

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO: ANUHCv2009/0221

BETWEEN:

DEAN JONAS

Claimant

AND

JAMES ROSE aka TANNY ROSE

Defendant

Before:

Master Cheryl Mathurin

Appearances:

Mrs. Denise Parillon for the Claimant

Mr. Kendrickson Kentish for the Defendant

2011: January 31st, May 6th

September 21st

RULING

- [1] **MATHURIN, M:** During a broadcast on ZDK radio station on the 26th May 2010, the defendant (Mr. Rose) made the following statements on a call in programme;

"Sly? Me call Minister Daniel this morning... and he tell me that he was down Cooks by the Prime Minister and if me can come down dey..."

...them drop me down dey and we were discussing the whole question a de election. So me ask the PM what he is going to do..."

But Sly, while I was there, me and Daniel, me see one fellar lakka he a hide; he no want me fu see he. He and Jackie dey, right, and he no want me fu see he 'tall... A Dean Jonas!... You na hear wha' me say? DEAN JONAS! Dean min down dey too."

- [2] The Claimant (Mr. Jonas) has claimed that the innuendo of the words is defamatory of the him, that he cannot be trusted, is a deceiver and traitor to the ALP and he is one clandestinely having political discussions with the senior members of the United Progressive Party. Mr. Jonas also states that the words complained of were published and broadcasted maliciously in that Mr. Rose was motivated by his political agenda and his strong dislike of him. The Claimant has not pleaded that the natural and ordinary use of the words alleged are defamatory, neither has he pleaded what they were capable of meaning in their natural and ordinary sense. The claim alleges defamation by innuendo and malice.
- [3] Mr. Rose has applied to have a ruling on whether the words are capable of the meanings of alleged in the Claim. He also asks that the Court make an order that the words relied on by Mr. Jonas do not bear a defamatory innuendo and that the Claim be struck out as an abuse of process and as disclosing no cause of action.

INNUENDO

- [4] Lord Hodson in **Lewis v Daily Telegraph Ltd** (1963) 2 AER 151 at 165 referred to the area of innuendo in defamation cases and stated as follows;

"The true innuendo is that which depends on extraneous facts which the plaintiff has to prove in order to give the words the secondary meaning of which he complains."

Clearly with the advent of **The Civil Procedure Rules 2000** which requires Parties to plead the facts on which they intend to rely to prove their case, these facts would have to be pleaded in order to be raised at trial. Specifically, Part 69.2 (a) of **The Civil Procedure Rules 2000** requires that the Statement of Claim must, if the Claimant alleges that the words or matters complained of were used in

a defamatory sense other than their ordinary meaning- give particulars of the facts and matters relied on in support of such sense. It is clear that Mr. Jonas would have to plead the particulars of the facts and matters relied on in support of a sense other than the ordinary meaning.

- [5] Counsel for Mr. Rose states that Mr. Jonas has pleaded no particulars or extrinsic facts in support of the allegation of defamatory innuendo raised in the claim. He refers to the case of **Slim v Daily Telegraph Ltd** (1968) 1 AER 1237 wherein Salmon LJ stated the law in reference to innuendo.

"A "true" or "legal" innuendo is a meaning, which is different from the ordinary and natural meaning of the words, and defamatory because of special facts and circumstances known to those to whom the words are published. The ordinary meaning and innuendo give rise to different causes of action, and, accordingly, must be separately pleaded.

- [6] Counsel refers to Gately on **Libel And Slander**, 10th Edition, Para 3.18

"True Innuendo: extrinsic facts... "Such facts have also been referred to as "added", "extraneous" or "special" facts, or "something outside the words". They may, for instance, be the circumstances of publication, any accompanying gestures or expression or tone of voice, possibly slang or technical meaning or the meaning of a foreign language, or some additional fact which would allow those who knew it to read a defamatory meaning into the words published. The key point is that the matter is not merely one of general knowledge.

Counsel also refers to Gately, Para 3.37;

"If the defamatory meaning arises indirectly by inference or implication from words published without the aid of extrinsic facts, there is said to be a "false" or "popular" innuendo and this does not give rise to a separate cause of action."

- [7] Counsel for Mr. Jonas however states that relevant facts were pleaded in the Claim. She states that the Claim states that Mr. Jonas is a political candidate for the Antigua Labour Party (ALP) (Para 1), he is a former member of the United Progressive Party (UPP) (Para 4) has publicly been referred to as "Judas" by the Defendant, implying that he is a traitor and cannot be trusted, having left the UPP to become a member of the ALP (Para 5).

- [8] It is clear that when innuendo is pleaded, the Claimant has to identify the defamatory meaning he contends the words convey, and identify the relevant extrinsic facts, and the person(s) to whom the words were published and who are alleged to have had knowledge of the extrinsic facts which are not merely matters of general knowledge. An "innuendo" is said to exist where the defamatory meaning arises because of special facts which are known to the recipients. As the learned authors of the 9th Edition of Gattley on Libel and Slander observe at paragraph 3.17:

"This has two principal consequences. First, the plaintiff must plead the special meaning he contends the words have and prove that the facts upon which this meaning is based were known to at least one of the persons to whom the words were published. Secondly, the meaning resulting from those facts gives rise to a cause of action separate from that (if any) arising from the words in their ordinary and natural meaning because it is an extended meaning not present in the words themselves."

- [9] I am of the opinion therefore that it is insufficient for innuendo as a separate cause of action to be pleaded by mere implication from the general body of the statement of claim. It seems to me that the innuendo meaning pleaded cannot go any further than the natural ordinary meaning because no special facts known to listeners of the programme which would give the words an extended meaning have been pleaded. Part 69.2(b) clearly mandates the necessity for particulars of facts and matters to be relied to be pleaded when the claimant alleges that the words complained of bear a meaning other than the ordinary one. The failure to comply with that rule would mean that it is only open therefore for the claimant to rely on the natural and ordinary meaning of the words in question and I rule accordingly.

MEANING AND MALICE

- [10] The next question to consider is whether words are capable of bearing the meanings alleged by Mr. Jonas. The pleadings are not clear as to what meaning the claimant attributes to the words in question. However paragraph 10 of the claim although in my opinion clumsily pleaded, satisfies me that these are the meanings that Mr. Jonas is alleging can be gleaned from the statement of Mr. Rose. It states as follows;

"The said words published by the Defendant were calculated to disparage and damage the Claimant as a political candidate for the Antigua Labour Party in the anticipated upcoming elections in the St George's constituency and/or to impute that the Claimant is a traitor and/or a deceiver and/ or one who cannot be trusted and that he was secretly having political discussions with the Prime Minister and Minister Wilmouth Daniel, senior members of the United Progressive Party (UPP)."(My emphasis)

[11] Mr. Jonas also states that the words were used maliciously and that Mr. Rose was motivated by his political agenda. He has pleaded particulars of malice to the effect generally that Mr. Rose made the statements with intent to injure his reputation and chances of success in the upcoming election in which he was a candidate for Antigua Labour Party (ALP). It must be noted here that "malice" means ill-will or spite or any indirect or improper motive in the mind of the defendant at the time of publication.

[12] Another opinion as to what constitutes malice, was expressed by Cory J speaking on behalf of the Supreme Court of Canada in Hill v Church of Scientology of Toronto, CanLII59 (SCC); [1995], DLR (4th) 129 at 17, who observed as follows:

"Malice is commonly understood, in a particular sense, as spite or ill will. However, it also includes ... "any indirect motive or ulterior purpose" that conflicts with the sense of duty or the mutual interest which the occasion created. Malice may be also established by showing that the defendant spoke dishonestly, or in reckless disregard for the truth."

[13] The concept of malice was also discussed in Dorset Flint & Stone Blocks Ltd v Moir, [2004] EWHC 2173. In that case, Eddy J warned that: *"Allegations of malice, like allegations of fraud, need to be scrutinized with particular care to ensure that there is a sufficient evidential basis for alleging dishonesty or inviting such an inference. Such allegations should not be made formulaically by mere assertion or used as a tactical weapon to try to bludgeon people into submission or compromise. It is no good merely to say, "I have put in a plea leave it up to the jury to decide." There must be facts alleged which, if true, are more consistent with the presence of malice than with absence."*

[14] It would appear, based on the foregoing principles and concepts that in the present case the issue of malice can be supported by the facts pleaded in the particulars that the statements were false and the language and tone used intended to injure the Claimants reputation as well as the fact pleaded that Mr. Jonas was a former member of the UPP that had crossed over to the ALP. The pleading of malice if proven can establish that Mr. Rose had an improper motive in broadcasting the defamatory statement about Mr. Jonas. A consequence of malice being established is that it becomes irrelevant that the publisher of the slanderous statements may not have intended to harm the claimant's reputation. The existence of malice also serves to inflate the damages that may be awarded. The existence of malice however is a question of fact which would have to be determined at trial and as such I will make no further ruling.

[15] In conclusion, it is hereby ordered that the pleadings be amended to remove all references to and reliance on defamatory innuendo within 14 days hereof after which the matter will resume its normal course. Costs to the Defendant are ordered in the sum of \$1,500.00 to be paid before the first case management hearing of the matter.



CHERYL MATHURIN

MASTER