



[2014] JMSC Civ. 228

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO 2011 HCV 05115

BETWEEN	VIVIAN BENNETT	CLAIMANT
AND	THE GLEANER COMPANY LTD	FIRST DEFENDANT
AND	THE STAR NEWSPAPER	SECOND DEFENDANT
AND	GARFIELD GRANDISON	THIRD DEFENDANT

IN CHAMBERS

Raymond Samuels for the claimant

William Panton and Marcia Burke instructed by DunnCox for first defendant

October 1, 2013 and September 18, 2014

ORAL JUDGMENT

**CIVIL PROCEDURE – APPLICATION TO STRIKE OUT AMENDED PARTICULARS
OF CLAIM**

SYKES J

[1] Mr Vivian Bennett is claiming damages from the defendants for libel. The Gleaner Company Ltd publishes the Star Newspaper and Mr Garfield Grandison is said to be the editor in chief of the newspaper.

[2] It is common ground that the alleged libellous article was published on December 1, 2005. The details are not important for the purposes of this application. Mr Bennett amended his particulars of claim by spelling out in detail what he says are the particulars of injuries he received as result of the libel. The injuries are psychological. These amendments were done in January 2013. The Gleaner Company Ltd wishes to have them struck on the basis that they speak a new cause of action outside of the limitation period of six years.

[3] Mr Panton relied on **Judith Godmar v Ciboney Group Ltd** SCCA No 144/2001 (unreported) (delivered July 3, 2003). That case makes the point that the cause of action accrues when the damage occurs and not necessarily when the tortious conduct takes place. The case also emphasised that the loss, damage or injury must be pleaded within the limitation period since time runs from accrual of the cause of action. Mr Panton says that Mr Bennett has breached this principle.

[4] The court does not agree. All Mr Bennett did was to give more particulars. His particulars of claim were filed on August 18, 2011, well within the limitation period. Mr Bennett pleaded from August 18, 2011 that '[b]y reason of the humiliation and the shame and scandal suffered by the claimant, the claimant has become quite apprehensive and anxious at times while at times he shows signs of depression. The claimant has as a consequence sought medical help.'

[5] At that time he did not plead the particulars. He has now done so. He pleaded depression. He pleaded that he sought medical help. Clearly that help must have a cost. The help was going to psychiatric or psychological. The particulars say he became (a) anxious and significantly depressed; (b) impairment of attention and concentration; (c) diagnosis of chronic post traumatic stress disorder with significant depressed features;

(d) anti-depressant medication prescribed; (e) mental impairment of 45% Global Assessment of Functioning Scale.

[6] Mr Samuels cited **Loutchansky v Times Newspaper Ltd and others (No 2)** [2002] 1 All ER 652. This case was cited for the proposition that each time the offending article is published that publication gives rise to a separate cause of action. Interestingly, publication is said to take place each time a person clicks on the article. This court does not disagree with these principles but they are not applicable here because Mr Bennett did not file multiple claims based on each click (which signifies publication to the clicker). This is confirmed by the fact that Mr Bennett has amended his particulars of claim which itself is based on the December 1995 publication.

Disposition

[7] Application dismissed. Costs to the claimant to be agreed or taxed.