (2005) 221 ALR 186 at [12] that:

A *mere* statement that a person is under investigation, or that a person has been charged, may not be enough to impute guilt. If, however, it is accompanied by an account of the suspicious circumstances that have aroused the interest of the authorities, and that points towards a likelihood of guilt, then the position may be otherwise.

- 9 In *Australian Broadcasting Corporation v Chau Chak Wing* [2019] FCAFC 125; (2019) 271 FCR 632 at [28] the Full Court of the Federal Court said:

... meaning is so much dependent upon the words used and context, and whether a matter is *capable* of conveying imputations of both suspicion and guilt, or grades of meaning in-between, including whether the suspicion imputation is one of strong suspicion, reasonable suspicion, or mere suspicion, or whether it is objective or subjective, active or passive, will depend upon the terms and the context of the matter...

- 10 The Court continued in *Chau Chak Wing* at [32]–[33]:

Upon the hypothesis that meaning is to be determined objectively, the audience is taken to have a uniform view of meaning. Although different people might in fact have understood the meanings conveyed by a matter in different ways, the Court must arrive at a single objective meaning [citations omitted]. Using the potential different meanings identified by Lord Devlin in *Lewis v Daily Telegraph Ltd* [1964] AC 234 to illustrate the point, if an applicant alleged that a matter imputed guilt, and the respondent contended that the matter went no further than to impute reason to investigate, there would likely be an issue at trial as to the meaning of the matter. But it would not be sufficient for the applicant to demonstrate that some members of the audience, or even a considerable proportion of the audience understood the matter to impute guilt, for that is not the issue. The issue at trial is the single meaning that an objective audience composed of ordinary decent persons should have collectively understood the matter to bear.

...in evaluating whether any individual imputation is conveyed, an applicant is precluded from succeeding merely because a substantial number or proportion of persons in the audience would have understood the words to have that defamatory meaning...

- 11 It is also relevant that different forms of media invite different forms of attention. In *Marsden* at 166 Hunt CJ at CL said (citations omitted):

Whereas the reader of the written document has the opportunity to consider or to re-read the whole document at leisure, to check back on something which has gone before to see whether his or her recollection of it is correct, and in doing so to change the first impression of what message was being conveyed, the ordinary reasonable listener or viewer has no such opportunity. Although such a listener or viewer (like the reader of the written article) must be assumed to have heard and/or seen the whole of the relevant programme, he or she may not have devoted the same degree of concentration ...to each part of the programme as would otherwise have been given to the written article and may have missed the significance of the existence, earlier in the programme, of a qualification of a statement made later in the published material.

- 12 In *Marsden* it was also said:

- (1) “[i]n determining what is reasonable in any case, a distinction must be drawn between what the ordinary reasonable reader, listener or viewer (drawing on his or her own knowledge and experience of human affairs) could understand from what the defendant has said in the matter complained of and the conclusion which the reader, listener or viewer could reach by taking into account his or her own belief which has been excited by what was said. It is the former approach, not the latter, which must be taken”: 166; and
- (2) “[a]n inference is drawn from an inference when the reader, listener or viewer draws an inference which is available in the matter complained of and then uses that inference as a basis (at least in part) from which a further inference is drawn. The publisher is held responsible for the first of those inferences but not for the second ... it is unreasonable for the publisher to be held so responsible”: 167.

13 In *Bazzi v Dutton* [2022] FCAFC 84; (2022) 402 ALR 219 at [4] Rares and Rangiah JJ accepted, without comment, the agreement of the parties that the correct approach was stated in *Stocker v Stocker* [2019] UKSC 17; [2020] AC 593 at [37]–[38] as follows:

Clearly, therefore, where a range of meanings is available and where it is possible to light on one meaning which is not defamatory among a series of meanings which are, the court is not obliged to select the non-defamatory meaning. The touchstone remains what would the ordinary reasonable reader consider the words to mean. Simply because it is theoretically possible to come up with a meaning which is not defamatory, the court is not impelled to select that meaning.

All of this, of course, emphasises that the primary role of the court is to focus on how the ordinary reasonable reader would construe the words. And this highlights the court’s duty to step aside from a lawyerly analysis and to inhabit the world of the typical reader of a Facebook post. To fulfil that obligation, the court should be particularly conscious of the context in which the statement was made...

2.2 Contextual imputations

14 In respect of contextual imputations, the starting point in this case is that s 26 of the *Defamation Act 2005* (NSW) (the **Defamation Act**) before its amendment by the *Defamation Amendment Act 2020* (NSW) applies. That section provided:

It is a defence to the publication of defamatory matter if the defendant proves that—

- (a) the matter carried, in addition to the defamatory imputations of which the plaintiff complains, one or more other imputations (*contextual imputations*) that are substantially true, and
- (b) the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.

15 Accordingly, a contextual imputation is an imputation carried by the matter complained of in addition to the defamatory imputation of which the applicant complains if the defamatory imputation of which the applicant complains does not further harm the reputation of the applicant because of the substantial truth of the contextual imputation.

16 It follows from the reasoning in *David Syme & Co Ltd v Hore-Lacy* [2000] VSCA 24; (2000) 1 VR 667 at [53]–[61] that a respondent can plead:

- (1) the defence of justification under s 25 of the Defamation Act as applicable (that is, it is a defence to the publication of defamatory matter if the defendant proves that the defamatory imputations carried by the matter of which the plaintiff complains are substantially true), which defence extends to proving the substantial truth of a meaning other than the meaning pleaded, provided that the meaning is not substantially different from and was not more injurious than the meaning pleaded; and/or
- (2) contextual imputations which are carried in addition to the defamatory imputations of which the plaintiff complains where the defamatory imputations do not further harm the reputation of the plaintiff because of the substantial truth of the contextual imputations.

17 In *Nassif v Seven Network (Operations) Ltd* [2021] FCA 1286 Abraham J summarised the position in respect of the defence of contextual imputations under s 26 in these terms:

- (1) the impugned matter carried one or more other defamatory imputations in addition to the pleaded defamatory imputations, that is, imputations which differ in substance (but not necessarily in kind) from those pleaded by the applicant: [121]–[122];
- (2) the respondent bears the onus of proving that the contextual imputations conveyed were true in substance at the time of publication: [124];
- (3) it must be established that because of the substantial truth of the contextual imputations, the defamatory imputations which constitute the applicant’s cause of action do not “further harm” the applicant’s reputation: [125]; and
- (4) a defence of contextual truth must defeat the whole matter complained of, which is all of the defamatory imputations conveyed by it: [127] citing *Besser v Kermode* [2011] NSWCA 174; (2011) 81 NSWLR 157 at [78].

18 Further, at [126], her Honour noted that as White J said in *Palmer v McGowan* [2021] FCA 430 at [28], “the “sting” in the pleaded imputations of contextual truth should exceed the

“sting” of those imputations pleaded by the applicant” or as McCallum J (as her Honour then was) put it in *McMahon v John Fairfax Publications Pty Limited (No 3)* [2012] NSWSC 196 at [19] the “essence of the defence is that if, viewed in its factual context, the defamatory publication was true enough that no further harm to reputation was done by the particular imputations selected by the plaintiff, no remedy should lie”. Justice White also said in *Palmer v McGowan* at [30]:

The authorities establish that, in making the assessment of whether, by reason of the substantial truth of the contextual imputations, the applicant did not suffer further harm by reason of his or her pleaded imputations, it is the combined effect of *all* of the established contextual imputations which is to be considered: *Fairfax Media v Kermode* [*Fairfax Media Publications Pty Ltd v Kermode* [2011] NSWCA 174; (2011) 81 NSWLR 157] at [79]. That is to say, the Court does not engage in a comparison of individual imputation against individual imputation: *John Fairfax Publications Pty Ltd v Blake* [2001] NSWCA 434, (2001) 53 NSWLR 541 at [4]–[6] per Spigelman CJ with whom Rolfe AJA agreed at [70].

2.3 Defamatory imputations

19 An imputation conveyed by a publication is defamatory if the imputation involves the diminution of the esteem in which the person is held by the community, is likely to lead an ordinary reasonable person to think the less of the person, or might cause “ordinary decent folk” in the community to think the less of the person: *Radio 2UE Sydney Pty Ltd v Chesterton* [2009] HCA 16; (2009) 238 CLR 460 at [3]–[7].

3. COMPETING CASES

20 The applicant noted that each alleged imputation which he advanced posited that he in fact engaged in the conduct in question. According to the applicant:

- (1) the ordinary, reasonable person would have understood from the whole of each publication that the applicant’s involvement was being presented as not merely speculative, but actually proven by evidence, and that the respondents were purporting to “reveal” it (as a fact) in the broadcast and article respectively;
- (2) the matters complained of both make so many allegations against the applicant and Euro Pacific, of such serious and scandalous conduct, that the ordinary reasonable person would be generally disposed to draw the worst inferences against the applicant from the broadcast and the article respectively; and
- (3) with so many adverse allegations about the applicant and the bank, the ordinary reasonable person would not have been parsimonious in inferring that the applicant was actually guilty of facilitating tax evasion and serious organised crime.

21 In response to the respondents' alleged imputations, the applicant submitted that the respondents' first alternative imputation (Schiff, through the establishment and operation of the Euro Pacific bank, knowingly provided a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime) differs in substance from each of the applicant's pleaded imputations because:

- (1) it imputes that the applicant, through the bank, provided a vehicle for customers to commit each of (1) tax fraud, (2) hiding the proceeds of crime, and (3) laundering the proceeds of crime, whereas the applicant's imputations 8.4, 8.6, 10.2 and 10.4 deal with facilitating tax fraud, 8.8, 8.9, 10.5 and 10.6 deal with assisting criminals to hide the proceeds of crime, and 8.10 and 10.7 deal with assisting criminals to launder the proceeds of crime, and no single imputation pleaded by the applicant deals with all three of the elements comprehended within the respondents' alternative meaning;
- (2) it involves an element of knowledge different from that involved in the applicant's imputations as the respondents' imputation is concerned with the applicant's alleged knowing provision of the bank as a vehicle for customers to commit tax fraud and hide and launder the proceeds of crime, whereas the applicant's imputations are concerned with the applicant's alleged knowing facilitation of the impugned conduct itself;
- (3) it involves a meaning different from imputations 8.6, 8.7, 8.8, 10.4 and 10.5 because they deal with specific cases involving named criminals (Simon Anquetil and Darby Angel), whereas the respondents' imputation is general in nature; and
- (4) it involves a meaning clearly substantially different from imputations 8.1, 8.2, 8.3, 8.11, 8.12, 10.1 and 10.8.

22 The applicant also submitted that the respondents' first alternative imputation is not conveyed "in addition to" the applicant's imputations because it is a rolled-up version of several different imputations pleaded by the applicant. Being a reformulation of the applicant's imputations, the respondents' first alternative imputation could not be conveyed in addition to them.

23 The applicant submitted that the respondents' second alternative imputation (Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminal endeavours by providing customers with secret bank accounts) differs in substance from the applicant's imputations because:

- (1) the reference to “assisting tax cheats and criminals in their criminal endeavours” is vague and does not specify the criminal endeavours in question, whereas the applicant’s imputations specify criminals such as drug traffickers (imputations 8.8 and 10.5) and organised crime figures (imputations 8.9, 8.10, 10.6 and 10.7) and that the criminal activities in question were tax fraud and money laundering; and
- (2) the conduct by which the applicant is alleged in the respondents’ second alternative imputation to have provided this assistance is “providing customers with secret bank accounts”, which is not an element of any of the applicant’s imputations.

24 The respondents contended that:

- (1) the ordinary, reasonable reader would not have understood from each publication that the applicant had in fact engaged in the conduct the subject of each imputation – meanings of that kind would be perverse and would only be conveyed to a hypothetical referee riddled with prejudice;
- (2) the readily apparent context included that:
 - (a) the matters concerned a global investigation by tax authorities;
 - (b) the investigation was ongoing;
 - (c) the allegations made concerned the conduct of customers of the bank and the bank itself; and
 - (d) the allegations do not rise beyond reasonable suspicion given the investigation was ongoing but, in any event, do not suggest that the applicant was involved in or had knowledge of any of the impugned conduct;
- (3) imputations 8.2, 8.3, 8.5 and 8.12 would only arise as a product of wild speculation or unreasonable inferences;
- (4) imputations 8.1, 8.4, 8.6, 8.7, 8.8, 8.9, 8.10, and 8.11 are not conveyed as the broadcast did not suggest that the applicant had that knowledge or was involved in the ways described; and
- (5) for numerous specified reasons, reasonable viewers of the broadcast, a part of the Nine Network’s “flagship” 60 Minutes program, would view the program soberly and with care.

25 The respondents noted that many of the alleged imputations use the formula “Schiff...through his bank”. This, they said, is an inherently ambiguous phrase with a multitude of different

connotations but, more relevantly, exposes an acknowledgement by Mr Schiff that the central allegations in each of the broadcast and the article are not “about” Mr Schiff, but rather about Euro Pacific bank.

26 According to the respondents, it is difficult to resist the conclusion that the applicant’s claim is an attempt to circumvent the restriction under s 9 of the Defamation Act precluding a claim for defamation by Euro Pacific. In this regard, the respondents referred to *Triguboff v Fairfax Media Publications Pty Ltd* [2018] FCA 845 at [79] in which Bromwich J said:

Independent corporate personality is not a device of mere convenience to be applied or set aside at will. Unless there is a proper reason to regard a publication as being not just about a company, but about a person or class of persons at a company, the corporate veil remains intact and s 9 operates according to its terms. Section 9 is to be read as a real and effective immunity from a defamation suit brought by most companies, save only that if a publication is not just about such a company, but also about a natural person, the natural person may still sue. Section 9(5) contributes to the understanding of the meaning of s 9 as a whole.

27 Section 9 of the Defamation Act says:

(1) A corporation has no cause of action for defamation in relation to the publication of defamatory matter about the corporation unless it was an excluded corporation at the time of the publication.

...

(5) Subsection (1) does not affect any cause of action for defamation that an individual associated with a corporation has in relation to the publication of defamatory matter about the individual even if the publication of the same matter also defames the corporation.

28 As the respondents put it, identifying the occasions on which the applicant asked if allegations were being put against Euro Pacific:

The meanings contended for are indeed perverse since, in the Broadcast itself, the Applicant plainly understood that the allegations being put to him were about Euro Pacific. If, as it is plainly the case, the Applicant didn’t understand the allegations as being concerning him or his conduct, such a meaning could only have been conveyed to a prejudiced, utterly unreasonable viewer not-well sensitised to the adversarial nature of the investigation being discussed.

29 The respondents submitted that similar contextual considerations relating to the article as a whole would mean that the ordinary, reasonable reader’s understanding of the article would be similar to the understanding of the broadcast – that activities and operations of the Euro Pacific bank were the subject of investigation, scrutiny and criticism, the processes and procedures of the bank were lax, and unsavoury persons were able to open and operate accounts, but not that

the applicant was intimately involved in the operations of the bank, or had any knowledge whatsoever of its customers.

30 As to their alternative imputations, the respondents submitted that in determining separate questions 7 and 8, the Court is being asked to determine the defence of contextual imputations without the benefit of any evidence being led at trial, a course to which the respondents objected. In *Toben v Milne* [2014] NSWCA 200, Beazley P and Ward JA (with whom Meagher JA agreed) said:

[11] Any imputation must be taken to include all other imputations which do not differ in substance [citation omitted]. Different tests have been stated for determining whether pleaded imputations are different in substance.

...

[18] The ‘tests’ stated in *Singleton v John Fairfax* [*Singleton v John Fairfax & Sons Ltd* (Supreme Court (NSW), Hunt J, 20 February 1980, unreported)] and *Griffith v Australian Broadcasting Corporation* [*Griffith v Australian Broadcasting Corporation & Ors* [2002] NSWSC 86], useful as they may be, are no more than available means by which a court may go about the task of determining whether imputations differ in substance. A court might find utility in engaging one or more of these so called ‘tests’. Depending upon the particular case, it may be sufficient for the court to have regard only to the words themselves, as Simpson J indicated in *Griffith v Australian Broadcasting Corporation*. Or, as her Honour added, it may be appropriate to look at the matter complained of to determine the context in which it is said the implication arises.

31 The respondents submitted further that:

- (1) the respondents’ first alternative meaning focuses attention on the establishment of the bank as a vehicle, thereby better encapsulating the context set out in the matters complained of. In this regard it would be sufficient for the respondents to prove that the applicant set up Euro Pacific bank knowing that the bank would be used by persons who would include criminals and tax evaders and they do not need to prove that, in fact, persons used the bank for tax fraud, hiding proceeds of crime, and laundering the proceeds of crime, and that the applicant was complicit in these crimes;
- (2) the respondents’ second alternative meaning merely identifies a nuanced meaning that better encapsulates the matters complained of – namely, how the applicant has “assisted” those criminals by providing them with secret bank accounts.

32 According to the respondents, the result is that the respondents’ imputations, as relied on by the respondents, do not differ in substance from and are not more injurious than the applicant’s

imputations as relevant, meaning that they are able to be pleaded as justification under s 25 of the Defamation Act.

33 Alternatively, according to the respondents, if the respondents' imputations, as relied on by the respondents, do differ in substance from the applicant's imputations as relevant, then the respondents' imputations must be contextual imputations which arise "in addition to" the applicant's imputations under s 26 of the Defamation Act. The respondents' first alternative imputation is not that the applicant provided a vehicle that "might" be used to engage in the conduct complained of. It is that the applicant set up Euro Pacific bank in the knowledge that his bank *would* be used by clients for the purpose identified. It is also no answer that the respondents' alternative imputations involve a "rolled-up allegation" that cannot be "in addition to" the applicant's meanings.

4. THE BROADCAST

4.1 Overview

34 I do not accept that the ordinary, reasonable viewer should be taken to have viewed the broadcast "soberly and with care" merely because the 60 Minutes program is Nine Network's "flagship". The broadcast occurred on a Sunday night. The opening shot involves a black and white photograph of the applicant against a black background with the sound consisting of what can only be described as an ominous or portentous tone of music. The opening sequence would be understood by the ordinary, reasonable viewer to be dramatic. This tone is reinforced by the next sequence, with the journalist (apparently) sitting opposite Mr Schiff saying "your bank's at the centre of the biggest tax evasion investigation in the world" and Mr Schiff responding "I haven't benefited one nickel". An ominous or portentous voiceover then says "payback time" and the vision moves to the journalist saying to an unknown person "you're coming for them" and the unknown person responding "we are coming for them". Another unknown person says "Peter Schiff's [a] character who likes to fly outside the rules". The ominous or portentous voiceover then says "hunting for hidden treasure". The vision moves to an unknown man on a screen saying "no reporting obligations, no tax obligation. There's no risk. There's absolutely zero risk". Images of a tropical paradise, an expensive car and watches flash past, as the ominous voiceover says "is this where the tax dodgers...", then vision of another unknown man attempting to shield his face with a newspaper appears, the journalist re-appears asking the applicant "how can such a notorious crime figure be allowed to get through the front door of your bank?". Mr Schiff answers "are you making an allegation against my bank?". The

ominous or portentous voiceover then continues “have been stashing their millions”. The visual moves to an unknown woman apparently being refused entry to an office. Mr Schiff is then shown apparently losing his temper in the interview and standing up saying “that’s it, I’m done, there’s no more questions”. The opening sequence then ends.

35 I do not accept that the ordinary, reasonable viewer would take a sober and careful approach to the broadcast given that opening sequence. The opening sequence would cause the ordinary, reasonable viewer to understand that they were in for some drama and intrigue involving the applicant, his bank, and tax dodgers hiding millions. This is not conducive to a particularly careful, sober approach to the broadcast by the ordinary, reasonable viewer.

36 After the introduction to the program, the journalist appears before a background showing a tropical island, a statue of blind justice with scales, and wads of \$100 Australian bank notes, with “Operation Atlantis” displayed in prominent lettering. The journalist says:

Good evening and welcome to the program. I’m Nick McKenzie. While it’s a favourite grumble that we pay too much tax most of us obediently hand over our fair share but not everyone. Each year hundreds of millions of tax dollars deliberately goes missing. There might be a fine line between minimisation and evasion but make no mistake, this is theft and the Tax Office is sick of it. It wants its money and as you’re about to see it’s willing to go to the end of the earth to get it. Operation Atlantis is a joint five nation investigation targeting the hiding places wealthy Australians use to stash vast sums of money. When it comes to contempt for paying income tax...

37 The vision segues to an office showing Mr Schiff in a chair on the telephone saying “so if we just settle it now for 5000”.

38 The journalist then continues “...there’s no greater hater than Peter Schiff”. With interposing vision of Mr Schiff, the journalist describes the applicant as a “business big shot”, thanks to his “controversial views on taxation and the economy”, who “loves bragging to the world about how much he knows about making money”, but “when he sat down for an interview the last thing he wanted to talk about was the offshore bank he co-owns in the Caribbean. A bank with hundreds of Australian clients”. One of the interposed shots of Mr Schiff in this sequence is him saying “I’m like wait a minute I mean all I have to do is move to Puerto Rico and I don’t have to pay any federal income tax”.

39 None of this is conducive to the ordinary, reasonable viewer taking a sober and careful approach to the broadcast. The program involves fast-moving sequences interposed with broken voices and vision designed as “teasers” of the later points to be made, and fast sequences of images.

40 After some more toing and froing taken from the interview (“are you making an allegation against my bank?”, “it’s not me that’s making the allegation, the authorities have”), the journalist says “tonight, 60 minutes...reveal how Schiff’s bank and around 100 of its Australian customers are at the centre of an enormous worldwide tax evasion investigation” and:

this story will cause alarm in the global banking industry and panic among clients. That’s because a secret alliance of tax cops from five countries including Australia have been examining allegations of money laundering and tax evasion linked to serious organised crime.

41 Interposed sequences identify an unidentified woman saying that “this is the headquarters of Euro Pacific Bank in San Juan, Puerto Rico”, and unidentified men saying to the journalist “there was certainly a feeling of excitement as we got to that really unprecedented level”, and “there’s always a feeling of nerves”.

42 The journalist says “as you’ll see the money trail shows us the secret tactics used by super wealthy Australians to dodge tax... And leads to the man at the centre of it all. The face of the bank. Peter Schiff”, the interposed part being a man saying “it’s been fantastic and the best thing I ever, ever, ever did”.

43 The broadcast returns to the journalist interviewing Mr Schiff in these terms:

PS: To say that oh I’m facilitating tax evasion. Why? I haven’t benefitted one nickel.

NM: So why do you think these tax authorities are targeting you? Is it because of your celebrity status?

PS: Ask them. Don’t ask me.

NM: Peter respectfully your bank’s at the centre of the biggest tax evasion investigation in the world. Now these are fair questions.

PS: I’m not asking [sic] any more questions on the bank.

NM: Okay.

PS: That’s it. I’m done.

NM: I’ll rephrase the question.

PS: There’s no more questions. No more questions.

44 Mr Schiff is shown standing up and leaving the interview.

45 The program moves on to cars driving along a freeway at night with a voice saying “one of the best methods of avoiding either detection or having your money taken off you by the authorities is to move that money to another jurisdiction”. The journalist says “for most of his career as a

Federal Police detective, John Chevis has chased dirty money around the world. One of his great frustrations has been the ease at which Australian crooks and tax evaders have been able to set up offshore bank accounts to avoid the tax man”. The man identified as John Chevis says “every time you cross another border, it takes the police who are coming along behind you perhaps several more months to try and track that money”. The journalist says:

after leaving the AFP Chevis began advising governments around the world on anti-money laundering. Two years ago while conducting one of his investigations he came across something strange. A bank in Puerto Rico being used by hundreds of Australians. Its name Euro Pacific. What do you think is the real reason why so many Australians are banking offshore in places like the Euro Pacific Bank in Puerto Rico?

46 Mr Chevis answers:

you would have to question why someone would place their money in a jurisdiction that’s so far away in a bank that doesn’t pay any interest, in a bank that charges enormous fees for moving your money and in a, in a bank that appears not to do ah the sorts of due diligence that ah many other reputable banks around the world do.

47 Again, none of this is conducive to the ordinary, reasonable viewer taking a sober and careful approach to the broadcast. The program involves multiple people, the identity of whom is not clear until revealed, with Mr Chevis shown driving a car alone at night, the glare of car headlights and street lights, ominous or portentous music playing in the background, Mr Chevis stopping in the dark and scrolling his mobile phone with his face half in shadow, moving to a shot of a large building, before moving back to an interview between the journalist and Mr Chevis.

48 The point I am making is that the ordinary, reasonable viewer would understand this program to involve high drama and international intrigue, and is not asking the viewer for sober and careful reflection. These aspects of tone and context underlie the whole of the program. So, and for example only:

- (1) Mr Chevis is interviewed against a dark background with mysterious flashes of light visible;
- (2) Mr Chevis is shown standing on a dark street under streetlights with the journalist saying “the last thing John Chevis would ever do is make anything easier for criminals. But he does want ordinary Australian taxpayers to see how they’re being ripped off by wealthy crooks who avoid paying their share of tax by setting up accounts with offshore banks like Euro Pacific”;

- (3) Mr Chevis is shown writing on a shaded notepad against a black background saying “so you’ve got yourself a million dollars that you want to hide from the tax man. The first thing you do is find yourself a referral agent and that person will be a lawyer or an accountant who will help you set up a trust and a company in an offshore jurisdiction that has access to a bank account preferably in another offshore jurisdiction like the Seychelles. Those people are strangers to you but they will put their name on the paperwork for you as owning the company and controlling it. Now you’re [sic] Seychelles company gets itself a bank account with a bank like Euro Pacific Bank. Now that you have your bank account you deposit your million dollars into it and you use it as you would use any other bank account. If the tax man ever comes asking all they get from Euro Pacific Bank is the name of a company in the Seychelles”, while intriguing music plays in the background;
- (4) unknown fingers then type on a keyboard in the near dark and vision moves to a person the viewer would understand to be Mr Anquetil trying to shield his face from photographers while the journalist says “it’s as simple as it is irresistible for tax avoiders like Simon Anquetil. International enforcement sources have told 60 Minutes he was one of the Australians using Euro Pacific. From 2014 to 2017, Anquetil engineered the biggest tax scam in recent Australian history, ripping off more than \$100 million dollars. Why would the engineer of Australia’s largest tax fraud want to bank with Euro Pacific Bank?”;
- (5) when dealing with Darby Angel, who is said “to claim to be a Hollywood film financier running a multi-million dollar investment fund out of Dubai”, the intriguing music restarts, and images are shown of the famous Hollywood sign and a city skyline (presumably Dubai);
- (6) Mr Chevis is later again shown on a dark and wet street with a person wearing a hoody shown walking across the street while intriguing music plays;
- (7) the Perth Mint and a Westpac building (Perth Mint and Westpac having been customers or partners of Euro Pacific) are shown illuminated at night, with the journalist speaking in front of the Westpac building and its red illuminated logo at night;
- (8) shots of Puerto Rico, the location of Euro Pacific, including a glamorous beach, luxury car and watches are shown with a song bearing the lyrics “if you dance with the devil” playing in the background;

- (9) part of a shadowy figure is shown walking in darkness, then dealing with paperwork with another person in darkness while the voiceover from the journalist says “Australians wanting to minimise their tax use local lawyers and accountants who can quite lawfully recommend an offshore bank and help set up an account. Given the founder of Euro Pacific wasn’t forthcoming, we decided to go undercover to find out how the bank is really sold to customers”;
- (10) a man is shown walking in slow motion in darkness in a carpark holding a briefcase while the journalist says “in a secure location in Canberra one of the most powerful law enforcement investigators in Australia has been working on a secret probe”. He is introduced as Will Day, “Deputy Commissioner of the Tax office”;
- (11) the journalist is shown at night outside the Tax Office saying “on January 24 this year Operation Atlantis sprang into action. Investigators from around the world, including America’s IRS [Internal Revenue Service] began knocking on the doors of investors and customers of a bank they vaguely described as an offshore institution. Our Tax Office won’t name the bank but we will. It was Euro Pacific co-owned by US business celebrity Peter Schiff”;
- (12) two shadowy figures are shown exchanging documents and shaking hands and when the footage moves back to Mr Chevis again driving alone at night and the glare of his headlights while the journalist says “Peter Schiff is right that the Australian accountants and lawyers promoting Euro Pacific don’t work for the bank but they are key to its operations. This highlights a major flaw in Australia’s anti-money laundering regime. Former AFP officer John Chevis says the government must pass new laws to force lawyers and accountants to report dodgy offshore transactions to authorities”;
- (13) Mr Day is then shown in a blurry image in darkness making notes in a small pool of light while the journalist says “our nation’s Deputy Tax Chief won’t name the bank while his investigation is ongoing but he did confirm the possibility that some involved with the bank may face criminal charges”.

49 A program of this kind may be based on sober and careful journalism, but it is not asking the viewer to take a sober and careful view of the material being presented. It is using numerous techniques – interplays of darkness, shadow, headlight glare, small pools of light, shadowy and silhouetted figures, unfocused images, slow motion, cutting between scenes, subsequent reveals of people’s identities, voiceovers and ominous, portentous, or intriguing music – to create an impression of high drama and international intrigue. The viewer knows without

anything being said that we are in the realm of nefarious conduct, the kind of conduct that thrives in darkness and shadows and avoids the light. By all of these techniques (and no doubt more which I cannot identify but contribute to the overall impression of the broadcast) an overall impression of serious wrongdoing is created. The viewer is not being invited to suspend judgment while authorities work their way through a complete investigation. The viewer is being invited to draw conclusions and make judgements condemning the conduct being described.

50 This overall impression is important because it is the context within which the viewer is hearing the words used in the broadcast. As noted, the viewer is hearing the words while these visual and aural techniques are being deployed. The viewer is not interested in or even aware of the visual and aural techniques. They are part of the overall entertainment package. This means that it would be wrong to parse and analyse the precise words used by reference to the transcript of the broadcast. The ordinary, reasonable viewer would not have a transcript. They would not be listening to each and every word. They would not be analysing each sequence and the jumping between sequences. They would form an overall impression where some parts of the words used would take prominence and others not.

51 This is why the respondents' focus on the dry text of the transcript is disconnected from the reality of the broadcast. Some examples of the unrealistic nature of this textual approach are below.

52 The ordinary, reasonable viewer, in the context of the broadcast as a whole, would not understand the words "we are coming for them" as indicating that a mere investigation was under way as authorities were "coming" but had not "arrived". That is unrealistic – the impression sought to be created is obvious – the authorities are about to catch up with the wrongdoers.

53 The ordinary, reasonable viewer, in the context of the broadcast as a whole, would not understand the question "is this where the tax dodgers... have been stashing their millions" as a mere question for the ongoing investigations which the program does not answer. The question is broken by other statements, with the journalist asking "how can such a notorious crime figure be allowed to get through the front door of your bank?" and the applicant responding "are you making an allegation against my bank?". The impression sought to be created is again obvious – this is where the tax dodgers have been stashing their millions.

54 The ordinary, reasonable viewer, in the context of the broadcast as a whole, would not hone in on the word “investigation” when the journalist says:

Each year hundreds of millions of tax dollars deliberately goes missing. There might be a fine line between minimisation and evasion but make no mistake, this is theft and the Tax Office is sick of it. It wants its money and as you’re about to see it’s willing to go to the end of the earth to get it. Operation Atlantis is a joint five nation investigation targeting the hiding places wealthy Australians use to stash vast sums of money. When it comes to contempt for paying income tax... there’s no greater hater than Peter Schiff.

55 Rather, the ordinary, reasonable viewer would hone in on apparent statements of fact – “make no mistake, this is theft”, “the Tax Office is sick of it. It wants its money”, the investigation is “targeting the hiding places wealthy Australians use to stash vast sums of money”, and Mr Schiff has a hatred of and a contempt for paying tax. It could not be more clear – Mr Schiff is somehow involved in Australians stealing money from the Tax Office by not paying tax they were required to pay, the Tax Office wants the stolen money back, and the people doing the stealing are wealthy Australians hiding vast stashes of money belonging to the Tax Office.

56 The ordinary, reasonable viewer, in the context of the broadcast as a whole, would not focus on the word “investigation” and similar words and understand them to mean that mere inquiries were being made and suspicions were held when the journalist or others say (for example):

- (1) “Schiff’s bank and around 100 of its Australian customers are at the centre of an enormous worldwide tax evasion investigation”;
- (2) “this story will cause alarm in the global banking industry and panic among clients. That’s because a secret alliance of tax cops from five countries including Australia have been examining allegations of money laundering and tax evasion linked to serious organised crime”;
- (3) “Peter respectfully your bank’s at the centre of the biggest tax evasion investigation in the world. Now these are fair questions”;
- (4) “as well as plenty of curious Australian references one name kept coming up in Chevis’ investigation, Peter Schiff the bank’s founder and co-owner”;
- (5) “Australian authorities were so concerned about Euro Pacific they designated it an Australian priority organisation target. This means Australian police suspect Euro Pacific poses a grave organised crime threat to the nation that must be confronted at any cost”;
- (6) “how many Australians were using that Caribbean entity which you targeted?”;

- (7) “there’s a build up over a number of months and multiple meetings. We had a real sense of this being a watershed moment that it could really be a game changer”;
- (8) “can you confirm that that target was suspected to be facilitating international money laundering”;
- (9) “our nation’s Deputy Tax Chief won’t name the bank while his investigation is ongoing but he did confirm the possibility that some involved with the bank may face criminal charges”; and
- (10) “with the power of the J5 behind our investigation we do have the ability to lift a lot of rocks, to shine a light in a lot of dark places”.

57 It is also unrealistic to suppose that the ordinary, reasonable viewer, in the context of the broadcast as a whole, would focus on and give weight to Mr Schiff’s statements as reinforcing that what was occurring was a mere investigation at its early stages. Mr Schiff did say, for example:

- (1) “are you making an allegation against my bank?”;
- (2) “no, nobody has told us that we’ve done anything wrong. Nobody”;
- (3) “people can be investigated for all sorts of reasons it doesn’t mean you’re doing anything wrong”; and
- (4) “look as I said they didn’t say that we did anything wrong”.

58 Context, however, matters. The sequencing, tone, images and overall effect involve an unmistakable invitation to the viewer to disbelieve Mr Schiff. Mr Schiff is portrayed as unwilling to answer questions from the outset, with one of the initial shots of him being that of him walking out of the interview. Numerous positive statements of wrongdoing of some kind are also directly made against Mr Schiff which are part of the context, including, for example:

- (1) “how can such a notorious crime figure be allowed to get through the front door of your bank?”;
- (2) “you’ll see the money trail shows us the secret tactics used by super wealthy Australians to dodge tax...And leads to the man at the centre of it all. The face of the bank. Peter Schiff”;
- (3) “it was fairly apparent that Peter Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money”;

- (4) “the whole point of someone in Australia setting up an account in Puerto Rico is to avoid or minimise their tax is it not?”;
- (5) Euro Pacific bank is “marketed to keep your money away from the tax authorities. Someone who would behave so unscrupulous [sic] I don’t think would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers. Um yeah they have no scruples”;
- (6) “what we’ve been told is Australians are hiding their profits they’re making in Australia by setting up offshore structures and then using your bank to hide their profits. Sometimes their dirty profits”;
- (7) “I’m putting to you that your bank has accounts for organised crime figures”; and
- (8) “well Peter why is it the tax authorities in Australia, the United Kingdom, Canada, America and the Netherlands all believe your bank is facilitating tax evasion and serious organised crime”.

59 The sequencing, tone, images and overall effect also involve an unmistakeable invitation to the viewer to disbelieve Mr Schiff’s attempts to distance himself from the operations of Euro Pacific bank. Examples include statements directed personally at Mr Schiff :

- (1) “your bank’s at the centre of the biggest tax evasion investigation in the world”;
- (2) “as you’ll see the money trail shows us the secret tactics used by super wealthy Australians to dodge tax... And leads to the man at the centre of it all. The face of the bank. Peter Schiff”;
- (3) “Peter respectfully your bank’s at the centre of the biggest tax evasion investigation in the world”;
- (4) “it was fairly apparent that Peter Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money”;
- (5) “Peter Schiff located the bank he co-owns Euro Pacific in Puerto Rico partly because he knew it offered the kind of secrecy his clients wanted”;
- (6) “given the founder of Euro Pacific wasn’t forthcoming, we decided to go undercover to find out how the bank is really sold to customers”;
- (7) “someone who would behave so unscrupulous [sic] I don’t think would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers. Um yeah they have no scruples” (in the context of “they” obviously

being Mr Schiff and his co-owner Mark Anderson, a bankrupt which “probably explains why the bank’s other owner Peter Schiff, is the public face of Euro Pacific”);

- (8) “these are unscrupulous people. These guys could shut down the bank tomorrow, transfer it to wherever they want and you’ll never see ‘em again” (in the context of “they” obviously being Mr Schiff and Mark Anderson);
- (9) Mr Schiff “only likes answering positive questions about the bank”;
- (10) “what we’ve been told is Australians are hiding their profits they’re making in Australia by setting up offshore structures and then using your bank to hide their profits. Sometimes their dirty profits”;
- (11) “our Tax Office won’t name the bank but we will. It was Euro Pacific co-owned by US business celebrity Peter Schiff”;
- (12) “Peter Schiff claims he isn’t allowed to talk about the J5 action on the bank in January”;
- (13) in response to Mr Schiff saying “you’re asking me questions that I cannot answer ‘cause I do not work at the bank. I’m not a compliance officer. I, you know, I have nothing to do with the daily operations of the bank”, that “the bank trades on your name. The bank uses you...the bank uses you as its key piece of marketing though so therefore you have a responsibility don’t you? When the, if the bank goes south it’s on you”;
- (14) “I’m putting to you that your bank has accounts for organised crime figures” and, in response to Mr Schiff saying “are you speculating or do you know?”, the journalist saying “shouldn’t the question be for you?”;
- (15) “well Peter why is it the tax authorities in Australia, the United Kingdom, Canada, America and the Netherlands all believe your bank is facilitating tax evasion and serious organised crime?”; and
- (16) “I’m asking you. You run the bank. It’s your bank”.

60 The impression that would be created in the mind of the ordinary, reasonable viewer is that, contrary to his protestations, Mr Schiff is responsible for the operation of the Euro Pacific bank facilitating tax evasion and serious organised crime. The respondents’ proposition that the formula “Schiff...through his bank” exposes an acknowledgement by Mr Schiff that the central allegations in each of the broadcast and the article are not “about” Mr Schiff, but rather about Euro Pacific bank and its customers is irreconcilable with the overall meaning conveyed by the broadcast which is to the opposite effect – the broadcast is not about a faceless corporation

subject to ordinary governance caught doing the wrong thing – it is about Mr Schiff establishing and locating a corporation intended to be used by those doing the wrong thing.

61 While these contextual and impressionistic considerations do not mean that the broadcast conveys the imputations on which Mr Schiff relies, or imputations which do not differ in substance from those imputations, it does mean that the respondents' submissions fail to engage with the reality of the broadcast as a whole. The broadcast is not a reflection of sombre and careful investigative journalism, even if the work underlying it might be of that character. The broadcast is a carefully choreographed piece of drama and intrigue focused on eliciting condemnation of Mr Schiff.

4.2 Imputations

62 Against this background, the specific imputations can be considered.

63 **Imputation 8.1** is that by permitting his bank, Euro Pacific, to be used as a vehicle for around 100 Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people. The respondents' proposition that there is no suggestion in the broadcast that Mr Schiff had such knowledge or was so involved is untenable. The ordinary, reasonable viewer would understand from the broadcast that:

- (1) people evading tax in Australia were involved in the theft of hundreds of millions of tax dollars each year and the Australian Tax Office was getting its stolen money back;
- (2) Mr Schiff's bank has hundreds of Australian clients;
- (3) Mr Schiff's bank and around 100 of its Australian customers are at the centre of an enormous worldwide tax evasion investigation;
- (4) the money trail shows the secret tactics used by super wealthy Australians to dodge tax;
- (5) the money trail all leads to Mr Schiff;
- (6) ordinary Australian taxpayers are being ripped off by wealthy crooks who avoid paying their share of tax by setting up accounts with offshore banks like Euro Pacific;
- (7) the investigation disclosed that it was fairly apparent that Mr Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money;
- (8) Mr Schiff located the bank he co-owns, Euro Pacific in Puerto Rico partly because he knew it offered the kind of secrecy his clients wanted;

- (9) Mr Schiff is a business celebrity partly because of his publicised opposition to paying federal income tax;
- (10) Mr Schiff and Mark Anderson are so unscrupulous they would not have any qualms about dealing with criminals, money launderers or tax dodgers;
- (11) Mr Schiff runs Euro Pacific bank – it is his bank and he is responsible for it; and
- (12) Australians, including notorious criminals, are involved in stashing their dirty money in Euro Pacific bank.

64 It is not to the point that some of these statements are made by people other than the journalist. In *Corby v Allen & Unwin Pty Ltd* [2014] NSWCA 227 McColl JA (with whom Bathurst CJ and Gleeson JA agreed) said at [140]–[141]:

In *Rivkin [John Fairfax Publications Pty Ltd v Rivkin* [2003] HCA 50; (2003) 201 ALR 77] (at [27]), McHugh J said (in dissent, but not doubted as correctly stating this principle):

[27] The rule that the publication must be read as a whole is particularly important where the publication reports a defamatory statement by a third party. The general rule is that a person who publishes the defamatory statement of a third party adopts the statement and has the same liability as if the statement originated from the publisher. Accordingly, it is not the law that a person reporting the defamatory statement of another is only liable if he or she adopts the statement or reaffirms it. But, as Griffith CJ pointed out in *Ronald v Harper*, although as a general rule a person who repeats a defamation adopts it as his or her own statement, it is not “a rule of invariable application”. The context of the statement may show that it is refuted or undermined by other parts of the publication ... (footnotes omitted)

Thus, mere publication of defamatory hearsay suffices to attract liability, however the context in which the defamatory hearsay was published, including whether it was, in fact, “adopted” by the republisher may be relevant to the nature and quality of the republisher’s liability: *Obeid [John Fairfax Publications Pty Ltd v Obeid* [2005] NSWCA 60; (2005) 64 NSWLR 485] (at [98]). The primary publication of the defamatory hearsay amounts, without more, to an “adoption of that statement”: *Obeid* (at [99]).

65 **Cummings v Fairfax Digital Australia & New Zealand Pty Ltd** [2018] NSWCA 325; (2018) 99 NSWLR 173 at [107]–[108] reinforces the importance of the publication as a whole in determining a re-publisher’s liability for the repetition of the defamatory hearsay.

66 In the present case, the statements by third parties in the broadcast are presented as reliable and are otherwise endorsed by the content and context of the broadcast as a whole. For example, Mr Chevis is described as a former federal police detective who, after leaving the Australian Federal Police (AFP), has advised governments around the world on anti-money laundering.

His knowledge of Mr Schiff's "operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money" is presented as being based on his personal knowledge obtained through his own investigations. There is no suggestion or hint in the broadcast that Mr Chevis might be wrong. The content and context of the broadcast as a whole adopts and reinforces the statements of Mr Chevis.

67 The same applies to Mr Ogilvie, who is introduced in the broadcast as "Euro Pacific's IT manager". He is not presented as some disgruntled former employee. He is "tracked down" to "find out what really happens inside the bank". According to the broadcast he knows what really happened because he worked closely with Mr Anderson, the bank's president and co-owner. He joined the bank innocently thinking it would "develop into a proper company", but that never happened. Instead he discovered that Mr Anderson and Mr Schiff were so unscrupulous that they would not have any qualms about dealing with criminals or money launderers.

68 Mr Day's resources are the "tax man's secret weapon". He is the Deputy Commissioner of the Tax Office, leading investigators who are "punching above [their] weight". He could call on an international tax crime fighting task force, the J5. The J5 had zeroed in on Euro Pacific bank. The J5 all believe Mr Schiff's bank was in fact facilitating tax evasion and serious organised crime. This is not a statement of mere suspicion of Mr Schiff's bank facilitating tax evasion and serious organised crime. It is a statement of the belief attributed to all J5 members, who are international tax crime fighters. The message conveyed to the viewer is that it is true that Mr Schiff's bank is facilitating tax evasion and serious organised crime. This sting is not undermined by the later exchange in which the journalist asks Mr Day "can you confirm that the target was suspected to be facilitating international money laundering?". The damage has already been done and is reinforced by the question which follows "is it safe to say the criminality, the alleged money laundering, the alleged tax evasion had to be in your mind of such a level to warrant that extraordinary action?" and Mr Day's answer "it's a very significant investment by all the countries involved". In this exchange, the journalist's failure to specify the "target" also suggests it is equally plausible that it is either Euro Pacific bank or Mr Schiff personally or both who are the subject of the international tax crime investigation.

69 The ordinary, reasonable viewer would understand the broadcast to be conveying to them that by Mr Schiff permitting his bank, Euro Pacific, to be used as a vehicle for around 100

Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people.

70 **Imputation 8.2** is that Schiff orchestrated an illegal tax evasion scheme. This imputation is conveyed to the ordinary, reasonable viewer. For the reasons set out above, the broadcast tells the viewer that Mr Schiff located Euro Pacific bank in Puerto Rico because it offered the secrecy his clients wanted. He intended Euro Pacific bank to be used by tax evaders. His clients include Australians who are “wealthy crooks” who avoid paying their share of tax by using, amongst others, Euro Pacific bank. He runs and is responsible for Euro Pacific bank. His bank is used by Australians to stash their dirty money. His bank’s partnership with the Perth Mint means that the Mint’s gold may be held beneficially for criminals around the world. While the imputation relies on implication and inference, the implication and inference would be reached by the ordinary, reasonable viewer – Mr Schiff founded and runs Euro Pacific bank at least in part to facilitate the use of the bank by customers involved in illegally evading tax and the bank is so used. This is Mr Schiff orchestrating an illegal tax evasion scheme, at least in the mind of the ordinary, reasonable viewer. The ordinary, reasonable viewer would not take a lawyer’s view of Mr Schiff orchestrating an illegal tax evasion scheme as requiring Mr Schiff’s knowing involvement in specific instances of tax evasion by known persons. They would understand that if Mr Schiff founded and runs Euro Pacific bank at least in part to facilitate the use of the bank by customers involved in illegally evading tax and the bank is so used, then Mr Schiff orchestrated an illegal tax evasion scheme.

71 **Imputation 8.3** is that Schiff committed tax fraud. This imputation is conveyed to the ordinary, reasonable viewer by reason of the same matters referred to above for imputations 8.1 and 8.2. The ordinary, reasonable viewer would understand that a person who has intentionally permitted the bank which he owns, runs and is responsible for to be used for tax evasion must have committed tax fraud. Such a person would not distinguish (or think about) any difference between knowingly and intentionally facilitating other people to commit tax fraud and personally committing tax fraud in relation to one’s own money. They would assume that a person who has orchestrated an illegal tax evasion scheme is a tax fraud irrespective of the person’s own tax affairs in respect of their own money. In the present case, that imputation would be supported by the insistence in the broadcast that Mr Schiff is a person who hates paying tax.

72 **Imputation 8.4** is that Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities. This imputation is conveyed to the ordinary, reasonable viewer by reason of the same matters referred to above for imputations 8.1 and 8.2.

73 **Imputation 8.5** is that Schiff knowingly assisted around 100 Australians to illegally evade their tax obligations. This imputation is conveyed to the ordinary, reasonable viewer by reason of the same matters referred to above for imputations 8.1 and 8.2.

74 **Imputation 8.6** is that Schiff, through his bank Euro Pacific, knowingly assisted the notorious Australian criminal Simon Anquetil to perpetrate a \$100 million tax fraud. The parts of the broadcast relevant to Mr Anquetil include:

- (1) the context that Mr Chevis wants ordinary Australian taxpayers to “see how they’re being ripped off by wealthy crooks who avoid paying their share of tax by setting up accounts with offshore banks like Euro Pacific”;
- (2) Mr Chevis describing how if you have a million dollars you want to hide from the tax man you take steps including “you’re [sic] Seychelles company gets itself a bank account with a bank like Euro Pacific Bank. Now that you have your bank account you deposit your million dollars into it and you use it as you would use any other bank account. If the tax man ever comes asking all they get from Euro Pacific Bank is the name of a company in the Seychelles”;
- (3) immediately thereafter the journalist saying “it’s as simple as it is irresistible for tax avoiders like Simon Anquetil. International enforcement sources have told 60 Minutes he was one of the Australians using Euro Pacific. From 2014 to 2017, Anquetil engineered the biggest tax scam in recent Australian history, ripping off more than \$100 million dollars” and asking Mr Chevis “why would the engineer of Australia’s largest tax fraud want to bank with Euro Pacific Bank?”; and
- (4) the journalist saying “if he didn’t already know it, it [the J5 action in January 2020] must have alerted him to the fact that questionable figures like Simon Anquetil were using his bank” and asking Mr Schiff “how could such a notorious crime figure be allowed to get through the front door of your bank?” and, when Mr Schiff denied knowledge, saying “but the bank trades on your name. The bank uses you... as its key piece of marketing though so therefore you have a responsibility don’t you? When the,

if the bank goes south it's on you", and "I'm putting to you that your bank has accounts for organised crime figures".

75 I do not accept that the broadcast conveyed to the ordinary, reasonable viewer that Mr Schiff, through his bank Euro Pacific, knowingly assisted the notorious Australian criminal Simon Anquetil to perpetrate a \$100 million tax fraud. This is because the broadcast (considered as a whole) does not suggest that the \$100 million Mr Anquetil ripped off in a tax scam was banked in Euro Pacific bank. It says that Mr Anquetil was a customer of Euro Pacific bank. The broadcast does not suggest that Mr Schiff knew that Mr Anquetil was stashing the \$100 million from his tax fraud in Euro Pacific bank or that he even knew who Mr Anquetil was. The broadcast suggests only that Mr Schiff might have and, indeed, should have known that Mr Anquetil was a notorious crime figure who was a customer of Euro Pacific bank.

76 There is a key difference between imputation 8.6 and the other imputations already discussed. It is that the other imputations involve Mr Schiff knowingly and intentionally founding and running his bank so that it could be used by tax evaders (generally and the 100 Australians mentioned) and was in fact used by tax evaders to evade tax (generally and the 100 Australians mentioned). Imputation 8.6 concerns Mr Schiff knowingly assisting a specific person to commit a specific tax fraud.

77 **Imputation 8.7** is that Schiff, through his bank Euro Pacific, knowingly assisted Australian criminal Simon Anquetil to move his illegally obtained money offshore. For the same reasons as set out above for imputation 8.6, I do not accept that imputation 8.7 is conveyed by the broadcast.

78 **Imputation 8.8** is that Schiff, through his bank Euro Pacific, knowingly assisted convicted drug trafficker Darby Angel to hide the proceeds of his crimes. The parts of the broadcast dealing with Mr Angel include:

- (1) the journalist saying "according to official sources this man, Darby Angel, also started an account with the Euro Pacific Bank. Angel claims to be a Hollywood film financier running a multi-million dollar investment fund out of Dubai. But he is also a convicted drug trafficker", "we called Angel but he refused to comment publicly other than to say he'd never heard of Euro Pacific";
- (2) the journalist asking Mr Chevis "why would a drug trafficker want to put their money in a Puerto Rican bank?" and Mr Chevis answering "if you can place ah your money in

an account that isn't linked to your name then the chances of having that money seized and taken from you ah is that much less"; and

- (3) the journalist asking Mr Chevis "the fact that multiple crooks, people with recorded criminal convictions for serious offending have bank accounts at Euro Pacific Ban[k]. What does it say about the bank's compliance culture?" and Mr Chevis answering "it suggests that perhaps they were waiving customers through without actually really considering the risk that those customers were going to be placing proceeds of crime in the accounts that they were opening".

79 I do not accept that the broadcast conveyed to the ordinary, reasonable viewer that Mr Schiff, through his bank Euro Pacific, knowingly assisted convicted drug trafficker Darby Angel to hide the proceeds of his crimes. The broadcast does not suggest that Mr Schiff knew Mr Darby, knew that he was a drug trafficker, or knew that he used Euro Pacific bank to hide proceeds of crime. As with imputation 8.6, the specificity of imputation 8.8 is relevant to my conclusion that imputation 8.8 is not conveyed by the broadcast.

80 **Imputation 8.9** is that Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes. I consider that the ordinary, reasonable viewer would draw a distinction between "convicted criminals and organised crime figures" and tax evaders. They would know that tax evaders are not necessarily convicted criminals and organised crime figures. The broadcast does say:

- (1) "multiple crooks, people with recorded criminal convictions for serious offending have bank accounts at Euro Pacific Bank";
- (2) "Peter Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money";
- (3) "Australian police suspect Euro Pacific poses a grave organised crime threat to the nation that must be confronted at any cost";
- (4) "the fact that this particular bank has been marked as a priority target for Australian authorities who are aiming to reduce the laundering of proceeds of crime and tax evasion is really significant";
- (5) "I don't think [they, Mr Schiff and Mr Anderson] would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers. Um yeah they have no scruples";

- (6) “how could such a notorious crime figure be allowed to get through the front door of your bank”;
- (7) “I’m putting to you that your bank has accounts for organised crime figures”;
- (8) “why is it the tax authorities in Australia, the United Kingdom, Canada, America and the Netherlands all believe your bank is facilitating tax evasion and serious organised crime”;
- (9) “is it safe to say the criminality, the alleged money laundering, the alleged tax evasion had to be in your mind of such a level to warrant that extraordinary action”;
- (10) “it may be many months before we find out exactly how many other Australians are stashing their dirty money in Euro Pacific Bank”.

81 However, I am not persuaded that the broadcast conveys to the ordinary, reasonable viewer that Mr Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to hide the proceeds of their crimes. As discussed, it does convey that through his founding, running and responsibility for Euro Pacific bank he knowingly facilitated people to illegally evade tax (see above). It also conveys that some of those people are convicted criminals and organised crime figures hiding the proceeds of their crimes, but draws a distinction between “tax dodgers” and serious criminals. It does not convey that Mr Schiff knowingly assisted those convicted criminals and organised crime figures to hide the proceeds of their crimes. Rather, it conveys that by Mr Schiff knowingly facilitating people to illegally evade tax through his founding, running and responsibility for Euro Pacific bank, the bank has also been used by convicted criminals and organised crime figures to hide the proceeds of their crimes. That is different because it does not involve Mr Schiff’s knowing assistance to be of the convicted criminals and organised crime figures to hide the proceeds of their crimes.

82 **Imputation 8.10** is that Schiff, through his bank Euro Pacific, knowingly assisted convicted criminals and organised crime figures to launder the proceeds of their crimes. For the same reasons given in respect of imputation 8.9, I am not persuaded imputation 8.10 is conveyed by the broadcast.

83 **Imputation 8.11** is that through his bank Euro Pacific, Schiff poses a grave organised crime threat to Australia. The broadcast includes:

- (1) “I think there’s a significant risk that some of the gold held within the Perth Mint by customers of the Euro Pacific Bank may be held beneficially for criminals in other parts of the world”;
- (2) “Australian authorities were so concerned about Euro Pacific they designated it an Australian priority organisation target. This means Australian police suspect Euro Pacific poses a grave organised crime threat to the nation that must be confronted at any cost”;
- (3) “the fact that this particular bank has been marked as a priority target for Australian authorities who are aiming to reduce the laundering of proceeds of crime and tax evasion is really significant”;
- (4) “Peter Schiff located the bank he co-owns Euro Pacific in Puerto Rico partly because he knew it offered the kind of secrecy his clients wanted”;
- (5) “I don’t think [they, Mr Schiff and Mr Anderson] would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers. Um yeah they have no scruples”; and
- (6) “but the bank trades on your name. The bank uses you...as its key piece of marketing though so therefore you have a responsibility don’t you? When the, if the bank goes south it’s on you”, “I’m putting to you that your bank has accounts for organised crime figures”, “well Peter why is it the tax authorities in Australia, the United Kingdom, Canada, America and the Netherlands all believe your bank is facilitating tax evasion and serious organised crime?”, “can you confirm that that target was suspected to be facilitating international money laundering?”, “is it safe to say the criminality, the alleged money laundering, the alleged tax evasion had to be in your mind of such a level to warrant that extraordinary action?”.

84 I consider that the broadcast conveys to the ordinary, reasonable viewer that Mr Schiff, through his bank Euro Pacific, poses a grave organised crime threat to Australia. This is because the imputation is that Mr Schiff poses a threat of this kind, not that Mr Schiff is himself involved in organised crime. The broadcast conveys imputation 8.11 because it conveys that Mr Schiff founded, runs and is responsible for Euro Pacific bank which itself poses a grave organised crime threat to Australia. The ordinary, reasonable viewer would understand that the broadcast is implying that it is Mr Schiff who is responsible for Euro Pacific bank posing this threat. They would understand the implication that it is Mr Schiff, not the otherwise mindless corporation

he controls, that is posing this threat. They would not give any prominence or significance to the word “suspect” in the statement that “Australian authorities were so concerned about Euro Pacific they designated it an Australian priority organisation target. This means Australian police suspect Euro Pacific poses a grave organised crime threat to the nation that must be confronted at any cost”. The surrounding context of the need to confront this grave threat at any cost would swamp the concepts of “target” and “suspect” as conveying a mere suspicion of a grave organised crime threat. The ordinary, reasonable viewer would be left in no doubt that through his bank Mr Schiff does pose a grave organised crime threat to Australia.

85 The ordinary, reasonable viewer also would not adopt a lawyer’s approach to separate corporate identity, the corporate veil, or to the kind and degree of knowledge necessary for one person to be involved in the crime of another. The broadcast is conveying to the ordinary, reasonable viewer that, despite his protestations about not being involved in the daily operations of Euro Pacific bank, the bank operates as Mr Schiff intends and, in so doing, poses a grave organised crime threat to Australia. The broadcast thereby conveys, as discussed, that Mr Schiff, through his bank Euro Pacific, poses a grave organised crime threat to Australia.

86 **Imputation 8.12** is that Schiff is such an unscrupulous individual that he has no qualms about doing business with criminals and money launderers. This imputation is conveyed by Mr Ogilvie’s statement that “someone who would behave so unscrupulous [sic] I don’t think would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers. Um yeah they have no scruples” given the context of this statement. The context includes:

- (1) the journalist saying Mr Ogilvie was tracked down to “find out what really happens inside the bank” – thereby presenting Mr Ogilvie as an authentic and reliable source of information about Euro Pacific bank;
- (2) Mr Ogilvie being described as Euro Pacific bank’s IT manager in 2014 – thereby presenting Mr Ogilvie as having inside knowledge that can be trusted;
- (3) Mr Ogilvie clarifying that the “someone” “who would behave so unscrupulous [sic] I don’t think would have any qualms about ah you know dealing with, with criminals or money launderers in general or tax dodgers” is the “they” that have no scruples (clearly being Mr Anderson and Mr Schiff);

- (4) the journalist saying Mr Ogilvie worked very closely with Mr Anderson, a former bankrupt which “probably explains why the bank’s other owner Peter Schiff, is the public face of Euro Pacific”; and
- (5) Mr Ogilvie not being surprised by the fact that Euro Pacific bank was now at the centre of an international tax evasion probe because “these are unscrupulous people. These guys could shut down the bank tomorrow, transfer it to wherever they want and you’ll never see ‘em again”. Again, “these guys” are obviously Mr Schiff and Mr Anderson.

87 Given the context of the broadcast as whole, the broadcast conveys not merely that Mr Ogilvie thinks Mr Schiff and Mr Anderson are both so unscrupulous that they have no qualms about dealing with criminals or money launderers in general or tax dodgers, but that Mr Ogilvie is right – they are both so unscrupulous that they have no qualms about dealing with criminals or money launderers in general or tax dodgers.

88 The respondents’ submission that the ordinary, reasonable viewer is “well sensitised to the administration of justice process and know that such allegations concern competing and untested allegations”, so that “a media report arising from civil proceedings to the effect that a person has been accused of certain conduct has been held to be incapable of conveying an imputation that that person is “guilty” of that conduct” (citing *Ross McConnel Kitchen & Co Pty Ltd v John Fairfax & Sons Ltd* [1980] 2 NSWLR 845 and *Cummings*) does not engage with the true context and content of this broadcast. Each case will depend on its own facts. In *Cummings*, the publication concerned a “fight”, or a “stoush”, in the NSW Supreme Court about racehorses. It was obvious the publication was conveying that there were disputed claims and counter claims: [140]. There was no embellishment and the publication made clear that the allegations were yet to be determined by a trial: [141]. These facts led to the conclusion that the ordinary reasonable reader, who is “well sensitised to the legal process of making allegations which lead to judicial resolution” (at [139]), would not read the matters complained of as conveying guilt imputations: [141].

89 In contrast, this broadcast, as a whole, is a sophisticated piece of high drama. By all of the methods identified and the content and context of the broadcast as a whole, it does not present to the ordinary, reasonable viewer, no matter how sensitised to court cases, a mere investigation or mere allegations or mere suspicions. The broadcast bears no resemblance to such a straightforward piece of reporting in print as considered in *Cummings*.

90 The respondents’ proposition that the alleged imputations would only be conveyed to a perverse person, engaging in wild speculation or unreasonable inferences does not confront the nature, context or content of the broadcast. The broadcast is not saying there is mere smoke about Mr Schiff’s founding, running and responsibility for the bank, it is saying that there is smoke coming from a fire and that those responsible are about to be caught. The central criticism is directed at Mr Schiff’s actions in founding and running a bank intended to enable and in fact enabling tax evasion. Given the broadcast, the supposed “elision” between the bank and Mr Schiff which the respondents criticise is demanded by the nature, context and content of the broadcast.

91 I agree that the viewer “would not go backwards and forwards, parsing a word here and a sentence there”. They would view the broadcast as whole. But the meaning being conveyed to them as a whole is not just about (or even mostly about) the bank as some kind of independent actor – the broadcast is about Mr Schiff intentionally enabling the use of the bank to facilitate tax fraud by others. Why would he do so? The broadcast provides the answer at the outset – because he is a person who likes to fly outside the rules (the “a little” at the end of that quote as it appears later is omitted the first time Mr Schiff is introduced) and “when it comes to contempt for paying income tax...there’s no greater hater than Peter Schiff”.

92 Contrary to the respondents’ submissions:

- (1) Mr Schiff is the obvious focus of the broadcast irrespective of the actual time he is shown on screen;
- (2) Mr Schiff is not just introduced as someone who has controversial views about the economy and taxation, and as the co-owner – and public face – of a bank in the Caribbean which is alleged to be at the centre of an unprecedented worldwide tax evasion investigation. Mr Schiff is introduced as the person whose own bank is in fact at the centre of the biggest tax evasion investigation in the world. He is described at the outset as a character who “likes to fly outside the rules” with a public opposition to the payment of tax. He is immediately associated with a notorious crime figure who got through the front door of his bank. He is almost immediately presented as a person who will not answer questions;
- (3) it is not just that “Euro Pacific’s compliance culture is called into question by the program” and this is not the “central allegation against Euro Pacific”. The reference to the bank “waiving customers through without actually really considering the risk that

those customers were going to be placing proceeds of crime in the accounts that they were opening” is one small part of the program. The central allegation is against Mr Schiff because it is “his” bank, he set it up in a location to provide secrecy to his bank’s customers, they want secrecy because they are illegal tax evaders, he intended his bank to be used by illegal tax evaders, and people are using his bank for illegal tax evasion for which he is responsible;

- (4) other than the imputations I have rejected above, it is not to the point that the broadcast does not identify that Mr Schiff “had knowledge of any particular people or transactions, or had any involvement in those transactions”. The ordinary, reasonable viewer does not draw the kind of fine distinctions a lawyer might between the types of knowledge that might fix a person with legal responsibility for conduct. The broadcast does identify that Mr Schiff founded and runs his bank intending to facilitate tax evaders to hide their money from tax authorities; and
- (5) the idea that the ordinary, reasonable viewer would not ignore Mr Schiff’s “robust and compelling denial of [the] proposition” that the whole point of an Australian setting up an offshore account with Euro Pacific was to avoid or minimise their tax obligations is implausible. There is no suggestion in the broadcast that Mr Schiff’s denials were robust or plausible in any way. Mr Schiff is presented as a person who avoids hard questions. He is a person with “contempt for paying income tax”. There is “no greater hater” of paying tax than Mr Schiff. He is the man at the end of the money trail and the centre of it all. His is the name that keeps coming up in investigations. The investigations showed he was operating in a manner intended to attract customers looking to evade tax or perhaps launder money. In this context, for the respondents to propose that the ordinary, reasonable viewer would take seriously Mr Schiff’s denials is far-fetched. The journalist obviously did not believe Mr Schiff, as apparent from his pointed comments such as:
 - (a) “well I’m asking [you] you’re the expert. Isn’t that a reason why many people use these banks...---to avoid paying taxes?”;
 - (b) Mr Schiff “only likes answering positive questions about the bank”;
 - (c) “is this banker ...feeling the heat”;
 - (d) “shouldn’t the question be for you?”;
 - (e) “I’m asking you. You run the bank. It’s your bank”;

- (f) “well you do know the IRS visited you this year, surely that was an indicator”;
- (g) “Peter Schiff is rarely lost for answers”; and
- (h) “he leaves the final word to his wife”.

93 The message is clear – Mr Schiff is not to be believed.

94 The observation in *Chakravarti v Advertiser Newspapers Ltd* [1998] HCA 37; (1998) 193 CLR 519 at 580 to which the respondents refer is of no assistance to them. In *Chakravarti* at 579–580 the point being made is that:

An overly rigid rule, strictly confining a plaintiff to the pleaded imputations, would run the risk that the alleged wrong was forgotten or overlooked [citation omitted]. Instead of measuring the damage done by the publication itself, the trial might be diverted to a different document, namely the pleading containing the imputations formulated by lawyers.

95 No doubt also that a more serious imputation may include a less serious imputation, but that does not mean the more serious imputation is not in fact conveyed.

96 Contrary to the respondents’ submissions, it is easy to “resist a conclusion that the Applicant’s claim in defamation therefore constitutes an attempt to circumvent” s 9 of the Defamation Act and the fact that if the bank had sued in injurious falsehood, it would have borne the onus of proving that the representations were false. Had the broadcast been just about the bank, Mr Schiff’s position would have been different. But this broadcast is about Mr Schiff and his vehicle, the bank, to achieve his end of facilitating tax evasion.

97 *Triguboff* at [79] also does not assist the respondents, as the point Bromwich J makes is that “if a publication is not just about such a company, but also about a natural person, the natural person may still sue”. This is the present case.

98 Mr Schiff is not pleading “meanings relating to the bank’s conduct in facilitating tax evasion and money laundering as if they are “about” him”. The meanings are about him and his founding and use of the bank to achieve his ends.

99 The submission that the “meanings contended for are indeed perverse since, in the Broadcast itself, the Applicant plainly understood that the allegations being put to him were about Euro Pacific” so that such meanings being about Mr Schiff “could only have been conveyed to a prejudiced, utterly unreasonable viewer not-well sensitised to the adversarial nature of the investigation being discussed” is untenable. The bank is consistently identified as Mr Schiff’s bank for which he is responsible (for example, “I’m asking you. You run the bank. It’s your

bank”). Mr Schiff’s references to allegations about “my bank” do not mean he understood that the allegations did not relate to his conduct, which explains his statement that “to say that oh I’m facilitating tax evasion. Why? I haven’t benefitted one nickel”.

100 The investigation was also not presented as an unfinished contest of an adversarial nature. While the investigation may not yet have established the Australians who had used the bank to stash their dirty money or evade paying tax, the broadcast presented the investigation as having already identified the person at the centre of Australians and others in fact having used the bank to stash their dirty money and to evade paying tax – Mr Schiff (“the money trail... leads to the man at the centre of it all. The face of the bank. Peter Schiff”; “it was fairly apparent that Peter Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money”; “Peter Schiff located the bank he co-owns Euro Pacific in Puerto Rico partly because he knew it offered the kind of secrecy his clients wanted”).

101 The ordinary, reasonable viewer would not just understand that Mr Schiff encouraged tax evaders and criminals to use the Euro Pacific bank through his marketing of the bank. They would understand that he had intended his bank to be used by tax evaders and had knowingly facilitated such use to occur. The ordinary, reasonable viewer would not just understand that Mr Schiff had been reckless or wilfully blind as to whether such unscrupulous persons were attracted to the bank. Nor would they merely have understood, at worst, the broadcast to be casting suspicion about Mr Schiff’s “involvement in the bank’s apparently nefarious conduct (i.e., a Chase level 2 meaning)”. This is a reference to *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772; [2002] All ER (D) 20 and a taxonomy of imputations from actual guilt (level 1), reasonable grounds to suspect (level 2), and investigation (level 3).

102 Conveying that Mr Schiff founded and runs a bank intending it to be used by illegal tax evaders and where it had been so used (as the broadcast does) is not about Mr Schiff being wilfully blind or reckless or being suspected to be involved in the bank’s nefarious activities. It is Mr Schiff’s own nefarious activity in which he has in fact engaged. The broadcast presents as a fact that “the money trail shows us the secret tactics used by super wealthy Australians to dodge tax” and that trail leads to Mr Schiff. There are in fact “wealthy crooks who avoid paying their share of tax by setting up accounts with offshore banks like Euro Pacific”. It was also “fairly apparent that Peter Schiff was operating in a manner that was intended to attract customers who were looking to either evade tax or perhaps launder money”. “Peter Schiff located the bank he

co-owns Euro Pacific in Puerto Rico partly because he knew it offered the kind of secrecy his clients wanted”. His bank in fact “has accounts for organised crime figures”. He runs the bank. The meaning of the broadcast would not be taken by the ordinary, reasonable viewer to involve Mr Schiff being merely wilfully blind or reckless or being suspected to be involved in the bank’s nefarious activities.

103 For these reasons, I am satisfied that imputations 8.1, 8.2, 8.3, 8.4, 8.5, 8.11, and 8.12 are conveyed by the broadcast. Those imputations are each defamatory. The respondents accept this, if the imputations are conveyed.

104 The respondents’ proposed imputations, as I understand it from the respondents’ submissions at least, is that in respect of the broadcast, the first alternative relates only to imputation 8.4 and the second alternative relates only to imputations 8.9 and 8.10. I have concluded that imputation 8.4 is conveyed, but imputations 8.9 and 8.10 are not conveyed.

105 I do not consider that any answer I might give to the separate questions dealing with the respondents’ alternative meanings operates to preclude the respondents from making any argument that might later be fairly made. One reason for this is that the separate questions (correctly) compare the respondents’ alternative meanings to all of the imputations alleged in respect of the broadcast whereas the respondents’ submissions deal only with imputation 8.4. But an imputation by imputation comparison would be misconceived.

106 What I can say now (for what it is worth) is that I do not accept that the respondents’ first alternative is no different in substance from imputation 8.4. It is different in substance because:

- (1) in imputation 8.4, Mr Schiff knowingly facilitates tax fraud, whereas in the respondents’ first alternative he merely knowingly provides a vehicle for customers to commit tax fraud, and hide and launder the proceeds of crime. The ordinary, reasonable viewer would not understand these to be the same in substance. In the former, Mr Schiff’s knowledge is of the facilitation of tax fraud, and in the latter his knowledge is of the bank being a vehicle for customers’ tax fraud;
- (2) in imputation 8.4, Mr Schiff has in fact knowingly facilitated tax fraud whereas in the respondents’ first alternative he has merely knowingly provided a vehicle for customers to commit tax fraud which they may or may not have in fact committed; and
- (3) imputation 8.4 does not deal with money laundering whereas the respondents’ first alternative deals with money laundering.

107 The evidence needed to establish the substantial truth of imputation 8.4 and the respondents' first alternative would be different. Contrary to the respondents' submissions, imputation 8.4 requires proof of tax fraud by customers of the bank, or else Mr Schiff could not knowingly facilitate tax fraud. The latter requires proof that by Mr Schiff establishing and operating the bank, he knowingly provided a vehicle for customers to commit tax fraud, and hide and launder the proceeds of crime. It does not matter if any such customer has or has not committed tax fraud, and hidden and laundered the proceeds of crime. What matters is if Mr Schiff's knowing provision of the bank as a vehicle enabled that to occur.

108 I am also not persuaded that the respondents' first alternative is conveyed by the broadcast in addition to imputation 8.4 in the sense required by s 26 of the Defamation Act as a contextual imputation. This is because (leaving aside the money laundering issue) the respondents' first alternative is simply a lesser version of imputation 8.4. It is subsumed into imputation 8.4. As such, if the respondents' first alternative is conveyed by the broadcast (which I would accept it is) and is substantially true, then it could not be said that the "defamatory publication was true enough that no further harm to reputation was done by the particular imputations selected by the plaintiff": *McMahon* at [19]. Further harm to reputation would be done by imputation 8.4 as it is more serious than the respondents' first alternative.

109 On my conclusions, the respondents' second alternative (Schiff, through the bank Euro Pacific, knowingly assisted tax cheats and criminals in their criminals endeavours by providing customers with secret bank accounts) involves a mere hypothetical. If I am wrong, again, however, I would say that the respondents' second alternative is substantially different from imputations 8.9 and 8.10 because "convicted criminals and organised crime figures" are not the same as "tax cheats and criminals" and knowing assistance to hide the proceeds of crime or to launder the proceeds of crime is not the same as knowing assistance by providing customers with secret bank accounts. Again also, the respondents' second alternative is a lesser version of, and thereby subsumed into, imputations 8.9 and 8.10.

5. THE ARTICLE

5.1 Overview

110 There is one factual dispute about the article but it is not material for present purposes. The parties cannot agree whether the header "How Peter Schiff and Euro Pacific was undone by Operation Atlantis" forms part of the version of the article when viewed online, or only when downloaded to be printed. If I assume that the statement appears at the top of every page of the

version as it appeared online, it makes no difference to my conclusions given that the overall content and context of the article is one of a probe, investigation, suspicion, and use of the Euro Pacific bank by tax cheats, not Mr Schiff knowingly assisting such illegality. The print version of the article bears a different headline, does not bear the disputed statement, and is differently formatted. I mainly refer below to the online version. Where necessary in the subsequent discussion, I distinguish between the two versions of the article, print and online.

111 The online article is headed “The day the international tax authorities came knocking”. It has a sub-heading which reads “[o]n a sunny Friday in late January, investigators from the Australian Tax Office ruined some people’s days. In Amsterdam it was icy when, on the same day, investigators were doing the same thing”. The headline of the print version of the article is “A day when tax sleuths united in global hunt”. A large photograph of Mr Schiff (identified as such) appears immediately under the heading in the online version and towards the centre of the print version. The article says that “[o]n a sunny Friday in late January, investigators from the Australian Tax Office issued subpoenas and fired off letters as part of an unprecedented probe that reached around the world”. It continues:

While none of the millionaire tax dodgers targeted on January 24, including about 100 Australians, knew each other, they shared a bond: they were customers of a little-known Caribbean bank.

The Euro Pacific Bank in Puerto Rico’s capital San Juan was founded by American celebrity investor and business commentator Peter Schiff. The silver-haired and pugnacious businessman is worth an estimated \$100 million... He also likes to warn people about the upcoming economic apocalypse from which they can take financial refuge in his “privacy assured” bank.

112 The article continues (after another large photo of Mr Schiff):

Schiff’s celebrity status is likely why some major Australian financial institutions, including Westpac and the Perth Mint, hopped into bed with the Euro Pacific Bank. They weren’t alone. ... cloaking it in an air of credibility it used to attract thousands of clients, including at least 400 from Australia (about 100 are considered “high risk”).

But on January 24, Euro Pacific became the target of Operation Atlantis, the world’s largest tax evasion probe. Australia’s deputy tax commissioner, Will Day, describes the inquiry as “unprecedented”.

An investigation by *The Age*, *The Sydney Morning Herald* and *60 Minutes* in collaboration with *The New York Times* can reveal that Operation Atlantis is examining the financial transactions of Euro Pacific’s customers. Hundreds of account holders are now suspects in a tax evasion probe.

Among the super wealthy Australians suspected to have sought to keep their financial affairs secret is the Sydney businessman responsible for one of Australia’s biggest tax rorts, Simon Anquetil. Other Australian account holders include Darby Angel, a Hollywood film financier with a drug-trafficking conviction.

[photograph of Mr Anquetil]

If Euro Pacific is the suspected heart of a shady financial system, its partners such as Westpac and the Perth Mint are the veins. Despite the raids, Euro Pacific is still, for now, pumping suspected tax-lite dollars around the world. And in an interview, Schiff says he intends to keep it that way.

113 The article explains that:

Like father, like son

A dislike of paying tax is a Schiff family trait. Peter Schiff's father, Irwin, is viewed as a martyr of the tax resistance movement. ...He died in jail for tax evasion.

... But while Irwin opened a bookshop, his son opened a bank in Puerto Rico...

114 After referring to Mr Schiff and his partner opening Euro Pacific bank in Puerto Rico in an office a bit like the bank itself, being “[a]n empty shell that has the appearance of luxury”, the article explains that:

Offshore accounts can have legitimate purposes. For example, they can hold money for multi-national businesses. But former Australian Federal Police officer and financial crime expert John Chevis has also seen them used to stash untaxed and undeclared income...

“You would have to question why someone would place their money in a jurisdiction that’s so far away, in a bank that doesn’t pay any interest, in a bank that charges enormous fees for moving your money,” Chevis said.

115 The article continues:

Euro Pacific’s former IT director, John Ogilvie, also had questions after working at the bank in 2014–16. Ogilvie says he was confronted with a shambolic business, lax data security and high-risk clients. He suspected some Australians were opening up accounts to avoid the ATO.

The bank’s security was also a problem. Anderson’s computer was hacked three times over a two-year period, Ogilvie says, and at one point, Russians tried to extort the bank for a ransom of 1000 bitcoins, worth millions of dollars. Ogilvie says customers from Australia and elsewhere seeking to keep their bank accounts secret were instead at risk of having their financial affairs floating around the dark web.

116 According to the article:

Euro Pacific’s anti-money laundering efforts were viewed sceptically by some of the large companies it was courting. Mastercard rejected the bank’s application for a licence around 2017 after it failed to meet anti-money laundering standards, leaving many customers without debit cards. By 2018, negative feedback about the bank was circulating online, and applications for new accounts started to dry up.

117 The article refers to Mr Day, the “Australian ‘J5’ chief”, J5 being a taskforce comprising the five chiefs of tax agencies in Australia, the US, UK, Canada and the Netherlands. Mr Day

confirmed the title of the J5’s biggest investigation: Atlantis – the name of a mythic Greek island.

118 The article poses the rhetorical question “[a]nd the chink in the armour that triggered Atlantis?”. The answer is:

According to a source... a leak of the account details of thousands of Euro Pacific customers opened up lines of inquiry. Once the J5 had the information, customer names were matched against criminal databases held by police and tax agencies around the globe, along with income tax declarations. The information revealed Euro Pacific’s customers included entities linked to a who’s who of financial and organised crime. Among them was Sydney businessman Simon Anquetil, the mastermind behind Australia’s biggest tax fraud, Plutus Payroll.

The Plutus fraud, hatched in 2014, started as a payroll services company but morphed into a scheme that stole millions of dollars from the tax office that paid for fast cars and glitzy events graced by the likes of Miss World Australia. By the time police arrested Anquetil in May 2017, they estimated he had stolen more than \$105 million.

Sources say another of Euro Pacific’s account holders is Australian entrepreneur and Hollywood film financier, Darby Angel.

Angel first appeared in public records in 1996 when he was convicted in the Melbourne Magistrates Court of drug trafficking.

119 The article continues:

An international customer was Canadian national Gunnar Helgason, who in 2013 was arrested and deported by Thai authorities as the mastermind of “an international boiler-room scam”. Helgason was blamed in the media for stealing \$50 million from Australians between 2008 and 2013 but was never charged.

His corporate bank account at Euro Pacific was linked to a Seychelles company created to export furniture, he says. The bank never asked him about his past, Helgason says, only lots of standard check-the-box questions.

...

The FBI also linked an account at Euro Pacific to a Russian syndicate described by the FBI as the world’s worst cyber crime group.

120 Further:

Will Day from the ATO says Operation Atlantis targets international money laundering and tax evasion. The January 24 raids, he says, were the first time in the history of tax enforcement that investigators around the world had simultaneously launched actions to disrupt and collect evidence about an offshore bank.

...

Day won’t discuss these actions but he will admit to “a feeling of excitement”. As far as international financial crime probes go, he says, Operation Atlantis was “unprecedented”.

The operation needs to “disrupt the operations of this particular financial institution”,

but Day also stresses he is circling “those professionals who might be thinking about connecting their clients to these sorts of arrangements”.

The J5 is also hunting the lawyers, accountants and financial institutions linking taxpayers to Peter Schiff’s bank.

121 The article refers to Patrick Flynn, a lawyer who “quite lawfully” refers clients to Euro Pacific bank, who said he:

helped clients with “legitimate commercial and fiduciary structures” with more than 50 banks around the world. He added: “[We] do not assist clients to evade taxes. So far as we are aware, no client of our firm has ever been accused of, let alone convicted of, tax evasion.”

122 The article refers to former AFP financial crime investigator John Chevis who discovered that the West Australian government-owned Perth Mint was working with Euro Pacific. The article continued:

“I was very surprised,” Chevis says. “I think there’s a significant risk that some of the gold held within the Perth Mint by customers of the Euro Pacific Bank may be held beneficially for criminals in other parts of the world.”

123 The article says that:

Schiff confronted

Schiff agreed to an interview last month. It took place via Zoom from his upmarket home outside of New York. His guard was down. In the nine months since the J5’s raids, Euro Pacific’s name had not leaked. Schiff started talking about topics he’s comfortable with – tax, the economy, the wrongs of government spending.

But the moment he was asked about his Puerto Rican bank, he stiffened and distanced himself from its operations. Asked why his bank was caught up in the world’s biggest tax evasion probe, Schiff denied any wrongdoing, personally or by his bank.

“I’m just going to get out of this chair if you’re going to keep asking me these kinds of questions,” he said.

Asked why the US Internal Revenue Service visited him on January 24, he refused to elaborate.

“I’ve already answered the question that we’re not involved in any illegal activity,” he said, adding the bank “turns down far more accounts than we approve because our compliance is so rigorous”.

Schiff threatened to sue this publication, ripped off his microphone and stormed out of his own living room.

124 According to the article:

Day says Atlantis continues to move in on the “professionals who might be thinking about connecting their clients to these sorts of arrangements”.

And he warns the Australians caught up in the probe may face civil penalties or jail terms for tax evasion.

Other Australian policing agencies have joined the hunt. The nation's peak criminal intelligence agency, the Australian Criminal Intelligence Commission, has listed Euro Pacific as an Australian Priority Organisation Target. This designates it as one of the most serious criminal threats to the nation's security.

Schiff is dismissive of the interest from law enforcement.

"It's got nothing to do with reality," he says of Operation Atlantis. "There's a lot of things that a government could believe that might not be true."

And before storming away, Schiff made it clear Euro Pacific is going nowhere.

"Now eventually, I'm hoping that the bank will be profitable," he said.

If it does, it will buck the Greek myth after which Will Day's and the J5's operation is named. The ancient story of Atlantis ends with the island sinking forever into the ocean.

5.2 Imputations

- 125 The article is different from the broadcast. It is an article to be read, not a broadcast to be viewed. The printed word does not allow for embellishments by reason of visual and sound effects. The ordinary reasonable reader of such an article about tax issues can be expected to approach the task of reading with a degree more care than a viewer of the broadcast. The article permits more careful consumption because it does not have distractions in the form of cutting from one sequence to the next, interposing figures and voiceovers, mysterious dark scenes, and ominous music. Although the online version has "How Peter Schiff and Euro Pacific was undone by Operation Atlantis" and says "investigators from the Australian Tax Office ruined some people's days", it is also apparent from the article that the context is an "unprecedented probe" of, amongst others, "millionaire tax dodgers...including about 100 Australians".
- 126 The article continues to make apparent that the issue is "the world's largest tax evasion probe". The ordinary, reasonable reader understands that a "probe" is an investigatory instrument. Other statements reinforce the character of the article, such as:

- "Operation Atlantis is examining the financial transactions of Euro Pacific's customers. Hundreds of account holders are now suspects in a tax evasion probe";
- "Among the super wealthy Australians suspected to have sought to keep their financial affairs secret is the Sydney businessman responsible for one of Australia's biggest tax rorts, Simon Anquetil";
- "If Euro Pacific is the suspected heart of a shady financial system, its partners such as Westpac and the Perth Mint are the veins";

- “Despite the raids, Euro Pacific is still, for now, pumping suspected tax-lite dollars around the world. And in an interview, Schiff says he intends to keep it that way”;
- “He suspected some Australians were opening up accounts to avoid the ATO”; and
- “He [Day] warns the Australians caught up in Atlantis may face civil penalties or jail terms for tax evasion”.

127 This context is important. It cannot be ignored in deciding if the alleged imputations are conveyed.

128 **Imputation 10.1** is that Schiff orchestrated an illegal global tax evasion scheme. I am not persuaded that this imputation is conveyed by the article. This is because the focus of the article is not the fact of an illegal global tax evasion scheme, but the investigation of a bank that has tax dodgers and suspected tax dodgers for customers. The article does say that Mr Schiff inherited the family dislike of paying tax, but this is presented as personal quality of Mr Schiff. It does not suggest that Mr Schiff orchestrated an illegal global tax evasion scheme. It says that Mr Schiff co-founded a bank suspected of enabling customers from around the globe to evade tax and which has been used by tax dodgers.

129 The “like father, like son” subheading in the online version does not suggest Mr Schiff has inherited the quality of being a tax cheat who should be in prison. It suggests that Mr Schiff has inherited his father’s dislike of paying tax and love for publicity.

130 The statement in the print version “Mr Schiff is Euro Pacific’s major shareholder and key marketing asset. He advocates using legal loopholes to minimise tax” is of no assistance. It is one thing to use legal loopholes to minimise tax. It is another to orchestrate an illegal global tax evasion scheme. I can see nothing in the article that suggests directly or by any reasonable process of implication or inference that Mr Schiff orchestrated an illegal global tax evasion scheme. Rather, he established a bank that has tax dodgers and suspected tax dodgers for customers, but denies any wrongdoing by the bank. The article is conveying some doubt about the validity of Mr Schiff’s denials (eg, “cloaking it in an air of credibility”, “the island sinking forever into the ocean” and, in the online version, “former employees speaking on the condition [of] anonymity say the office was a bit like the bank itself. “An empty shell that has the appearance of luxury””), but overall it leaves open the possibility that Mr Schiff might be right (eg, the numerous references to “probe”, suspicion, and other qualified language, and in the

print version the prominent quote from Mr Schiff indented in the article's text: "I can tell you there is no tax evasion going on".

131 The article does not focus on Mr Schiff's conduct and use it as a means of undermining his denials. The interview with Mr Schiff does not come until towards the end of the article. While the online version has the subheading "Schiff confronted" and says Mr Schiff's "guard was down", which both convey a sense Mr Schiff has something to hide, the implication is in a context of both the preceding text disclosing that the issue is a probe or investigation and the detail given about Mr Schiff's response such as "I've already answered the question that we're not involved in any illegal activity," he said, adding the bank "turns down far more accounts than we approve because our compliance is so rigorous". The effect of the whole is not that Mr Schiff orchestrated an illegal global tax evasion scheme, but that he co-founded and is involved in a bank suspected of enabling customers from around the globe to evade tax and which has been used by tax dodgers.

132 **Imputation 10.2** is that Schiff knowingly facilitated tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities. For the same reasons as set out for imputation 10.1, I am not persuaded that the article conveys this imputation.

133 **Imputation 10.3** is that Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations. For the same reasons as set out for imputation 10.1, I am not persuaded that the article conveys any imputation that Mr Schiff knowingly assisted any illegal tax evasion. The article does say that there were 100 Australian tax dodgers (meaning people illegally evading tax) who were customers of the bank, but not that Mr Schiff knowingly assisted them to do so.

134 **Imputation 10.4** is that Schiff, through the use of his bank Euro Pacific, assisted criminal Simon Anquetil to hide the proceeds of a \$100 million tax fraud. The article does say that Mr Anquetil stole more than \$100 million as part of a tax fraud scheme. It also says he is a customer of the bank. It does not convey any meaning that Mr Anquetil put the stolen \$100 million into the bank or that Mr Schiff, through the use of his bank Euro Pacific, assisted him to do so.

135 **Imputation 10.5** is that Schiff, through his bank Euro Pacific, assisted convicted drug trafficker, Darby Angel, to hide the proceeds of his crimes. The article does say that Mr Angel is another Australian with a Euro Pacific bank account and is a convicted drug trafficker. It

does not say that he used the bank to hide the proceeds of his crimes or that Mr Schiff, through his bank Euro Pacific, assisted him to do so.

136 **Imputation 10.6** is that Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes. The discussion above about Mr Anquetil and Mr Angel applies. Also, the references in the online version to a customer “Canadian national Gunnar Helgason, who in 2013 was arrested and deported by Thai authorities as the mastermind of “an international boiler-room scam”” does not assist. Nor does the fact that he said that they [Euro Pacific] “never asked him about his past”. Equally immaterial is the statement that the “FBI also linked an account at Euro Pacific to a Russian syndicate described by the FBI as the world’s worst cyber crime group”. The missing component remains that Mr Schiff, through his bank Euro Pacific, assisted organised crime figures to hide the proceeds of their crimes. That meaning requires inference upon inference not present in the article.

137 **Imputation 10.7** is that Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes. There are references in the article to suspected use of the bank for money laundering. However, nothing conveys that Mr Schiff, through his bank Euro Pacific, assisted organised crime figures to launder the proceeds of their crimes. The same reasoning as set out above applies.

138 **Imputation 10.8** is that through his bank, Euro Pacific, Schiff poses a serious criminal threat to Australia’s security. No such meaning is conveyed. The meaning conveyed is that the bank has been designated as one of the most serious criminal threats to Australia, not Mr Schiff.

139 For these reasons, I am not persuaded that any of the imputations on which Mr Schiff relies is conveyed by either version of the article. I am also not persuaded that the respondents’ alternative imputations are conveyed.

6. SEPARATE QUESTIONS

140 My answers to the separate questions follow.

141 **Question 1:** the broadcast conveys the following imputations:

Imputation 8.1 (by permitting his bank, Euro Pacific, to be used as a vehicle for around one hundred Australian customers to commit tax evasion, Schiff facilitated the theft of millions of dollars from the Australian people).

Imputation 8.2 (Schiff orchestrated an illegal tax evasion scheme).

Imputation 8.3 (Schiff committed tax fraud).

Imputation 8.4 (Schiff knowingly facilitates tax fraud, in that he established his bank, Euro Pacific, in Puerto Rico for the purpose of enabling his customers to illegally hide their money from tax authorities).

Imputation 8.5 (Schiff knowingly assisted around one hundred Australians to illegally evade their tax obligations).

Imputation 8.11 (Through his bank Euro Pacific, Schiff poses a grave organised crime threat to Australia).

Imputation 8.12 (Schiff is such an unscrupulous individual that he has no qualms about doing business with criminals and money launderers).

142 **Question 2:** the imputations conveyed as set out in answer to question 1 are defamatory.

143 **Question 3:** the article does not convey any of the pleaded imputations.

144 **Question 4:** this question does not arise.

145 **Questions 5–10:** I am not persuaded that I should provide answers to these questions given the observations I have made above.

I certify that the preceding one hundred and forty-five (145) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice Jagot.

Associate:

Dated: 23 September 2022

SCHEDULE OF PARTIES

NSD 1086 of 2021

Respondents

Fourth Respondent: CHARLOTTE GRIEVE

Fifth Respondent: JOEL TOZER