

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(Civil)

Comment [a1]: Final copy. Issued to parties-June 2001

Civil Suit No. 508 of 1995

BETWEEN:

LOOPSOME PORTLAND

Plaintiff

and

DENNIS SINCLAIR DaBREO

Defendant

Appearances:

Mr. Dexter Theodore for the Plaintiff

Mr. Winston Hinkson for the Defendant

2001: February 21 and March 8.

JUDGMENT

- [1] **BARROW J:** The Plaintiff was the proprietor of a video arcade in Castries. Presumably the arcade was something of a novelty in 1995 because the Defendant, the editor, publisher and owner of a newspaper called "*One Caribbean*" saw fit to write two articles about the arcade. The first article, published on the 10th February 1995, condemned the fact that school children were absenting themselves from school in order to frequent the arcade. The second article, which the Plaintiff complained was libelous, was published in the issue of 17th February 1995 and was generated by what the Plaintiff did in response to the earlier article.
- [2] According to the Plaintiff himself he was annoyed about the earlier article so he set out for the Defendant's offices. He met the Defendant either in the passageway to the Defendant's building or just outside

the building. The dispute between the parties as to that detail is insignificant. In the words of the Plaintiff in his witness statement, this is what happened. "I spoke loudly and within the hearing range of all around, including Woman Police Constable, now Inspector of Police, Frances Henry, who was passing at the time. I certainly told the Defendant that I would have him deported if he printed my name in his paper again. In fact that was exactly what I went to tell him. I never threatened to kill him."

- [3] In the Defendant's newspaper of the 17th February the headline article was entitled "Exploiting children!" in large type across the page. Below that, across half the page appeared the words Doo tells DaBreo "I will kill you!" The words in quote appeared in red: however, so did much else on the front page. It is common ground that the Plaintiff is known as Doo or Mr. Doo. The article itself appeared on page 3. After holding forth on the negative impact of video games and arcades and calling for closure during certain hours, the Defendant wrote:

"The repercussions of printing such opinions were made clear to us this week in the wake of a previous story on video arcades.

Making a personal visit to our offices, one Doo, who operates video games encountered me downstairs. He refused the offer to make an appointment for a later date.

He flatly told me that he would kill me if I ever printed anything about him again. He said that he would ask his friend Mr. Campton (sic) to deport me to Grenada."

- [4] The Plaintiff's complaint is that he never threatened to kill the Defendant.
- [5] In pleading the defamatory meanings that he contended the words bore the Plaintiff averred that: "the Defendant meant and was

understood to mean that the Plaintiff had threatened to kill the Defendant and/or that the Plaintiff is a person who does not respect the rights of others".

- [6] Although he denied that the words were defamatory the Defendant, at the trial, did not rely on that defence. I find as a matter of law that the words are capable of bearing the defamatory meanings that the Plaintiff pleaded.
- [7] In argument counsel for the Plaintiff was asked whether it was in fact defamatory to publish of a man that he said he would kill someone. This could be mere bluster or just plain intemperate language. Quite rightly, I believe, Counsel responded that in the particular context the words published would have the effect of lowering the Plaintiff in the estimation of right thinking members of this society. People would say this is a man of low quality; he is not a man who respects the rights of others, he does not write back in response but instead he goes and threatens to kill. This is how Counsel summed up the sting of the libel. I accept this submission.
- [8] The Defendant's plea of qualified privilege is, with respect, entirely misconceived. I stopped Counsel in his address on that defence, which was all that he came prepared to argue. Either the Plaintiff said the words or he did not: that is what I attempted to get Counsel to focus on.
- [9] Justification must have been intended to be pleaded by Counsel for the Defendant. It was certainly "pleaded" in the Defendant's witness statement. And since counsel for the plaintiff was kind enough to

identify it as an issue in the statement of issues that he filed, this seems to get the Defendant past the fundamental proposition that "If the Defendant intends to justify he must raise a plea of justification specifically in his defence" see **Gatley on Libel and Slander** 9th ed. (1998), para 27.5.

- [10] In the face of the flat contradiction between the two versions of events I must decide who to believe. The Plaintiff starts out with the advantage: "it is clear that a defamatory imputation is presumed to be false and that the burden is upon the Defendant to show that it is substantially true" **Gatley** at para 11.3.
- [11] The evidential burden on the Defendant has been substantially discharged by the testimony of the Plaintiff himself. As set out in paragraph 2 above, the Plaintiff admits that he was annoyed at what the Defendant had written about him and he went looking for the Defendant to threaten him. The Plaintiff admits that he spoke loudly to the Defendant so that all around could hear and he threatened the Defendant. The threat was to have the Defendant deported "if he printed my name in his paper again"
- [12] This tells loudly against the Plaintiff. The Plaintiff's threat was not that he would have the Defendant deported for writing false things about him which would have been bad enough. It was a threat to exile the Defendant if he merely printed the Plaintiff's name in the paper again. This strikes me as an extraordinary piece of "ignorance".
- [13] The Plaintiff's conduct produces the precise result that Counsel for the Plaintiff says the falsely reported threat to kill produces. The threat by

the Plaintiff to the Defendant would tend to lower the Plaintiff in the estimation of right thinking members of society. It demonstrates that the Plaintiff is not a man who respects the rights of others, he does not write back in response to what was written about him but instead he goes and threatens to get the writer deported from the country.

[14] It could not, it seems to me, have made any significant difference to the Plaintiff's reputation if he was falsely reported to have threatened to kill the Defendant. The publication of the truthful report of what the Plaintiff had actually done was quite enough to fix the Plaintiff's reputation at the level that it deserved. I recognize that the threat to kill was more sensational, especially in a headline. In the context of the article, however, and its effect on the plaintiff's reputation, what is material is that the Plaintiff is the sort of man who threatens a journalist for writing about him.

[15] Given the extent to which the defamatory meanings pleaded by the Plaintiff have been shown to be justified by what the Plaintiff actually did, the injury to the Plaintiff's reputation could not have been much, if I were to decide that the Defendant falsely published that the Plaintiff threatened to kill the Defendant. Actually, even without that element, as libels go this was not a bad one. The alleged libel is that the Plaintiff was guilty of intemperate conduct; that the Defendant wrote about his video arcade in the newspaper and the Plaintiff went on "ignorant". How much of a blow to a man's reputation is such a report? Not much, in my view. But, as has emerged, the defamatory imputation was fully borne out by the Plaintiff's admitted conduct. He did get on "ignorant". If the report of the threat to kill is not justified,

the most that I could see the Plaintiff deserving as damages for the additional injury to his reputation would be EC\$750.00.

[16] However, I go on to decide the issue of whether the Defendant has made out his plea of justification. I believe that what the Plaintiff admittedly did makes it more probable than not that he uttered the threat to kill. The weight of the evidence was against the Plaintiff; specifically, his own witness statement told against him on the central issue. His relative position was such as to require rebuttal evidence. While there was no legal burden upon the Plaintiff to prove the falsity of the defamatory words, the evidential burden had shifted to him. Why did he not bring the Police Officer who, he said, was a witness to the incident? In cross-examination the Plaintiff testified that he had spoken with this Inspector of Police about this pending case and that she told him she was available as a witness. It is a significant failure on the part of the Plaintiff not to have brought this neutral and authoritative witness. It leaves me with the belief that the Defendant's version of events is more probably true than not.

[17] In the result, I find that the defence of truth or justification is made out. I dismiss the Plaintiff's claim with costs to the Defendant in the sum of One Thousand dollars (\$1000.00) which I accept from Counsel as an appropriate figure.

DENYS A. BARROW
High Court Judge (Ag.)