

MMCS

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. C.L. 2003 I-053

BETWEEN COLLIN INNIS CLAIMANT
AND KINGSLEY THOMAS DEFENDANT

Miss Shawn Steadman instructed by Ian Wilkinson & Company for the Claimant.

Mrs. Vanessa Allard & Mrs. Teneisha Watkins instructed by Vacciana & Whittingham for the Defendant.

HEARD: 19th & 20th April, 2005

PUSEY, J. (Actg.)

This matter is a rather unusual defamation matter in that it relates to an incident at which both the defendant and claimant were present and the libel claimed purports to be a written report of that incident. The claimant was the director of projects of the Sugar Industry Housing Limited (SIHL) a company whose purpose is to provide low cost housing for workers in the sugar industry. The defendant is the chairman of the Board of the National

Housing Trust (NHT) a statutory corporation established to fund low cost housing development.

A meeting was held on 1st December 1999 to deal with the funding of housing for sugar workers. Present were representatives of trade unions which represented workers in the sugar industry, representatives of the sugar producers, officials of SIHL including the claimant and officials of NHT including the defendant. The defendant indicated at the meeting that the NHT would no longer fund houses developed by SIHL as there were significant cost overrun in these projects.

After the meeting the claimant and the defendant spoke outside the meeting room. It is common ground that the parties did not know each other although the claimant said that he had been at other meetings at which the defendant was present. The parties' account of the encounter differs greatly so it is necessary to set them out in detail.

The claimant in his witness statement stated:

“I was standing outside the meeting hall and the defendant approached me and greeted me. We shook hands and I said to him, “you know Mr. Thomas, I am really surprised that for a big man like yourself you could sit in a room with all these people and feed them with such utter

garbage. You know that what you were saying was a lot of rubbish and you continued to say it as though you believed it.”

At this point the defendant pulled his hand away, stepped back and shouted twice “all right, all right” and said that he would resign. At this time Dr. Munroe who was standing a little behind the defendant said “Gentlemen, what about conflict resolution?”. The defendant then left the building.”

Dr. Munroe, who was present at the meeting as a representative of one of the Trade Unions was not called as a witness by any party.

The defendant also gives his version of the incident in his witness statement:-

“At the end of the meeting, as I had already exited the meeting room and proceeded to my car, a gentleman (who was also at the meeting) and whom I did not know, approached me in a menacing and threatening manner, and said in a loud voice, “what kind of bullshit you talking in the meeting?”, Both his tone and his approach to my person I considered hostile and threatening. This caused me to fear that he would commit an assault upon my person, and particularly since I did not know who he was, I felt fearful and threatened.

I responded to his threat by saying, “I will resign as Chairman of the National Housing Trust if this is your behaviour, because I am afraid of you guys . I will resign if I am standing in your way.”

At the time of this exchange, Mr. Earl Samuels ... and Dr. Trevor Munroe ... were standing nearby and they heard the exchange between the claimant and myself.”

It is common ground that Mr. Turnbull, the claimant’s superior at SIHL wrote to the defendant protesting the decision of the NHT as set out by the

defendant at the meeting of 1st December 1999. The defendant replied to that letter and after dealing with the reasons for the decision of the NHT refers to the incident with the claimant in the following terms.

“At the end of the December 01, meeting a Mr. Innis, who accompanied you to the meeting, approached me in a threatening and menacing manner. I wish to place on record my very strong objection to his behaviour. In light of what I consider to be Mr. Innis’ foul and threatening language, I have found it necessary to take certain precautions in the interest of my personal safety.”

This letter was accompanied by a distribution list of some 17 persons, namely persons who attended the meeting and the members of the Board of NHT. It is this statement written in the letter that the claimant says has libeled him.

The claimant has pleaded that the words used meant and were understood to mean:-

- (a) That the claimant has threatened physical violence to the defendant.
- (b) That the claimant is a danger to society;
- (c) That the claimant is likely to use physical violence against the defendant in the future;
- (d) That the claimant is likely to commit a criminal offence by injuring the defendant.

- (e) That the claimant has so terrified the defendant by threats of physical violence that the defendant has found it necessary to take precautions to protect himself against the claimant.

The defendant pleaded justification in defence of these allegations and additionally and rather surprisingly admitted that the words and the plaintiff's action could bear the imputation in paragraphs a, c, d & e above. This line of defence is significant as it narrows the issues quite sharply.

Miss Steadman for the claimant suggested that the court use the example of the approach of Brooks J. in **Leslie Harper v Edward Seaga** Suit No. C.L. H138 of 1996 namely

- (i) determine what meaning the words are capable of bearing;
- (ii) determine what meaning the alleged libelous words do in fact bear;
- (iii) determine whether by the meaning arrived at the words were defamatory of the claimant;
- (iv) look at the Defence;

- (v) consider the seriousness of the allegations;
- (vi) consider the extent of the publication;
- (vii) determine the damages to be awarded if liability is proved,

The meaning of the Words

As stated before the defendant admitted the meanings suggested in statement of claim save for the imputation that the defendant was a danger to society. Miss Steadman has encouraged the court to find that by necessary implication of Mr. Innis had threatened the claimant and was likely to commit a criminal offence against him causing him to have to take measures to protect himself then the claimant was a danger to the society at large. This assertion can be countered in two ways. Firstly, it seems apparent that a person can be a danger to another individual or group of individuals yet not threaten any other members of society. Secondly, the words complained of did not admit to a wider context than the discussion between the complainant and the defendant and therefore ought not to be seen as holding any imputation as to the claimant's attitude to society in general.

There is a presumption at law that the claimant is of good reputation therefore a charge that he is likely to do violence and has caused the defendant to take measures to protect himself would lower him in the eyes of the ordinary reasonable man. The question of whether the words are defamatory can therefore be answered in the positive.

The Defence

The defendant pleaded justification. Miss Allard pointed out by reference to S.7 of the defamataion Act and to **Gleaner Company Limited v Charles Woodrow Wright** 16 JLR 352 and **Bookbinder v Tebbitt** [1989] 1 ALL ER 1169 that justification is not merely a plea to the truth of the statement but as to whether the words complained of are substantially true.

The Defamation Act puts it this way at S.7.

“In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”

In this case the words complained of contained three distinct charges. The first is that the claimant approached the defendant “in a threatening and

menacing manner.” The second is that the claimant used “foul and threatening language “to the defendant. The third charge is that as a result of the first two charges the defendant has had to take precautions for his safety.

The fact that this concerns the report of an incident at which both parties were present raised the issue of what standard should be used to determine whether the charges have been proved. In particular in reference to the first two charges, should the court determine whether an ordinary reasonable man would find the claimant’s attitude “threatening and menacing” and his words “foul and threatening” or is it sufficient if the court finds that the defendant a sincere belief that claimant’s behaviour was as he described it. This is even more relevant when the incident being referred to was apparently a brief though emotionally charged encounter.

It is my view that the court’s duty is to establish whether the charges represent a sincere belief which could be arrived at based on the proven facts. I will therefore set out the facts as I have found them. There is no dispute of fact of the existence or the subject matter of the meeting of 1st December 1990.

1. The parties were not acquainted prior to the incident. Mr. Innis knew who Mr. Thomas was but the defendant was not aware of who Mr. Innis was although they might have been at meetings before.
2. I find that at the meeting the defendant indicated the position of the NHT in relation to entering into housing ventures with SIHL.
3. The Claimant disagreed with the position taken by NHT and thought that the defendant's statements about the performance of SIHL were factually deficient.
4. When the defendant greeted persons at the end of the meeting he approached the claimant and the claimant confronted the defendant about the statements that he made in the meeting.
5. On a balance of probabilities I find that the words reported by the claimant are the most accurate reflection of what the claimant said to the defendant. I am not of the view that there is a great difference in substance between the words that Mr. Innis said that he used and those that Mr. Thomas thought he had used.

6. The claimant spoke in a strong and forceful manner to the defendant. In evidence the claimant said he intended it to be a forceful statement.

The allegations

I will look next at the three allegations made in the letter of 13th December 1999.

(A) ... Mr. Innis ... approached me in a threatening and menacing manner.

Although I have found that Mr. Thomas made the first approach I am not of the view that this is a significant fact in this case. One reason for this is that in the normal social act of greeting, the person who is being greeted will move towards the person who initiates the greeting. As a consequence, unlike counsel on both sides, I am not of the view that the issue of who approached whom is material.

In relation to the “threatening and menacing manner” I am of the view that Mr. Thomas sincerely believed that the manner of Mr. Innis was threatening and menacing. I am also of the view that when one considers the forceful manner of Mr. Innis in his own words and the fact that the defendant’s evidence was that, not knowing who Mr. Innis was he mistook him for a

contractor, then I am of the view that he had reasonable grounds for the sincerely held belief that the claimant's manner was threatening and menacing and therefore the defence of justification would avail him in relation to this allegation.

(B) ... Mr. Innis' foul and threatening language.

The word "Foul" is defined in the Cambridge International Dictionary of English as "extremely unpleasant and offensive in respect of language."

In a society of rapidly changing or rather rapidly deteriorating values it is again difficult to determine what "foul" language is. The important question is whether foul language is restricted to what is known as "indecent language" or does it also include 'abusive and calumnious language' or does it have a wider definition. I am of the view that the phrase does have a wide definition and that the two most important aspects in determining what foul language is are the social context and the perception of the hearer.

It is my view therefore that language is considered foul by an individual when language that the individual finds offensive to a very high degree is used in a social context that is grossly inappropriate.

Based on this definition I am not of the view that the words that Mr. Innis used were in fact "foul" language. As a matter of interest I do not find that

the use of the word “bullshit” in the context would be considered “foul language”. Firstly, nothing in the evidence of Mr. Thomas or Mr. Samuels indicated that either of them found that word offensive to a high degree. The ease with which they used the word indicates that while impolite and perhaps rude, the word was not “foul”.

The second part of the allegation is not supported by the evidence. Although subjectively the manner of Mr. Innis’ interaction could be considered “threatening” there is nothing in the language that Mr. Innis used or the language that Mr. Thomas and Mr. Samuels said that he used which revealed or implied a physical threat. In the premises the defence of justification fails in relation to this allegation.

(C) “I have found it necessary to take certain precautions in the interest of my personal safety.”

No evidence was put before the court in relation to this allegation. Mrs. Allard argued that under section 7 of the Defamation Act the fact that the major allegations had been proven to be true, the lack of proof in terms of this allegation ought to be overlooked once the words not proved do not injure the reputation of the claimant. In this matter once the defendant has admitted that the words complained of could mean the imputations set out in

sub-paragraphs a, c, d & e of paragraph 5 then any failure of the defence is decisive in the question of liability.

A final word needs to be said about the seriousness of the allegation. Having conceded the meaning of the words it is no small matter to impute criminal acts and the possible use of physical violence against the defendant who was a professional in a senior management position and to whom is imputed a good reputation in law.

The extent of the publication

The letter of 13th December 1999 was circulated to all the members of the board of NHT and persons who were at the meeting. Consequently some nineteen persons were privy to these allegations which have been found to be unjustified . It is not relevant that there is no evidence that any of the persons to whom the letter was circulated indicated that they had adverse views of the claimant as result of this letter. The wide circulation extends the scope of the libel. Despite the absence of any evidence of the reaction of the persons to whom it was circulated.

Damages

Having decided the issue of liability the question of damages comes to be considered .

The court will consider the following factors in assessing damages

1. the gravity of the libel
2. the standing of the claimant
3. the scope of the publication
4. the conduct of the defence and the defendant in the course of the litigation and at the trial.

In relation to the gravity of the libel there is no question that the imputations were serious, in particular, the charge that Mr. Thomas' security had to be augmented because of what he feared Mr. Innis would do. It is my view that the libel can be seen to consist of hyperbole and exaggeration. There is no evidence that any one considered these charges as a serious blight on Mr. Innis' character. Although a person from NHT asked the claimant about the charges and the claimant indicated that he avoided certain places because of what he thought persons may have been saying about him, the fact that when SIHL closed he found a similar job in the government system and he retains his position as president of the cable operators association.

As has been indicated before Mr. Innis has not suffered loss of standing either in his substantive job or as head of the association of Cable operators. There is evidence that other persons outside of the distribution list had heard about this letter but there is no evidence that the publication was widespread.

In most of the cases looked at such as **Hugh Bonnick v. Margaret Morris and Gleaner Company Limited and Ken Allen** Suit No. C.L B142 of 1992, **Mohammed Sham v Jamaica Observer Limited and Paget de Freitas and Desmond Allen and Vivienne Green Evans** Suit No. C.L. 1995/S292 or **Leslie Harper v Edward Seaga** Suit No. C.L. H138 of 1996 the publication has been through national media and could affect future employment. The case of **David Sykes v Guardian Insurance Brokers and Brian M. Self** Suit No. C.L. S115 of 1991 is the most appropriate to this case in that the publication was to a limited group of influential persons. In that case the damages awarded were \$600,000.00 in 1999. It must also be noted that in that case Clarke J. found that the attempted apology aggravated the damages.

I must say in passing that an early apology in relation to the “exaggerations” may have made this case unnecessary.

Having examined the relevant factors I award the sum of \$150,000.00 as general damages. There is judgment for the claimant against the defendant and cost to the claimant to be taxed if not agreed.