

THE HIGH COURT OF FIJI AT SUVA  
CIVIL JURISDICTION  
CIVIL ACTION NO. 43/2011

BETWEEN:

Mahendra Kumar

Plaintiff

AND

Carpenters Fiji Limited

Defendant

COUNSEL: Mr A.Sen for the plaintiff

Mr E.Narayan for the defendant

Date of hearing: 26<sup>th</sup> and 27<sup>th</sup> November, 2015

Date of Judgment: 23<sup>rd</sup> September, 2016

**Judgment**

1. The plaintiff brings this action against the defendant for damages, for being injured in his name, reputation and career by an advertisement published by the defendant in the Saturday newspapers that he is no longer employed by the defendant and will not be responsible for any business transactions or dealings he may carry out on its behalf. The advertisement did not disclose his resignation. The plaintiff alleges that the imputations of the publication are damaging to him. The defendant denies the claim and states that it is a customary business and commercial practice to publish "*such or similar advertisements*" for the information of its customers and the public.
2. The amended statement of claim pleads that the advertisement draws the following inferential and ordinary meaning:
  - A. *That the plaintiff is a dishonest unfaithful, unreliable person who has been terminated by Carpenters Fiji Limited.*
  - B. *That the plaintiff could not perform or discharge his duties and obligation and responsibilities with Carpenters Fiji Limited which may have resulted in the sacking or termination of the plaintiff.*
  - C. *That the plaintiff may have colluded with other employees whose photograph appeared in the advertisement in defrauding the company.*

- D. That the plaintiff and other three employees whose photograph appeared in the newspaper were stealing the monies and other items from Carpenters Fiji Limited and benefitting themselves.
- E. That the plaintiff is a dishonest person and has continued to deal or carry out responsibilities and duties on behalf of the defendant company after handing over his resignation.
- F. That the public have the privilege and liberty to be aware of employees of the defendant company such as the plaintiff who after resignation cannot succeed in finding another suitable employment.

### 3. *The hearing*

(a) PW1,(the plaintiff) in evidence in chief said that he joined Carpenters Motors, a division of Carpenters Fiji Limited, as Manager, Rental Fleet He was given a company vehicle. There were no allegations of any financial or sexual misconduct against him. An audit was going on at Carpenters Motors. The auditors wanted him “to snoop” on some other managers, which he did not do. He resigned from the company on 13<sup>th</sup> May, 2010. His resignation was accepted.

The defendant did not ask him, if the company could put an advertisement in the newspapers regarding his resignation He could not have conducted business on behalf of Carpenters Motors, after his resignation, as he had no resources nor the vehicle key.

On 15<sup>th</sup> May,2010, a close friend called him and sarcastically said that he thought that he, (PW1) has “*done something very good and is a very prominent figure now*”, as his photograph was in the newspapers . He asked him “*kitna banaya tum*”-how much did you make from Carpenters Motors?.

PW1 said that he was shocked and asked his friend what he was saying. He asked him to check the Fiji Times. Later, his brother bought the Fiji Times. PW1 said that he then saw the advertisement with his photograph and name.

He got disturbing calls from colleagues and family members asking him how much he made, when he got fired and “*anything left for me*”. He received 10-12 calls. He switched off his phone. The calls affected him badly. He was stressed and resorted to unnecessary drinking of kava, liquor and smoking 40 cigarettes a day. When he went to the post office or the bank, people who knew him briefly would pass similar comments. He could not attend Mandalis nor weddings of family members. He could not socialize. No one called



him to play cards or drink grog for more than a year. He stopped following a MBA program, as his classmates would pass remarks.

He made several applications to secure employment. At the commencement of his job interview with FNU, he was asked by the Hon Minister for Education whether he was part of the group that was “fired” by Carpenters Motors and whose photo appeared in the newspapers. Ten weeks later, after much convincing and persuasion, he finally got the job at FNU at \$ 27,000. His salary at Carpenters Motors was \$40,000.00. Five months later, he got a job at the Housing Authority with a salary of \$50,000.

(b) PW2, (*Narendra Prasad*) said that PW1 was a very close friend and cousin, their mothers were sisters. They met at gatherings and grog sessions on a weekly or fortnight basis. He said that when he saw the photo and notice, he felt that PW1 must have been terminated. The words, Carpenters Motors will not be responsible or accountable for any business transaction or dealings he may carry out on its behalf meant that he was a dishonest and unethical person who has committed a serious misconduct or theft and cannot be trusted. The advertisement did not say that he had resigned. He called PW1 and “jokingly” asked him “*Bhai*”(Brother) how much money did you make from Carpenters.

In the aftermath, his relationship with PW1 deteriorated for three years and is still not strong. He received calls from several people saying that one of his best friends had been terminated from Carpenters Motors, as he also heard at gatherings and Tuesday rituals. People “joke[d] around” that PW1 is a “*Chorwa*”(thief). Their ritual group, the Ramayan Mandali disowned him.

(c) PW3( *Sushil Nilesh Chand*) in evidence in chief said that he knew PW1 for 10 to 15 years. When he saw the advertisement, he called PW1 and asked him how much he made. The notice implied that he was not a trustworthy person. He must have done something wrong or stolen. People were talking about it. He disassociated himself with PW1, as he did not want to associate with people of such caliber and spoil his reputation.

(d) I have considered the salient parts of the cross-examination of PW1 and PW2, in the next paragraph of my judgment.

(e) PW3, in cross examination said that his perception of PW1 changed after he saw the advertisement. He denied that he jokingly asked PW1 how much he made. PW3 said that he came to give evidence at the request of PW1’s brother, a taxi driver. He hardly reads

newspapers, but had seen the particular publication. He agreed that such advertisements are published by employers.

- (f) In re-examination, PW1 said that his photo was published by the defendant to tarnish his reputation, as he had not toed the line with the defendant, as regards its audit. It was not a fair practice to publish a notice that he was no longer in employment, when he had resigned.

PW2 said that the advertisement clearly says that PW1 was terminated or suspended from the organization, cannot be trusted, has committed a serious misconduct and is a criminal.

PW3, in re-examination said that the advertisement with a photograph and the words below meant that he had done something wrong.

- (g) DW1, (*P.K Sharma*, Head of Group Human Resources of the defendant company) in his evidence in chief said that such notices are published, in order that the public may know that a particular employee/s is no longer in employment and the defendant would not be responsible for any transactions that he may carry out on its behalf.
- (h) In cross-examination, it was put to DW1 that the advertisement does not say PW1 had resigned. The photographs and notices regarding the employment of two other Senior Managers who had resigned, were not published in the newspapers He said that the advertisement was the easiest mode of mass communication. It was a standard clause. DW1 denied that the advertisement was derogatory, designed to cause the plaintiff disrepute and done maliciously. The company was protecting its interest.

***The determination***

4. The plaintiff's claim against the defendant is for an alleged libel in respect of a paid advertisement which appeared on Saturday, the 15<sup>th</sup> May, 2010, in the Fiji Times and the Fiji Sun with his photograph and that of three others. The advertisement reads as follows:

*Notice is hereby given that the above named individuals are no longer employed by Carpenters Motors – Walu Bay. We will not be responsible or accountable for any business transaction or dealings that the above named individuals may carry out on behalf of Carpenters Motors. (emphasis mine)*



5. The plaintiff contends that the advertisement portrayed him as a dishonest person, someone who was terminated, not one who resigned, a thief who could still do business for Carpenters Motors, even after he was terminated.
6. The defendant, in its statement of defence denies that the advertisement is defamatory of the plaintiff. It is an accepted business and commercial practice and in the public interest to “disseminat[e]..such information” to its customers for the continuity of its business operations.
7. The question for determination is whether the words complained of are capable of bearing a defamatory meaning.
8. On the construction of words, *GATLEY ON LIBEL AND SLANDER*, (10<sup>th</sup> Ed,2004) at para 3.15 states:

*Words are normally construed in their natural and ordinary meaning, i.e. in the meaning in which reasonable men of ordinary intelligence, with the ordinary man’s general knowledge and experience of worldly affairs, would be likely to understand them. The question is what would the words convey to the mind of the ordinary, reasonable, fair minded reader? The natural and ordinary meaning may also include any implication or inferences.* (footnotes omitted, emphasis mine)

9. In my judgment, the natural and ordinary meaning of the words that he is “no longer employed by Carpenters Motors” means that the plaintiff has ceased to be an employee. The words that follow, viz, “We will not be responsible or accountable for any business transaction or dealings that the above named individuals may carry out on behalf of Carpenters Motors” do not infer that he was a thief, a dishonest man and has been terminated for discreditable conduct.

10. Significantly, PW1 and PW2 in cross-examination admitted that the advertisement does not state that he was terminated nor that he was a dishonest person, a thief or thug nor that he could not discharge his duties or he colluded with other employees,(as was also stated by DW1 in evidence in chief). PW1,PW2 and PW3 stated that such advertisements are frequently featured in newspapers.
  
11. Moreover, it transpired in the cross-examination of the plaintiff,(PW1) that as liaison officer of Carpenters Motors, he dealt with the marketing and business growth of the company. It also emerged that PW1, in his letter of resignation had stated that he “contemplate[s] to join opposition in a very near future”.
  
12. Spring J.A. in *Borron v Fiji Broadcasting Commission*, [1982] FJCA 7 declared:

*If the words are capable of conveying a defamatory meaning then it is a question to decide whether the words, do in fact, convey a defamatory meaning. In deciding whether words are capable of conveying a defamatory meaning the court will reject those meanings which can only emerge as the product of some strained or forced or utterly unreasonable interpretation...*

*The test as to whether words are capable of being understood in a defamatory sense is not whether some people would put a sinister construction upon them but whether they would be so understood by a fair minded reasonable person.* (emphasis mine)
  
13. Lord Halsbury in *Nevill v Fine Art and General Insurance Co.*,[1897] AC 68 at pp 72-73 stated that “it is not enough to say that by some person or another the words might be understood in a defamatory sense”.

14. The authors of **GATLEY ON LIBEL AND SLANDER**, (*op.cit.* at para 2.30) under the heading “**Dismissals**” states :

*A person wrongfully dismissed cannot rely on the dismissal itself as conveying a defamatory imputation, nor it is in itself defamatory for a person to publish of one who has ceased to be employed by him that he is no longer so employed and is no longer authorized to do business..* (footnotes omitted, emphasis mine)

15. The authors cite two cases which are almost a counterpart of the present case.

16. In the first case, **Grundy v Geyer**, (1887) 21 S.A.L.R. 3 as referred to in the closing submissions filed on behalf of the defendant, an advertisement published in a newspaper to the effect “*Take notice that G is no longer employed by us and that in future the business will be managed by N., who for fifteen years has been in our employment,*” was held not libellous and did not convey a libellous innuendo.

17. In the other, **Beswick v Smith**, (1907) 24 T.L.R. 16. Lord Halsbury stated:

*The words complained of, if taken in their natural meaning, would not convey to the mind of a person of ordinary intelligence the impression that any imputation was being made against the plaintiff.... The ordinary and reasonable inference to be drawn from the notice which was sent was, perhaps, that the employment had terminated because the parties had quarreled, but certainly not that the defendant was imputing anything criminal to the plaintiff. Such an inference seemed to him to be the invention of an imagination already tainted with the idea that there was something wrong in the termination of the employment.*

18. I conclude that the advertisements published by the defendant on 15<sup>th</sup> May, 2010, in the Fiji Times and the Fiji Sun are not defamatory of the plaintiff.

19. The plaintiff’s action fails.



20. *Orders*

- (a) I dismiss the plaintiff's action.
- (b) The plaintiff shall pay the defendant costs summarily assessed in a sum of \$3000.



*A.L.B. Brito-Mutunayagam*

**A.L.B. Brito-Mutunayagam**

**JUDGE**

21<sup>st</sup> September, 2016