2012 NO. 5 DEMERARA

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

(CIVIL JURISDICTION)

BETWEEN:

IRFAAN ALI

Plaintiff

-and-

1. GLEN LALL
2. NATIONAL MEDIA AND PUBLISHING COMPANY LIMITED, A Limited Liability Company registered under the Companies Act 1991, whose registered office is situate at lot 24 Saffon Street, Georgetown, Demerara.

Defendants
Jointly and severally

Mr. Hukumchand and Mr. Jairam for applicant
Mr. Persram for Respondent

DECISION

This is an application by amended summons dated 20th February 2012 filed on behalf of the plaintiff to continue the exparte injunction granted herein on 5th January 2012 restraining the defendants from printing or publishing or causing to be printed or published the front page article and the words contained on page 2 of the "Kaieteur News" of Sunday the 1st January 2102 in an article headed "after two years as Minister … Irfaan Ali builds mansion with poolhouse", or any similar Libel of the plaintiff, be continued until the hearing and determination of the action herein or until further order.

In their Affidavit in Answer the defendants deny that the articles were either libelous or defamatory, that the words and photography were the actual facts and opinion honestly held by the maker of the news, and that the press has a right to freedom of expression and a duty to disseminate news to the public, and that their defence at the trial will be "truth and justification".

In **Bonnard v Perryman** (1891) 2 Ch 269 it was stated as follows:-

> "The Court has jurisdiction to restrain by injunction, and even by an interlocutory injunction, the publication of a libel. But the exercise of the jurisdiction is discretionary, and an interlocutory injunction ought not to be granted except in the clearest cases – in cases in which, if a jury did not find the matter complained of to be libelous, the Court would set aside the verdict as unreasonable. An interlocutory injunction ought not to be granted when the defendant swears that he will be able to justify the libel, and the Court is not satisfied that he may not be able to do so."

The Judge is the decision maker as to whether what was published is defamatory, or where justification is pleaded whether the defendant has made out such a defence, but the judge is in no position to say whether the defence has been established until he has heard all the evidence.

The plaintiff claims irreparable harm to his reputation. Reputation has a value and the freedom of expression is not an absolute right and may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of the reputation of others.

A duty to disseminate information is a liberty to communicate information and not misinformation. There is no human right to disseminate information that is not true, and no public interest is served by publishing or communicating misinformation. If it is an honest comment, then that privilege is misused if the defendant acts dishonestly or recklessly or for an improper purpose. In today's conditions publication of a defamatory statement at large can cause immense and lasting damage.

I find the tone and words used by the defendants in their article was extremely reckless and were intended to injure the plaintiff's reputation.

If it is neutral reporting on a matter of genuine public interest, then that is a factor in favour of according privilege to the publication. Neutral reporting involves presenting an allegation as an allegation, not adopting it as a fact and not "taking sides." In my opinion the defendants did not resort to neutral reporting since the presentation and captions were intended to cast a certain adverse imputation to the plaintiff's right to own property. In my opinion the words "after 2 years as Minister … Irfaan Ali builds mansion with poolhouse" was not neutral reporting but imbued with the intention to injure the plaintiff's character.

There is a duty to use available information reasonably and responsibly. The defendants claim that what they printed was the actual facts and opinion honestly held, but the question is did they use that information reasonably and responsibly. To my mind they did not.

The following words were printed:

"The construction of a house at Leonora, West Coast Demerara, is the talk of the neighbours who say that the property is owned by 31-year old Irfaan Ali, the Minister of Housing and Water……In addition to the home there is a multi-million-dollar pool house which makes the $69 million Corentyne office of the National Insurance Scheme Office look like a garage….estimated at more than $300 million if the sums paid by the Government for projects that have been advertised and completed, are a yardstick…to fence the compound of that estate would be about $50 million…

"Some have actually questioned Minister Ali's wealth bearing in mind that he came from humble beginnings and has been a Minister for just about three years."

The above words are rife with hearsay, speculation and assumptions, and unequivocally and unambiguously referred to the plaintiff in the most denigratory , derogatory and slanderous terms. It is unarguable that the defendants at all material times meant and intended to and in fact referred to the plaintiff by name and his official title as Minister of Housing and Water in the Government of the Republic of Guyana so that in the reader's mind there was absolutely no doubt as to the person the defendants were referring to.

The Kaieteur News is available on the World Wide Web (www) system of the internet to readers not only in Guyana but throughout the world.

The defendants failed to observe the elementary principles of responsible journalism adumbrated by their lordships in the House of Lords in **Reynolds v Times Newspaper Limited** (2001) 2 AC 127; (1999) 4 All ER 609.

The nature, status and source of the information and the circumstances of the publication have to be taken into account in determining what was the defendant's duty in relation to this information, and the interest of the public to be informed of this information.

What the defendants did was to make it clear by innuendo that the Plaintiff who came from humble beginnings and who became a Minister of Government just two years prior was able to acquire an expensive mansion and poolhouse through improper or dishonest means for a whopping sum of $300 million. The nature, status and source of this information is what is stated as hearsay, assumptions and speculation in the article (supra). In their natural and ordinary meaning the words meant and were understood to mean that the plaintiff

acquired a massively expensive property through improper and dishonest means.

Another issue is whether the plaintiff was given an opportunity to comment prior to publication. The question is was there sufficient urgency to offset the fact that the plaintiff had not been given no or no adequate opportunity to comment prior to publication. If the matter was of legitimate public interest then the responsibility of the defendants is to be responsible and fair. Was there therefore responsible journalism on behalf of the defendants. To my mind there was not.

The defendants prepared, printed and published the article without making any attempt to verify the facts with the plaintiff or afford the plaintiff any opportunity to comment on the proposed publication.

If it can be shown by the plaintiff that the statement was made with malice, i.e. with some indirect or improper motive then the defence of "qualified privilege" would fail. If the defendants were recklessly indifferent to the truth of the statement they published then that too defeats the defence of privilege.
The words "2011: a year replete with scampishness, secret deeds and downright skullduggery" were definitely written with a malicious intent. (see **Herbage v Pressdram Ltd. And others** (1984) WLR 1160, where the court held "accordingly the judge had rightly followed the established practice that where the issue of malice was raised in the pleadings of an action for defamation, the court would only grant an interlocutory injunction if the evidence of malice was overwhelming.")

Another issue is that rumours cannot be made assertions of truth. The defendants must prove that the subject matter of the rumour is true. Question

is did the defendants observe the elementary principles of fairness in responsible journalism?

As Lord Devlin opined in **Rubber Improvement Ltd. V Daily Telegraph Ltd** (1964) AC 234, 283-284, HL:

> "You cannot escape liability for defamation by putting the libel behind a prefix such as "I have been told that…or "It is rumoured that …." And then asserting that it was true that you have been told or that it was in fact being rumoured you have …."to prove that the subject matter of the rumour was true." For the purpose of the law of libel a hearsay statement is the same as a direct statement and that is all there is to it."

The defendants have not stated any facts that they rely on but have resorted to hearsay, assumptions and speculations in their article. The defendants have stated that "the construction of (the plaintiff's) house … is the talk of neighbours who say the property is owned by 31-year old Irfaan Ali, the Minister of Housing and Water." The law is that the defendant must prove that the subject matter of the rumour is true. This they have failed to do.

Was the publication premeditated and calculated to inflict serious and permanent injury to the plaintiff's reputation? Merely repeating what they have been told by people is not a defence, neither can the defendants assert to the truth of hearsay without verification.

Was the publication premeditated and calculated to cause a certain reaction from the public? There cannot be a good reason for omitting, from a hardhitting article making serious allegations against a named individual, all mention of that person's own explanation.

The above are just but a few of the questions the judge will have to ask himself and hear the evidence before he/she can determine whether the publications were libelous and defamatory.

At this interlocutory stage the judge cannot decide these issues without deciding the substantive issues, but these questions are enough to establish that there is a serious issue to be tried and that the defendants must prove their defences to the satisfaction of the court.

The law presumes that defamatory words are false. The plaintiff need do no more than prove that defamatory words have been published of him by the defendants (see **Duncan & Neil on Defamation** 3rd ed. (2009) p. 108 para12:05: **David et al. Defamation Law Procedure & Practice** 4th ed. (2009) p. 59 para 8-03 and **Gatley on Libel and Slander** 11th ed. (2008) para 11.3 p. 311) It is then for the defendants to prove, if they can, that the words are true and this is a long standing rule and has been reaffirmed in the unreported case of **Steel & Morris v Mc Donald's Corpn.** (31 March 1999) by the English Court of Appeal which rejected the argument that the burden of proving falsity lay on the plaintiff and regarded as "clear and binding law" the rule that defamatory words are presumed to be false until the contrary is shown.

I find therefore that the plaintiff has proved that he is likely to suffer injury from the further publication of these articles, and that the court ought to protect the plaintiff's reputation at this stage, by prohibiting the defendants from continuing to publish the articles and statements, which are the subject matter of these proceedings.

The plaintiff has also given an undertaking to pay for any damage the defendants are likely to suffer as a result of the orders being wrongfully granted. The defendants are not likely to suffer any injury should the injunction continue.

In the circumstances the interim injunction granted on the 5th January 2012 is hereby made interlocutory until the hearing and determination of the action herein. The matter to take is normal course.

Costs in the cause.

…….

Diana F. Insanally

21st June 2012.