

**EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NUMBER: SVGHCV 2016/0026

BETWEEN:

JOSEPH DELVES

CLAIMANT

AND

VENOLD COOMBS

THE NEWS LIMITED

DEFENDANTS

APPEARANCES:

Mr. Grahame Bollers for the claimant

Mr. Andreas Coombs for the 1st defendant

Ms. Keisal Peters for the 2nd defendant

2016: November 21; December 12
2017: February 16; March 27

RULING ON MEANING

[1] **GLASGOW, M:** The claimant and the first defendant in this claim are prominent citizens and football officials on the island of St. Vincent and the Grenadines. Mr. Joseph Delves ("Mr. Delves") is a respected legal practitioner of some 25 years' experience at the local bar. He has served in the recent past (2007 – 2011) as the president of the Saint Vincent and the Grenadines Football Federation ("SVGFF"). The first defendant, Mr. Venold Coombs ("Mr. Coombs") is now serving as the immediate successor to Mr. Delves as the president of the SVGFF having been elected to that office in 2011.

[2] The second defendant is a local company and the publisher of "the News" newspaper ("the News"). The News is a locally distributed publication which is also available in the Caribbean, the United Kingdom and the United States and to readers all over the world via the World Wide Web.

[3] The parties are odds over words allegedly uttered by Mr. Coombs and published in the 18th September 2015 issue of the News under the caption “**Coombs: Delves needs to explain \$400,000**”. The article reads,

COOMBS: DELVES NEEDS TO EXPLAIN \$400,000

President of the St. Vincent and the Grenadines Football Federation, SVGFF, Venold Coombs wants former SVGFF President, Joseph Delves, to explain how over \$400,000 of what he says is “football money” ended up in the coffers of the Caribbean Money Market Brokers, CMMB, with no benefits to the SVGFF.

“Under Delves administration over \$400,000 went down to Trinidad to the CMMB. Football sent the money down there and the information is very interesting and Delves needs to come and tell the people,” Coombs told The News in an exclusive interview on Wednesday 8th September.

Coombs said that after his executive took office he became aware of the money being sent to Trinidad, following questions from Fifa (sic) as to how the money got to CMMB.

“I did some investigations but I think that former president Delves needs to explain, Coombs stated, but when pressed further as to if the SVGFF benefits from such “investments” he stated: all I can say is that Delves needs to explain.”

When contacted for a response, Delves did admit that money was sent to CMMB and that this was done with the understanding and knowledge of the members of his executive at the time.

He also expressed surprise that Coombs only became aware of the transaction by way of Fifa (sic), stating that audited statements of the SVGFF would have shown the money transfer.

Delves however, stated that he was not the person responsible for the SVGFF’s finances at the time and referred The News to the former financial officer, Ashley Caine.

The News made several efforts to contact Caine but was unable to do so.

Delves said the way he conducted the affairs of football during his stint at the helm, was different from that of Coombs.

He stated that all officers had their responsibilities, which he did not interfere with, stating that he did not want to make comments on the financial matter with CMMB, since Caine would have been the officer intimately involved with the transaction.

- [4] Mr. Delves is not pleased with the contents of the article. On February 12, 2016 he filed this claim against Mr. Coombs and the News for damages for allegedly defaming him and an injunction to prevent them from saying or publishing the same or similar words.
- [5] Mr. Delves claims that he has been defamed since the words in the article, in their natural and ordinary and/or inferential meaning(s) can be understood to say that he has
- (1) Stolen or defrauded and/ or committed or conspired with others to commit the criminal offence of theft of the sum of \$400,000.00, being the property of the SVGFF, which theft is an offence punishable by imprisonment under the Criminal Code (“the first meaning”);
 - (2) Abused his position as president of the SVGFF by conspiring with others to misappropriate \$400,000.00 of SVGFF funds by depositing the same or causing same to be deposited into an account at Caribbean Money Markets Brokers in Trinidad with no benefit to the SVGFF (“the second meaning”);
- [6] Mr. Coombs and the News filed separate defences on 16th March 2016 and 18th March, 2016 (amended defence) respectively. Mr. Delves thereafter on 9th June 2016 filed this application in which he has asked the court for an order that the natural and ordinary meanings of the words complained of in the statement of claim are capable of bearing the meaning(s) attributed to them in the statement of claim. He has also asked for permission to file replies to the defences outside of the time set out in the Civil Procedure Rules 2000 (“the CPR”). The application is supported by an affidavit sworn by Mr. Delves on 9th June 2016 and filed on the same day. The application is the subject of this ruling.
- [7] Quite unsurprisingly, Mr. Coombs and the News filed responses to the application in which they oppose the request that the court finds that the natural and ordinary meanings of the words complained of in the statement of claim are capable of bearing the meaning attributed to them in the statement of claim. On the contrary, they proposed to demonstrate that the words do not bear the pleaded meanings. Both defendants have not opposed Mr. Delves’ request for an extension of the time to file his reply to their defences.

ISSUES

- [8] The questions to be asked on this application are – (1) what do the words set out in the statement of claim mean in their ordinary and natural sense?(2) Do they bear out the meanings set out in the statement of claim or do they bear some other meaning?

Mr. Delves' submissions on meaning(s)

- [9] Mr. Delves' arguments are fairly straight forward. His view is that the words of the article are "*statements of facts and are accusatorial*"¹. Mr. Delves complains that the impropriety alleged by the defendants are borne out by:

- (1) insinuations that \$400,000.00 is not in the accounts of SVGFF. "*Football money*" in inverted commas is said to be missing;

- (2) the use of the words "*with no benefits to the SVGFF*" as well as²

Under the Delves administration over \$400,000.00 went down to Trinidad to CMMB. Football sent the money down there and the information is very interesting and Delves needs to come and tell the people.

- (3) The use of the words "*I did some investigations but I think former president Delves needs to explain*"³; "*when pressed further as to if the SVGFF benefits from such investments he stated all I can say is that Delves needs to explain.*"⁴

- (4) Linking the word investments in quotes to "*football money*" which the SVGFF had no knowledge of and from which they derived no benefits. This approach, it is argued, suggests to an ordinary, reasonable, fair minded reader that the funds were misappropriated by Mr. Delves.

¹ Mr. Delves' submissions filed on 11th November 2016 at para. 10

² Ibid at para. 11

³ Ibid at para.12

⁴ Ibid

[10] All in all, Delves' position is that:⁵

... the ordinary reasonable man reading this article would undoubtedly form the view that the Applicant, as President of the Football Federation, sent money to an institution in Trinidad, secretly and for his personal use. The meanings pleaded by the Claimant are not strained meanings... the natural and ordinary meanings pleaded ... are well within the range of meanings of which the words complained of are reasonably capable of meaning. The Claimant further submits that the words complained of clearly accuse him of criminal misconduct.

[11] The court is asked to consider CPR 69.4, the cases of **Dr. Ralph E. Gonsalves v Edwardo Lynch and BDS Limited**⁶ and **Jameel v Times Newspaper Limited**⁷. In **Gonsalves v Lynch**⁸, Alleyne J, quoting from **Skuse v Granada Television Limited**⁹, recited the following approach to be taken to the question of meaning:

1. *The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable person watching the programme once....*
2. *The hypothetical reasonable reader (or viewer) is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer, and may indulge in a certain amount of loose thinking. But he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.*
3. *While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.*
4. *The court should not be too liberal in its approach.*

⁵ Supra, note at para. 14

⁶ SVGHCV 2002/0405 & 0406

⁷ [2003] EWCA Civ 1694

⁸ SVGHCV 2002/0405&0406 at para. 6

⁹ [1996] EMLR 278

5. *A statement should be taken to be defamatory if it would tend to lower the Plaintiff in the estimation of right thinking members of society generally or would be likely to affect a person adversely in the estimation of reasonable people generally.*
6. *In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words.*
7. *The defamatory meaning pleaded by the plaintiff is treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and secondly, if not, what (if any) less injurious defamatory meaning do they bear.*
8. *The Court is not at this stage concerned with the merits or demerits of any possible defence.*

Mr. Coombs' arguments on meaning(s)

[12] Mr. Coombs relies on **Halsbury's Laws of England**¹⁰ which offers guidance on the approach to be taken to this exercise :

Before it is possible to determine whether or not particular words bear a defamatory meaning, it is necessary to determine their meaning. Whether words are capable of bearing a defamatory meaning is a question of law. However, the single meaning of words for the purpose of the law of defamation is not a question of legal construction but a question of fact, since a lay person will read into words an implication more freely than a lawyer. The meaning is that which the words would convey to ordinary persons. The ordinary person reads between the lines in the light of his general knowledge and experience of worldly affairs. Ordinary men and women have different temperaments and outlooks; some are unusually suspicious; some are unusually naive; and one must try to envisage people between those two extremes and determine what is the most damaging meaning they would put on the words in question.

¹⁰ Halsbury's Laws of England, 5th edn. Vol 32 at para 545. Sir Anthony Clarke's instructions in **Jeynes v News Magazine Ltd** are also urged on the court.

In determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context. When a claimant complains of words in their natural and ordinary meaning he must accept that meaning with all the derogatory imputations that it conveys; the ordinary reader takes the imputations as a whole and does not divide them up.

The court must not put a strained or unlikely construction upon the words, and over-analysis of the words and their context is to be avoided. If they are capable of bearing a number of good interpretations, it is unreasonable to seize upon the only bad one to give the words a defamatory sense.

- [13] Extrapolating from and applying these principles to the facts, Mr. Coombs argues that the words of the article bear none of the meanings suggested by Mr. Delves. Regarding the first meaning, Mr. Coombs proposes that the ordinary reader not avid for scandal would understand the article to be saying that moneys from SVGFF were sent to CMMB during Mr. Delves' time as president of that organization. The reader would go on to be informed that when Mr. Coombs took over as president he became aware of the transaction after making enquiries as to how SVGFF benefited from the monies. Mr. Delves would be better placed to come and explain how the moneys were utilized.
- [14] Mr. Coombs also admonished that when the "bane and antidote" of the article are taken together it will be seen that Mr. Delves was contacted by the News for comment. When contacted, he explained that the information requested was set out in SVGFF's financial statements and directed the News to Mr. Caine who was the person responsible for finances during Mr. Delves' tenure as president of the federation. Mr. Delves also explained that he was not responsible for SVGFF's finances and that he did not interfere with Mr. Caine's work as finance officer. Mr. Coombs says that the ordinary reader would have seen Mr. Delves' comment and realized that he was not well placed to provide any explanation. The hypothetical reader would seek to have answers from Mr. Caine.

- [15] Taken as a whole therefore, Mr. Coombs explains, there can be no inference drawn from the words that Mr. Delves committed theft or fraud. Such an outcome would only be derived from a strained, forced or utterly unreasonable interpretation of the words when there are “*far more reasonable, non-defamatory meanings that could be ascribed to the words...*”¹¹ Mr. Coombs presents the same reasoning in respect of the second meaning presented by Mr. Delves and asks the courts to find similarly that the words do not bear the meanings alleged.

The News’ arguments on meaning(s)

- [16] The News takes the same posture on meaning(s) as Mr. Coombs. The words, it says, do not convey any of the pleaded meanings. Learning from **Gatley on Libel & Slander**¹² and judicial guidance from the cases of¹³, **Jones v Skelton**¹⁴, **Morgan v Odhams Press Limited**¹⁵ and **Gillick v Brook Advisory Centres & Jones**¹⁶ are proposed as authorities for this logic. The following learning from **Mapp v News Group Newspapers Limited** on the approach to be taken by the court on this application is extensively quoted by the News:

"In Lewis v Daily Telegraph [1964] AC 234 where the words complained of alleged that the fraud squad were inquiring into the affairs of the Plaintiff company, Lord Reid in his now classic judgement stated as follows at page 258-260:

*"There is no doubt that in actions for libel the question is what the words would convey to the ordinary man: it is not one of construction in the legal sense. The ordinary man does not live in an ivory tower and he is not inhibited by knowledge of the rules of construction. So he can and does read between the lines in the light of his general knowledge and experience of worldly affairs....**What the ordinary man would infer without special knowledge has generally been called the natural and ordinary meaning of the words. But that expression is rather misleading in that it conceals that fact that there are two elements in it. Sometimes it is not necessary to go beyond the words themselves, as where the Plaintiff has been called a thief or a murderer. But more often the sting is not so much in the words themselves as in what the ordinary man will infer from them, and that is also regarded as part of their natural and ordinary meaning...***

Generally the controversy is whether the words are capable of having a libelous meaning at all, and undoubtedly it is the judge's duty to rule on that. I shall have to deal later with the test, which he must apply. Here the controversy is in a different form. The respondents admit that their words were libelous, although I am in some doubt as to what is the

¹¹ Mr. Coombs's submissions filed on 17th February 2016 at para. 5.3

¹² Gatley on Libel and Slander 10th edn., at para. 3.12 et seq

¹³ [1998] QB 520

¹⁴ [1963] 3 All ER 952

¹⁵ [1971] 2 All ER 1156

¹⁶ [2001] 1 All ER 307

admitted libelous meaning. But they sought and seek a ruling that these words are not capable of having the particular meaning, which the appellants attribute to them. I think that they are entitled to such a ruling and that the test must be the same as that applied in deciding whether the words are capable of having any libellous meaning....

In this case it is, I think, sufficient to put the test in this way. Ordinary men and women have different temperaments and outlooks. Some are unusually suspicious and some are unusually naive. One must try to envisage people between these two extremes and see what is the most damaging meaning they would put on the words in question. So let me suppose a number of ordinary people discussing one of these paragraphs, which they had read in the newspaper. No doubt one of them might say, 'Oh, if the fraud squad are after these people you can take it they are guilty.' But I would expect the others to turn on him, and if he did say that, with such remarks as 'Be fair. This is not a police state. No doubt their affairs are in a mess or the police would not be interested. But that could be because Lewis or the cashier has been very stupid or careless. We really must not jump to conclusions. The police are fair and know their job and we shall know soon enough if there is anything in it. Wait till we see if they charge him. I wouldn't trust him until this is cleared up, but it is another thing to condemn him unheard' What the ordinary man, not avid for scandal, would read into the words complained of must be a matter of impression."

In Jones v. Skelton [1963] 1 WLR 1362, 1370-1371 a decision of the Privy Council, Lord Morris of Borth-y-Guest, giving the judgment of the Board, stated:

"It is well settled that the question whether words which are complained of are capable of conveying a defamatory meaning is a question of law and is therefore one calling for decision by the court. If the words are so capable then it is a question for the jury to decide whether the words do in fact convey a defamatory meaning.

In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation....

The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: ***any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words.*** See Lewis v Daily Telegraph Ltd.

The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense."

Finally, in Morgan v. Odhams Press Limited [1971] 1WLR 1239, 125-1252 Lord Morris of Borth-y-Guest described the role of the judge:

*"... the principle is just the same in defamation cases as in any other cases, that the judge in his control of the proceedings will not leave a case to the jury if the jury could not properly find for the plaintiff. So if a plaintiff complains that words which have been published of him are defamatory a **Judge will withdraw the case if he decides that the words complained of are simply not capable of bearing a defamatory meaning. He will decide whether a reasonable man could (not would) regard the words as defamatory.** If they are capable of being so regarded then it will be for the jury to decide whether or not the words did bear a defamatory meaning." In one passage in his judgment the judge said that it was the tendency of the court to leave a meaning to the jury unless it was a very clear-cut case that it should be struck out. Mr. Price on behalf of the appellants, criticised this passage and submitted that it introduced too high a threshold and appeared to hark back to the 0.18, r.19 test.*

Mr. Shields on behalf of the plaintiff, suggested that, in fairness to the judge, too much could be read into that short passage in his judgment. Mr. Shields rightly accepted that the test to be applied was that laid down in the authorities quoted above, without any of the restrictive criteria, which apply under 0.18, r.19.

In my judgment, the proper role for the judge, when adjudicating a question under 0.82, r.3 (a), is to evaluate the word complained of and to delimit the range of meanings of which the words are reasonably capable, exercising his own judgment in the light of the principles laid down in the above authorities and without any 0.18, r.19 overtones. if he decides that any pleaded meaning falls outside the permissible range, it is his duty to rule accordingly. It will, as is common ground, still be open to the plaintiff at the trial to rely on any lesser defamatory meanings within the permissible range but not on any meanings outside it. The whole purpose of the new rule is to enable the court in appropriate cases to fix in advance the ground rules on permissible meanings which are of such cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the plaintiffs reputation, but also for the purpose of evaluating any defences raised, in particular, justification or fair comment. This applies with particular force in a case like the present where there is a defence of justification of a lesser meaning than that pleaded in the statement of claim" [emphases added by the News]

- [17] Applying these authorities to the words pleaded, the News offered its own summary of how the ordinary reader would read the article in question¹⁷:

The First Defendant the current President of SVGFF, after his executive took office and following queries from FIFA, he became aware that during the Claimant's tenure as President, the sum of \$400,000.00 of SVGFF'S money was placed with CMMB, a well-known financial company domiciled in Trinidad, and that he was calling on the Claimant who was the former President of the SVGFF to explain the circumstances under which the money was placed with CMMB and whether or not and what if any benefit to the SVGFF was derived from the money being placed with CMMB, that when the second Defendant interviewed the Claimant, he responded admitting the money had been placed with CMMB

¹⁷ The News' submissions filed on 10th October 2016 at para. 4.1

with the understanding and knowledge of the members of the SVGFF's executive, but expressed surprised (sic) that the First Defendant only became aware of this through FIFA (sic), since audited Financial Statements would have shown the transfer and that further, he had no responsibilities for the SVGFF's finances when he was its president, but that Mr. Ashley Caine the financial officer did. Moreover, that he the Claimant did not interfere since Mr. Caine would have been the officer intimately involved with the transaction. Furthermore, that the Second Defendant after making several efforts to contact Mr. Caine for confirmation, was unable to do so.

- [18] The News concluded that the ordinary hypothetical reader would give his understanding of the article to be¹⁸:

As the former president of the SVGFF the Claimant should give an explanation to the public for the money being placed with the CMMB by the executive of the SVGFF under his watch as President and of the conditions under which it was thus placed and that he explained that he was not the person who is responsible for doing so but that rather Ashley Caine was the financial officer with responsibility and that he did not want to make any comment on the finances since Mr Caine was intimately involved with the matter.

- [19] In respect of the first meaning, the News offers the view that the article could be fairly interpreted to question Mr. Delves' and/or his administration's competence to carry out their mandate as the executive of the SVGFF at the time Delves was in office. It would, however, give the words a strained or forced or utterly unreasonable interpretation to conclude that, in their natural and ordinary meaning, they meant that Mr. Delves "*stole or conspired or acted otherwise fraudulently and/or conspired to misappropriate \$400,000.00 of SVGFF's funds by making the deposit into an account at CMMB...*"¹⁹

- [20] In respect of the second meaning, the News urges the court to find that Mr. Delves chose a defamatory meaning out of many good inferences that could be drawn from the words when one applies their ordinary and natural meaning. Hence it is "*unreasonable to ascribe to the words such a strained or forced meaning.*"²⁰ Lord Blackburn's statement of principle in **Capital & Counties Bank v Henty**²¹ is restated as authority for this logic:

¹⁸ Supra. Note 17 at para. 4.2

¹⁹ Ibid at para. 4.3

²⁰ Ibid at para. 6.1

²¹ [1882] 7 App Cas 741 at 786

... it is unreasonable that when there are a number of good interpretations, the only bad one should be seized upon to give a defamatory sense to the document.

- [21] The News argues that there is no explicit statement that Mr. Delves stole the \$400,000.00 or that he conspired with others to do so. It is also submitted that there are no expressed words that Mr. Delves “*abused his position as president of the SVGFF to conspire with others to misappropriate the \$400,000.00 or any moneys whatsoever*”.²² To arrive at these outcomes, the News argues, the court would have to deduce the ordinary and natural meanings by some strained or utterly unreasonable interpretation. Mr. Delves’ approach, the News submits, would require the reader to be possessed of knowledge:²³

... beyond general knowledge to arrive at those imputations. They are not implications nor inferences which a reasonable listener guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. And no innuendo is pleaded.

Bane and Antidote

- [22] The article repeats comments made by Mr. Delves when he was asked to respond to the assertions made by Mr. Coombs. These comments were the cause of some discussion at the hearing of this application. Mr. Coombs and the News posit that the alleged “sting” of Mr. Coombs’ comments were removed or neutralized by the responses given by Mr. Delves. Indeed the discussion was focused on whether the court should consider these matters at this preliminary stage. Further submissions were presented to the court.

Mr. Delves’ further Submissions

- [23] In his further submissions, Mr. Delves argues that the whole of the article must be considered in determining the meaning of the words in question. It is said that:²⁴

...if something disreputable to a Plaintiff is stated in one part of a publication but this stain is removed in another part of this publication, the bane and antidote must be taken

²² Supra, note 17 at para. 6.1

²³ Ibid at para. 6.3

²⁴ The case of **Cruise v Newspapers PLC[1998] EMLR 780** is provided as authority for this proposition.

together when a court is asked to consider whether this publication is defamatory to the Plaintiff...

- [24] Mr. Delves contends that the question of whether or not the antidote removes the sting is one for the court to determine at trial and not at this early stage. It is only in the most exceptional of cases that a court should venture to rule on such matters at a preliminary stage. For this proposition he relies on Lord Justice Brooke's statement in **Cruise v Times Newspaper**.²⁵

I see no reason to suppose that whatever the judge may have meant by his throwaway comment in an ex tempore judgment, he did not in fact consider whether this might be one of those rare cases in which it is open to a judge to consider that the alleged antidote so obviously extinguishes the alleged bane that there is no issue which can properly be left to a jury. But that that would be a rare situation is well established by persuasive authority. In addition to the judgment of Samuels JA in the Court of Appeal of New South Wales in Morosi v Broadcasting Station 2GB Pty Ltd [1980] 2 NSWLR 418(n) (which Hirst LJ quoted in Mitchell), that court returned to the same topic in Sergi v Australian Broadcasting Commission [1983] 2 NSWLR 669. Hutley JA said at p 670:

"There being no doubt that if portions of the material published stood alone, the plaintiff/appellant would have been defamed, it is only if the whole of the material published does not permit of a defamatory meaning that there is no case to go to the jury. The bane and antidote theory upon which Hunt J relied is merely a vivid way of stating that the whole publication must be considered, not a segment of it: cf World Hosts Pty Ltd v Mirror Newspapers Ltd [1976] 1 NSWLR 712, at 719, 725. It must follow that it is only rarely that it will be possible for a judge to remove from the jury the issue whether the whole publication is defamatory where a publication contains clearly defamatory statements if they had been published on their own. As Samuels JA said: '...cases (ie, when a publication which seeks to refute a calumny which it expressly states may be held incapable of conveying any defamatory meaning) must be comparatively rare.' Morosi v Broadcasting Station 2GB Pty Ltd [1980] 2 NSWLR 418(n) at 419.

The mere making of an apology may not be sufficient; it is a question for the jury whether the apology is so complete as to expunge the defamation and for the judge to determine whether the evidence is so strong as to make a decision to the contrary by a properly instructed jury perverse."

Glass JA said more briefly at p 674:

"The question must in my view be submitted to a jury which is the proper tribunal for determining whether the antidote has overcome the bane: Odgers on Libel and Slander, 6th ed (1929) at pp 22, 23; Morosi v Mirror Newspapers Ltd [1977] 2 NSWLR 749 at p 770; Chalmers v Payne (1835) 2 Cr M&R 156 at 159; 150 ER 67 at p 68. Rare cases may

²⁵ [1998] EMLR 780

occur where the refutation so exactly matches the accusation that there can be no question for the jury.

[25] In this context Mr. Delves presents two further arguments:

- (1) His comments cannot be construed as an antidote to the bane of which he complains. For his words to amount to an antidote:²⁶

*... might be one of those cases in which it is open to a judge to consider whether this might be one of those rare cases (underlined for emphasis) in which it is open to a Judge to consider that the alleged antidote so obviously extinguishes the alleged bane that there is no issue which can properly be left to the Jury (underlined for emphasis) ”, see **Cruise v. Newspapers PLC** (ibid) at pages 333, and 334 (a) - (e).*

- (2) It is usual for a publication to request comment from a person before publication. The comment is usually insufficient to neutralize the attack²⁷.

[26] Mr. Delves concludes that when the courts looks at all of the words of the article and considers the imputations and inferences arising from the language used, it will be found that there no statements expressly disclaiming the allegations or any antidote to the accusations which form the subject of his complaint.

Mr. Coombs' further submission

[27] Mr. Coombs, in his further submissions continued to argue that the words do not convey the meaning suggested by Mr. Delves. His submissions on “bane and antidote” make the following points additional to his earlier submissions:

- (1) In his comments, Mr. Delves never refuted the assertion that the money was sent to CMMB during his time as president. Such refuting would have taken the sting out of “any

²⁶ Mr. Delves' further submissions filed on 12th December 2016

²⁷ David Price, Defamation Law, Procedure and Practice, 4th Edition at para. 2.08

sense of scandal” since it would convey to the hypothetical reader that this was a “proper transaction” as explained by Mr. Delves; and

- (2) The hypothetical reader not avid for scandal would realize that non defamatory meanings could be ascribed to the words. It would be clear to that reader that the moneys were sent by SVGFF and not Mr. Delves. The money was sent to CMMB which is a reputable financial institution. Clarification was sought from Mr. Delves as to how the money ended up at CMMB. After hearing his clarification there could be no doubt as to the veracity of his explanation as he is respected legal practitioner and a person of good repute.

The News’ further submissions

[28] For the News, there is no great elaboration on the issue of bane and antidote in its further submissions. After reiterating its previous stance on meaning, the News makes the following additional points:

- (1) There is no statement in the article to the effect that Mr. Delves personally deposited the money into an account at CMMB or that the account at CMMB was in his name. In fact, Mr. Delves admits that the money was placed into the account at CMMB with the knowledge of the then executive at SVGFF, that the transaction is reflected in the SVGFF’s financial statements and that Mr. Caine is the person responsible for the explanation about the transaction since he, Delves, did not handle such matters. Based on those facts, only an unreasonable reader would infer that Mr. Delves stole the money sent to CMMB;
- (2) The article makes the point that under Mr. Delves’ administration, “football” sent the money to CMMB, the information is very interesting and Delves needs to come and tell the people. However, the article goes on to publish Delves’ explanation. The reasonable reader of *“ordinary intelligence, with the ordinary person’s general knowledge and*

experience of worldly affairs”²⁸ would be aware that CMMB is “a recognized financial institution based in Trinidad”²⁹. Mr. Delves’ assertion that the moneys were accounted for in the SVGFF’s audited statements would be interpreted by the reader to mean that the transaction was properly made. This interpretation would be further fortified by Mr. Delves’ statement that he did not interfere with the responsibilities assigned to the officers under his administration. As such he would not comment on financial matters since Mr. Caine was the officer “intimately involved with the transaction.”³⁰

- (3) Mr. Delves has seized upon the “most egregious interpretation of the article”³¹ when there are other non-defamatory meanings which can be drawn from the words published.

Analysis and conclusion

- [29] Where proceedings for defamation have been filed, the CPR permits the claimant to apply to the court for a ruling on whether or not the words complained of bear the meaning or meanings ascribed to them in the statement of claim. CPR 69.4 dictates the procedure in this regard :

69.4 (1) At any time after the service of the statement of claim, either party may apply to a judge in chambers for an order determining whether or not the words complained of are capable of bearing a meaning or meanings attributed to them in the statement of case.

(2) If it appears to the judge on the hearing of an application under paragraph (1) that none of the words complained of are capable of bearing the meaning or meanings attributed to them in the statement of case, the judge may dismiss the claim or make such other order or give such judgment in the proceedings as may be just.

- [30] The exercise on this application is not to determine whether the words of the article are in fact defamatory. The court’s obligation on this exercise is to determine whether the words complained of bear the meaning or meanings pleaded. If not, whether (and what) lesser meaning or meanings

²⁸ The News’ further submissions filed on 12th December 2016 at para. 14

²⁹ Ibid

³⁰ Ibid at para. 15

³¹ Ibid at para. 20

they do bear. I have already recited above in this ruling much of the judicial guidance on the approach to be taken to determining the meaning or meanings of the words pleaded. Some general principles can be extracted from the learning:

- (1) The court is to give the words of the article their natural and ordinary meaning when the article is considered as a whole. The object is to evaluate the words complained of and to set out a range of meanings which the words are capable of conveying. Hirst LJ in **Mapp v News Group Newspapers Limited** assesses the role of the court in this way³²;

...the proper role for the judge, when adjudicating a question under O.82, r.3 (a), is to evaluate the words complained of and to delimit the range of meanings of which the words are reasonably capable, exercising his own judgment in the light of the principles laid down in the above authorities and without any O.18, r.19 overtones. If he decides that any pleaded meaning falls outside the permissible range, it is his duty to rule accordingly. It will, as is common ground, still be open to the plaintiff at the trial to rely on any lesser defamatory meanings within the permissible range but not on any meanings outside it. The whole purpose of the new rule is to enable the court in appropriate cases to fix in advance the ground rules on permissible meanings which are of such cardinal importance in defamation actions, not only for the purpose of assessing the degree of injury to the plaintiffs reputation, but also for the purpose of evaluating any defences raised, in particular, justification or fair comment...

- (2) While the exercise is one for the court, the meaning or meanings must be arrived at not as a matter of legal construction but as the meaning or meanings that would be conveyed to an ordinary reasonable reader. Accordingly, the court must be mindful of the fact that it is applying the mind of an ordinary reasonable reader who will bring his own general knowledge and experience of worldly affairs to the exercise. The ordinary reasonable reader can read between the lines. He is not naïve but he is not out to seek scandal or to embrace one bad meaning where other non-defamatory meanings can be deduced. In this context, a court should

³² [1998] 2 WLR 260 at 265

not attach a derogatory meaning to the words when a number of good interpretations exist.

- (3) In conducting the exercise the court should not defer to overelaborate analysis or too literal an approach. The court is to disregard meanings which can only emerge from a strained or forced or utterly unreasonable interpretation of the words in question.
- (4) The court is also to bear in mind that the ordinary and natural meanings are not only the literal meaning or meanings which may be taken from the expressed words but any implication and/or inference which the hypothetical reasonable reader would draw from the words. This is premised on the hypothetical reasonable reader who is guided only by his general knowledge as opposed to rules of construction. Further that the hypothetical reasonable reader is not “avid for scandal”. If any such implication or imputation reasonably drawn tends to lower the claimant in the estimation of right thinking members of the public or expose the claimant to ridicule or hatred, they would be defamatory;
- (5) The defendants’ motives are irrelevant to the question of whether or not the words are capable of the meaning or meanings to be ascribed to them. Consequently, the court would not be limited to the meanings to be ascribed to the words by the defendants or any defences they may offer. Equally, the court is not constrained by the meanings or interpretations proffered by the claimant.

[31] In arriving at whether the words bear the meanings pleaded, I would immediately indicate that a misappropriation of the funds in question may amount to theft. Mr. Delves could therefore be subjected to criminal charges if an allegation of misappropriation is borne out. It is my view therefore that the first and second meanings can be conjointly interpreted to state that:

- (1) Mr. Delves stole, misappropriated or abused his office to steal or misappropriate the funds in question;
- (2) Mr. Delves conspired with others to steal or misappropriate the funds in question.

- [32] Do the words convey such meanings? Mr. Coombs and the News submit that the suggested meanings are not apparent or implied on the words used. Mr. Coombs says that in any event the sting of any slur is removed by the comments made by Mr. Delves and reported in the article. I disagree with the argument that the court could, at this juncture, determine whether any alleged bane has been removed by the alleged antidote. As correctly stated by Mr. Delves in his further submissions and indeed conceded by Mr. Coombs and the News, the court's task on this exercise is to consider whether the whole article to ascertain what meanings can be conveyed by all the words of the article. As it is instructed in the case of **Cruise**, it is only in the rare instance that it is open to a court to find at this preliminary stage that the alleged antidote has so extinguished the alleged bane that there is no case to proceed to trial.
- [33] I have formed the view that when the whole article is considered, the ordinary reasonable reader would be left with the impression that something was amiss with SVGFF funds during Mr. Delves' term in office as president. The story suggests that money was sent overseas to CMMB without proper record or trace since the existence of the transfer only came to light after FIFA made a query and after the new president, Mr. Coombs, carried out an investigation. What is further telling is the fact the new president informed the News that he could not say what benefit inured to SVGFF from the placement of the funds overseas. It begs the question to whose benefit the funds stood. In fact, the title of the article sets up the tone of its contents when it says in its headlines that Delves needs to explain. The suggestion is that he has some knowledge of the transfer of the funds, why they were placed at CMMB and that he could explain why the transfer was only discovered after investigations. The further suggestion is that Mr. Delves is the person best placed to advise on what benefits, if any, the SVGFF stood to gain from the money being sent overseas to CMMB. I would agree that there is no expressed allegation of theft of the funds by Mr. Delves. However, it appears to me that the ordinary, reasonable reader would be left with the impression of misdeed and/or gross maladministration or gross incompetence by Mr. Delves and/or his administration.
- [34] I should add for clarity that my view of the meanings also considers Mr. Delves' explanation that, in essence, the transfer was not done by him, that the records should demonstrate the existence of the same and that Mr. Caine was the person with the details of the transaction. Mr. Delves'

explanations do not, in my opinion serve to diminish or extinguish the overall tone of the article or its imputations of wrongdoing or gross mismanagement and/or gross incompetence.

[35] I find therefore that the article conveys the following meanings:

- (1) Mr. Delves abused his office to transfer the sum of \$400,000.00 to CMMB without perceptible benefit to SVGFF either for his own benefit or otherwise;
- (2) Mr. Delves conspired with others to transfer the sum of \$400,000.00 to CMMB without perceptible benefit to SVGFF either for his own benefit or otherwise;
- (3) The sum of \$400,000.00 of football money was transferred to CMMB without perceptible benefits to the SVGFF due to Mr. Delves' and/or his administration's gross mismanagement of the affairs of the SVG and/or through gross incompetence on the part of Mr. Delves and/or his then SVGFF administration.

[36] Having found that the words used by Mr. Coombs and the News conveyed the above stated meanings, Mr. Delves is permitted to amend the claim accordingly. Mr. Delves may file and serve the amended pleadings within 14 days of today's date. Mr. Coombs and the News may file defences to the further amended pleadings within 28 days of the receipt thereof. Any reply to the defences must be filed within 14 days of the receipt of the same. The matter will take its usual course thereafter. The parties are to bear their own costs on this application.

.....
RAULSTON GLASGOW
MASTER