IN THE SUPREME COURT OF THE REPUBLIC OF VANUATU HELD AT PORT VILA
(Civil Jurisdiction)

Civil Case No. 133 of 2000

BETWEEN : RODNEY BANGGA

(Plaintiff)

AND : ASSET MANAGEMENT UNIT

(First Defendant)

AND: JOE LIGO

(Second Defendant)

AND : TRADING POST LIMITED

(Third Defendant)

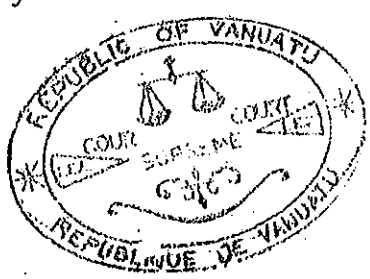
RULING ON COSTS

The plaintiff concedes the defendants are entitled to costs on a party and party basis. The defendants ask for solicitor and own client costs. The plaintiff objects to that.

On behalf of the first two defendants their lawyer says there was never any realistic claim. Their letter of 13 December 2000 terminated the plaintiff's employment in accordance with his contract, whatever might have taken place before. In any event, they say he was never going to win more than three months salary in damages, that had been paid.

On behalf of all three defendants there is an acceptance of a defamation, but one that attracted nominal damages. However, the notice containing the defamatory statement was published as a response to what the plaintiff and or his lawyer had caused to be placed in the newspaper a few days earlier.

The defendants say there was no complaint, no letter before action or request for an apology. Had any such request been made then the matter might simply have been resolved by a published apology, or in some other way. The third defendant says it was simply added to the action.



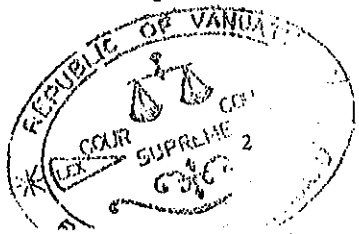
In response, the plaintiff's lawyer referred to the cases of Colgate Palmolive-v- Cussons (1993) 118 ALR 248 and Civil case 22 of 2000, Erakor Island Limited –v- Elder and Thiess. He accepted the plaintiff had lost on all issues but stated had he been believed then he would have won. It was a matter of credibility. None of the criteria from Colgate, Palmolive or Erakor –v- Elder and Thiess applied. In particular, it was open to the Court to find the 17th November letters were an unlawful termination and, if so, an award of damages was due to the plaintiff. There was no right to terminate by pay in lieu of notice. It was also a contract for a specified term.

The plaintiff's lawyer argued that it wasn't for the plaintiff to ask for an apology. It wasn't a Colgate Palmolive point. There was no evidence the plaintiff telephoned the third defendant in respect of the first article. The plaintiff's lawyer said the news paper was referred to him, "they got a response from me which they printed instead of the letter".

At page 5 of the Judgment I referred to "some curiosities in this case". The plaintiff originally asserted there was no dismissal then said there was. At paragraph 2, I stated "It is difficult to see how, even had the plaintiff succeeded in a claim for wrongful dismissal, he would have recovered in damages any more than has already been paid to him...." The Writ was issued twenty seven days after the letters of 17 November and the day after the date of the AMU's letter of termination on notice. It is not entirely clear if the termination letter had been received at that time. However, the Chairman of the AMU wrote on 24th November to the plaintiff's solicitor saying they had referred the matter to their lawyers for advice and would get back to him.

It is difficult to understand why a Writ was issued whilst the Chairman's promised response was awaited or alternatively within hours of receipt of the termination letter of 13th December. A sober, taking stock of the circumstances by the plaintiff and his lawyer at that stage would have benefitted everyone. There was no claim for interim relief.

That in itself does not mean an award of solicitor and own client costs should be made. However, given that precipitate approach together with the fact that on the dismissal/termination issue whatever the outcome the plaintiff was not going to receive more in damages than he was being offered and was paid, I find an award of solicitor and own client costs is correct on this issue. This must be particularly so as the first and second defendants took seriously and acted upon the plaintiff's initial complaints



that there could not be a dismissal. There was no pleading of any breach of an implied term of trust and confidence.

The libel issue involves all three defendants. At page 11 paragraph 4 of the judgment, when considering the libel I stated "The writ was issued with precipitate speed." Again a sober, taking stock of the circumstances by the plaintiff and his lawyer would have benefited everyone. Had a letter been sent to the three defendants setting out the circumstances after the 13th December letter, requesting a correction and apology that would probably have taken place. It cannot be entirely overlooked that the findings of fact about the plaintiff's behaviour would have rendered any dismissal, as such, lawful and meant there was no libel, one of the curiosities in this case.

That in itself does not mean an award of solicitor and own client costs should be made. It must not be forgotten that the second defendant was on 9th December alleging a dismissal when the first defendant had on 5th December resolved to dismiss the plaintiff on notice.

The failure, or perhaps very limited success of the libel action was dependent to a large extent upon finding s of credibility.

However, the plaintiff issued a Writ for libel having at the least encouraged the matter into going into the public domain and before the circumstances were clear. The libel depended upon a claim for dismissal which I have found had little if any chance of success.

On the known facts in January 2001 and in the absence of any letters before action or requests for correction or apologies the launch of a libel action was risky indeed. The potential to resolve the case without litigation was high. In these circumstances I also award solicitor and costs in respect of the libel.

DATED at Port Vila this 28th day of February 2002

REPUBLIC OF VANUATU SUPREME COURT

R.J.COVENTRY
Judge

Put in Suoglers box 1/3/02