

[2015] JMCA Civ 26

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 82/2014

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MRS JUSTICE SINCLAIR-HAYNES JA (AG)

BETWEEN THE GLEANER COMPANY LIMITED APPELLANT
AND VIVIAN BENNETT RESPONDENT

Written submissions filed by DunnCox for the appellant

Written submissions filed by Samuels Samuels for the respondent

2 February and 17 April 2015

PROCEDURAL APPEAL

(Considered on paper pursuant to rule 2.4 of the Court of Appeal Rules 2002)

PANTON P

[1] This appeal is from a judgment of Sykes J in which he dismissed the appellant's application to strike out amendments that have been made to the respondent's particulars of claim in an action for libel.

[2] On 1 December 2005, the Star Newspaper, which is published by the appellant, carried an article which the respondent regards as libellous. It states that he had been

charged with bestiality, and that certain residents had expressed shock and disgust at the fact that someone within their community had been so charged. The respondent alleges that the article contains untrue statements and that the appellant was reckless not caring whether the words were true or not.

[3] The respondent is claiming that the article was so defamatory that he has suffered humiliation, shame and scandal. He has become apprehensive and anxious, and at times he shows signs of depression. His condition has caused him to seek medical help.

[4] The amendments that have been objected to by the appellant are in respect of the respondent's particulars of injuries, specifically psychological trauma. These are they:

- " 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."

[5] In dealing with the application to strike out the amended particulars, the learned judge observed that the injuries suffered by the respondent are psychological. He rejected the submission that the amendments amounted to "a new cause of action

outside of the limitation period of six years". He found that what the respondent did was to provide more particulars of the injuries that he had pleaded.

[6] The learned judge was referred to the case **Loutchansky v Times Newspapers Ltd and others (No 2)** [2002] 1 All ER 652. He said that it had been cited for the proposition that each time the offending article is published that publication gives rise to a separate cause of action. He said that he did not disagree with the principles therein stated but did not find them applicable in the situation before him as the respondent "did not file multiple claims based on each click (which signifies publication to the clicker)". This comment was made in light of the pleading in paragraph 13 of the particulars that the words and caricature were enhanced by being "published on the World Wide Web hereafter referred to as the internet for a period of upwards of four (4) years".

[7] The grounds of appeal are:

- "1. The learned Judge erred in law when he found that there was a second publication on the internet in 2009 which meant that the time for bringing the claim for personal injury had not expired and would run to 2015.
2. The learned Judge erred in law in concluding the alleged internet publication in 2009 was in any way connected to the alleged personal injury when the Appellant's pleaded claim for damages for personal injury is grounded solely on the events immediately following his arrest on November 28, 2005 through to December 1, 2005.
3. The learned Judge erred in law in his conclusion that the complaint that the Claimant has become apprehensive and anxious at times and showed signs of depression although

not named, is so closely connected that it should be regarded as of the same caliber, [as Post Traumatic Stress Disorder]. To my mind those words are capable of suggesting psychological trauma or injury.

4. That the learned judge erred in concluding that the proposed amendment to include Post Traumatic Stress Disorder merely amplify the particulars of injury already pleaded.
5. The learned Judge erred in awarding costs against the Appellant.”

[8] As regards grounds one and two, there seems to be a misunderstanding on the part of the appellant as the note of the oral judgment does not reflect that which is complained about. There is nothing to indicate that the learned judge arrived at his decision by relying on the internet publication, or by assuming that the tort was continuing beyond the date stated in the particulars of claim.

[9] In respect of grounds three and four, the appellant submitted that the learned judge made a link between the alleged personal injury and the alleged internet publication, and that the claim alleging post traumatic stress disorder was filed out of time. On the other hand, the respondent submitted that no prejudice or injustice would be caused to the appellant as the amendments arose out of, and were based on facts already pleaded. The earlier pleadings, says the respondent, clearly point to anguish and mental health issues experienced by the respondent.

[10] It should be observed that the issue of time can only be relevant if the tort alleged is based solely on an internet publication after the original limitation period had expired. That is not the case.

[11] On the face of it, the original pleading of depression lends itself to expansion to indicate the nature of the depression. It would not have been appropriate or just for the respondent to be deprived of the opportunity to give fuller details of the depression he said he suffered. If and when the evidence is produced, it will be for the appellant to challenge same if it is susceptible to challenge. The answer cannot be to exclude the further particulars. It cannot be doubted that injuries of the mind do take time to develop at times. So, it is a question of proof of the linkage.

[12] In the circumstances, there is nothing meritorious that has been advanced to warrant disagreement with the decision of the learned judge. The appeal should accordingly be dismissed and costs of the appeal awarded to the respondent, such costs to be agreed or taxed.

DUKHARAN JA

[13] I have read in draft the judgment of the learned President and agree with his reasoning and conclusion. There is nothing I wish to add.

SINCLAIR-HAYNES JA (AG)

[14] I too have read the draft judgment of the learned President and agree with his reasoning and conclusion.

PANTON P

ORDER

Appeal dismissed. Costs to the respondent to be agreed or taxed.