

**INDIAN CHAMBERS OF COMMERCE
OF BRUNEI DARUSSALAM & 24 OTHERS**

....Appellants

AND

**RAMESH JIWATRAM BHAWNANI
ABDUL HAMID BIN ABAS**

.....Respondents

**(Court of Appeal of Brunei Darussalam)
(Civil Appeal No. 5 of 2018)**

Before: Mortimer P, Burrell and Seagroatt JJ A.
12th May 2018

Mr Kamal bin Shaari and Mr Eugene Loh Jit Kuan (Messrs. Yusof Halim & Partners) for Appellants

Mr Pg Izad Ryan bi PLKD Pg Haji Bahrin and Ms Too Shu Vun (Messrs. Pengiran Izad & Lee) for Respondents

Seagroatt, JA.:

The 25 appellants appeal against the judgment of Findlay, J dated 24 March 2018 in which he found for the plaintiff respondents in their defamation action against these appellants and awarded exemplary and aggravated damages in addition to general damages.

The appellants' grounds are:

1. That the judge erred in holding all the defendants liable in damages in relation to the publication of the 29th November 2010 when the judge held that only the 1st and 4th defendants were liable for the defamatory matter in that publication.
2. The judge erred by awarding joint and several damages against all defendants without apportioning the awards between the defendants according to their respective aggravating and exemplary circumstances.
3. Awarding exemplary damages was wrong in law.
4. Holding the defendants responsible for damages flowing from the publication on 16th June 2010 was wrong in law.
5. The publication on 16th June 2010 was a novus actus interveniens and independent of the defendant's publications so there should be no liability.
6. The award of damages was disproportionately high compared with other cases.

The defamatory acts

The matter starts with a letter dated 5th April 2010 by the defendants to the Indian High Commissioner. It is written by the second defendant as President of The Indian

Chamber of Commerce on the Chamber of Commerce's headed notepaper and is counter signed by 23 other members or office holders of the chamber.

It contains, beyond argument, libelous material against the first plaintiff. The following are extracts.

"Ramesh....developed a business known as YMRM...he deals mainly with counterfeit branded goods.....has recently been increasingly in various malicious activities...."

6) Money laundering and mafia style gangster. Ramesh is widely suspected of laundering huge sums of money...and threatening people in due course if at all someone tends to talk about it or report it."

There were also references to Ramesh's use of "dirty words" and "dirty tactics." The other members had signed as "confirming their support." They were thus as much authors of the letter as their president.

The letter of the 29th November 2010 was also written on the notepaper of the Chamber of Commerce and signed by the fourth defendant as general secretary of the chamber. It generally disparages the first plaintiff alleging "dubious activities and anti-social behavior". It repeats the libelous nature of the earlier letter by alleging that his "so-called business activities are in actual fact a sham to cover his illegal money-laundering operations. Both letters called upon The Indian High Commission to "investigate the matter rigorously...and we are pretty sure that something worthwhile will be unearthed." It is not countersigned by other members though expressed to be sent on behalf of the management and executive committee.

The second plaintiff's case is based upon limited content in the letter of the 5th April 2010 which does not specifically identify him by name but which can readily lead to his identification. The libel is that he abused his office as an officer of the Ministry of Foreign Affairs. He is identified as the brother of Haji Sabali who works in the Ministry of Foreign Affairs.

At trial the defendants' counsel conceded that they had no defence to the action for defamation and there could be no justification. The three issues to be argued were the extent of publication, malice and damages.

Extent of publication

Findlay, J quite properly rejected the unrealistic argument that publication was limited in extent and short-term in effect. The contents of the letters would have been widely known within the Commission since the defendants were requesting the High Commissioner to investigate matters concerning the first plaintiff in the context of their statements and allegations. It would be nonsense to suggest that publication was limited to the High Commissioner who had informed the defendants that he would be in touch with the Bruneian authorities.

The judge found that the matters they set out to the High Commission would be likely to be topics of conversation and discussion within the Chamber of Commerce members generally.

Malice

It is difficult to see how the defendants could sensibly argue that there was no malice on their part in publishing such material. In our view, and the judge found as much, the terminology and expressions, they used to describe the baseless allegations reeked of malice. They admitted that they had no basis and could not be justified. They had contended otherwise up to the beginning of the trial, almost 8 (eight) years after publication.

The answers to the appellants' skeletal argument

Ground 1. The judge made it clear in his findings that although he found for the first plaintiff on the alleged libel in the letter of the 29th November 2010 he made no specific award of damages in respect of it. In other words he confined himself to the effect of the letter of the 5th April 2010.

Ground 2. He found all the defendants equally liable. The form and content of the letter of the 5th April constitutes equal responsibility. The evidence of the 14th defendant could not relieve him of his equal responsibility. He was one of the Public Relations Officers (and probably a management committee member). There is no valid distinction to be drawn between any of the defendants all of whom authored the libel by "*confirming their support by signing.*"

Ground 3. Concerns exemplary damages. We deal with this later.

Ground 4. There is no merit in the argument on absolute privilege. The High Commission acted upon the letter of the 5th April 2010. It circulated the generality of the libel to a significant number of Senior Bruneian Officials – 18 in all. Even if the High Commission itself were able to establish some form of privilege, which is dubious, their publication was generated, even demanded, by the content of the 5th April letter from the Chamber of Commerce. The black listing, which lasted for one year, was in our view a direct consequence of that demand. The last paragraph of the letter of the 5th April 2010 contains the exhortation to the High Commission "unless he is curbed and stopped....." which is in effect a demand that he be blacklisted. The High Commission's letter of 9th March 2010 to the 7th defendant is in any event not to be construed as if it was "paddling its own canoe" in initiating action against the plaintiffs. The timing of the libelous communication in relation to the High Commission's actions in June was not coincidental.

Ground 5. We have dealt with this in the context of ground 4. The chain of libelous publication was not broken by any "novus actus."

Ground 6. We consider the awards of damages in the following paragraphs.

Damages

The judge found these allegations to be "of the utmost gravity." We agree entirely. He set out succinctly and conclusively the basis for his views.

He awarded both aggravated and exemplary damages in specified sums in addition to general or compensatory damages. We will deal with exemplary damages first.

These are usually awarded as a punitive sum for misconduct but courts have usually limited the circumstances in which it is appropriate, taking into account the facts of each case. They may be awarded particularly where a defendant has deliberately defamed for profit. There is no evidence in this case that profit has motivated the defendants though it is possible, simply on the basis of an understanding of human nature, that some defendants had in mind the commercial or financial benefit to themselves if they effected the destruction of this plaintiff's business. However the obvious attack upon him as a successful businessman will sound in damages in any event.

A second circumstance is where a defendant is a government servant and acted oppressively, arbitrarily or unconstitutionally. That does not apply in this case. Nonetheless the weight of the whole Chamber of Commerce was thrown behind these allegations which were vicious and nasty. It is difficult to see how the so-called authority of such an institution brought to bear on a businessman would not be deemed arbitrary, oppressive and contrary to any reasonable ethical code. All these factors are properly treated as affecting the level of damages in the overall assessment rather than as a specified sum for a punitive element.

The situation is somewhat different in relation to aggravated damages. It is appropriate to award such damages or include in the award of general damages an element for the aggravating factors. Malice and the increase in injury to a plaintiff by a defendant's conduct are such factors. The defendants have sought to justify their libel for eight years. The civil action by the plaintiffs was commenced approximately five years ago. There has been no apology or offer of amends over the whole of that period of time.

Their attitude has thus been dismissive and persistently insulting. The plaintiffs have borne the brunt of this arrogant defamatory treatment in this long interim. A serious element of aggravation is beyond argument.

Neither award, exemplary damages having been excluded, was excessive or disproportional. This was a serious libel calculated to destroy reputations using powerful institutions or authorities to that end. It was nasty, vicious and coordinated. It is difficult to see how it could be more serious. It endured for 8 years. It had the potential to ruin reputation, financial and career prospects, and perhaps for the first plaintiff, exclusion from this chosen domicile. We have considered other awards within the region and these awards are not out of line with those to which counsel have referred us.

The award to the first plaintiff

The elements of malice, form of the libel and timescale sufficiently illustrate what the first plaintiff has had to endure. But the figure for exemplary damages falls away. The judge made it clear that he did not make a specific award in respect of the letter of the 29th November 2010. His award, excluding the figure for exemplary damages, is \$500,000. This figure is a proper one having reviewed a number of awards in this region.

The award to the second plaintiff

This is based upon the defamatory letter of the 5th April 2010 which the judge properly highlighted the position of this plaintiff as a senior government official accused of being “corrupt and prepared to abuse his powers.”

Excluding the award of exemplary damages which is not appropriate, the award is BND\$225,000 which is, in our judgment, also unappealable.

This appeal is allowed in respect of the award of exemplary damages, all other grounds of appeal being dismissed.

The appellants are allowed 2/3 rds of its costs of the appeal.

This is a costs order nisi. It shall become absolute at 10a.m. on Monday, 14th May 2018 unless either party files an application to make further representation as to the costs order which shall be heard at 2.30p.m. on Monday 14th May 2018.

Mortimer, P.

Burrell, J.A.

Seagroatt, J.A