Forget Geoffrey Rush: most defamation cases are petty and incredibly local

For all the publicity that a Geoffrey Rush or Rebel Wilson case attracts, the vast majority of defamation suits are small, wasteful and often result in outcomes disproportionate to their social value.

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IMAGE CREDIT: PETER RAE/AAP

If you've ever lived in a strata block, then the following story will not surprise.

Ms Murray moved into the Watermark building in Manly in July 2016. Trouble began immediately, because she left her mailbox unlocked. This was not OK with the long-serving chairman of the Watermark's strata committee, Mr Raynor, who began asking Murray to lock her mailbox a month later and kept asking when she failed to comply.

Tensions escalated following two break-ins in April and May 2017. Thieves had opened a number of the mailboxes. Raynor stepped up his campaign, sharing with Murray his belief that her failure may have been a contributing factor to the thefts (on the theory that the burglars could have read the code on her unsecured lock and had a master key made).

Raynor was certainly not alone with his anxiety about the mailbox situation. Various other residents were also participating in mailbox surveillance and reporting their findings. The issue had become a *cause célèbre* at Watermark.

Raynor was nothing if not persistent, motivated by a genuine belief that Murray's cavalier attitude to mail security was endangering more than her own interests. His emails on the subject were polite and unemotional, but nevertheless he was getting well under Murray's skin. Possibly the final straw was his suggestion that Murray may be personally liable for any financial losses suffered by other residents if there were more break-ins. That was a bit of a stretch.

Finally, Murray had heard enough about the subject of mailboxes, and she exploded into print in late May 2017 in a long email to Raynor with the punch line, "Please stop!"

Murray's email was redolent with passive aggression, channelling no doubt a lot of pent-up frustration. After a long recitation in defence of her right to not lock her mailbox (something the block's by-laws didn't require), she went hard:
"To avoid further harassment, I've not replied to your provoking mailbox emails. However your consistent attempt to shame me publicly is cowardly. It is also offensive, harassing and menacing through the use of technology to threaten me."

Perhaps unwisely, Murray copied 16 other residents into her email. Raynor was, on his evidence, awfully distressed by the accusations against him. So he commenced defamation proceedings against Murray, as you do.

That fight played out over three days in the District Court, and the judgment came down recently. The judge found that Murray had defamed Raynor by suggesting that he had unreasonably harassed and acted menacingly towards her, and that he is a malicious person and a small minded busybody who wastes the time of fellow residents on petty affairs.

Making out the defamatory imputations is the easier part of a defamation case. The action is all in the defence. Murray pleaded truth, honest opinion and qualified privilege, but they all failed. The judge was, it's fair to say, very much on Raynor's side, finding him a credible witness and Murray the opposite. She did not think him a pest; rather, a diligent and reasonable keeper of the interests of the strata scheme he represented. Murray's explosion was not justified, and her accusations in no way proportionate to the actions that had provoked them.

One might have thought that qualified privilege would win out in a case like this, given the connection between Murray's reply and the lengthy email campaign to which she was responding — directed, as it was, to a very specific audience of legitimately interested parties (the residents). The judge, however, finding that

“every sentence in [Murray’s] email conveys contempt and anger”, wasn’t having a bar of it.

That’s all fascinating but the end result was breathtaking. Raynor’s hurt feelings were, the judge decided, needing to be compensated to the order of $90,000, topped up by aggravated damages — due to Murray’s refusal to apologise — of another $30,000.

Each party will have spent around $100,000 in legal costs, so Murray is looking at a total tab of about $300,000. Quite a bill for a single email sent in anger and frustration.

If you’ve ever lived in a strata block, you’ll know how enormous the smallest things can become. There’s no surprise in the fact that the case of the unlocked mailbox took on existential proportions in the minds of some of the residents of the Watermark. However, when such a matter comes to occupy three days of the publicly funded court system and result in a six figure damages verdict, it’s reasonable to ask whether there might be a better means of resolving petty disputes between private citizens than this.

For all the publicity that a Geoffrey Rush or Rebel Wilson case attracts, the vast majority of defamation suits are exactly like Raynor v Murray: small, wasteful and often resulting in outcomes disproportionate to their social value.

Entertainment it does provide, but not at all cheap.