

NO. 39447-2-II

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION TWO

FILED  
COURT OF APPEALS

19 APR 20 10 28 10  
STATE OF WASHINGTON  
BY   
CLERK

---

DUC TAN, a single man; and VIETNAMESE COMMUNITY OF  
THURSTON COUNTY, a Washington corporation,

*Respondents,*

v.

NORMAN LE and PHU LE, husband and wife; PHUET X. NGUYEN and  
VINH T. NGUYEN, husband and wife; DAT T. HO and "JANE DOE"  
HO, husband and wife; NGA T. PHAM and TRI V. DUONG, wife and  
husband; and NHAN T. TRAN and MAN M. VO, wife and husband,

*Appellants.*

---

REPLY BRIEF OF APPELLANTS  
PHUET AND VINH NGUYEN

---

Nigel S. Malden  
WSBA #15643  
Nigel Malden Law PLLC  
711 Court A, Suite 114  
Tacoma, WA 98402  
253-627-0393

Rebecca Larson  
WSBA #20156  
Davies Pearson P.C.  
920 Fawcett Ave.  
Tacoma, WA 98402  
253-620-1500

I. Appellant Nguyens' Reply to Appellees' Opposition

Appellants Phiet and Vinh Nguyen hereby reply to appellees' opposition brief as follows:

A. Joinder in Co-Appellants' Arguments

Although represented by separate counsel, the appellants share virtually identical legal arguments on appeal. Therefore, to avoid duplicative briefing, the Nguyen's join in, and incorporate by reference, the legal arguments set forth in the co-appellants' reply briefs.

This reply shall focus primarily on issues unique to the Nguyens or not fully covered in other briefing including the appellees' failure to prove Nguyen's malice and the trial court's erroneous refusal to instruct the jury on community interest privilege.

B. The Appellees Never Proved Nguyen's Malice

The public figure plaintiffs in this case had the burden to prove by clear and convincing evidence that Mr. Nguyen had *malice*; that he knew his statements were false. It's a high hurdle that plaintiffs never came close to clearing.

Mr. Nguyen's incredible, firsthand experience with communism is summarized in his opening brief and will not be repeated here. Suffice it to say, Mr. Nguyen knows the difference between Santa Claus and Ho Chi Minh. But even if he did not it would make no difference. Malice was never proven and that ends the case.

C. The Trial Court's Refusal to Instruct the Jury on the Community Interest Privilege was a Clear Error of Law and a Manifest Abuse of Discretion

The appellees argue in their opposition brief that the trial court properly refused to give the community interest privilege instruction because there was no discernible community or group of people with any shared interest. It is a silly argument.

This case involves the Vietnamese refugee community. The members of this community have the right and desire to know if any communist sign or symbol surfaces in their midst or if any public figure supports or has any tie to communism. This is precisely the kind of "common interest" that fits the doctrine of community privilege.

D. The Jury's Verdicts Were Outrageous and Clearly the Result of Passion or Prejudice that Shocks the Conscience

The jury in this case awarded outrageous sums of money for non-existent damages. Dr. Miriam Lam's testimony about what happened to someone during an unrelated event in California has no bearing on what happened to the plaintiffs in this case. If the appellees have thin skin and no strength of character, they should not make themselves public figures and inject themselves into hot button politics.

II. Conclusion

For all of these reasons, Phiet and Vinh Nguyen join their co-appellants and request that this court order the judgments vacated and the case

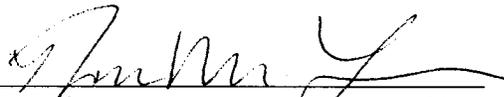
dismissed. Alternatively, the appellants request this court to order a new trial.

Respectfully Submitted on August 20, 2010

NIGEL MALDEN LAW, PLLC

By:   
Nigel S. Malden, WABS No. 15643  
Counsel for Appellants Nguyen

DAVIES PEARSON P.C.

By:   
Rebecca Larson, WSBA No. 20156  
Counsel for Appellants Nguyen

Proof of Service

394'

Phiet and Vinh Nguyen's Reply Brief was deposited in First Class U.S. Mail on

August 20, 2010 addressed to the following:

Mike King  
701 Fifth Ave # 8600  
Seattle, WA 98104

Howard Goodfriend  
1109 1st Ave Ste 500  
Seattle, WA 98101-2988

Greg Rhodes  
PO Box 7846  
Olympia, WA 98507

Rebecca Larson  
920 Fawcett Ave  
Tacoma, WA 98401

I certify that the foregoing is true and accurate

Nigel S. Malden WSBA No: 15643

*Nigel S. Malden*

PR 50  
000118 2010  
10 AUG 20 PM 2:22  
STATE OF WASHINGTON  
BY *[Signature]*  
JURY