

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. B142 OF 1992

BETWEEN	HUGH BONNICK	PLAINTIFF
A N D	MARGARET MORRIS	FIRST DEFENDANT
A N D	THE GLEANER CO. LTD.	SECOND DEFENDANT
A N D	KEN ALLEN	THIRD DEFENDANT

Dr. R. Manderson-Jones for Plaintiff.

Mr. John Vassel and Miss J. Mangatal instructed by Mr. Richard Ashenheim of Dunn, Cox, Orrett & Ashenheim for Defendants.

Heard: September 23, 24, 25, 26,
October 2, 3; November 24, 25,
26, 28, 1997 & January 16, 1998.

LANGRIN, J.

The plaintiff the then Mangaging Director of the Jamaica Commodity Trading Company commenced proceedings against the three defendants, Margaret Morris, The Gleaner Company Limited and Ken Allen claiming damages for libel in respect of an article which appeared on the front page of the newspaper published on Sunday 19th April, 1997.

The defendants in their defence admitted the publication but denied that the words bore any of the meanings set out in the Statement of Claim or any defamatory meanings. Further the defendants stated that the words in their ordinary and natural meaning are true in substance and in fact.

The claim is one for aggravated or exemplary damages on the ground that the publication had injured the plaintiff in his credit and reputation and brought him into public scandal, odium and contempt. The plaintiff averred that the said words were calculated to increase the circulation of the said newspaper and with a view to making a profit from the sale of the newspaper and of the advertising space therein.

The plaintiff is a Management Consultant and first employed to Jamaica Commodity Trading Corporation from 1977 - 78 as Deputy Managing Director and Managing Director from April 1, 1990 to December 24, 1990.

The plaintiff's case rests on the testimony of the plaintiff himself. He testified that he was advised by the Chairman of the Board that the new Minister wanted to have his own 'man' as Managing Director. During the plaintiff's tenure the Corporation and dealings with Prolacta S.A., JCTC had a monopoly to import commodities set out by Government including milk products. Prolacta tendered in August 1990 to supply milk powder to JCTC.

Since 1983 JCTC was provided with a list of criteria formulated by the Auditors to be followed in making tenders. The criteria was basically that tender documents should go to suppliers on the approved list. When the tender documents are returned from the suppliers they go directly to the Auditors and then to the Tender Committee for approval and finally to the Managing Director.

These procedures were followed in respect of the two relevant contracts.

The Purchasing Department which is responsible for making the purchase, then prepares the documents after approval and sends

them to the respective suppliers.

These contracts were normal C.I.F. contracts delivered to Kingston. Payment arrangements were that the total contract price was to be deposited to account of Prolacta in Eagle Commercial Bank. Both purchases were cash purchases with the interest belonging to the suppliers. The Bank in fact made a mistake by paying the interest to JCTC on the first contract. On the second contract the matter was corrected.

The plaintiff recall having a telephone conversation with Margaret Morris about 4 or 5 days prior to publication of article. The conversation lasted about 5 minutes. Basically, she was researching an article on JCTC and had information pertaining to irregularities in respect of the Prolacta contracts. She did not go into extensive details as to what the irregularities were. However, he told her that there were no irregularities and the contracts were put out to tender according to laid down procedures. Also they were evaluated and awarded according to the criteria laid down and that the auditors were present on all occasions. He further indicated to her that he would sue anyone who says otherwise. She never mentioned to him about having any authoritative sources. She had asked him whether he was fired from JCTC and when he answered in the affirmative, she asked him why. He told her that based on the advice he had received he would be paid for the notice period. When she asked him whether the termination was due to Prolacta Contracts he told her no. He never gave her any assent to the publication.

Under cross-examination, he admitted that the JCTC is a limited liability company with all the shares owned by Government. It is also Tax Exempt. He was head of JOS when government

bought all the shares and is also a former Trade Administrator. He agreed that if the Managing Director was guilty of impropriety the public should be informed providing the information was accurate.

Mrs. Margaret Morris, Journalist, testified on behalf of the Defendants that it was an article in the 'Insight' which she read that formed the basis of the impugned article. She accessed sources at JCTC who spoke in strict anonymity . She had previously dealt with this source and formed the source to be knowledgeable and reasonable. Based on what she received from the source this plaintiff's response was different so she put both responses in the article. She did not know who was right. Whatever she wrote she firmly believed to be true. She would regard the contracts as a complex matter. She did not evaluate the contracts but reported the evaluation she received which was from her authoritative source. She never saw the contract documents, the JCTC approved lists or the tender documents. She apologised for not using the Mr. Bonnick as an authoritative source.

Anton Thompson, a senior officer at JCTC gave evidence of the procedures which had to be complied with before the contracts were formed. There was a list of approved suppliers. The purchasing department was not excluded from a consideration of the Tender and participated in the purchasing of the subject matter of the contracts.

It is convenient at this point to set out the article as appeared in the Statement of Claim:

"JCTC sues Belgian Milk Company

by Margaret Morris

Sunday Gleaner Staff Reporter

The Jamaica Commodity Trading Company (JCTC) has confirmed that they have filed suit against a Belgium company in respect of a breached contract to supply milk powder

(2) A source close to JCTC confirmed that the dispute centres on two supply contracts - the first for 3,000 Tonnes at US\$1,264 per Tonne awarded in August 1990 and the second for the same amount at US\$1325 per tonne agreed in December 1990.

(3) The attractive feature of both was that payment could be made in Jamaican dollars but the contracts were "very unusual". Both were cash contracts and as such, prices were lower than average in a recovering and volatile world market.

(4) In respect of the first contract, JCTC was required to lodge the full amount (over J\$30.2M) in Eagle Commercial Bank and appropriate disbursements from the deposit were to be credited to Prolacta's account at the time of each shipment leaving Europe. At the same time, interest on the deposit was paid to JCTC.

(5) In the second deal, Prolacta demanded that interest on the deposit of approximately J\$31.8M should accrue to their account.

According to one authoritative source, "Nobody at JCTC could be so mad as to agree to that". He also contended that the contracts were arranged without the normal participation of the Purchasing Department and that Prolacta was not on JCTC's list of approved suppliers.

(6) Mr. Hugh Bonnick, then Managing Director of the JCTC told the Sunday Gleaner that there had been a mistake in the implementation of payments on the first contract and interest should have gone to the suppliers, not to JCTC. He said that he had "opened up the restricted lists" of all suppliers when he assumed the position at JCTC.

(7) Mr. Bonnick also emphasized that the Prolacta contracts were both put out to tender, evaluated and awarded according to the rules and that the auditors were present on all occasions. He indicated that he would sue anybody who suggested otherwise. Mr. Bonnick's services as managing director were terminated shortly after the second contract was agreed.

(8) An authoritative source pointed out other departures from the norm in respect of these

contracts: the fact that Prolacta evaluate in starting delivery - and then requested a price hike to cover increased transportation costs because of the Gulf War. Much pressure was brought to bear on JCTC Officers to accede to this request but the Sunday Gleaner was unable to find out the actual outcome.

(9) The second contract was agreed just weeks after delivery on the first contract had started. In the absence of any official release, it is assumed that Prolacta terminated supplies when JCTC refused to agree to release their financial condition - for example agreeing to Prolacta getting the bank interest.

(10) Skimmed milk under these contracts is supplied to the condensery and ice-cream manufacturers and the import price impacts heavily on the cost of living"

The pleaded meaning of the article whether in their natural or ordinary meaning as set out at paragraph 3 of the Statement of Claim as follows:

- " (a) The Plaintiff's services as Managing Director of Jamaica Commodity Trading Company Limited (JCTC) were terminated because of his impropriety in the formation, conclusion and implementation of very unusual contracts with Prolacta SA for the supply of milk powder.
- (b) The plaintiff caused the contracts to be entered into and implemented irregularly and in breach of normal procedures.
- (c) The Plaintiff acted irregularly and improperly in having JCTC enter into these very unusual contracts without the normal participation of the Purchasing Department and with a company which was not on JCTC's list of approved suppliers.
- (d) The Plaintiff is insane or stupid and would be so viewed by an authoritative source insofar as the Plaintiff agrees that under the contracts interests should have gone to the suppliers.
- (e) The Plaintiff is insane, stupid or incompetent in having JCTC enter into contracts in which the supplier could be entitled to interests on the deposits.

- (f) The plaintiff is guilty of impropriety and irregularity in bringing pressure to bear on JCTC officers to accede to requests from the supplier which were departures from the norm and irregular."

Mr. Vassell submitted that not one of these meanings is sustainable as the one 'right' meaning which the reasonable fair-minded reader would attribute to the words of any of them. He also submitted that one may concede that the Gleaner's readership may include unusually suspicious and cynical people who will jump at the worst meaning that is remotely possible. The test is, however, not what such a reader, may think but whether by the single standard of the ordinary reader, the words are defamatory in the specific meaning pleaded. Mr. Vassell cited Charleston v. News Group Newspaper Limited, (1995) 2 AER 313 (H.L.) Lord Bridge refers to the old and oft cited case of Chalmers v. Payne and the principle it establishes that you look at the whole article and take the "bane and the antidote" together. He argued that the article announced itself with the most inoffensive of headlines - "JCTC sues Belgian Milk Company". It does not allege any corrupt or dishonest conduct by the plaintiff or any suggestion of a kickback. Against that background he argues, why would a reasonable fair-minded reader proceed from the reasonable balanced presentation of facts and comments about two milk powder contracts with a foreign supplier and the litigation in relation to them which ensued, to conclusions of impropriety and irregularity about the Plaintiff?

The first issue which the Court must resolve is whether the words in their natural and ordinary meaning are actionable. In the case of Jones v. Skeleton (1963) 3 AER 952 Lord Morris had

this to say:

"The ordinary and natural meaning of words may be either the literal meaning or it may be an implied meaning or an inferred or indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning. The ordinary and natural meaning may therefore include any implications or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict rules of construction, would draw from the words.

It was argued by Dr. Manderson-Jones that by referring to the source as "authoritative" and 'close to JCTC' the defendant has made it clear in the article that the facts are those stated by the "authoritative" source namely that there were departures from the norm. By stating that Mr. Bonnick's services were terminated shortly after the second contract there is the clear inference that the termination was because of the alleged departures from the norm. By placing Mr. Bonnick's statements between the allegations of her "authoritative" source, the Defendant is attacking Mr. Bonnick's statements not endorsing them and also challenging the veracity of Mr. Bonnick to the point of ridicule by trumpeting that he said he would sue anybody who suggests otherwise. She is saying I know these allegations to be true so "sue me if you think you bad".

Counsel for plaintiff contends that the whole tenor of the article is an attack on the integrity of the then Managing Director.

It seems quite clear to me that the words mean and would be reasonably understood by the ordinary man to mean that the plaintiff, Managing Director despite his assertions that the contracts were put

out to tender, evaluated and awarded according to the rules and his threat to sue anybody who suggests otherwise, an authoritative source close to JCTC states that the contracts were arranged without the normal participation of the Purchasing Department and without Prolacta being on JCTC's list of approved suppliers. As a result of these and other irregularities the plaintiff was dismissed as managing director shortly after the second contract was agreed.

In my judgment, notwithstanding the submissions by Mr. Vassell to the contrary, the ordinary meaning pleaded by the plaintiff in paragraph 3 of the statement of claim is sustainable and that meaning is clearly defamatory.

The plaintiff is a Management Consultant by calling and the words in the article and their imputations are capable of disparaging him in his calling and if true they would in fact tend to disparage the plaintiff in his calling and injure his reputation or would tend to make people think the worse of him.

Justification

The next issue to be decided is the plea of justification, i.e. whether the words are true in substance and in fact.

The question which must be asked is this:

Do the words not proved to be true naturally injure the plaintiff's reputation having regard to the truth of the charges made by the words which are true?

The words not proved to be true include: (a) "Nobody at JCTC agreed to Prolacta's demand for interest". The plaintiff's unchallenged evidence is that it was agreed that as cash contracts interests would go to the suppliers, Prolacta and not to JCTC, but

there had been a mistake by the bank in the implementation of payments on the first contracts.

(b) "Contracts were arranged without the normal participation of the purchasing department".

The evidence of defendant's witness Anton Thompson stated that not only was there normal participation but that Mr. Mattis of the Purchasing Department prepared the tender and that the contract was signed by either Mr. Mattis or himself and that there was a flow of correspondence between the purchasing department and the supplier Prolacta after the contract was awarded.

(c) "Prolacta was not on JCTC's list of approved suppliers". The evidence of Anton Thompson was that Prolacta was on the approved List of Suppliers

(d) "there were other departures from the norm". There is no evidence of any norm and of which there is a departure.

(e) "Much pressure was brought to bear on JCTC officers to accede to the request from Prolacta for a price hike". There was no evidence to substantiate this allegation.

The law regards that proof of the truth of what the defendant uttered is an absolute defence to the action but the burden of proof rests on the defendant. It is, however, sufficient to prove the substantial truth of the remarks rather than truth in every detail.

The words not proved to be true are grossly disparaging of the plaintiff's integrity since the inescapable inference must be that there was impropriety, irregularity and disregard for procedures in dealing with contracts.

By endorsing her "authoritative" source the defendant was

endorsing not only the facts alleged by the "authoritative" source which are proved to be true but also the facts alleged by the authoritative source which are not proved to be true and are grossly defamatory of the plaintiff.

The plea of justification therefore fails. I turn now to the defence of qualified privilege.

Qualified Privilege

The defendant's plea is that the said words were published upon an occasion of qualified privilege and he stated the particulars as under:

Particulars

"The Jamaica Commodity Trading Company (JCTC) is a Corporation wholly owned by the Government of Jamaica. It is, or was at all material times, in particular, involved in the importation and distribution of goods which are necessary for the economic welfare/well-being of Jamaica. Included in such goods is milk powder or skimmed milk required for supply to the condensery and ice-cream manufacturers. Further the purchase of goods from overseas suppliers where foreign exchange is involved is also of great concern to Jamaica as a whole and a contract involving the price of such goods in regards to a basic food is of importance in regard to the cost of living.

- (a) The second Defendant is dedicated to informing the public on matters of public interest;
- (b) The first Defendant is a well known journalist and staff reporter of the Second Defendant;
- (c) The Business transactions of the Jamaica Commodity Trading Company (JCTC) in circumstances where, inter alia, it quite often enjoys a monopoly or otherwise are matters in which the public as a whole has a legitimate interest;

- (d) The First Defendant prior to publication afforded the plaintiff an opportunity to state his point of view by way of reply to the intended publication which was, as the publication complained of shows, incorporated in the said publication;

In the premises the Defendants say:-

- (i) That the persons to whom the said words were published had a concern and corresponding interest in the subject matter and publication of the said words. The subject matter of the said words was of public concern and the publication thereof was in the public interest;
- (ii) Further and/or in the alternative, that they were under a legal and/or moral and/or social duty so to publish the said words and the public in general had a like duty and/or interest to receive them;
- iii) Further and/or in the alternative, the subject matter of the said words was in the general public interest and they published the said words for public information or were under a duty to communicate the said words to the general public;
- (iv) Further or in the alternative, the said publication constituted formed information on a matter of public interest and said publication possessing both appropriate status and appropriate subject matter in that the public had a legitimate and proper interest therein and/or the Defendants were under a duty to communicate same to the public.
- (v) Further and/or in the alternative, that they published the said words in the reasonable and/or necessary protection of their own interest and that of the public as a whole."

The law provides that statements that are made fairly by a person in the discharge of some public or private duty, whether legal or moral are protected. However, the privilege is lost if the defendant was actuated by malice or an improper motive, either

by intrinsic or extrinsic evidence of the circumstances in which the statement was made.

The plaintiff has agreed that if the Managing Director was dismissed for impropriety or irregularity that would be a matter of public interest. He agreed that the press had a duty to report matters of public interest. This moral duty of the defendant and its reporter to publish matters of public interest is implicitly recognised in the cases: Trevor Munroe v. The Gleaner Company S.C.C.A 67/86 and Smart v. Sibbles and the Gleaner Company S.C.C.A 32A and 32D of 1979. It follows in the instant case, that the fact that the JCTC is a public institution is sufficient to make the conduct of its management in their office a matter of public interest and the occasion is therefore privileged.

Mr Vassell, Counsel for the Defendants submitted that if the occasion is found to be privileged such privilege will only be lost if convincing and affirmative evidence is adduced that the dominant motive for making the publication was not the performance of a duty of the newspaper to report to the public a matter of public interest but some other indirect motive. To put it another way the privilege will only be lost if it can be shown that the newspaper abused the occasion of the privilege. Where damaging allegations have been authoritatively refuted there can be no duty to report them to the public.

In the leading case of Horrocks v. Lowe (1975) AC 135 H.L. it was stated inter alia.

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe that what he published was true this is generally conclusive evidence of express malice.

In the present case there are two separate sources of information providing conflicting informations. Although the defendant says she believed her anonymous source to be reliable and found him so on two previous occasions she nevertheless made subsequent enquiries from the plaintiff, who gave her a different account from that of her anonymous source with important conflicting allegations of fact. The defendant in her evidence stated that she believed the plaintiff's statement at the time it was made to her to be true.

The cross-examination of Mrs. Morris by Dr. Manderson-Jones reveal the following and I quote:

"Whatever I wrote I firmly believe to be true."

Q. You disagree that you honestly did not believe the truth?

A. Yes.

Q. Are there any facts in the article which you knew or believed to be untrue at the date you published them?

A. No. I quoted JCTC source, I quoted Mr. Bonnick. I don't know who is right. I attempted to balance the first with Mr. Bonnick's

Q. When you came up with two different perceptions what did you do?

A. I printed them and people can make up their minds.

Q. Truth is that you did not consider whether they were true or false?

A. I left it to the readers to make up their minds.

I believe that both sources believed it to be true.

Q. What is there in your article that is different from the Insight Article?

A. Details of contracts, perceptions of two different persons. My JCTC source had a conflicting perception to Mr. Bonnick's at variance.

Q. Did you believe Mr. Bonnick's statement that -
"The Prolacta contracts were both put out to tender, evaluated and awarded according to the rules and that the auditors were present on all occasions".

A. Yes.

The position taken by Mrs. Morris is clearly untenable both in law and practice. Just imagine a situation in which a so called authoritative anonymous source who had been disgruntled over a decision given by a Judge telephoned her and made defamatory remarks about the Judge. If she called up the Judge and requested an explanation from him in which he contradicted the 'source', would it be permissible for her without further enquiry to publish both accounts for her readership to decide which of the two accounts was true.

The answer seems to be found in the case of Headley v. Barlow (1865) F & F 230 where it was stated: "Any facts which go to show that the defendant published the comment in the knowledge or belief that it was unjust, or in reckless indifference as to whether it was unjust or not will be evidence of dishonesty or malice."

I accept Dr. Manderson-Jones submission that the defendant at this stage would be duty bound to make further enquires either of her anonymous source or of an independent source, rather than

go to print with unverified and contradicted defamatory allegations against the plaintiff. However in as much as she believed the plaintiff's statement she could not possibly have believed that of her anonymous source on the disputed facts of "departures from the norm". In the circumstances there was neither any need for further enquiry nor for her to print the allegations which she clearly did not honestly believe to be true in view of her belief in the truth of the plaintiff's statement.

What is also significant is that the defendant made no mention in her article of the plaintiff's statement of his confirmation that the termination of his employment had nothing to do with the Prolacta matter. The inclusion of the termination of his employment while withholding from the readership that it had nothing to do with the contracts would obviously lead her readership to conclude that the termination of the plaintiff's employment was a result of the alleged departures from the norm. The conclusion is therefore inescapable that the defendant acted with some improper motive. Malice is accordingly proved in terms of lack of honest belief. Accordingly, the defence of qualified privilege fails.

Fair Comment

Statements of opinion or comment, not statements of fact which are made fairly on a matter of public interest are protected provided the defendant can prove the truth of the facts upon which the comments are based. The question of malice or improper motive will destroy the defence since there will be no honesty in the criticism.

The point was admirably expressed in Slim v. Daily Telegraph (1968) 2 QB 157 at 170 by Lord Denning M.R. in terms that would favour the writer in a deserving case.

An examination of the comment that 'nobody at JCTC could be so mad as to agree to that' referring to Prolacta's demand for interest, reveals the uncontradicted evidence of the plaintiff that JCTC agreed to interest going to Prolacta.

The matters referred to as "other departures from the norm" such as:

- (i) The contracts were arranged without the normal participation of the Purchasing Department
- (ii) Prolacta was not on JCTC list of approved suppliers
- (iii) Much pressure was brought to bear on JCTC officers to accede to the request from Prolacta for a price hike.

did not occur.

Accordingly the facts on which the comments were based are not true and I so find.

In my judgment the defendant did not honestly believe the comments she made since in her evidence she said she believed the plaintiff and she considered him authoritative and he knew nothing about commercial, economic or financial matters. I therefore reject the submission of the defence that the comments were fair and reasonable in the circumstances and made in good faith.

The defence of fair comment fails.

Damages

In assessing the quantum of damages the Court will have to bear in mind the position and standing of the plaintiff and the fact that persons who held him in high esteem would think less of him after reading the article. The plaintiff testified that after

the publication his business associates shied away from him because they were having reservations about his reputation. The reaction of overseas people was even worse.

The Constant Spring Golf Club of which he was a member stopped inviting him to Social functions. Although he still remains a member, he has not visited the club for more than two occasions within the last two years. Outside of the Club he has not been invited to government functions of which he was normally invited. All this had a devastating effect on himself and his family.

I must also take into account the fact that the publication was in a newspaper which seems to enjoy a wide circulation in Jamaica and Overseas. The evidence of the defendant is that on the particular date of the publication there was not enough materials to publish. I have also taken into account the prominence of the publication and the words used. An article on the front page is more prominent than one in the middle of the paper or tucked away at the latter pages.

I am fully reminded of the plaintiffs evidence as to the effect he said the article had on him and the resultant damage to his character and reputation.

I find that as a result of the publication by the defendants the plaintiff has been injured in his credit and reputation and brought into public scandal, odium and contempt.

The persistence in the plea of justification even at the trial attracts aggravated damages.

In my judgment the defendants deliberately committed the publication either knowing it was untrue or being reckless and not caring whether it was true or false. I am fortified in this view

from the recent decision in John v. MGN Limited (1996) 2 ALL ER 35.

For the reasons already given the plaintiff is entitled to receive an award of damages which I assess at \$750,000.00.

Accordingly there will be judgment for the Plaintiff against the Defendants in the sum of \$750,000.00 with costs to be agreed or taxed.