

60 .
IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

000298

ACTION NO. 113 OF 1979

Between:

SUNGOLD JEWELLERY INDUSTRY
(FIJI) LTD.

Plaintiff

- and -

RAMNIK LAL RANIGA & 8 ORS.

Defendants

ACTION NO. 114 OF 1979

Between:

SURESH TULSI DASS JOGIA
s/o Tulsi Dass Jogia

Plaintiff

- and -

RAMNIK LAL RANIGA & 8 ORS.

Defendants

Mr. G.R. Shankar for the Plaintiff

Mr. K.C. Ramrekha for the Defendants.

J U D G M E N T

These two civil actions, Nos. 113 and 114 of 1979, against the same 9 defendants were at the hearing consolidated on the application of the plaintiffs' counsel, Mr. G.R. Shankar and tried as one action. Mr. Shankar notified the Court that the plaintiffs were not proceeding against the second, third, sixth, eighth and ninth defendants and the actions against them were discontinued.

The plaintiffs allege that on or about the 2nd February, 1979, the defendants falsely and maliciously wrote and published of and concerning them to the Permanent Secretary, Ministry of Immigration and

Labour Suva the words set out in the statement of Claim. These words, which make up three pages of a letter addressed to the said Permanent Secretary, are set out fully in the Statement of Claim. The plaintiffs' case is that such words are defamatory of both plaintiffs.

There is no doubt in my mind that the words are defamatory of the plaintiff Mr. Jogia but I have doubts whether they are defamatory of the plaintiff company. In view of the decision I have come to, it is not necessary to set out the defamatory words in this judgment or decide whether they are in fact defamatory of the plaintiff company.

The plaintiffs called Mr. Satyanand, the Permanent Secretary for Labour Industrial Relations and Immigration, who testified that in February 1979 he received what he called a petition against the two plaintiffs. He produced the petition, which after objections by Mr. K.C. Ramrakha, counsel for the defendants, was admitted and marked for identification.

The petition was shown to a Mr. Amritlal Herilal Jogia who was also called to give evidence. He said, the petition, a letter as he called it, was brought to him by the 8th defendant Madhu Kant Jogia and a Jayanti Lodhia about February 1979 and he was asked to sign it. He says he read it but did not have time to read it properly. The letter at the time he first saw it had been signed by two or three people whose signatures he could not identify. The letter MFI:1 was shown to the witness and he stated it was the letter he had read in February 1979. He says he did not sign the letter.

The next witness called was the plaintiff Mr. Jogia. He was shown the petition or letter and he stated he knew probably all the signatures attached to the letter. Before the letter was tendered Mr. Ramrakha asked to be permitted to examine the witness on the voir

dire. The letter was in due course admitted into evidence.

Mr. Shankar, no doubt not being certain whether the plaintiffs had adduced sufficient evidence to establish authorship and publication of the letter, after a short adjournment to consult a witness, then called the original ninth defendant. He identified the first defendant's signature which the witness said he saw him write. While Mr. Ramrakha was at first somewhat surprised when one of the original defendants was called as a witness by the plaintiff he lost no time in extracting from him evidence damaging to the plaintiff's case.

Mr. K.R. Jogia confirmed that he and certain other defendants had apologised to the plaintiffs who had withdrawn their claims against him and them. He had paid no damages to the plaintiffs. He said he was given a letter by Mr. H. Lodhia of Lords Jewellers Ltd. - the 4th defendant - to take to the first defendant to obtain the first defendant's signature to it. He was shown the letter Exhibit 1 which consists of 3 pages. His signature was not on it but his son's signature was. He said that originally there was only a one page letter and it was only a single sheet letter he showed the first defendant. He said he did not properly read the letter which was against the plaintiff company. He did not state the original letter he was shown referred to the plaintiff Mr. Jogia. Mr. K.R. Jogia did not know who had typed the three page letter.

It came as no surprise to the Court that Mr. Ramrakha offered no evidence on behalf of the remaining four defendants when the plaintiffs closed their case.

The defendants in their defence denied the plaintiffs' allegations that they had written or published the alleged words to the Permanent Secretary. The plaintiffs were unable to establish who had written the letter but that itself is not fatal since it is publication of the words which is of importance.

The petition or letter consists of a three page typed letter with pages stapled together which ends up in type :-

"Yours faithfully,
Jewellers of Fiji

(signed in attest sheet)"

The last paragraph of the letter states as regards the allegations in the letter "the undersigned are quite prepared to discuss it with you". The paragraph ends "The sheet attest herewith bears the signatures of people in similar trade". "Attest" is clearly meant to be "attached". As I read that paragraph the last sentence referring to signatures of people in the similar trade is not a reference to the signatures referred to earlier as "the undersigned" but of other jewellers who support the views expressed by the signatories to the letter.

Attached to that letter by a pin are two sheets of paper with a number of signatures on them mainly signatures below rubber stamped business names. One sheet is headed "Lautoka Jewellers" and the other "Suva Jewellers" and at the top both sheets have the following words typed on them :

"We the undersigned agree to the allegations submitted in the letter attached".

Two different typewriters have obviously been used to type these words. These words support my view earlier expressed that the signature on those two sheets of paper are those of supporters of the signatories and not the authors and signatories of the letter.

Those two sheets of paper, one of foolscap size and the other quarto size, are not part of the letter, the three pages of which are stapled together, and clearly from the wording at the top of them the signatories thereon are not signatories to the letter but merely express

agreement "to (sic) the allegations submitted in the letter attached".

I am not satisfied that the three page letter was attached to either of the two sheets bearing the signatures when the signatures were obtained. The three pages are quarto sizes whereas the Lautoka Jeweller sheet is foolscap which lends credence to Mr. K.R. Jogia's evidence that the letter he saw was a one page letter. The contents of the letter could be typed on a single sheet of foolscap in my view.

What the plaintiffs have established is that an unsigned three page letter with two sheets of paper bearing a number of signatures pinned to the letter was sent to and received by the Permanent Secretary, Ministry of Immigration and Labour in February 1979. Those signatures are alleged to be the signatures of the original 9 defendants. In respect of the first defendant the evidence is that he signed a one page letter which was said to be "against Sungold Jewellers". I am satisfied it is the first defendant's signature on the foolscap sheet attached to the letter but I am not satisfied he signed or published the three page letter. The only witness who gave evidence about the purported signatures of the remaining 3 defendants the 4th, 5th and 7th defendants was the plaintiff Mr. Jogia.

As regards the 4th defendant Lords Jewellers Ltd. he said there were two J. Lodhias but he did not know which one had signed. As regards the 5th defendant he said that while he had no dealing with Mr. K. Bhindi he had seen his signature on what he called "communal organisations" whatever that term means.

The 5th defendant's purported signature appears as "Karsanji Naranji" under a rubber stamped "Bhindi Bazaar". No attempt was made by the plaintiffs to establish that the signature "Karsanji Naranji" was that of the 5th defendant Karsanji Bhindi.

The purported signature of the 7th defendant Sundarji Niranji Bhindi is a rubber stamped signature "Sundarji Naranji Bhindi per....." followed by an illegible signature which the plaintiff Mr. Jogia says is that of Bhikha Bhindi a son of the 7th defendant.

The plaintiffs have not satisfied me that the remaining 4 defendants signed, published or authorised publication of the letter produced in Court to the Permanent Secretary.

On the evidence before me it would appear that someone and possibly one of the original defendants wrote a letter and sought support of other jewellers in Fiji. He produced a letter to them and obtained from them signatures in support of that letter. At a later stage the one page letter was replaced by the three page letter produced in Court. The author of the 3 page letter or someone at his request pinned the two pages of signatures to the 3 page letter and forwarded it to the Permanent Secretary.

Mr. Shankar informed the Court that five defendants had apologized and had been released by the plaintiffs. They were the five defendants in respect of which the plaintiffs discontinued their actions.

Mr. Ramrakha did not refer to this matter and has not sought to amend the Defences. When the Court asked Mr. Shankar whether the release of the five defendants operated to release the remaining four he merely stated that the defendants were jointly and severally liable for the defamatory statements. There is no doubt that they are jointly and severally liable, if liable at all. Equally there is no doubt that if the original nine defendants were liable they were joint tortfeasors.

The plaintiffs are not bound to sue all joint tortfeasors but what is the position where, as in this instant case the plaintiffs at the hearing accept apologies from 5 of the 9 defendants and release them and discontinue action against them? Leaving aside for the time being what might be the common law position it appears to me that the remaining 4 defendants would be put in a difficult position if they sought contribution against the 5 released defendants under the provisions of section 6(1)(a) of the Law Reform (Contributory Negligence & Tortfeasors) Ordinance.

The common law rule is where the joint tortfeasor is released or otherwise discharged all the other joint tortfeasors are released from further liability.

(Cutler & Another v. McPhail (1962) 2 All E.R. 474).

Cutler's case was a libel action brought against a number of defendants. The plaintiff's solicitors wrote to the solicitors of some of the defendants offering to release all officers and members of the committee of an association if apologies were published. Apologies were published and the association paid certain damages and costs. It was held this agreement released the defendant in respect of a separate tort alleged to have been committed by him in causing his letter to be published in a journal.

Where however there is an agreement not to sue one of several joint tortfeasors this agreement will not amount to a discharge of the others where it is not the intention of the agreement that an accord and satisfaction should emerge. It was so held in Apley Estates Co. & Others v. De Bernales & Others (1946) 2 All E.R. 338. In that case the agreement expressly stated it should not be construed or operate as a release of any cause of action of the plaintiffs against the defendants or any of them. In the instant case the plaintiffs' counsel has advised the Court that 5 defendants have been released. One of those defendants has stated he was released after he apologised. There is nothing before me to indicate that

the plaintiffs expressly reserved their rights against the remaining defendants.

However, Mr. Ramrakha has not sought to amend the defendants' defences after the release of the 5 defendants was disclosed to and commented on by the Court. It may be that he is well aware that there was no intention by the plaintiffs to release the other defendants.

Since I am not satisfied that the defendants published the alleged libel I do not find it necessary to decide whether the release of the 5 defendants at the hearing operated as a release of the remaining defendants. I would also add that if the plaintiffs had been able to establish that the remaining 4 defendants did publish the words which are clearly defamatory of the defendant Mr. Jogia, I would in any event only have allowed nominal damages in view of all the circumstances.

The letter failed in its object of preventing the issue of a work permit to Mr. Jogia. The permit was issued before the Secretary for Labour received the letter. Mr. Jogia is still in Fiji on a work permit from which I would assume the Secretary treated the contents of the letter with the contempt it clearly deserved.

Both actions are dismissed with costs to the defendants.

(R.G. Kermode)

JUDGE

SUVA,

April, 1980.