

# Courts Extend the “Long Arm of the Law” in Landmark Case



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In Australia, the courts have in the past authorised “substituted service” on a party to a dispute via text message and E-mail when other conventional methods of contact have been unsuccessful. In December 2008, the Supreme Court of the ACT granted lawyers for a mortgage lender, the plaintiff, permission to serve a legal notice through the popular social networking site, Facebook. Master Harper of the Supreme Court held that the lawyers were allowed to serve the defendants with the court papers via Facebook after several unsuccessful attempts to serve them using conventional methods of contact.

The defendants had previously defaulted on a six-figure home loan and failed to turn up to Court in which case the Court awarded the plaintiff a default judgement. The plaintiff was then required to locate the defendants and serve the default judgement (legal notice that the defendants failed to appear in court) on them. In the meantime, the defendants had changed home, jobs and telephone contact details in order to avoid being served with the legally binding documents. The lawyers for the plaintiff decided to use the personal details that the co-defendant had originally provided the plaintiff to run a search on Facebook.

The defendants both had profiles on Facebook that were public and those profiles listed details such as the defendants full names, dates of birth, and e-mails. Furthermore, one of the defendants had the co-defendant listed as a ‘friend’ on their profile. Therefore the Supreme Court held that it was satisfied that the Facebook profiles in question did belong to the defendants and that Facebook was a sufficient method of communicating with the defendants in the circumstances. Unfortunately for the plaintiff, once the application had been granted the defendants, after becoming aware of this, changed their privacy settings so that the plaintiffs’ lawyers are now unable to serve them via Facebook.

This case demonstrates the innovation of the Australian Courts to adapt to and utilise modern technological advancements in communication in order to extend the long arm of the law to people avoiding its reach. However, issues may arise down the track if the courts continue to recognise social networking websites, such as Facebook or MySpace. One such issue is whether one can rely on the basis of a purported individuals webpage profile that service has actually been received. It may be that this case might have just been the exception.

If you want more information on this topic then contact us on 1300 428 947.

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