

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SUIT NO. 175 OF 1996

BETWEEN:

JOHN G. M. COMPTON

Petitioner

vs

PATRICK JOSEPH

- Respondent

Mr. P. J. Husbands QC for Plaintiff
Mr. O. W. Larcher for Defendant

1996: March 27
May 14

JUDGMENT

d'Auvergne J.

By a writ of Summons indorsed with a Statement of Claim filed on the 1st of March, 1996, the Plaintiff claimed against the Defendant the following:

- "(a) Damages for libel.
- (b) Aggravated damages.
- (c) An injunction restraining the Plaintiff by himself, his agents, servants or otherwise from making or publishing any or similar defamatory statements to or concerning the Plaintiff."

On that same date the Petitioner filed a Summons for an Interlocutory Injunction against the Respondent under Order 29 Rule 1 of the ^{Rules of the St} Supreme Court. The Summons reads as follows:

"That the Respondent be restrained by an Interlocutory Injunction, by himself, his agents, or servants or otherwise from continuing to make groundless allegations against the

Petitioner to wit: The Petitioner inter alia "owned shares in a Geest Company and in negotiations for the sale of Geest PLC was enriching Geest and by extension enriching himself" and/or other words or similar words or words defamatory of the Petitioner: until after judgment in this action or until further order and that costs in this application shall be costs in the cause."

The Summons was supported by an Affidavit of the Petitioner who deposed inter alia that he was the Prime Minister of Saint Lucia, and that the Respondent wrote to him alleging that he had the largest shareholding in a Geest Company, after Geest and as such he was in a position of conflict of interest in negotiations on behalf of the farmers of Saint Lucia to purchase Geest PLC and that by the ownership of those shares, the Petitioner was by extension enriching himself by enriching Geest, since the value of the assets of Geest PLC was far less than the sum paid for them. The Petitioner further deposed that the said letter was copied to the following:

- (a) The President, Saint Lucia Chamber of Commerce.
- (b) Hon. Leader of the Opposition.
- (c) U.S. Trade Representative, U.S. Embassy, Barbados.
- (d) European Community Banana Trade Association; and

that the contents of the letter was also broadcasted on Radio CANA and the Voice of America.

The Petitioner deposed that sometime in February 1959, while a practising Barrister, he obtained sixty-five (65) shares for sixty-five dollars (\$65) from a client in a company known as Sugar Manufacturers Limited, the shares of which were purchased by Geest Industries (West Indies) Limited, a Shipping and Exporting Company and renamed Geest Industries (Estates) Limited, a Company concerned with planting and reaping bananas.

He deposed that he did not sell those shares and that by the issue of bonus shares they now amounted to a total of seven hundred and fifteen (715) shares. That he had forgotten about the shares and moreover never gained or benefitted from the purchase of the shares.

He again deposed that the issued shares of Geest Industries (Estates) Limited, numbered 7, 979, 972 of which Geest Industries (West Indies) Limited owns 7,976,600 or 99.9% of the shares; that his shareholding, whilst the second in number, is in actual fact a small shareholding or 0.0089% of the issued shares and that the use of the adjective "largest" with respect to his shareholding meant and is understood to mean that his shareholding was enormous and represented a corresponding significant interest in Geest Industries (Estates) Ltd.

He deposed that the Company in which he is a shareholder is completely separate and distinct from and wholly unconnected with any Geest Company concerned with negotiations with banana farmers in any shape or form and was in no way involved in any negotiations for the purchase of Geest PLC.

Again he deposed that as Prime Minister he was never engaged in negotiations with any Geest Company on behalf of the Saint Lucia Banana Growers Association or anyone else; that he was not involved in negotiations between Windward Island Banana Development and Exporting Company (WIBDECO) and Fyffes PLC for the said purchase.

He concluded his Affidavit by deposing that the statements and allegations by the Respondent are untrue and are motivated by malice and that the Respondent was well aware of the falsity of these allegations, but he made them recklessly, without any regard for the truth and that the statements were specifically to embarrass him politically and in so doing advance his personal cause and those of his associates and political supporters.

The usual undertaking as to damages was stated.

On the 26th day of March, 1996 an Affidavit in Reply was filed by the Respondent.

I pause here to state that I saw that Affidavit for the first time at the hearing on the 27th March, 1996 at 2.15 p.m.

The Respondent deposed that he was the Secretary to the Saint Lucia Banana Salvation Committee which represents over two thousand (2,000) Banana Farmers in Saint Lucia.

He deposed that the Affidavit of the Petitioner was grossly misleading since it consisted of sentences and words extracted from a letter and interviews over a period of time; that the said sentences and words were taken out of context.

He deposed that according to the registered Share Holding Accounts of Geest Industries (Estate) Limited, the Plaintiff has the largest shareholding in the said Company after Geest Industries (West Indies) Limited.

He further deposed that the register at the Registrar of Company Office shows that there are three Companies within the Geest group, namely:-

- (1) Geest Industries (West Indies) Limited;
- (2) Geest Industries (Estates) Limited;
- (3) Geest Industries (Development) Limited.

The Respondent's Affidavit categorically notes the following:

That the Petitioner after Geest Industries (West Indies) Limited is the second largest shareholder; that Geest Industries Estates Limited is a Company within the Geest Group, part of the parent Company Geest Industries Limited incorporated in the United Kingdom.

Further depositions of the Respondent indicated that the Petitioner was misleading the Court, and deposed to the following:

That the same person is the Director of the three above mentioned Companies which form the Geest group.

That the Saint Lucia Banana Growers Act was amended to make Windward Islands Bananas Development and Exporting Company (WIBDECO) the sole authority to export and market bananas produced in Saint Lucia.

That by a shareholders Agreement dated 28th March, 1994 made between the Governments of the Windward Islands, including the Government of Saint Lucia and the Banana Growers Association of the Windward Islands, it was agreed that the first Board of Directors of the Windward Island Bananas Development Exporting Company (WIBDECO) would comprise of the following:

- (i) The Prime Minister or the nominees of each of the Windward Islands.
- (ii) A representative of the Banana Growers of each Windward Island.
- (iii) A member to be proposed by the four Prime Ministers and mutually agreed between partners.

Again he deposed "that according to the Chairman of the Windward Islands Bananas Development and Exporting Company (WIBDECO) on the Acquisition of Geest Banana Business the Board of the Windward Islands Bananas Development and Exporting Company (WIBDECO) had the full support of the Prime Ministers of the Windward Islands and the Boards of Banana Growers Association;" that "the loan for the purchase of Geest Bananas were guaranteed by the four Windward Islands Governments which said loan was financed by the most prestigious merchant Bank, Samuel Montgagu of the United Kingdom,"

that "during the said negotiations the Petitioner was in the United Kingdom to guarantee the said loan for the purchase of Geest Banana Business."

He concluded his Affidavit by deposing that in his letter to the Petitioner he specifically stated that he was seeking clarification with regards what seemed to be a conflict of interest "in the negotiations of Geest Banana Division" that the said letter was an observation not motivated by malice or design to malign and defame the character and reputation of the Plaintiff; moreover the observation was a fair comment on a matter of public interest, and that the grant of an injunction would amount to stifling his democratic right of freedom of expression and fair comment on matters of public interest.

Arguments

At the hearing Learned Counsel for the Petitioner quoted the oft cited case of **American Cyanamid Co v Ethicon Ltd 1975 AC 396** and the **White Book, 1995 Edition Page 515** under the rubric Particular Instances (1) Defamation. "The Court will not ordinarily restrain publication of a defamatory statement..... but the Court will restrain the publication of obvious lies;"

He quoted Halsbury's Laws of England 4th Edition Vol. 28 Paragraph 168 which provides "when qualified privilege or fair comment is to be pleaded, an injunction may nevertheless be granted if the plaintiff can satisfy the Court on the issue of malice."

He argued that the defence must be based on fact and reiterated the Petitioner's Affidavit.

He said that the falsity in the Respondent's case is that he linked one Geest Company to another and that shares in Geest Industries (Estates) Limited does not mean Geest PLC.

He said there was malice on the part of the Respondent, and that can clearly be seen by his publication of the letter he wrote to the Petitioner, to other bodies and by the broadcast of the defamatory statements on two radio stations, namely, CANA radio and Voice of America.

At this juncture, Counsel for the Respondent objected to Counsel for the Petitioner reading from a document which he said was not tendered as an exhibit and which he had not got the opportunity to read.

Counsel for the Petitioner replied by stating that Counsel knew what the broadcast was about but nevertheless refrained from any further reading of that document after a ruling from the Court.

Counsel for the Petitioner contended that malice is a question of fact for the judge to decide and that the Respondent should be restrained from repeating statements that are untrue.

He further contended that though Freedom of Speech as enshrined in the Constitution was not an unbridled right, there must be due regard for the reputation of others.

He argued that the 715 shares in Geest Estates Ltd had no nexus with Geest PLC, that the Respondent was being malicious and in so doing has caused irreparable damage to the Petitioner.

He said that election was Constitutionally due by April 1997 and that the Respondent's aim was to damage the Petitioner politically and quoted **Bradshaw v Sealy (1978) 32 WIR Page 111.**

He concluded his arguments by stating that the balance of convenience laid on the side of the Petitioner and therefore the Court should grant the Order of injunction as prayed.

Learned Counsel for the Respondent commenced his arguments by stating that it was a serious matter to curtail the Respondent for making certain statements and that "politics" appeared to be the reason why the injunction was being sought.

He reiterated the Respondent's Affidavit in reply and said that the exhibit of Geest Industries (Estates) Ltd List of shares show that the Petitioner was the largest share holder after Geest (West Indies) Ltd, an observation that can be clearly made by all upon a glance at the said exhibit.

He argued that the observation made was a fair comment and quoted **Gatley on Libel and Slander 8th Edition Paragraph 884 Page 387**

"Comment on a matter of public interest. In cases of comment on a matter of public interest the limits of comment are very wide indeed. This is especially so in the case of public men. "Those who fill public positions must not be too thin-skinned in reference to comments made upon them."

"One who undertakes to fill a public office offers himself to public attack and criticism and it is now admitted and recognised that the public interest requires that a man's public conduct shall be open to the most searching criticisms." Unless there is some clear evidence of malice or some misstatement of fact, no action should be commenced, however severe the terms of the criticism may be. It should be recalled that even if the defendant is mistaken as to one or some of the facts on which he comments, he will have the protection of the Defamation Act 1952, s 6. Those who carry on a business in which they deal with the public generally are in the like position as public men; their manner of doing business, in all its aspects, is open to the most severe comment."

He further quoted the cases of **Hector vs Attorney General of Antigua and Barbuda (1990) 2 AER Page 103** and

Silkin v Beaverbrook Newspapers Ltd v Another 2 AER 1958 Page 516 which states that the test to be considered in a case of libel

where fair comment is pleaded is whether the comment is an honest expression of opinion.

He further quoted the case of **Horrocks v Lowe 1974 1 AER Page 662** which held that even gross unreasoning prejudice does not of itself amount to malice.

He stressed that cognisance should be taken that the attitude of the Court is one of caution when dealing with delicate matters of this type, fair comment on a matter of Public Interest. He further stressed that the Respondent was indicating a fact and that malice must be proved.

Counsel for the Petitioner replied that the Defamation Act of 1952 had no relevance to Saint Lucia and that malice was a fact to be found on a balance of probabilities.

CONCLUSIONS

This decision was reserved since it appeared to me, after the arguments placed by both sides that I had to do much research on 'Interlocutory Injunctions' in actions of Libel and Slander.

The Petitioner has petitioned the Court for an interlocutory injunction restraining the Respondent from publishing and repeating defamatory statements about the Petitioner.

Generally, courts are reluctant to fetter free speech because of the questions that may arise during the proceedings, such as whether the meaning of the words or statements complained of are defamatory and whether the defences of fair comment and justification are applicable.

It is my view that

~~It~~ it for the Petitioner to succeed in his request for this injunction he must satisfy this Court that there was malice in the publication of the said alleged defamatory statements and that

there is reason to believe that there will be further publication that if there were those further publications he would suffer injury of such a nature that damages will not be an adequate remedy since the Respondent has deposed in paragraph 10 of his Affidavit that the statements were "fair comment on a matter of public interest."

The burden of proof is therefore on the Petitioner to destroy that defence by establishing malice and in this regard Learned Counsel for the Respondent argued strenuously and produced much authority.

I must pause here to note that the letter which forms the basis of this hearing was never tendered in evidence though a copy of the broadcast over CANA radio and the Voice of America were tendered.

I perused these two documents and it is my view that they cannot be regarded by any stretch of the imagination as "Merely seeking clarification on an important issue on behalf of the Farmers of Saint Lucia."

Moreover it is my view that if one is seeking clarification on a particular issue, by letter, that correspondence should not be copied to various bodies such as:

- (1) The President of Saint Lucia, Chamber of Commerce.
- (2) Hon. Leader of the Opposition.
- (3) U. S. Trade Representative, U.S. Embassy, Barbados.
- (4) European Community Banana Trade Association.

In my judgment there is malice in the conduct of the Respondent with regard to the writing, and broadcast of the alleged defamatory Statements, and therefore this application falls into the small category where an injunction will be granted even if the Respondent has stated his intention of pleading the defence of fair comment.

Based on the above my Order is as follows:

- (1) That an injunction be and is hereby granted to the Petitioner and the Respondent is hereby restrained by himself, his servants, agents or otherwise from making or publishing any or similar alleged defamatory statements to or concerning the Plaintiff until the determination of the case or further order of the Court.
- (2) That cost be costs in the cause.

Suzie d'Auvergne

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SUZIE d'AUVERGNE
PUISNE JUDGE