

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

Suit No. 614 of 1993

BETWEEN:

DANIEL GIRARD

Plaintiff

and

1. RICK WAYNE

2. THE STAR PUBLISHING CO

Defendants

Appearances:

Mr. Kenneth Monplaisir Q.C. for the Plaintiff

Mr. Peter Foster for the Defendants

2001: April 2; 3

JUDGMENT

- [1] **BARROW, J. (Ag.)** The Plaintiff claims he was libelled in an article published on pages 8 and 9 of The Star Newspaper for 7th August, 1993. The Plaintiff was at the material time and still is the Managing Director of the St. Lucia Development Bank which I understand to be a statutory body. It has as the name indicates a development purpose. The Plaintiff is a person who has some significant qualifications in the professional field and I accept that he is fully competent and fit to hold the office as obviously his employers themselves consider.
- [2] The first defendant is a reporter/a journalist and he was at the time (but no longer is) the editor of the Star Newspaper and the second defendant is the publisher of that newspaper. It is accepted that the newspaper has a wide circulation in St. Lucia and in circulation of some lesser extent abroad. The words complained of are set out in the Statement of Claim and they constitute, I think, about four paragraphs in what is a very long article by local standard. I have looked at the article as a whole, as I am required to do, and I have looked at another article in the same newspaper. It is quite clear that the focus of the article is Mr. George Theophilus who was at the material time, unwillingly I understand, the Chairman of the Board of Directors of the St. Lucia Development Bank he had previously been the Managing Director of that bank. I think the Plaintiff's boss and he was at the material time the manager and of course

the owner of the Institution called FICS. My obligation is to look at the broad meaning of the word. There is ample law on how they are to be looked at, and I will refer to that in the written judgment. What I need to do determine the reasonable man would see the words which were published, what the reasonable man would get from it. A summary of the offending passages, I think in seventh or maybe eighth part. Firstly the article states that the Plaintiff acquiesce when Theophilus “caused to be transferred” from SLDB to FICS – FICS’ account close to one Million dollars. Secondly, the transfer of the SLDB funds was made only on the Plaintiff’s, Thirdly, that there was no knowledge on the part of the rest of SLDB’S Board of Directors. Fourthly that there was something “wrong or unusual” about how Theophilus had “acquired the loan” “for FICS”. Fifthly, that FICS had no track record. Sixthly, that in normal circumstances those involved would have been required to answer several serious questions from a Commission of Inquiry. Seventhly, that the Plaintiff would have had excellent reasons to owe Theophilus a special gratitude and; eighthly, there is a reference to jailed youth for theft which follows a paragraph not pleaded on the assertion by FICS’ lawyer that in the transaction there was never a criminal motive, and it was simply a matter of possibly an error of judgment.

- [3] In setting out that summary I need to bear in mind whether the reasonable man in St. Lucia, and perhaps in the wider Caribbean would understand the purport or tenor of the words complained of in this fashion I think it is an interesting question for us to consider whether we can ascribe to our local or regional reasonable man the same restraint and thinking as the reasonable man in say, England or Australia. The question is whether there are cultural or other differences because of the size of our society which make our reasonable man a different sort of person from the obviously restrainedtype that is mentioned in the English authorities. I need to consider whether as a matter of law the words are capable of bearing the defamatory meaning pleaded and then I need to consider whether as a matter of fact they do bear this meaning. The meanings pleaded include

- (1) that the plaintiff clandestinely and corruptly conspired with Mr. George Theophilus to loan or to unlawfully transfer to FICS nearly one million dollars of SLDB’s funds.
- (2) That the Plaintiff is dishonest and corrupt.
- (3) That he is incapable of exercising good judgment in dealing with the funds of SLDB and unfit to discharge his duties as Managing Director.
- (4) That
- (5) That he deals with the funds of SLDB carelessly and for irregular and improper motives.

[4] It seems to me that as a matter of law the words pleaded do not bear the meanings pleaded and as a matter of fact I find that they do not. The question is, however, do they bear any defamatory meaning because of the authorities in this case, I am not confined to considering only the meanings pleaded and in answer to that I say yes, they do bear a defamatory meaning. The meanings I find they bear is that the Plaintiff was guilty of an error of judgment in relation to this particular transaction and that the Plaintiff imprudently exercised the power of his office to benefit George Theophilus. Now having found that I go on to find these are distinctly expressions of opinion. In reading the witness statement of the Plaintiff and in seeing him in the Witness box I am satisfied that the Plaintiff acted with complete honesty and integrity in this transaction I find that he had no corrupt or improper motives and he had not the slightest thought that he was doing anything wrong. I am pleased to state that so far as this Court is concerned in relation to this matter his reputation must stand unblemished. I am pleased as well that in cross-examination the Defendant readily conveyed his appreciation of the Plaintiff's entitlement to his good name and stated that he never had any intention to even offend the Plaintiff. I share the Defendant's expression that this whole case is a matter of regret.

[5] I go on to find that the conduct of the affairs of the St. Lucia Development Bank is a matter of public interest. The Defendant therefore had a legal right to comment on it, the Defendant had a right to criticize and he had a right to take a contrary view in relation to this matter. In **Gatley on Libel and Slander** 9th Ed at para 1226 occurs a number of useful passages. There is this one:

“Despite the name of the defence fair comment in general protects comment which is exaggerated, prejudiced or plain wrong headed and there may therefore be some understandable hesitation in applying it where the Defendant has drawn a plainly unreasonable conclusion that the Plaintiff has behaved in a dishonest or dishonourable manner.”

[6] At paragraph 1222 offers some other observations:

“But if the language complained of is such as can be fairly called criticism the mere circumstance that it is violent or exaggerated or even in a sense unjust will not render it unfair. It is at the most evidence that it was not the most honest expression of real evidence but was inspired by malice. Putting aside the case of an implication of corrupt or dishonourable motives or an inference of facts to which different considerations may apply, a comment may be fair or ever exaggerated or even prejudice, be the language of criticism. In deciding an issue of fair comment the jury has no right

to apply the standard of its own taste and measure the right of the critic accordingly, if it were so, there would be an end of all just and necessary criticism for a jury would be able to find a criticism unfair merely because they did not agree with the view expressed by the critic or think them correct. The basis of our public life is at the crank; the enthusiast may say what he honestly thinks as much as a reasonable man or woman who sits on a jury; for this reason the use of the adjective "fair" has often been criticized because it is capable of giving the impression that the defendant's criticism must be justified by the fact, or at least could be regarded by a reasonable person as a support of the view of the fact and this is not the law.

- [7] Another passage at the end of that paragraph:
"Would any honest man, however prejudiced he might be or however exaggerated or obstinate his view, have written this criticism? Could an honest person holding a strong view, holding perhaps an obstinate view, holding perhaps a prejudiced view, could have been capable of writing this?"
- [8] The view expressed by a critic by way of fair comment is not necessarily therefore a view which is right or wrong and this, I believe is what the ordinary man in our society needs to recognize. It is also what our professionals, our bureaucrats and our civic and political leaders need to recognize. It must have been very distressing for Mr. Girard when public attention became focused on this transaction to find that he had been left out to dry. The Board of SLDB obviously having highest regard for Mr. George Theophilus and his ability to look after the Development Bank's Money. It might have been comforting, not just for the parties most closely criticized for this transaction, for this to have been said it might have been comforting to the public and in the interest of the public for it to have been said I do not know if it was said, maybe it was said. I have already indicated what the law is in relation to fair comment, the protection it is, and that even exaggerated comment is permissible.
- [9] I turn next to the loss of protection which arises where malice in the sense of improper motives or ill will or spite is established. The authorities indicate very clearly that such malice must be the dominant motive. The burden of proof of malice to defeat fair comment is on the plaintiff. In a related libel case brought by George Theophilus who was the focus of this article are replying alledging expressed malice was pleaded other publications are identified as extrinsic evidence to support the assertion. That case remains to be tried so I say nothing more of it. In this case the plaintiff did not deliver a reply and placed no reliance on extrinsic material. It is a difficult task that the plaintiff undertakes. Malice in the defendant against a third party will destroy the fair comment in relation to the plaintiff

but that malice must be proved. In this case I am not satisfied that it was proved. Certainly the cross-examination of the defendant did not leave me with that view. He explained his motive for writing the article. Counsel who cross-examined the defendant .. conceded as the plaintiff himself that the defendant is an investigative reporter who has as his theme the requirement of accountability in public office on the part of those in authority. The defendant explained why he wrote the article in relation to George Theophilus and why he wrote it over a year after the Development Bank's money had been returned. I have no reason to reject this testimony. I note the other material identified by Counsel for the Plaintiff as indicative of malice I do not find that these show malice in light of the testimony of the Defendant. In summary therefore I find that the Plaintiff was defamed, slightly so, I find that the defence of fair comment was made out and I find that the plea of malice was not made out.

- [10] I therefore give judgment for the Defendant with costs to the Defendant in the sum of \$10,000.00 a figure to which both Counsel agreed.

Denys A. Barrow S.C
High Court Judge (Ag.)