

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NUMBER SLUHCV2002/1145

BETWEEN:

DR. DAVID CAROL BRISTOL

Plaintiff

AND

DR. RICHARDSON ST. ROSE

Defendant

Appearances:

Mr. James Bristol for Claimant

Mr. Horace Fraser for Defendant

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2005: March 21, 22
April 21
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JUDGMENT

Introduction

1. **SHANKS J:** The Claimant is a consultant general surgeon. He was employed by St Jude hospital in November 1993 and was appointed Medical Director in March 1994. The Defendant is also a consultant general surgeon. He was employed by the St Lucian government as an orthopaedic surgeon in 1975. He worked from time to time at St Jude hospital. It appears that, whatever they may have said at the time, neither man ever had a high opinion of the other.
2. In October 2002 the Claimant received a letter from the St Jude Hospital Administrator informing him that his contract as Medical Director would not be renewed at the end of November. He sought the assistance of the St Lucia Medical and Dental Association

(SLMDA) to get his contract renewed. On 5 November 2002 the Defendant wrote a letter about him to the President of SLMDA which he copied to the Minister of Health, the Permanent Secretary, the Chief Medical Officer and the Administrator of St Jude hospital. The letter was in these terms:

November 5, 2002

*The President,
St. Lucia
Medical and Dental Association
Castries*

Dear Colleagues,

I write to express my utter dismay at the enthusiasm with which the S.L.M.D.A. has set out to address the non renewal of Dr. Bristol's contract issue.

There are far more important issues I shall not mention here, which were presented for discussion, but have never been considered by the S. L. M. D. A.

I shall outline some responses, the details of which can be taken up at future discussions, and which have convinced me that Dr. David Bristol's contract should never be renewed either as Medical Director or General Surgeon. Further, he should not be given privileges at any Government Hospital.

This doctor's profound arrogance and conceit have generated an unhealthy atmosphere at St. Jude's Hospital and has resulted in patient death and morbidity. I worked there from 1975 until about 1995, one year after he became Medical Director. The reasons I gave for discontinuing my services at St. Jude were made known to the then C.M.O. and the Medical Association who did not think they merited discussing or who were pressured not to, by the sinister clique of support he had in the Medical Association and the former political administration.

The volunteer doctors at St. Jude Hospital have been given yeomen services. Dr. Bristol stopped many from coming to St. Jude's for reason known only to him.

- *He stopped plastic surgeon, D. Goldstein, an outstanding one, was stopped because he was "rude".*
- *Dr. Dusan, Anaesthetist, was fired because he disagreed with Bristol's management of a head injury patient for surgery;*

- *The French Oncologist was stopped – patients now have to go to Martinique to be assessed, come back to St. Lucia, then return to Martinique for Radiotherapy.*

I can only go on and on at a discussion with you about the doctor's unconscionable practices.

The specialist services given at St. Jude Hospital are no longer available on the scale like before – The Plastic Surgery, Head Surgery, Paediatric Orthopaedics, Sub Speciality Urology, etc. All this good work was discontinued by Mr. Bristol, supported by the clique in this S.L.D.M.A. Dr. Bristol was the Medical Director, Administrator and Accountant at St. Jude Hospital. He was all powerful and systematically rid St. Jude of the people he thought would take away some of this power. He was out of control and his worsening arrogance and impertinence may spell doom for St. Jude Hospital.

Dr. Bristol has never been an asset to St. Jude Hospital. I see no merit in the support for renewal of contract from S.L.M.D.A. I strongly object to his reappointment in the Government Service and I do not think he deserves to be given privileges at any government hospital.

This view is shared by the more informed doctors in the S.L.M.D.A., who have been deliberately excluded from your meetings of the S.L.M.D.A.

3. The Claimant's attempt to retain his job at St Jude was unsuccessful. In December 2002 he started this libel claim against the Defendant. The Defendant says in his Defence that the letter is not defamatory, that in so far as it contains facts they are true and in so far as it contains comment it is fair comment, and that the letter was protected by qualified privilege. The Claimant alleges in response to the qualified privilege and fair comment defences that the Defendant was acting maliciously. In his written submissions put in after the trial Mr Fraser for the Claimant abandoned the defence of fair comment (see para 2.2).

Issues

4. The issues I must resolve are therefore as follows:
 - (1) what the letter means and whether it is defamatory;
 - (2) whether what is said is true (i.e. the defence of justification succeeds);
 - (3) whether it is protected by qualified privilege;
 - (4) whether the Defendant acted maliciously;

(5) the appropriate level of damages.

Evidence

5. For the Claimant I heard evidence from Roy White, the Hospital Administrator for most of the period the Claimant was there, Dr Didier, a physician specializing in internal medicine, Leonard Lashley, a radiologist, Stephen King, the Chief Medical Officer, Bernadette St Catherine, a nurse, Christy Daniel, a urologist, and the Claimant himself. For the Defendant I heard evidence from Virginia Talium, the mother of a young patient seen by the Claimant in 1998, Palcous Lendor, a gynaecologist who said the Claimant dismissed him in 1999, Victor Delice, a patient who saw the Claimant in 1998 (he had broken his neck in a road accident and appeared in court in a wheelchair), the Defendant himself and Dr Trevor Anatol, who came from Trinidad to give expert evidence about the quality of the care given to ten particular patients at St Jude hospital. I also received helpful written submissions from Mr James Bristol and Mr Fraser after the trial.

Meaning

6. I do not see how the Defendant can seriously contend that the letter was not defamatory and seriously so. At the very least the letter alleged that the Claimant was not fit to be the Medical Director of St Jude hospital because, in order to satisfy his own arrogant wish to retain power, he had prevented doctors (in particular volunteers) working at St Jude and limited the specialties it could offer which had caused patient death and morbidity. This is a seriously defamatory thing to say about a doctor and medical director of a hospital.

Justification

7. The onus is on the Defendant to show that the defamatory words in the letter are true. In spite of the mass of evidence produced the Defendant did not come close to satisfying me that the Claimant had prevented doctors working at St Jude for any but proper reasons or that he had limited specialties or that either of these matters had caused patient death or morbidity. Indeed, as Mr James Bristol points out, it was not

even pleaded that the deaths and morbidity pleaded at paras 6A(vii)-(xv) of the Defence had been caused by anything other than individual cases of inadequate treatment. I have no hesitation in rejecting the defence of justification.

Qualified privilege

8. The basic test as to whether a communication is made on a privileged occasion is that set out in the much quoted dictum of Lord Atkinson in *Adam v Ward* [1917] AC 309 at 334: "...a privileged occasion is...an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is made has a corresponding interest or duty to receive it...". In determining whether an occasion is privileged the court has regard to all the relevant circumstances.
9. The relevant circumstances in this case seem to me that:
 - (1) the Defendant is a doctor with a senior position in St Lucia who worked from time to time at St Jude and had an interest in health care in St Lucia;
 - (2) there was an issue whether the Claimant's contract as Medical Director of St Jude hospital should be renewed on which the Defendant had a view;
 - (3) he communicated that view to the SLMDA (an organization of which both he and the Claimant were members and which was being asked to support the renewal of the Claimant's contract) and to four others who were directly concerned in the matter and to no-one else.
10. I also take account of the Defendant's evidence at paras 36-39 and 49-51 of his witness statement (which was not really challenged and which I accept) in so far as it is not already covered by (1) to (3) above. Taking account of these circumstances it seems clear to me that this letter was written on a privileged occasion and that the Defendant has a defence to the libel claim unless the Claimant is able to establish malice.

11. Mr James Bristol referred me to *Reynolds v Times Newspapers* [1999] 4 AllER 609 and submitted that in this case the court should also take account of the matters set out by Lord Nicholls at p629b-d and that, taking account of them, the Defendant could not avail himself of the defence of qualified privilege. It is certainly true that if those matters are relevant the Defendant would be in difficulty (e.g. no comment was sought by the Defendant from the Claimant before writing the letter, the letter did not contain the Claimant's side of the story and the tone was by the Defendant's own admission "abrupt or harsh" (see para 43 of his witness statement). I am satisfied, however, that Lord Nicholls's list of matters to be taken into account is relevant to a case where a newspaper or other news medium publishes allegations to the world at large and not to a case like this one of limited publication where the statement is made and received by persons with a special interest or duty in relation to the matter. That is clear I think from a full reading of the opinions in *Reynolds* and, if there were any residual doubt on the matter, it is fully dispelled by the passage in the opinion of Lord Cooke at p645d-j.

Malice

12. Full details of an allegation of malice must be set out in a party's statement of case and the court will not allow him to put forward any other basis for the allegation at trial. In this case the allegation of malice against the Defendant is put on a very narrow basis. It is said that the Defendant knew that it was false to say that the Claimant had fired or stopped volunteer doctors coming to St Jude (or was reckless as to the truth of the allegation) because he knew the Claimant had no authority to hire and fire volunteer doctors or stop them coming to St Jude because he was on a committee which had reported in September 1998 that there was provision for the Hospital Administrator to recruit such volunteers as were deemed necessary: see paras (8)(d), 6(x), and 6(t), (u) and (v) of the Reply.
13. I confess I find the Claimant's reasoning difficult to follow. I do not see how the fact that the Hospital Administrator had power to recruit volunteers necessarily meant that the Claimant had no power to fire them or stop them coming. And in any event, the fact (if it be so) that the Claimant had no formal authority to fire or stop them coming, does not mean that he might not have done so in fact. In any event I am satisfied that

the Defendant honestly believed that the Claimant had stopped volunteers coming to St Jude and/or fired them even if he was wrong in that belief and I refer in this connection to paras 40 to 47 of his witness statement which he was only cross-examined on briefly and which I accept as being an honest account by the Defendant of the basis for his belief that the Claimant had fired or stopped volunteer doctors coming.

14. No other basis for the allegation of malice was advanced in the Reply and in these circumstances I must reject it. It follows that the plea of privilege must succeed and the Claimant's claim must fail.

Damages

15. In case I am wrong in relation to privilege or malice it may be helpful if I indicate the level of damages which would have been awarded if the Claimant had succeeded on his claim for libel. Although the Claimant did not keep his job as Medical Director of St Jude there is no claim for loss of earning or other financial loss. He is therefore confined to general damages for the injury to his reputation and to his feelings. Aggravating factors are that the letter is seriously defamatory, that the Defendant has failed even to acknowledge that that is so and that he ran a hopeless defence of justification. A highly mitigating factor is that it was published to a very small number of people who had an interest in the subject matter and would have been in a position to judge for themselves the truth of the allegations. In all the circumstances the maximum award I would have made would have been \$7,500.

Result

16. The claim is dismissed.

Costs

17. Subject to any submissions the parties may wish to make I would not be inclined to award the Defendant any costs in this case notwithstanding his success for the following reasons. His letter, although it was written on an occasion of privilege and no

actual malice has been proved against him, was an intemperate and unprofessional attack on a fellow doctor. The manner in which he chose to pursue his defence was also wasteful and, on certain points, deeply unrealistic. The letter was obviously defamatory but this was not admitted. His attempt to justify was doomed to failure. The evidence called on his behalf about the ten patients came nowhere near to proving his case that their treatment had been compromised by the Claimant's way of running the hospital. The expert who came all the way from Trinidad did not assist this case at all. And calling the mother of a young patient who had suffered a distressing condition and a man who had to come in a wheelchair to give evidence was in my view not only pointless but rather heartless. Neither side have covered themselves in glory in this case. It seems to me that they should each bear their own costs.

Murray Shanks
High Court Judge (Ag)