

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV2328/2008

BETWEEN	HONOURABLE GORDON STEWART	CLAIMANT
AND	JOHN ISSA	1 ST DEFENDANT
AND	RAYMOND CLOUGH	2 ND DEFENDANT
AND	HONOURABLE DARYL VAZ, M.P.	ANCILLARY DEFENDANT

J. Spencer and N. Amos instructed by Patterson, Mair, Hamilton
for claimant

A. Dabdoub, R. Clough and F. Jobson instructed by Clough, Long
& Company for 2nd defendant

Heard: May 13 and 15, 2009

Lawrence-Beswick J

ORAL JUDGMENT

1. The application being considered is application of second defendant, i.e. Mr. Clough, to strike out claim of the Honourable Mr. Gordon Stewart.

2. The claim is filed by Mr. Stewart against Mr. Clough for damages for libel for republishing to the Honourable Mr. Daryl Vaz, words contained in an electronic mail purportedly written by one Dr. Robinson to Jamie Stewart, daughter of Mr. Stewart.

3. Paragraph 6 of the amended particulars of claim filed on July 2, 2008, states that the letter/electronic mail contained defamatory words concerning Mr. Stewart.

Paragraph 6B states that Mr. Clough falsely and maliciously re-published the

e-mail to Mr. Daryl Vaz by handing a copy of the e-mail to Mr. Daryl Vaz on March 11, 2008.

Paragraph 9 states that Mr. Clough was actuated by express malice.

The Particulars of Malice concerning Mr. Clough are that:

1. He intended to anonymously disparage and denigrate Mr. Stewart having the defamatory material re-published with reckless disregard to the damage caused.
2. He did not honestly believe the truth of those words.
3. He was reckless in the re-publication of the words.
4. He failed to apologize for his actions.
5. He has not offered amends to Mr. Stewart.

4. Paragraph 10 states that the publication of the words has brought Mr. Stewart into public scandal, odium and contempt and that his character and reputation have been injured by the publication and he has suffered damage and claims damages.

5. In his defence, Mr. Clough pleads that he is one of Mr. Stewart's attorneys-at-law concerning claims brought against the **Jamaica Observer Newspaper**, owned by a company in which Mr. Stewart is interested.

6. Mr. Clough also pleads that he is the attorney-at-law for Ms. Muna Issa, daughter of Mr. Issa, the first defendant, in a suit filed against her by Mr. Stewart for libel.

Ms. Issa asked him to attend a meeting and she there shared the e-mail, the subject of the libel suit against her, with Mr. Clough. Mr. Clough avers that he was shown this in his capacity of Ms. Issa's attorney-at-law.

7. Mr. Clough admits in his defence that he gave to Mr. Vaz a copy of the e-mail on a strict confidential basis between attorney-at-law and client, as he thought the letter/e-mail was libellous of Mr. Vaz and he had a duty to bring it to Mr. Vaz's attention because he was Mr. Vaz's attorney-at-law.

Mr. Clough pleads that Mr. Vaz breached the confidentiality agreement when Mr. Vaz told Mr. Stewart that Mr. Clough had given him the e-mail.

8. Mr. Clough avers in his defence that all communication between Mr. Issa, Ms Muna Issa, Mr. Vaz and himself were subject to attorney/client privilege.

9. I consider whether the claim discloses reasonable grounds for bringing the claim. Communication between attorney-at-law and client is privileged and not the subject of action for defamation. **Three Rivers DC v Bank of England** [2004] 3 WLR 1274.

However, the pleadings of Mr. Stewart do not indicate that Mr. Clough is Mr. Vaz's attorney-at-law. The issue as to whether or not Mr. Clough is an attorney-at-law for Mr. Vaz would have to be resolved by evidence.

10. I consider also if the claim amounts to an abuse of the process of the court. In **Wallace v Valentine** [2002] EWCA CW 1034, court held libel claim is to be struck out as abuse of process when publication within jurisdiction is minimal, and that that is especially so when the claimant is pursuing a vendetta, not vindication. Above re-enforced in **Dow Jones Co. Inc. v Yousef Jameel** [2005] 2 WLR 1614.

11. In this case, publication by Mr. Clough was to one person with no claim of damage particularized as being attributable to that single publication.

There is no claim or allegation that Mr. Stewart suffered a loss of reputation or injury to character in the eyes of Mr. Vaz, nor of any special damaged suffered in that regard.

Mr. Stewart claims that he has been brought into public scandal, odium and contempt but does not indicate how Mr. Clough's sole publication to Mr. Vaz accomplished that.

12. Mr. Stewart in his pleadings at paragraph 6A Amended Particulars of Claim avers that the letter/e-mail was transmitted via the world wide web and would be accessible to any number of computer owners. It is not being alleged that that transmission to the world was due to Mr. Clough. It is agreed that the letter/e-mail was not authored by Mr. Clough.

13. The pleadings state that Mr. Clough published to his client Mr. Vaz and Mr. Vaz to Mr. Stewart. There is no particularization of how the publication to Mr. Vaz resulted in Mr. Stewart's reputation being brought into public scandal, odium and contempt.

14. I find that the claim of libel for Mr. Clough's single publication defies logic, moreso when viewed against the pleading that the letter/e-mail is possible of access worldwide, as a result of its creation and publication by a person other than Mr. Clough.

15. Mr. Stewart's pleadings do not establish a realistic prospect of establishing the commission of a real and substantial tort.

16. Rule 26.3(1) Civil Procedure Rules (CPR) provides:

“... [T]he court may strike out a statement of case ... if it appears to the court-

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- (b) that the statement of case ... to be struck out is an abuse of the process of the court ...
- (c) that the statement of case ... discloses no reasonable grounds for bringing ... a claim ...”

17. I conclude that the claim is an abuse of the process of the court and discloses no reasonable grounds for being brought.

18. I therefore order it to be struck out for those reasons. It follows that judgment is entered for the second defendant as against the claimant.

Cost to the second defendant to be agreed or taxed. Special costs certificate.
Costs for two Counsel.

Leave to appeal granted

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