

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**CIV-2013-404-003456
[2016] NZHC 3017**

BETWEEN YI WU
 Plaintiff

AND MAY MONCUR
 First Defendant

TRUTH WEEKENDER LIMITED (IN
LIQUIDATION)
Fourth Defendant

Hearing: 7, 8, 9 March and 25 July 2016

Appearances: F C Deliu for Plaintiff
 M Moncur in person
 No appearance by or on behalf of Fourth Defendant

Judgment: 13 December 2016

JUDGMENT OF WOOLFORD J

*This judgment was delivered by me on Tuesday, 13 December 2016 at 12:30 p.m.
pursuant to r 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Counsel: F C Deliu, Auckland

And to: Ms Moncur, Auckland

Introduction

[1] This is an action for defamation taken by Yi Wu, also known as Easter Wu, a businessman and frequent contributor to a forum on an internet website, <http://www.skykiwi.com>, (Skykiwi), against May Moncur, another contributor to the same forum, who he claims defamed him in comments she made on the forum in response to a post under the username “Wu Fu”.

[2] Ms Moncur was also instrumental in bringing Wu Fu’s post to the attention of the *Truth* newspaper, which published an article about the post that included comments from Bob Kerridge of the Auckland Society for the Prevention of Cruelty to Animals.

[3] Mr Wu’s defamation claim originally named a reporter for the *Truth* newspaper as the second defendant, a director of the *Truth* newspaper company (the company) as the third defendant, the company itself as the fourth defendant and Mr Kerridge as the fifth defendant.

[4] The second defendant was unable to be served with the proceedings. It is believed that he is in Australia. Mr Wu settled with the third and fifth defendants. The fourth defendant was liquidated and has now been struck off the Companies Register altogether. Mr Wu recognises that no real remedy is available against the company, but nonetheless seeks a declaration against it in vindication of his reputation.

[5] Ms Moncur is, in effect, the sole remaining defendant. Mr Wu seeks \$250,000 general damages and \$7,500 punitive damages against her. He also seeks a permanent injunction to restrain her from continuing with her defamatory comments.

Username “Wu Fu”

[6] Paragraph 1 of the statement of claim pleads that Mr Wu was a blogger on Skykiwi under the username “Wu Fu”. I am advised that Wu Fu was short for “Wu Fu De Mai Bi” or Wu Fu’s eyebrow pencil. At paragraph [30] of his brief of evidence Mr Wu stated:

I was one of the veteran bloggers on Skykiwi. I refer to document(s) exhibited as “A” in the common bundle. I enjoyed commenting on the latest news and events. People also liked to view and read my comments on the internet.

[7] However, in evidence before me, Mr Wu claimed that Wu Fu was not him. When reading paragraph [30] of his brief, Mr Wu stated:

I think maybe me make a change as the “I” here is actually means the “ID”, ID was the blogger because a person, human person cannot be a real blog in the website, it must be a ID.

[8] Mr Wu compared the username “Wu Fu” to a character in a novel. The username was quite different to the author. He said “[The] ID is not me, it’s as simple as that”.

[9] Mr Wu said that his company and his team organised the username, but it did not mean it reflected himself or equalled himself. He said he was shocked and surprised how someone could think the username was him. His management team, staff and friends also had access to the username and any number of people could, and did, post comments as Wu Fu.

[10] Mr Wu continued with this reasoning in answering questions about previous posts under the username “Wu Fu”. When asked whether he could recall saying in one of the postings “People complaining about [receiving] illegal [below the minimum] wages normally demonstrate two moral defects, one is greed and the other is stupidity”. Mr Wu responded:

What I mean is that I personally didn’t break the [minimum wage] laws, but if I agree or my team agree to say the minimum wage is not so, so right, what’s the problem?

[11] Mr Wu stated it was not his personal view because that would make enemies. He repeated his assertion that the username under which such comments were made may be related to him or his team, but was not him.

[12] Mr Wu was, however, later interviewed by a reporter who published a newspaper article with Mr Wu’s photograph, under the heading “Businessman backs illegal wages for immigrants”. Mr Wu said he made a complaint to the reporter as

the article did not properly reflect his views, but did not sue him for defamation as it was “not that serious”.

[13] Mr Wu said that the username did not express his view or represent him, continuing to distance himself from it. At one stage he said “I post thousands of posts here with this ID. I mean this ID post thousands of posts”.

[14] When asked about another post about falsifying documentation to get a bank loan, Mr Wu said it was a joke or black humour. He said he was quite a good person or his blog was quite a good blog because some degree of black humour can make people think.

[15] If the username “Wu Fu” is not to be identified with Mr Wu, then Mr Wu’s claim that he was defamed by Ms Moncur in comments she made in the forum in response to one of the posts under the username “Wu Fu”, must fail because in her comments Ms Moncur referred not to Mr Wu, but to Wu Fu. Mr Wu was not named and not defamed.

Website forum

[16] The evidence presented to Court discloses that Skykiwi operates an on-line community in New Zealand with over 160,000 registered members. It attracts over 60,000 unique daily IP visits and over 700,000 daily page views. It is apparently the 41st most popular website in New Zealand and reaches 80 per cent of the Chinese community in New Zealand.

[17] The forum on which Wu Fu and Ms Moncur posted comments is called FML, which I am advised means “Fuck my life”. The forum rules emphasise that it is a forum for people to express their original views and noted that “originality should be negative or controversial and should be meaningful”.

[18] In her evidence, Ms Moncur identified a number of previous posts by Wu Fu, which are relevant as background to the controversy which erupted over the post by Wu Fu and the response by Ms Moncur. Although Ms Moncur has not obtained

translations from a qualified translator, I am satisfied that the gist of the posts are translated sufficiently accurately by Ms Moncur.

[19] Ms Moncur says that on 17 December 2012 at 6:05 p.m. Wu Fu wrote about using false documentation in order to get a bank loan in New Zealand. She translates the post as follows:

We need to mortgage our house to get a bank loan. The agent said that I need to provide marital status certificate if I am over 25 years old and single, but it is trouble to get it, so he will help me get a divorce certificate. Later he also suggested that alternatively I could try to get a certificate that my parents were divorced.

In this case I will be free of any offence. So let them divorce.

[20] Ms Moncur says that on 19 March 2013 at 10:29 a.m. Wu Fu wrote about killing all gays to reduce the homosexual population, killing people over 65 to save retirement costs and allowing incest between parents and their children. Ms Moncur translates the post as follows:

Rules are all made by people.

Well, lets amend the law.

All the people aged over sixty-five should be killed by poisoning, its also fine. Retirement costs could be saved.

Let's eliminate all the homosexuals; every generation is to be cleansed, to keep the homosexual rate low.

Incestuous relationships between father and daughter, mother and son should be allowed; it is also fine if they want to have children as it improves the harmony of a society and reduces the global population.

All the men shorter than 1.75 metres should also be killed to enhance future performances in the Olympics.

All the men taller than 1.75 metres should also be killed to save resources of the globe and change females' aesthetics standards.

The purpose of the rule is to assist us to achieve our objective. The circumstances are changing as well as our goal; therefore the rules must be changed accordingly.

Once the rules are changed, people will be willing to comply with them. There is nothing to be debated about in terms of civilisation and humanity.

Rules are deemed humane if they are made for the benefit of the majority of people (within a society), including exchanging children for cannibal

purposes during famines. It is cruel not allowing the people with closest relationships to marry each other, for instance between sister and brother, father and daughter, mother and son. Is it cruel? Yes, it is cruel. Is it humane? Yes it is humane. Do you feel uncomfortable with it? No need. The rules are formed by society.

[21] These posts were controversial and lead to a number of disapproving posts on the forum by other contributors. Ms Moncur also produced a copy of what she says is a post by the forum administrator on 6 May 2012, suspending Wu Fu for his inappropriate and offensive on-line comments. Mr Wu denied that the post was by the administrator. The post was, however, made by a contributor with the ID number 00001, which seems to suggest the post had some official status.

Allegedly defamatory comments

[22] The allegedly defamatory comments Ms Moncur posted on the forum on 30 March 2013 at 10:51 a.m. were:

If Wu Fu does not consider himself a madman, he should apologise for remarks about microwaving pets and children

If someone is a mental patient, commonly called a madman, then they are more likely unable to take legal or moral responsibilities for their own behaviour.

But if this is a normal person with abilities of behaviour, the remarks about microwaving kittens, puppies and children are low grade and indecent acts without public morality and without conscience, and the person concerned should apologise to the public.

New Zealand is a country with freedom of expression, but this freedom is not without moral and legal restraint.

Forgivable if this is a madman.

Otherwise please apologise.

[23] Ms Moncur did not name Mr Wu, but made reference to Wu Fu, which Mr Wu says is not him.

[24] Wu Fu responded three minutes later, at 10:54 a.m:

Don't talk randomly anymore. What I referred to was a non-heating microwave. Is killing people in films all real? Is sawing people in magic performance all real?

Such sub-standard false accusation and mud throwing. Weak.

[25] Ms Moncur also e-mailed a link to the post to a well-known blogger, Cameron Slater, who operates his blog under the name Whale Oil. In the e-mail she said:

Hello Whale Oil

Please refer to the attachment and a link below. A Chinese man who works for WTV & Chinese Radio put up a thread on the most well-known Chinese social network site, SKYKIWI, suggesting that people microwave their puppy or kitten, or even a child. Below is a translation of what he wrote. His name is Easter Wu and he is a senior employee of a Chinese media company and a very high profile on this website.

He wrote:

“Put a puppy or kitten into a second hand microwave for one hour.

(if you do so and put the video on Youtube) **The video will be madly popular and the puppy or the kitten will be famous in an earner name as never dying web-cat”.**

The cost of buying the microwave will be fully recovered.

If you put a child into the microwave, the whole universe will be shocked and the child will gain a name as a little superman.

This idea of mine will be worth ten million dollars and you can take it now for free.

[Link provided]

Above is a translation of Mr Wu’s words on the website.

May

[26] What Ms Moncur did not know was that the blogger, Mr Slater, was at that time the editor of the *Truth* newspaper. The *Truth* newspaper then published an article about the post two weeks later. The article included two photographs – one of Mr Wu being spoken to by a uniformed police officer, with the caption “History: In trouble with the law before”. The second photograph showed a kitten behind the door of a microwave with a person’s hand about to push the on button. The article read:

A HIGH-PROFILE member of the Chinese community has ignited a firestorm with startling calls for Kiwis to nuke their cats, dogs and kids in the microwave – and then post the videos online.

Just days after promoting illegal wage practices for migrant workers, former World TV and Chinese Radio media executive Easter Wu is courting controversy again – but this time it's with potentially deadly consequences.

Today in *Truth* exclusive we can reveal how Wu has been using his online profile to promote behaviour that in many countries would attract the death penalty.

In a post on the popular Chinese social networking site Skykiwi, Wu wrote:

Put a puppy or kitten into a second-hand microwave for one hour. If you do so and put the video on YouTube the video will be madly popular, and the puppy or the kitten will be famous and earn a name as never dying web cat. The cost of buying the microwave will be fully recovered.

But it gets worse.

Wu – who until recently had a weekly slot on Chinese radio to promote his extreme views – then suggests parents who really want to make a name for themselves and “shock the universe” should try cooking a baby in the microwave.

He said if the baby survived not only would it be heralded as “a little superman”, but it would also have the potential to make millions of dollars.

Last year a 30-year-old Asian woman narrowly avoided the death penalty after she was convicted of killing her seven-week-old daughter in the microwave.

Ka Yang claimed to be in the midst of a seizure when she put her baby in the microwave and cooked it for two minutes. She was sentenced to life imprisonment without the possibility of parole.

Given the potential for catastrophe should someone take up Wu's challenge, *Truth* has brought the matter to the attention of police.

Truth has also spoken to Plunket and the RSPCA, who say they cannot believe someone would be promoting such disturbing practices.

SPCA head Bob Kerridge told *Truth* he was absolutely astounded by the remarks.

He said it was clear from the comments Wu was “one sick individual” who should be locked up “out of harm's reach”.

There was enough cruelty to animals as it was without idiots like Easter Wu promoting such horrific practices, Kerridge said.

You don't even joke about this sort of thing. I don't think the comments are tongue in cheek. I think they are in extremely bad taste and that this chap is sick in the mind.

Wu – who now runs a telecommunications business and an exporting company employing around 10 people – could not be reached for comment.

A spokesman for his former employer, World TV and Chinese Radio, did not want to comment on the remarks or the reasons Wu had left the company two months ago.

Asked if he was “a bit crazy”, the spokesperson said she would prefer not to comment.

This week Wu made headlines for suggesting employers had the right to pay staff only what they thought they were worth – even if that was below the minimum wage.

How much you are worth is how much you get. You got an \$8 skill, I pay you \$8, he said.

The comments were lambasted by AUT business school researcher Danae Anderson, who claimed Wu’s theories promoted a “low wage, low productivity economy”.

[27] After having viewed the article in the *Truth* newspaper on-line, Ms Moncur cut and pasted it and posted it on the forum with the heading “Wu Fu has news on newspaper again, and on the front page as well, with photos”, with the comment that this time it was not the economist’s views that were controversial, but it was a moral and ethical issue.

[28] Ms Moncur’s allegedly defamatory comments on the forum and the *Truth* newspaper article had their genesis in a post by Wu Fu on the forum. Mr Wu does not, however, refer to the original Wu Fu post in the statement of claim and did not provide the Court with a certified translation of it. Nor did he refer to it in his brief of evidence, except to say that he had never called on anyone to microwave children or animals. He specifically stated that he has never said to “put a puppy or kitten into a second-hand microwave for one hour. If you do and put the video on YouTube the video will be madly popular, and the puppy or the kitten will be famous and earn a name as never dying web cat. The cost of buying the microwave will be fully recovered”. Mr Wu says that he has never advocated harming any sentient beings for fame, publicity, profit or other material gain.

[29] Ms Moncur’s translation of the original Wu Fu post on 29 March 2013 at 7:06 p.m. is as follows:

Put a puppy or kitten into a second-hand microwave for one hour. If you do so and put the video on YouTube the video will be madly popular, and the puppy or the kitten will be famous and earn a name as never dying web cat. The cost of buying the microwave will be fully recovered.

If you put a child into the microwave, the whole universe will be shocked and the child will gain a name as a little superman.

This is my innovative, pioneering idea which is worth ten million dollars.

Provide it to anybody free of cost.

[30] Mr Wu takes issue with the translation provided by Ms Moncur on the basis that the words “non-functioning” were included in the original post in the Chinese language. Whether or not Wu Fu’s post contained the words “non-functioning”, it immediately drew widespread disapproval. Comments made by other forum users included:

Harmful suggestion.

You are sick again.

If you are sick, get treatment as soon as possible otherwise the condition will get worse.

Speechless on this posting.

Well you may get into trouble if the police become aware of it.

[31] Wu Fu then replied to these comments:

Where is the problem?

[32] Another contributor then replied:

Cats and dogs are not allowed to be tortured, let alone about torturing babies. Turning in a microwave (even if non-functioning) or in a washing machine, is very dangerous. The Police will investigate the matter.

[33] Other comments were:

Are you at the final stage of your disease? You should be given euthanasia.

Wu Fu, are you taking the micky here? I reckon that you have been wired in recent days by constantly blogging some bizarre and unthinkable topics.

[34] Wu Fu replied to this last comment, saying:

I am not teasing anyone. This is a pioneering creative idea. I want to share it with people who want to put it into action.

[35] Another contributor responded:

Can you put yourself in rotation for an hour? You can't do this to kittens and puppies let alone doing this to babies.

[36] Other contributors continued to criticise the post. Comments were posted such as:

Get this blogger (Mr Wu) microwaved straightaway. Get rid of one evil for the people.

How can this kind of bloody comment be posted?

You seemed to have become insane. Take some medicine. I can buy it for you if you haven't got it.

[37] Mr Wu alleges that Ms Moncur's post on the forum on 30 March 2013 at 10:15 a.m. and her posting of the *Truth* newspaper article on the forum on 18 April 2013 were defamatory of him because she said he:

- (a) Was a maniac;
- (b) Was a psychiatric patient;
- (c) Could not be trusted to act legally or ethically;
- (d) Was immoral;
- (e) Was scum;
- (f) Was a culprit;
- (g) Had breached ethical norms or the law;
- (h) Was crazy; and
- (i) Should apologise for advocating the microwaving of kittens, puppies and babies.

[38] More extensive grounds were pleaded by Mr Wu as to why the *Truth* newspaper article which Ms Moncur had posted on the forum was defamatory of him.

Ms Moncur's post of 30 March 2013

[39] If Mr Wu's denial that he is to be identified as Wu Fu is to be accepted, Ms Moncur's initial post of 30 March 2013 cannot be defamatory of Mr Wu because it made no mention of him and could not have been taken as referring to him.

[40] I am, however, of the opinion that Mr Wu is to be identified with the username "Wu Fu". The evidence satisfies me that the public viewed Mr Wu as the person or principal person behind the username "Wu Fu". This accords with the pleading in paragraph 1 of the statement of claim in which Mr Wu alleges he is a blogger on Skykiwi under the username "Wu Fu". Ms Moncur admits the truth of the pleading in paragraph 1 of her amended statement of defence.

[41] As to whether Ms Moncur's post of 30 March 2013 is defamatory of Mr Wu, I am of the view that the nature of the forum, entitled "Fuck My Life", on which Ms Moncur posted her comments in response to Wu Fu's original post has an important bearing on the issue of whether the words used had a defamatory meaning.

[42] As noted by Matthew Collins in *The Law of Defamation and the Internet*:¹

As a general rule, it seems likely that the sensible reader will spend more time on, and analyse more closely, an authoritative web site than a sensational one. The same can probably be said of special-purpose bulletin boards and forums used exclusively by persons sharing some common interest, as opposed to general-purpose bulletin boards and forums with a reputation for trading in gossip and rumour. The extent to which the nature of the publication affects the meaning borne by the words used is a question of fact.

[43] In that regard, I also note the comments of Eady J in *Smith v ADVFN Plc*:²

[Bulletin board postages] are often uninhibited, casual and ill thought out; those who participate know this and expect a certain amount of repartee or "give and take".

[44] I am of the view that contributors to this forum were generally expected to express strong opinions in a manner that could be forthright and even rude or

¹ Matthew Collins *The Law of Defamation and the Internet* (3rd ed, Oxford University Press, Oxford, 2014) at [8.16].

² *Smith v ADVFN Plc* [2008] EWHC 1797 (QB) at [14].

confrontational. Those who participated in the forum were aware of its nature and did not shy away from engaging in heated on-line discussions. Hyperbole and sarcasm also appear to have had a part to play in such discussions.

[45] When looked at in that context, I am of the view that Ms Moncur's post of 30 March 2013 was not defamatory of Mr Wu. Ms Moncur did not directly accuse Mr Wu of suffering from any mental illness. She suggested that those suffering from mental illness were less likely to be able to take legal or moral responsibility for their actions and called upon Wu Fu to apologise for his comments if he was not suffering from any mental illness. If he was suffering from a mental illness then, she said, his comments would be forgivable. Ms Moncur also said that if Wu Fu was a normal person with control over his actions then his remarks about microwaving kittens, puppies and children were "low grade and indecent acts without public morality and without conscience".

[46] These words are an English translation provided by a qualified interpreter instructed by Mr Wu and do not, in my view, carry a defamatory meaning as alleged, such as Mr Wu could not be trusted to act legally or ethically and was scum or a culprit. As translated, Ms Moncur's words were directed at Wu Fu's remarks and not directly at Mr Wu's personal character.

[47] Other contributors to the forum accused Mr Wu of being sick or at potential risk of a Police investigation. One suggested that Mr Wu be put in a microwave himself. Another suggested Mr Wu should be euthanised. None of these contributors have been sued for defamation by Mr Wu. Such comments were obviously part of the rough and tumble of the forum.

[48] If I am wrong in that regard and Ms Moncur's post of 30 March 2013 was capable of being defamatory of Mr Wu, then I am of the view that Ms Moncur has a defence of honest opinion. Having heard her give evidence and having seen her cross-examined rigorously over a considerable period of time, I have no doubt that the opinion she expressed in her post was her genuine opinion. She is both a mother and a pet owner. She has strong maternal instincts and is upset by any animal abuse. It was her genuinely held opinion that only someone who was sick would, or could,

suggest putting animals and/or babies in a microwave, whether functioning or not. In her view, Wu Fu's post was unacceptable.

[49] The defence of honest opinion, of course, applies only to the expression of opinion and not to assertions of fact. Whether the words complained of are to be reasonably understood as an opinion or as a statement of fact must depend on the context. In my view, the entirety of Ms Moncur's post was opinion. It was also an opinion that had a clear factual basis. Evidently it followed and was based on Wu Fu's post to which it was clearly written in reply. In terms of its substance, even if the cooking function of a microwave had been disabled, putting an animal or a baby into a confined space such as a microwave for an hour would have to be extremely disorientating and distressing for an animal or baby. Posting it on YouTube for so-called entertainment would tend to normalise such unacceptable treatment and may cause or encourage others to harm animals or babies.

Ms Moncur's posting of the *Truth* newspaper article

[50] The *Truth* newspaper article was much more extensive than Ms Moncur's initial post on 30 March 2013. It referred to an earlier post of Wu Fu with comment on that by an AUT business school researcher. It accused Mr Wu of advocating actions with potentially deadly consequences and referred to the case of a woman who had been jailed for life without parole for killing her baby daughter by putting her in a microwave and turning it on. It also included comment from Mr Kerridge who called Mr Wu a sick individual who should be locked up out of harms reach. The post was also quite sensationalist with the headline "Nuke 'Em".

[51] Mr Wu has not proceeded against or has reached a settlement with all defendants, except Ms Moncur and, accordingly, the case did not focus on the allegedly defamatory comments in the *Truth* newspaper article. I decline to make a declaration against the company which has been struck off the Companies Register, not only because of the lack of utility, but also because I did not hear detailed argument on the article.

[52] Whatever the merits of Mr Wu's claim that the *Truth* article was defamatory of him, I am of the view that Ms Moncur also had a defence of honest opinion to

Mr Wu's claim of defamation by her republication of the *Truth* article by posting it on the forum.

[53] Section 10(2)(b) of the Defamation Act 1992 provides that in any proceedings for defamation in respect of matters that includes an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless the defendant proves that:

- (i) The opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant; and
- (ii) The defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

[54] I am of the view that both requirements are met. The *Truth* article did not purport to be Ms Moncur's opinion. I also have no doubt that Ms Moncur honestly believed that the statements made in the *Truth* article were genuine opinions expressed either by the reporter or by Mr Kerridge. Mr Kerridge, in particular, was a well known and respected animal welfare advocate and Ms Moncur would have had no doubt as to the strength and sincerity of his beliefs. Ms Moncur also referred to the long history of the *Truth* newspaper in holding people accountable for actions considered offensive to the average citizen.

[55] Ms Moncur says that she posted the *Truth* article on the forum in order to continue debate on the matter and to raise public awareness on issues concerning basic social values. Sharing material found online is commonplace. Ms Moncur has established to my satisfaction that she had no reasonable cause to believe that the opinions expressed in the *Truth* article were not genuine.

Conclusion

[56] The defamation claim by Mr Wu against Ms Moncur is dismissed on the basis that her original post on 30 March 2013 was not defamatory. Ms Moncur has

also established the defence of honest opinion to my satisfaction both in respect of her original post on 30 March 2013 and the post of the *Truth* article on 18 April 2013.

[57] Ms Moncur was not represented in the High Court hearing so I am unaware of her entitlement to costs. If costs remain an issue, memoranda by both parties should be filed by 31 January 2017.

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Woolford J