

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL ACTION NO. 306 OF 2000L**

NO. 45 OF 2007

BETWEEN	DR. GANESH CHAND	<u>Plaintiff</u>
AND	FIJI TIMES LIMITED	<u>1st defendant</u>
AND	MARGARET WISE	<u>2nd defendant</u>

Appearances:	Mishra Prakash & Associates for plaintiff Howards for defendant
Dates of Hearing:	4, 5, 6 September 2006
Dates of Submission:	18 September, 22 November & 1 December 2006
Date of Judgment:	13 April 2007

Judgment

[1] On 26 August 2000, *The Fiji Times*, a daily newspaper circulating throughout Fiji published an article under the title "*Chand faces theft probe*" (the article). The article was published on the front page as the lead story of the day. The plaintiff (Dr. Chand) issued a writ on 22 September 2000 in which he claimed that the article was defamatory of him.

Background

[2] In May 1999, the Fiji Labour Party led Peoples Coalition was elected into parliament. Dr. Chand was appointed Minister for National Planning, Local Government, Housing and

Environment. His appointment entitled him to State residential accommodation. The Public Service Commission (PSC) allocated Dr. Chand the Government quarters at 18 Richards Road (the premises). The premises was formerly used as offices for the Ministry of Environment. Renovation and maintenance work on the property including the provision of furniture and other chattels was carried out prior to Dr. Chand moving in. Dr. Chand took occupation of the premises in November 1999.

- [3] Dr. Chand was amongst the group of politicians held hostage following the 19 May 2000 attempted coup. He was released on 13 July 2000. The premises was left unoccupied during the period of his captivity. Dr. Chand's family resided in Lautoka at the time. He did not return to reside in the premises after he was released. On 14 July he left Suva to be with his family in Lautoka. It is not in dispute that the period of 56 days that Dr. Chand endured as a hostage was a very traumatic experience for him and his family.
- [4] On 1 August 2000, during a routine inspection of the premises, the PSC quarters clerk, Mr. Mataitini discovered that the premises had been broken into and a number of items were missing from the premises. Mr. Mataitini had also gone to Richards Road to serve a notice to vacate the premises on Dr. Chand. He reported the break-in to the police. The missing property was reported as belonging to the State. The police opened a file. Dr. Chand was the person wanted or suspected by the police. The article was published on 26 August 2000. A search warrant was executed by the police at Dr. Chand's place of residence in Lautoka on the same day. On 29 August 2000, Dr. Chand was interviewed under caution by the police. Charges were never filed due to insufficient evidence against him. In 2001 Dr. Chand was again elected to the Lautoka Indian Communal Seat with an increased majority from 1999.

The amended statement of claim

- [5] The plaintiff's pleadings are defective. I shall come to that later. At this stage, I mention only that the plaintiff has not identified precisely the words claimed to be defamatory. The alleged libel is pleaded at paragraph 7 of the amended statement of claim as follows:
7. "The natural and ordinary meaning of the article published by the first defendant and written by the second defendant, the text of which is produced below, meant

and were understood to mean and by way of innuendo meant and were understood to mean:

"Chand faces theft probe – Fiji Times Saturday August 26, 2000 – State quarters stripped of items – by Margaret Wise:-

"Police are investigating the theft of government owned furniture and other household items from the home previously occupied by a deposed Cabinet Minister.

Former Housing, Environment and National Planning Minister Dr. Ganesh Chand will also be questioned, said SSP Emosi Vunisa, head of the Criminal Investigation Department.

The Public Service Commission lodged a complaint with Police after it found the residence at Richards Road stripped of all household furniture, including the air conditioning system, washing machine, stove and refrigerator.

And investigations into the theft revealed that funds used to renovate the home was almost double the reported \$47, 000 used by the Public Works Department. The Housing Ministry has revealed it also spent \$54, 000 on improvement.

The building was formerly the Environment Ministry's headquarters before it was converted into a residence to be used by Dr. Chand.

PSC Secretary Anare Jale said the commission only found out about the missing items when government officials went to inspect the quarters and prepare it for the new occupant – former President Ratu Sir Kamisese Mara. He is now reluctant to move there.

This means his successor Ratu Josefa Iloilo will have to wait a while longer before he can move in to Government House, the official residence of the Head of State.

Permanent Secretary in the President's Office Luke Ratuvuki referred all queries to PSC, saying he had submitted his report on the matter.

SSP said a report on the theft had been lodged. He said police investigations would include a search of Dr. Chand's private home.

"Nothing has been recovered and investigations are continuing. We will carry out a search of Mr. Chand's private residence," Mr. Vunisa said.

Dr. Chand asked for written questions when contacted earlier this week. Yesterday he still had not responded to questions sent to the People's Coalition Office in Samabula.

Housing Ministry Permanent Secretary Rishi Ram said he was not aware of the theft.

He said he did not know which items were missing as he had only visited the quarters once, while renovations were being carried out.

Mr. Ram said the Ministry spent \$54, 000 on renovations, of which \$35, 000 was provided by the Finance Ministry and the remaining \$18, 590 was used from funds allocated to the Housing and Environment Ministry - \$15, 000 from the Minister's overseas travel vote and \$3, 590 from supply and services.

Mr. Chand was also responsible for the Ministry of National Planning where he was entitled to another \$15, 000 for overseas travel.

Mr. Jale could not put a figure to the value of the missing items because improvements were made without PSC's approval.

"Everything is gone, stove, fridge, furniture, air conditioning and washing machine. The quarters is bare," he said

"We are now asking the Housing Ministry to furnish us with an inventory of things bought or items that were in the house while the former minister lived there."

- (a) The plaintiff is a thief and crook
- (b) He had stolen valuable goods and items from the Government of Fiji of which he is a Minister
- (c) He is a dishonest person and not a law-abiding citizen
- (d) He is guilty of abuse of office
- (e) He had spent a great deal of unauthorized government money to improve a premises where he himself was residing and/or that he had spent a great deal of government money on his own personal house

- (f) He is deceitful and dishonest and unworthy of respect
- (g) He had stripped all the furnishings and fittings from a government house which he occupies and has converted the same to his own use and/or unjustly enriched himself."

[5] Other publications by the 1st defendant and comments later made in parliament which are alleged as being disparaging of the plaintiff are also pleaded in the amended statement of claim. They need not be stated here. The cause of action is based on publication of the article. The alleged defamatory meanings complained of are contained in (a) to (g) above.

The amended statement of defence

[7] Publication of the article written by the second defendant is admitted. The first defendant pleads that the plaintiff's pleadings contained in paragraph 7 of the statement of claim above is defective in that:

- (a) the paragraph does not identify which part/s of the text is alleged to contain the various meanings attributed thereto;
- (b) the paragraph does not identify which part/s of the text is alleged to bear an innuendo or what the innuendo is alleged to be.

[8] It denies the matters pleaded in paragraph 7 of the claim. The defence of justification is relied on. The 1st defendant says that:

- (a) the article sued upon is factually correct
- (b) in their natural and ordinary meaning the said words are true in substance and in fact
- (c) further, to the extent that the article contains matters of opinion, such opinion constitutes comment which was fair and in the public interest.

[9] The particulars pleaded are that:

- (i) By 1 August 2000, certain chattels were unlawfully removed from premises at 18 Richards Road
- (ii) As at 1 August 2000 the plaintiff had been the last lawful occupier of the premises

- (iii) Prior to the plaintiffs occupation of the premises they had been used as the headquarters for the Environment Ministry
- (iv) The premises were issued to the plaintiff as quarters on 19 November 1999
- (v) On 1 August 2000 the removal of chattels was reported by PSC to the police
- (vi) On 26 August 2000 the plaintiff was interviewed by police in connection with the removal of the chattels
- (vii) On 26 August 2000 a search warrant authorizing a search of the plaintiff's home at Lautoka was executed
- (viii) Between 8 October 1999 and 19 November 1999 the plaintiff as Minister had sought and obtained from the Public Works Department improvements to the premises and the acquisition of new furniture at a cost in excess of \$49,000
- (ix) Upon completion of the said improvements additional work on the premises was required and was carried out
- (x) The additional work and cost was not authorized by the Public Works Tender Board.

Definition defamatory

- [10] "A statement is defamatory of a person if, broadly speaking, it is calculated to lower him in the estimation of right-thinking members of the community or cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule.... a statement is prima facie defamatory if the words, in their natural and primary sense, that is, in their plain and popular meaning, are defamatory."¹

Relevant principles

- [11] A body of authority has emerged which sets out the relevant considerations in determining the interpretational capabilities of the ordinary reader. The leading authority is *Lewis -v- Daily Telegraph*² in which an article in the *Daily Telegraph* headed 'Inquiry on Firm by City Police' reported that the City of London Fraud Squad were inquiring into the affairs of Rubber Improvement Ltd. The Chairman of the company, Mr. Lewis, sued for libel. He and the company claimed that the natural and ordinary meaning of the article was that they were guilty

¹ *Halsbury's Laws of England* (3rd Edn.) Vol. 24 para. 40

² [1964] A.C. 234

of fraud. Their Lordships held that no ordinary and reasonable reader would conclude guilt merely because the police were investigating the matter. The article was capable of conveying the impression that the plaintiffs were *suspected* of fraud and that this was a defamatory allegation in itself, albeit less serious.

[12] The following general principles of construction emerge from their Lordships' speeches and subsequent authorities.³

- (i) The natural and ordinary meaning is that which the words convey to ordinary reasonable persons.
- (ii) The ordinary reader is not avid for scandal but can read between the lines and draw inferences. Ordinary men and women have different temperaments and outlooks. Some are unduly suspicious and some are unusually naïve. One must try to envisage people between these two extremes and see what is the most damaging meaning that they would put on the words. On the facts of *Lewis*, it was held that only an unduly suspicious person would have concluded that the plaintiffs had been guilty of fraud simply because the police were investigating their affairs.
- (iii) The effect of the publication on an ordinary reader is one of impression and the court should be wary of an over-elaborate analysis. The narrow and analytical construction put on words by a lawyer is inappropriate.
- (iv) The ordinary reader considers the publication as a whole in determining its meaning. If "in one part of the publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and antidote must be taken together."⁴
- (v) "As we have seen, there is now a strong current of authority supporting the view that a report which does not more than state that a person has been arrested and been charged with a criminal offence is incapable of bearing the imputation that he is guilty or probably guilty of that offence. The decisions are, I think, soundly based, even if we put aside the emphasis that has been given to the process of inference on inference that

³ *Defamation Law, Procedure & Practice*, David Price, London Sweet & Maxwell 1997 para. 2.07

⁴ *Cornwell v. Myskno* [1987] 1. W. L. R. 630

is involved in reaching a contrary conclusion. The ordinary reasonable reader is mindful of the principle that a person charged with a crime is presumed innocent until it is proved that he is guilty. Although he knows that many persons charged with criminal offences are ultimately convicted, he is also aware that guilt or innocence is a question to be determined by a court, generally by a jury, and that not infrequently the person charged is acquitted.”⁵

- (vi) “In deciding whether the 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 ordinary and natural meaning of words may either be the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words.”⁶

What do the words mean

[13] I now proceed to consider the article in order to decide:-

1. whether it is capable of the defamatory meanings alleged and in fact bears a defamatory meaning
2. whether the defence of justification protects the defendants from liability.

[14] The whole of the article here is claimed by the plaintiff to be defamatory. He alleges that he has suffered considerably because of the portrayal by the defendants of him as a thief and a crook who had stolen valuable goods and items from the Government of Fiji of which he was a Minister. That he was a dishonest person and guilty of abuse of office spending unauthorized government money to improve a premises where he was residing.

⁵ Per Mason J in *Mirror Newspapers Ltd -v- Harrison*, 42 ALR 486

⁶ Per Lord Morris of Borth-Gest in *Jones -v- Skelton* [1963] 3 All ER at 958

- [15] I accept the submission of learned counsel for the defendants that the approach to be adopted is the natural and ordinary meaning of the words used in the article. The language used in the article is simple and there is no need to strain at technical or unfamiliar expressions. Each claimed fact in the article has only one meaning and there is no innuendo.
- [16] The plaintiff ascribes and pleads no less than seven (7) defamatory meanings in paragraph 7. He is restricted to the particularized imputations set out in paragraph 7. I deal with each in turn.
- (a) "The plaintiff is a thief and a crook". This meaning cannot be ascribed to the article as a matter of law. See principles at [9] and [10] (ii) & (v) above.
 - (b) "He has stolen valuable goods and items from the Government of Fiji of which he is a Minister." Again this cannot run as a matter of law.
 - (c) "He is a dishonest person and not a law abiding citizen." This is not an inference which would be drawn by any reasonable man reading the whole article. The words cannot carry this imputation.
 - (d) "He is guilty of abuse of office." Again the words cannot carry this imputation as a matter of law.
 - (e) "He has spent a great deal of unauthorized government money to improve a premises [sic] where he himself was residing and/or that he had spent on great deal of government money on his own personal house." I agree with learned counsel for the defendants that this does not arise from the article.
 - (f) "He is deceitful and dishonest and unworthy of respect." In my view, this is not an inference which would be drawn by any reasonable man reading the article as a whole. This meaning can only emerge as the product of a strained and unreasonable interpretation of the language used. The suggested imputation does not arise.

- (g) "He had stripped all the furnishings and fittings from a government house which he occupies and has converted the same to his own use and/or unjustly enriched himself."
This suggested imputation is the same as (a) and (b), and cannot run as a matter of law.

[17] I have also upheld the defence submission that there can be no nexus between the report of the investigation into the alleged theft and the facts relating to money expended on renovations to the premises given that it is not the kind of article which reports facts together with some fact or facts which point to motive for wrongdoing.

Innuendo meanings

[18] Paragraph 7 of the claim also alleges innuendo meanings. The pleading is wholly inadequate in this regard and cannot sustain a separate cause of action. Lord Devlin in the *Lewis* case said in relation to pleadings:

"..... the essential thing is that if a paragraph is unaccompanied by particulars it cannot be a legal innuendo since for a legal innuendo particulars are mandatory and the innuendo cannot be proved" (emphasis added)

[19] The particulars of extrinsic facts and matters relied upon to support the alleged innuendo have not been pleaded. The plaintiff has also failed to prove the extraneous facts (not pleaded) in order to give the words the secondary meaning which he complains.

Justification

[20] Had I found that the article bore the alleged defamatory meanings, the defendants would have succeeded on the defence of justification pleaded. It is absolute defence that the statements in question are true or substantially true. The fundamental principle is that the defence will not succeed if the meaning that is proved to be true is a materially less serious meaning than that which the words are held to bear. The particulars of justification have been pleaded. The plaintiff was required to serve a reply to a defence of justification admitting or denying the allegations raised by the defendants and specifying any matters which he relies on in

opposition to the defendant's allegations.⁷ This was not done. Such a defence will succeed if it is proved that the sting or substance of the defamatory words is true, or if the words contain two or more charges, it is proved that some are true and those not so proved do not materially injure the plaintiff's reputation. The defendant is also entitled to rely upon incidents which have occurred after the date of publication in order to establish the defence of justification.⁸

[21] The defendants' "Analysis of the Article" handed to me in the course of oral submissions was very helpful and I have adopted the format of the analysis.

1. Chand faces theft probe

The evidence has established that on 26 August 2000 the plaintiff was facing inquiries being made by the police into a complaint of missing government property from the premises at 18 Richards Road. The police docket describes the person wanted or suspected as Dr. Ganesh Chand. By the 18 August 2000 – as shown in Investigation Diary No. 970 – the investigation was well underway.

2. State Quarters stripped of items

By that date 18 Richards Road had been the subject of theft of furniture and chattels. In his statement to the police Mr. Mataitini confirmed that the following items were missing:

- a. Built in wardrobe
- b. Coffee table
- c. 6 foam mattresses
- d. Chef gas stove
- e. Kelvinator fridge
- f. Washing machine
- g. 2 Vernon chairs
- h. 2 Air conditioning units

⁷ RSC Ord. 82r.3. Also see 28 Halsbury's Laws (4th Edn) para. 196.

⁸ *Pamplin -v- Express Newspapers Ltd (No. 2)* [1988] 1 All ER 282 @ 288

Mr. Mataitini's testimony was credible. Chattels were removed. Whether or not the washing machine was government owned is irrelevant. Much was made of the fact that the missing air conditioning units were not listed in the inventory for the premises. However it is clear from the evidence – D20 pages 1, 2, 3, 4, 5, 9, 11 and 14 – that air conditioning units were installed in the premises, at Government's expense, on Dr. Chand's request.

3. Police are investigating the theft of government owned furniture and other household items from the home previously occupied by a deposed Cabinet Minister

As at 26 August 2000 a police investigation was under way in respect of the theft. The premises had been tenanted by Dr. Chand. His knowledge of whether he was under investigation is irrelevant. The evidence has clearly established that he was under investigation and was to be questioned. The police and Public Service Commission evidence established this conclusively.

4. Former housing minister Dr. Ganesh Chand will also be questioned

As at 26 August 2000 Dr. Chand was to be questioned in connection with the theft. He was the prime suspect according to police records. He was interviewed under caution on 28 August 2000.

5. The Public Service Commission lodged a complaint with police after it found the residence at Richards Road stripped of all household furniture, including the air conditioning system, washing machine, stove and refrigerator

The initial complaint was lodged with the police by Mr. Mataitini on 1 August 2000, after he discovered the theft of most of the household furniture including all the items referred to in the article.

6. And investigations into the theft revealed that funds used to renovate the home was almost double the reported \$47, 000 used by the Public Works Department. The Housing Ministry has revealed it also spent \$54, 000 on improvement

The evidence has established that the initial cost was \$49, 786 to which there was added works estimated to cost \$34, 549. It may in fact have cost a lot more. The

handwritten note on page 11 of the PSC documents, "What have they done with \$49,000?" appears to suggest that.

7. **The building was formerly the Environment Ministry's headquarters before it was converted into a residence to be used by Dr. Chand**

This is a fact

8. **PSC Secretary Anare Jale said the commission only found out about the missing items when government officials went to inspect the quarters and prepare it for the new occupant He is now reluctant to move there**

Mr. Mataitini's evidence and PSC records proved this to be a fact.

9. **Permanent Secretary in the President's Office Luke Ratuvuki referred all queries to PSC, saying he had submitted his report on the matter**

I accept that this appears to be a reply obtained by the 2nd defendant to a question put by her to Mr. Ratuvuki. It appeared to be the position that PSC was fielding the inquiries.

10. **SSP said a report on the theft had been lodged. He said police investigations would include a search of Dr. Chand's private home. "Nothing has been recovered and investigations are continuing. We will carry out a search of Mr. Chand's private residence".**

It has been established that the search warrant was executed on 26 August 2000. As at that date the investigation was ongoing. Dr. Chand was interviewed on 28 August, 2000.

11. **Dr. Chand asked for written questions when contacted earlier this week. Yesterday he still had not responded to questions sent to the People's Coalition Office in Samabula.**

I am satisfied on the evidence that on 14 February 2000 written questions were faxed to Dr. Chand. A copy of those questions was also faxed to Mr. Jale – p. 18 PSC records.

12. **Housing Ministry Permanent Secretary Rishi Ram said he was not aware of the theft. He said he did not know which items were missing as he had only visited the quarters once, while renovations were being carried out.**

Again I accept that this appears to be a comment elicited from Mr. Ram by Margaret Wise.

13. **Mr. Ram said the ministry spent \$54, 000 on renovations, of which \$35, 000 was provided by the Finance Ministry and the remaining \$18, 590 was used from funds allocated to the Housing ... Ministry - \$15, 000 from the Minister's travel vote and \$3, 590 from supply and services.**

The relevant portion of the Auditor General's report confirmed that an estimate of \$49, 786 was obtained for certain works. Additional works were requested and costed at \$34, 549. PSC approved the works and the Ministry of Finance later approved a virement of \$15, 000 from the departments Travel and Communication allocation. The evidence has also clearly established that Dr. Chand took interest in the works at the premises and additional costs were incurred because of his interest. In cross examination he admitted that he had requested additional works after the initial renovation works. He would have known that this involved additional expenditure, which was substantial.

14. **Mr. Chand was also responsible for the Ministry of National Planning where he was entitled to another \$15, 000 for overseas travel.**

Dr. Chand confirmed this in evidence.

15. **Mr. Jale could not put a figure to the value of the missing items because improvements were made without the PSC's approval &**

16. **"Everything is gone, stove, fridge, furniture, air conditioning and washing machine. The quarters is bare." He said, "We are now asking the Housing Ministry to furnish us with an inventory of things bought or items that were in the house while the former minister lived there".**

I accept that the statements were clearly comments from Mr. Jale.

[22] I uphold the defence submission that the factual matters contained in the article have been sufficiently established so to enable truth as a defence to stand. The evidence established that the sting and substance of the article was true or substantially true. That the 2nd defendant did not testify is immaterial. The relevant issues were not dependant on her testimony. Her testimony may only have been relevant on attempts made to make contact with Dr. Chand. In this regard and that of steps taken by the 1st defendant to facilitate a balanced report, I found the testimony from Mr. Hunter compelling and have preferred his version of relevant events to that given by the plaintiff. As submitted, in light of the evidence, whether or not any comment from Dr. Chand to Ms Wise would have made any difference to the article is one of speculation. The defendants are entitled to a verdict.

Defective pleadings

[23] The statement of claim is defective in that the precise words complained of have not been set out. In other words, the plaintiff has failed to plead a cause of action against the defendants. The amended statement of claim, at paragraph 7 merely reproduces the entire article published without referring to the words of which complaint is made of the respects in which they are alleged to be defamatory. The plaintiffs pleadings are fatally flawed.

[24] In *DDSA Pharmaceuticals Ltd -v- Times Newspapers Ltd & Another*⁹ Lord Denning struck out the statement of claim as embarrassing and defective because :

- (a) even though the plaintiffs relied on the relevant and ordinary meaning of the words used, it was necessary for the fair conduct of the trial and to enable the defendants to plead that the plaintiffs should set out the meaning or meanings which the words bore since the article was capable of many different meanings; and
- (b) the pleading threw on the defendant a long article, some of which was not defamatory of anyone, some of which was defamatory of unnamed chemists and some of which was defamatory of the plaintiffs, but failed to specify those passages alleged to be defamatory of the plaintiffs.

⁹ [1972] 3 All ER 417

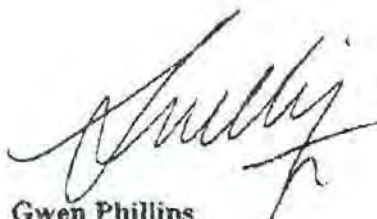
[25] Lord Denning at page 419 of his judgment re-enforced the rule that a plaintiff must specify the particular parts defamatory of them. He found that the plaintiff who had simply pleaded an entire article was "quite improper to plead in the way it was done". The pleading was struck out as embarrassing and defective.

[26] The plaintiff pleaded the entire article and failed to specify those passages alleged to be defamatory of him. Had I arrived at a different finding in respect of the alleged defamatory imputations from the article, I would have struck out the pleading as embarrassing and defective. The defendant is entitled to costs on the higher scale given that it was put to the expense of adducing evidence dealing with all the factual matters set out in the article.

Orders

- i) Judgment for the defendants
- ii) The plaintiffs claim is dismissed with costs to the 1st defendant assessed in the sum of \$2500.00.




Gwen Phillips
JUDGE

At Lautoka

19 January 2007