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Daniel Schlaepfer vs. ASIC

The below is a statement released on behalf of Daniel Schlaepfer following today's verdict on his appeal.

Mr. Schlaepfer is pleased that ASIC's truth defence has been struck down, rejecting the finding that Select Vantage Inc. (SVI) traders had engaged in market manipulation.

The judgment concluded that: *"Although Mr Schlaepfer has been unsuccessful in the outcome of the appeal, he has been successful on most issues including the defence of truth, which occupied a substantial portion of the proceedings. That success has achieved what was said to be an important outcome of the appeal, namely, the vindication of Mr. Schlaepfer's reputation. Although ASIC has succeeded in establishing the defence of qualified privilege at common law, that is a defence of confession and avoidance. To put the matter another way, Mr Schlaepfer has established in the appeal that he was defamed, but defensibly so."*

Key extracts from the judgment

- "The evidence adduced by ASIC was insufficient to sustain the defence of justification. It did not establish that Select Vantage or Merlito were engaging in market manipulation." (p. 7)
- "The fact that Mr Yanco's communications were made without any opportunity for Mr Schlaepfer to respond was fatal to the element of reasonableness required to be established in order to make out the statutory defence. Accordingly, the primary judge erred in holding that the defence of qualified privilege under s 30 of the Defamation Act was made out." (p. 7)
- "I do not mean to suggest that Mr Yanco's evidence was anything other than an honest account, but such accounts are often unwittingly influenced by self-interest". (p. 67)
- "ASIC did not even attempt to demonstrate that Select Vantage's trading patterns actually reflected the whole-day manipulative strategy it maintained Select Vantage traders were pursuing, even though such evidence should have been available." (p. 134)
- "I would have upheld Mr Schlaepfer's challenge to the primary judge's conclusion concerning the truth defense." (p. 135)