

SAINT LUCIA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2000/ 0040

BETWEEN:

PETER AUGUSTE

Claimant

and

CIBC CARIBBEAN LIMITED

Defendant

Appearances:

Mr. Alvin St. Clair for the Claimant

Mr. Kenneth Monplaisir QC for the Defendant.

2004: May 11

June 14

DEFAMATION...SLANDER..WHETHER WORDS UTTERED ARE CAPABLE OF
BEARING A DEFAMATORY MEANING...SLANDER ACTIONABLE PER SE...NOMINAL
DAMAGES AWARDED

JUDGMENT

1. HARIPRASHAD-CHARLES J: Mr. Peter Auguste brought these proceedings against CIBC (Caribbean) Limited (the Bank) claiming among other things, damages for breach of confidence and defamation of character.

The Facts

2. On or about August 1999, Mr. Auguste applied to the Bank for a loan of \$47,000.00 to purchase a motor omnibus. After complying with all the requests and demands of the Bank through its employee, Ms. Avril Leonce, he was told that the loan would be processed and he should return sometime later to find out whether or not it had been approved.

3. Mr. Auguste made several unsuccessful trips to the Bank without any positive response. Then on 26th November 1999, he went to the Bank and demanded his documents from Ms. Leonce. A heated exchange of words ensued in the presence of many customers and staff of the Bank. During the altercation, Ms. Leonce is alleged to have uttered the following words to Mr. Auguste: "Get out of my office, you are on drugs and that is the reason you will not get a loan from this bank or any other bank."
4. Mr. Auguste did not leave right away but sought an explanation from Ms. Leonce. In his attempt to do so, he became loud and aggressive. In order to prevent further unpleasantness, Mr. Sheldon Innocent, the then Head Teller (whom Mr. Auguste knew for many years) came over, appeased him and asked him to sit down. Shortly thereafter, Mr. Auguste left the Bank and headed straight for his lawyer's office.
5. His lawyer wrote a letter to the Bank demanding an apology and discussion towards an amicable settlement of the matter. The Bank did not budge. Instead, the then Manager, Mr. Wade Gbalajobi met Mr. Auguste one day by the Tapion School at La Toc and bitterly complained that he should have sorted out the matter with him rather than "going to a junior lawyer to write a crap letter." Mr. Gbalajobi also told Mr. Auguste that he had torn up the letter and threw it away and as such, he would allow the matter to take its normal course.
6. Two months after the alleged incident, Mr. Auguste instituted these proceedings against the Bank.
7. In its defence filed on 6th April 2000, the Bank denied all of the allegations raised by Mr. Auguste. Specifically, the Bank denied the following:
 - i. That Ms. Leonce caused the publication of the words complained of.
 - ii. That the said words or any of them referred to or were understood to refer to Mr. Auguste.

- iii. That the said words bore or were understood to bear or were capable of bearing the meanings or any defamatory meaning of Mr. Auguste.
- iv. That it was in breach of its duty of confidence regarding the financial status or otherwise of Mr. Auguste.
- v. That Mr. Auguste's credit, character and/or reputation as alleged were damaged.

The Issues

8. In their well-documented and comprehensive written submissions, both Mr. Monplaisir QC and Mr. St. Clair identified the issues as follows:
- (1) Were the words complained of actually uttered?
 - (2) Were the words capable of a defamatory meaning such that it lowered Mr. Auguste in the eyes of right-thinking members of the public?
 - (3) Does the particular circumstance bring the case within the cases where slander is actionable per se?
 - (4) Was Ms. Leonce acting as a servant of the Bank?
 - (5) Damages, if any.

Were the words complained of actually uttered?

9. The question of whether the words were uttered is purely a question of fact to be determined based on the evidence adduced. Learned Queen's Counsel, Mr. Kenneth Monplaisir appearing for the Bank submitted that it is easy for the court to conclude that there was an exchange of words between the parties but that Ms. Leonce never uttered the words complained of. Instead, she was so overwhelmed by the threatening words used by Mr. Auguste that she shouted at him to get out of her office.
10. Mr. Alvin St. Clair appearing for Mr. Auguste argued that there is overwhelming evidence from at least two independent witnesses including Mr. Sheldon Innocent that Ms. Leonce did utter the words complained of. He substantiated his argument by calling both of those witnesses to testify at the trial. The first to give evidence was Mr.

Jose Zimbanni. He was at the Bank on the day in question when he overheard a female voice saying "you are on drugs; that is the reason you will not get a loan from this Bank or any other bank. And I will see to it that you do not get a loan from this Bank or any other bank." He was cross-examined and he was unshakeable in his testimony.

11. Mr. Auguste next called Mr. Innocent to testify on his behalf. Mr. Innocent was unavailable to sign his witness statement but in giving oral testimony, he testified that its contents were true and correct. It is also significant to note that his witness statement was a verbatim transcript of a witness statement which he attested to before a Justice of the Peace on 8th March 2004. At paragraph 3, he stated:

"I was approaching the office of loans officer Avril Leonce when I heard the outburst from the occupant of the office, Avril Leonce. 'Get out of my office, get out of my office, you are on drugs, that is why you will not get a loan from the bank. For that matter I will see to it that you do not get a loan from this Bank or any Bank.'"

12. Under cross-examination, Mr. Innocent, youthful and exuberant suddenly lost his powers of retention. He could not recall attesting to a witness statement before a Justice of the Peace three months ago. He was not sure of the contents of that witness statement nor was he sure what words were uttered on the day in question. Mr. Innocent became very selective in his responses. Needless to say, I found him to be an untruthful and evasive witness.
13. Based on the evidence as a whole, I came to the inescapable conclusion that Ms. Leonce did utter the words complained of and I so find.

Were the words capable of a defamatory meaning?

14. Mr. Monplaisir QC quite attractively argued that even if the words complained of were used, they were incapable of bearing the meanings or any defamatory meaning of the claimant as alleged at paragraph 7 of his statement of claim. He submitted that the test to be applied is an objective one; that is, the meaning which ordinary reasonable men to whom the publication was made would understand them.

15. Mr. Monplaisir next submitted that the words “you are on drugs and that is the reason you will not get a loan from this bank or any other bank” could not in their ordinary and natural meaning impute that Mr. Auguste is a criminal, a drug addict, a rogue and someone to shun and ridicule. He however conceded that in the realm of criminal law, those words would be regarded as “insulting”.
16. Mr. St. Clair, on the other hand argued that the words complained of would lead one to conclude that they were meant to insult, lower the image of Mr. Auguste, create an image of a most disgusted criminal in the eyes of the members of the public namely a drug dealer and also a drug user and indeed a person who could not command any sort of respect financially or otherwise in order to obtain a loan from a financial institution in Saint Lucia. Mr. St. Clair relied heavily on the case of *Stephanie Anna James v Lennard Peter Moise*¹. It bears close affinity to the present case and involves a similar claim for slander. Chong J. (as he then was) having found that the words complained of were in fact uttered, went on to decide the next issue of whether, as a matter of law, the words complained of were capable of conveying a defamatory meaning and in so doing lowered the claimant in the estimation of ordinary right thinking persons. In arriving at the conclusion that the words were indeed defamatory of the claimant, the learned Judge brought to bear the local idiosyncrasy of Caribbean society.
17. In like manner, I firmly believe that the words uttered by Ms. Leonce could only have conveyed the meaning ascribed to them by Mr. Auguste – that he is a criminal, a drug addict, a rogue and someone to shun and ridicule. In my opinion, he has satisfied the onus placed on him and has proven that the words used were defamatory of him and lowered him in the estimation of right thinking persons.

Slander actionable per se?

18. Article 989H of the Civil Code states as follows:

¹ High Court Civil Suit No. 37 of 1996 (unreported) (Commonwealth of Dominica)

“In an action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage, whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.”

19. The case of *Webb v Beaven*² is also instructive. It was held that “words imputing that the plaintiff has been guilty of a criminal offence will support an action for slander without special damage, and it is not necessary to allege in the statement of claim that they impute an indictable offence.”
20. In my judgment, the law is clear. This is a case where special damages need not be proven as it is a case of an action for slander actionable per se. The arguments advanced by Mr. Monplaisir are therefore untenable.

Liability of the Bank

21. At paragraph 9 of the defence, the Bank simply denied that it is vicariously liable for the actions of Ms. Leonce. Mr. Monplaisir argued that Ms. Leonce should have been sued and not the Bank.
22. Mr. St. Clair contended that a bare denial and nothing more appears spurious in the circumstances. He attributed it to the Bank’s recognizance that Ms. Leonce was acting as their servant in the course of her employment.
23. The exact basis of vicarious liability is unimportant here since as Lord Pearce has said, “the doctrine has not grown from any very clear, logical or legal principle but from social convenience and rough justice.”³ It has been suggested that “the master’s liability for the negligence of his servant is not a vicarious liability but a liability of the master himself owing to his failure to have seen that his work was properly and carefully done”⁴ and that when a master is held liable for the negligence of his servant

² (1883) 11 Q.B.D. 609

³ *Imperial Chemical Industries Ltd v Shatwell* [1965] A.C. 656, 685

⁴ *Broom v Morgan* [1953] 1 Q.B. 597, 609, per Denning L.J.

in driving a lorry “he is himself under a duty to see that care is exercised in the driving of the lorry on his business.”⁵ In *Rose v Plenty*⁶, Scarman L.J. stated that basically, as he understood it, “the employer is made vicariously liable for the tort of his employee not because the plaintiff is an invitee nor because of the authority possessed by the servant, but because it is a case in which the employer, having put matters into motion, should be liable if the motion that he has originated leads to damage to another.” Irrespective of the precise basis, it is clear that “the master is liable vicariously for the negligent act of the servant done in the course of his employment.”⁷

24. Applying the legal principles emanating from these authorities, it is evident that the Bank is liable for the slanderous words uttered by Ms. Leonce during the course of her employment.

Damages

25. The final issue to be determined is that of damages. In *James’* case, Chong J. considered the sum of \$3,000.00 to be adequate compensation for the injury suffered. He was guided by the Dominican case of *Emmanuel v Lawrence*⁸ in which I awarded an Attorney-at-Law the sum of \$5,000.00 in damages for a libelous letter. Relying on these judgments, I see no compelling reason why I should depart from the quantum of damages awarded in *James’* case.
26. In the premises, there will be judgment for Mr. Auguste as follows:
- (a) Damages for slander in the sum of \$3,000.00.
 - (b) Costs of \$5,000.00.

INDRA HARIPRASHAD-CHARLES

High Court Judge

9th day of September 2004

⁵ Ibid p.608

⁶ [1976] 1 W.L.R. 141, 147

⁷ *Broom v Morgan* [supra], per Hodson L.J.

⁸ (Civil Suit No. 448 of 1995) [unreported] [Commonwealth of Dominica]