

**IN THE HIGH COURT OF FIJI**  
**WESTERN DIVISION AT LAUTOKA**  
**CIVIL JURISDICTION**

**CIVIL ACTION NO. HBC 99 OF 2018**

**BETWEEN** : **AVINESH NARAYAN** trading as Autronics Services of Yalalevu, Ba,  
Businessman.

**PLAINTIFF**

**AND** : **ALI HASSAN KHAN** trading as Bridgetown Service Station of  
Yalalevu, Ba, Businessman.

**DEFENDANT**

**Appearances** : Mr R. P. Chaudhary for the plaintiff  
: Mr R. Charan for the defendant

**Date of Trial** : 18 and 19 September 2019

**Date of Written**

**Submissions** : 24 October 2019 (plaintiff), 19 November 2019 (defendant)

**Date of Judgment** : 04 December 2019

## **J U D G M E N T**

### **Introduction**

[01] The plaintiff brings this action against the defendant claiming damages for publication of libelous word about the plaintiff.

[02] The defendant pleaded qualified privilege and stated that the notice was inside the service station to notify the staff only and it was not published.

[03] At the trial, both parties gave evidence and called their respective witnesses. They have also filed their closing submissions. I am grateful to both counsel for filing comprehensive submissions.

### **Background facts**

[04] The background facts as gleaned from the statement of claim are as follows:

1. The plaintiff is a businessman in Ba trading as Autronics Services. He is also known as "*Copper*".
2. The defendant is also a businessman operating and managing a Service Station in Yalalevu, Ba known as Bridgetown Service Station, which is situated on 20 Kings Road Highway, Yalalevu, Ba.
3. On or about 23 April 2018, the defendant published notice concerning the plaintiff. The notice reads:

*"DO NOT ACCEPT  
AVINESH NARAYAN'S (COPPER)  
CHEQUE (AUTRONICS SERVICES)  
Dated 23/4/18  
Management"*

4. The notice was displayed prominently inside the service station.
5. The words in their natural and ordinary meaning meant and were understood to mean: -
  - a) That the plaintiff was a dishonest and unethical person.
  - b) That the plaintiff was not credit worthy.
  - c) That the plaintiff's cheques were being dishonored and cheques should not be accepted from him.

- d) That a cheque or cheques given by the plaintiff to the defendant was or were dishonoured.
  - e) That it was not safe to do business with the plaintiff.
  - f) That the plaintiff was not a trustworthy person.
6. The plaintiff alleges that the said words were calculated to and they did disparage the plaintiff personally and as a businessman, and that as a consequences of the publication of the words by the defendant the plaintiff has been injured in his credit, character and reputation and has been brought into public scandal, ridicule, odium and contempt and has been subjected to mental agony and distress and his business reputation has been adversely affected.

#### **Defendant's case**

[05] The defendant in his amended statement of defence states: the defendant decided to put up a notice of his staff to remind them not to accept cheques from the plaintiff. Only the staff and management of the Service Station were privy to the Notice and so the Notice was displayed inside the Service Station to ensure that the message is received by all those who are on shift at any given time. It was reasonable for the defendant to publish the words in the manner which he did.

[06] He has specifically pleaded that:

- i. The publication was not wider than it needed to be as the published notice was placed inside the office only for the viewing of the staff and was not publicly displayed elsewhere.
- ii. The notice was privileged between the defendant and the staff.
- iii. The purpose of the notice was to keep the staff working at the Service Station informed of the defendant's decision to not accept cheques from the plaintiff.
- iv. The words in its natural and ordinary meaning are not capable of imputing any derogatory or disparaging meaning towards the plaintiff.

## Agreed facts

[07] At the Pre-Trial Conference held between the parties the facts admitted include:

- 1) The defendant is a businessman operating and managing a Service Station on 20 Kings Highway, Yalalevu, Ba known as Bridgetown Service Station.
- 2) The plaintiff is a businessman in Ba aka "Copper" trading as Autronics Services.
- 3) The following notice was displayed by the defendant in his Service Station in bold red letters on an A4 size white paper.

***'DO NOT ACCEPT  
AVINESH NARAYAN'S (COPPER)  
CHEQUE (AUTRONICS SERVICES)  
Dated 23/4/18  
Management'***

## Evidence

### *Plaintiff*

[08] At the trial, the plaintiff ('PW1') gave evidence for himself and called 3 other witnesses namely Ravi Narayan, Police Officer ('PW2'), Rikashni Lata ('PW3') and Vikashni Lata ('PW4'), in support of his claim.

### *Defendant*

[09] The defendant ('DW1') also gave evidence for himself and called 2 other witnesses namely Alisi Meredani, Bowser Attendant ('DW2') and Rohit Prasad, also Bowser Attendant ('DW3').

[10] I will summarise what each witness stated in their evidence where necessary.

## The law

- [11] The privileged occasion was explained in *Toogood v Spyring* (1834), 1 Cr. M & R 181 as follows (1 Cr.M. & R. at p. 193):

*“In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorized communications and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits.”*

- [12] Lord Diplock in *Horrocks v Lowe* (1974) 1 ALL ER 662 at 669 explained the privileged occasion in this way:

*“... With some exceptions which are irrelevant to the instant appeal, the privilege is not absolute but qualified. It is lost if the occasion special reason of public policy why the law accords immunity from suit—the existence of some public or private duty, whether legal or moral, on the part of the maker of the defamatory statement which justifies his communicating it or of some interest of his own which he is entitled to protect by doing so. If he uses the occasion for some other reason he loses the protection of privilege”.*

## Discussion

- [13] The plaintiffs claim arise out of a notice the defendant put up in his service station concerning the plaintiff. The notice reads:

**‘DO NOT ACCEPT  
AVINESH NARAYAN’S (COPPER)  
CHEQUE (AUTRONICS SERVICES)**

*Dated 23/4/18*  
*Management'*

- [14] So as not to be misled, the plaintiff's nick name and his company name is given in the notice. Undoubtedly, the notice refers to the plaintiff only and nobody else.
- [15] It is common ground that the defendant displayed the notice in his Service Station in bold red letters on an A4 size white paper.
- [16] The notice was displayed for some time from 23 April 2018. The plaintiff said in evidence that he took a photograph of the notice on 18 May 2018. However, he did not exhibit the photograph he took on that day. The defendant's evidence was that he usually puts any notice for 2 weeks. On the evidence, I could say that the notice was displayed in the defendant's service station for more than 3 weeks from 23 April 2018.
- [17] Apart from the conceivable meaning of the words in the notice, the plaintiff has pleaded several innuendo meanings that:
- a) That the plaintiff was a dishonest and unethical person.
  - b) That the plaintiff was not credit worthy.
  - c) That the plaintiff's cheques were being dishonored and cheques should not be accepted from him.
  - d) That a cheque or cheques given by the plaintiff to the defendant was or were dishonoured.
  - e) That it was not safe to do business with the plaintiff.
  - f) That the plaintiff was not a trustworthy person.
- [18] If the plaintiff has pleaded a meaning wider than was necessary, he will enable the defendant to justify that meaning.

*The defence*

- [19] Since the display of the notice in the service station has been admitted by the defendant, I turn to consider the defence of privileged occasion.

- [20] The defendant has set as defence that the notice (words) was displayed inside the service station as an instruction or a reminder for the cashiers, his employees who work on shifts, and it is not a general notice for the public.
- [21] In a defamatory sue, I need to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. For that purpose, I must consider the evidence given by the defendant and his witnesses.
- [22] The defendant (DW1) states in his evidence that:
- a) He knew the plaintiff and his family from childhood and that the plaintiff together with members of his family used to use his service station to fill up.
  - b) Only the plaintiff used cheque to make payment for the purchase of the fuel and he used to write \$50 cash cheque and fill up for \$10 and pocket the rest of the cash and buy assorted items from the mini-mart next door and not his service station.
  - c) As there was no profit in the business sense from cashing the plaintiff's cheque and he called and informed the plaintiff that he will not be accepting his cheques before placing the internal notice for his staff.
  - d) He did not charge any fee for cashing the plaintiff's cheque.
  - e) In his service station there are 3 fuel pumps. 3 attendants work on one shift and each attendant has their own cash register till. One shift is up to 8 hours. There are 3 shifts within a day and since each attendant has their own till, customers are not allowed in the cashier's office. The attendants would take payment from customers and issue them invoice.
  - f) A notice is usually put for 2 weeks and then takes it out once all the attendants have full knowledge about it. The notices would be about customers who had reached their credit limit and so forth.
  - g) He said the front glass is tinted and the Notice was placed on a door inside the office which is used as a notice board by the business.

h) He wrote '*copper*' in the brackets as there is 3 Avinesh Narayan who were his customers and for the staff to easily identify the plaintiff he wrote '*copper*'.

[23] DW2, the defendant employee told the court that the Notice was placed inside the service station on the door. Under cross-examination she said she attended 2 staff meetings a month, and the notice board was effective medium of getting the message across.

[24] DW3, another employee of the defendant in his evidence stated that: The Notice was placed inside the service station and was for staff only. He saw the plaintiff taking the photograph. The front glass is tinted to the head height level and as you go inside the office it is up to your chest high as the floor inside is 1 foot raised. He said the plaintiff was taking the photograph holding his both arms up, otherwise he could not have taken the photograph.

*Whether words were capable of being defamatory*

[25] Before I make a determination on the issue of qualified privilege, I need to decide on the issue whether the words published were capable of being defamatory to the plaintiff or his business.

[26] The notice that: '*DO NOT ACCEPT AVINESH NARAYAN'S (COPPER) CHEQUE (AUTRONICS SERVICES)*' was affixed inside the service station by the management, the defendant.

[27] The word '*copper*' used therein refers to the nick name of the plaintiff. Not only the plaintiff but also the witnesses called by him confirmed that he (the plaintiff) is popularly known as '*copper*'. The nick name '*copper*' and his company name (Autronics Services) appear to have been chosen to avoid confusion. The defendant in his evidence said that he has got 3 customers with the same name of Avinesh Narayan.

[28] On the evidence, I find that the words '*copper*' and '*Autronics Services*' are not defamatory in its natural and ordinary meaning . They simply identify which Avinesh Narayan the notice refers to. In other words, they spot the plaintiff.



- [29] If you remove those couple words-'*copper*' and '*Autronics Services*', from the notice, the remaining words would be '*DO NOT ACCEPT AVINESH NARAYAN'S CHEQUE*'
- [30] I need to decide on whether the words '*DO NOT ACCEPT AVINESH NARAYAN'S CHEQUE*' are defamatory to the plaintiff.
- [31] At the end of the notice, it says: '*Management*', meaning by the Management.
- [32] The Management may give instructions to its employees. Only the employees are bound by the instructions given by the Management not others or the public.
- [33] The purpose of the Management's instructions is to inform its employees of its business decision.
- [34] The word '*Management*', which appears at the end of the notice, suggests that the notice is addressed to the employees particularly the cashiers at the service station. It does not address the public or it does not say '*to whom it may concern*'.
- [35] By that notice, the management instructs its employees namely the cashiers who were on shift work that '*DO NOT ACCEPT AVINESH NARAYAN'S CHEQUE*'.
- [36] The notice does not say that '*DO NOT ACCEPT AVINESH NARAYAN'S CHEQUE*', as his cheque gets dishonoured. To my mind, it appears that the notice instructs the cashiers not to accept AVINESH NARAYAN'S (plaintiff's) cheque, a business decision taken by the management.
- [37] '*The test according to authorities is whether, under the circumstances in which the writing was published, reasonable man to whom the publication was made would be likely to understand in libellous senses*' (*Capital and Counties Bank v Goerge Henty & Sons* (1882), 7 App. Cas. 741 at p. 745 (Lord Selborne, L.C.)).
- [38] In *Nevill v Fine Art General Insurance Co.* [1897] AC. p. 68, Lord Halsbury said:

*"What is the sense in which any ordinary reasonable man would understand the words of this communication so as to expose the plaintiff to hatred or contempt or ridicule.*

*"It is not enough to say by some person or another the words might be understood in a defamatory sense (at p. 73)."*

- [39] The plaintiff in evidence said: Mr Aman Dayal, a lawyer saw the notice before him and formed the opinion that the plaintiff's cheque had bounced. The plaintiff did not call Mr Aman Dayal to give evidence in court.
- [40] PW2 is the Acting Police Inspector and a law student who also had seen the notice when he fuel his car and informed of it to the plaintiff. The plaintiff called this witness to establish that he had expression that the plaintiff's cheque or cheques had been dishonoured.
- [41] Both Mr Aman Dayal and PW2 are from legal background and would have formed their opinion based on their legal knowledge. They are not ordinary reasonable men.
- [42] I would say that the plaintiff had failed to establish that, under the circumstances in which the notice was affixed, an ordinary reasonable man who reads it would be likely to understand in libellous sense.
- [43] The notice is meant for the staff. It was affixed inside the service station. It is not addressed to the general public. The words in the notice that: '*do not accept Avinesh Narayan's cheque*', in my opinion, would not be understood in a defamatory sense by an ordinary reasonable man. This follows that the words in the notice are not capable of having a libellous meaning concerning the plaintiff at all.

*Inferential meaning*

- [44] I must also rule on the innuendos. The plaintiff has drawn inferences from the notice that: a) That the plaintiff was a dishonest and unethical person, b) That the plaintiff was not credit worthy, c) That the plaintiff's cheques were being dishonoured and cheques should not be accepted from him, d) That a cheque or cheques given by the plaintiff to the defendant was or were dishonoured, e) That it was not safe to do business with the plaintiff and f) That the plaintiff was not a trustworthy person.

[45] The innuendo has been explained in Halsbury's Laws of England (4<sup>th</sup> Ed, vol.28 at Para 46) as follows:

*"The innuendo. Confusion has been caused because "innuendo" has been used to describe both the inferential defamatory meaning of words and their secondary defamatory meaning. However, it is now clear that the secondary defamatory meaning is the true or legal innuendo and that the inferential defamatory meaning is the natural and ordinary meaning, or part of it, the distinction being that the true or legal innuendo depends on knowledge of special facts or circumstances either extrinsic to the words themselves or relating to a special meaning of the words, whereas the inferential meaning must be deduced or inferred from the words themselves and the context in which they were published."*

[46] What ordinary men would infer without special knowledge has generally been called the natural and ordinary meaning of the words.

[47] The notice conveys a decision of the management that the staff should not accept cheque from Avinesh Narayan, the plaintiff. There is nothing libellous in that. As I said, the notice is given to the employee by the management in a business situation. It is not necessary to go beyond the words themselves.

[48] In my opinion, no reasonable person would draw a defamatory inference from the words in the notice themselves. It follows that the words in the notice are not capable of having the particular meaning which the plaintiff attributes to them.

*The defence of qualified privilege*

[49] For the sake of completeness, let me say something about the defence of qualified privilege.

[50] Presumably, the words in the notice can have a libellous meaning pertaining to the plaintiff. Then the question arises whether the defence of qualified privilege would be available to the defendant in the circumstances under which the notice was affixed.

[51] The notice was affixed on the sliding door inside the service station. The notice was about a business decision taken by the management. It informed the staff that: '*do not accept Avinesh Narayan's cheque*'.

[52] Lord Esher, M. R. says in *Pullman v Hill & Co.* (11) [1891] 1 Q. B. at p. 528:

*"An occasion is privileged when the person who makes the communication has a moral duty to make it to the person whom he does make it, and the person who receives it has an interest in hearing it. Both these conditions must exist in order the occasion may be privileged."*

[53] The defendant as employer notifies his business decision by way of the notice to his staff that have an interest in hearing and obeying the business decision taken by their employer. This satisfies the two conditions as stated in the above case in order to claim the occasion to be privileged.

[54] On the evidence, I would hold that the notice was affixed in a privileged occasion. Therefore, the defendant would succeed in his defence of qualified privilege if the words in the notice were capable of having libellous meaning concerning the plaintiff in its ordinary or inferential meaning.

## **Conclusion**

[55] For the reasons I have set out, I conclude that the words complained of are not capable of having a defamatory sense towards the plaintiff in its ordinary context or in its inferential meaning which the plaintiff attribute to them. Presumably, even if the words are capable of having a defamatory statement, the defendant would be entitled to claim the defence of qualified privilege as they were made under a privileged occasion. I would, therefore, dismiss the plaintiff's claim with summarily assessed costs of \$1,000.00.

## **The result**

- 1) Plaintiff's claim dismissed.

2) Plaintiff shall pay summarily assessed costs of \$1,000.00 to the defendant.

*M. H. Mohamed Ajmeer* 4/12/19

M. H. Mohamed Ajmeer

JUDGE



At Lautoka

04 December 2019

Solicitors:

For the plaintiff: Chaudhary & Associates, Solicitors

For the defendant: Ravneet Charan Lawyers, Solicitors