

‘Stupid is as stupid does’: does Joe Aston have a legal leg to stand on? We asked an expert

The *AFR*'s Joe Aston is pulling out the opinion defence after being sued for defamation.



Joe Aston's column on February 3 2019 began with a description of "the characteristically juvenile resignation rant of vulgar Life gibberer Clementine Ford". Having disposed of Ford (a journalist), Aston switched objects:

"But Ford isn't the only feminist cretin currently proffering a begging bowl. Blue Sky Alternative Investments' venture capital head Elaine Stead, a prodigious destroyer of capital, will not be silenced!"

Aston writes for the *AFR*'s Rear Window column, which the business world approaches each morning with a combination of dread and voyeurism.

Stead had been an Aston target since April 2018, when he referred to her (during an assault on Blue Sky) as "Brick Tamlin", the deeply stupid weather guy in the *Anchorman* films.

Aston's particular beef with Stead appeared to be that she was bad at her job (picking investments) but even worse at social media. He was affronted by her Twitter feed ("unhinged drive!" he called it), even more so by her Instagram post musing about crowdsourcing to pay for a trip to Mongolia when she had been paid a lot of money by Blue Star despite "fatuous investments in peanut start-ups Shoes of Prey and Vinomofo".

In October 2019, Aston reignited his disgust at Stead, calling her a “venture capital pyromaniac” responsible for losing \$9 million of Blue Sky investors’ money in the failed Shoes of Prey venture, “just one of many unviable enterprises through which Stead set fire to other people’s money”.

He went on to label the South Australian government’s continuing employment of Stead in its venture capital fund as “downright embarrassing”, arguing that it would be better off paying her not to invest other people’s money. Bear in mind that Stead had resigned from Blue Star in April 2018.

As is often the case with Aston’s work, ouch. And, almost always, that’s where it ends. Gossip columnists are relatively rarely sued — for various reasons including the desire to not provoke them into doing worse. They wield real power, particularly in an incestuous context like the Australian corporate finance sector.

Stead, however, is suing. She claims that Aston defamed her by making her out to look “cretinously stupid” instead of the highly educated, well-respected venture capitalist with a good track record for success that she actually is. The damage to her reputation, she argues, is significant and permanent.

The AFR was going to try to prove that the defamatory imputations were true (that Stead is, in fact, stupid) but wisely dropped that idea and is defending solely on the basis that Aston’s words were an expression of his honest opinion.

The opinion defence requires establishing that the statement in issue was one of opinion, not fact; that it was honestly held; that it was on a matter of public interest; and that it was based on a foundation of true facts.

Aston’s counsel has told the court that what Aston wrote was “classic language of opinion ... clearly meant to be a witty way of dealing with the issue”.

One could debate that; the judge didn’t think there was anything witty about the phrase “venture capital pyromaniac”, and it’s been a long time since people of normal sensitivity found humour in calling someone a “cretin”.

Aston, in the witness box, maintained that his honest opinion of Stead was what he had written. “Stupid is as stupid does,” he said. “Someone who repeatedly does stupid things is by definition stupid.” He conceded that it was an offensive term.

Stead’s stupidity, according to Aston, took two forms: the “banality” of her social media posts, and her terrible investment decisions. On both counts, he was savagely cross-examined by Stead’s barrister, who was seeking to undermine his position that his opinions of Stead were either founded on truth or honestly held by him.

The honest opinion defence plays a critical role in protecting free speech. Critics, reviewers and satirists rely on it heavily, to defend their ability to do their jobs — saying things about other people (or those people’s work) that those people would rather not hear.

For gossip columnists, it’s a more tenuous lifeline. The essence of their trade is not actually opinion, but fact — or rumour, which for defamation purposes is still fact. They report “news”, often of interest to the public but not necessarily of public interest. In that context, the distinction between fact and opinion can easily become blurred.

So, did Aston defame Stead by calling her a cretin and a venture capital pyromaniac? Given the seriousness of the framing, yes I would say he did. It wasn't very funny, it was more than mere "vulgar abuse" as his barrister sought to portray it, and it went straight to the heart of Stead's professional reputation.

The more important question is, will his defence of honest opinion work? To answer that, the judge will have to decide whether Aston, possessing a solid foundation in the facts of Stead's performance as a venture capitalist, genuinely believed that she was an idiot.

The other possible conclusion is that Aston had one day, for whatever reason, added Stead to his target list and then went for her, the underlying truth being no more than incidental to his mission.

Asked by Stead's barrister what kind of columnist he is, Aston replied "not a very popular one". That's an example of an honest opinion.

ABOUT THE AUTHOR

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