IN THE HIGH COURT OF SOLOMON ISLANDS
(Chetwynd J)

Civil Claim No. 138 of 2009

BETWEEN

HONOURABLE DEREK SIKUA — **First Claimant**

And

JEREMIAH MANELE — **Second Claimant**

And

TRADEWINDS INVESTMENT COMPANY LTD
(T/A The Island Sun Newspaper) — **First Defendant**

And

PRIESTLEY HABRU
(As Editor of the Island Sun Newspaper) — **Second Defendant**

And

MELANESIAN HOLDINGS LIMITED
(T/A Provincial Printing Press) — **Third Defendant**

Mr Afeau for the Claimants
Mr Rano for the First and Second Defendants
Mr Radclyffe (not appearing at trial) for the Third Defendant

Date of Hearing: 28th May 2010

Date of Judgment: 20th July 2010

Judgment

1. This is a claim in defamation. It arises out of an official visit by the First Claimant as Prime Minister of Solomon Islands to the 63rd United Nations General Assembly Meeting held in New York from 22nd September to 1st October 2008. The Second Claimant was, at the time, Secretary to the Prime Minister and a part of the Solomon Islands delegation. On 8th and 9th October 2008 the Defendants are said to have published (as owner, editor and printer respectively) an article, an editorial and a

cartoon commenting on the behaviour of the Claimants which the Claimants say are defamatory.

2. It is not necessary to repeat the details of the article, editorial and cartoon. In essence they say of the First Claimant that as Prime Minister he was drunk, threatened his wife with violence and because of he was drunk missed a speech by the then Australian Prime Minister. The Second Claimant was described as a "drinking colleague" and is criticised for allowing the First Claimant to behave in such a drunken manner. The published material is exhibited to the sworn statement of the Second Claimant filed 2nd December 2009 and is otherwise set out in the Court Book lodged 21st May 2010.

3. There is no dispute that the material was published. There is no dispute publication was in the manner set out in the pleadings and in the Second Claimant's sworn statement. In other words there is no dispute about what was published or how it was published.

4. In their defence the First and Second Defendants say what was published was true, that it was published in the public interest and was fair comment made without malice. The issues before the court are relatively simple to identify. Was the published material true and if not was it capable of being defamatory ?

5. The Third Defendant took no active part in the trial. This was because the Third Defendant says it was only "contracted" to print the material. Apart from the contractual link pleaded (and accepted, or at least not contested, by the other parties) it is not connected in any other way with the remaining Defendants. It says it carried out it's contractual obligations to the First and Second Defendant without knowing the content of the material. The Third Defendant acknowledges it may be under some liability and says that if it is it should be entitled to an indemnity from the First and Second Defendants. In simple terms, the Third Defendant accepts that it's case stands or falls along with the other defendants. Given the defence put forward by the Third Defendant it cannot be, and is not in any way, criticised for not actively participating in the trial of the "main" issues.

6. At the start of the trial Mr Rano for the First and Second Defendants made an application for the issue of two witness summonses, one for a Mr Tausiria and one for a Mr Chan. The summonses were dated 27th May (the date of the trial) and were returnable the next day. I refused to issue the summonses. First, because they did not comply with Rule 13.52, and secondly because the issue of witness summonses had been raised earlier in the case and in particular at the Pre Trial Conference held on 27th April 2010. The trial date had been set at the Pre Trial Conference. It was clear nothing had been done by the First and Second Defendants to ensure the witnesses' attendance at trial in the intervening period. I felt it would be entirely inappropriate to allow the apparent apathy of the First and Second Defendants to further delay the trial of this matter.

7. As a result the only evidence available to the First and Second Defendants was the sworn statement of Mathias Loji sworn 29th October 2009 (in support of an application) and that of Priestley Habru sworn 7th December 2009. Only Mr Habru's was of any relevance in the trial. Although it was relevant it was of no great assistance. All it effectively said was the "news item" came from a "trusted source" who "claimed to be an "eye witness". It contained no evidence as to fact. Mr Habru said he thought the source was accurate. Although the First and Second Defendants may have believed in the truth of what the source told them, that in itself it does not make it the truth. The First and Second Defendants cannot simply rely on a belief that the information was accurate in a defence of a claim based on justification or truth. It does not matter if they honestly believed the information was accurate or that their source had always previously been truthful and accurate. The onus is on them to prove what they published was true or had some basis in proven fact. They were unable to provide any evidence as to what actually happened in New York. In short then there was no evidence from the Defendants as to the truth of the material published. If they cannot show that any part of the published material was true, and I repeat the onus is on them, then it is capable of being defamatory.

8. As indicated earlier, the First and Second Defendants also raise the issue of fair comment. It is long established law that, "In order to give room for the plea of fair comment the facts must be truly stated".[1] Or as said in another case [2], "To found a plea of fair comment, there must be sufficient substratum of fact stated". In this case there is no evidence from the First and Second Defendants of any truth or fact.

9. The Common Law used to require defendants in defamation proceedings to prove every factual allegation to be true. The Defamation Act 1952 [3] changed all that. By section 6 of that Act a defendant can rely on the defence of fair comment if the opinion expressed is fair comment having regard to those facts actually proved. In other words, the defendant does not have to prove each and every fact alleged or referred to in order to successfully establish a defence of fair comment. It is something of a moot point whether or not the 1952 Act applies to Solomon Islands, I believe it is an Act of general application in accordance with section 76 and Schedule 3 of the Constitution, the actuality in this case is the defendants have not proved any of the facts alleged or referred to.

10. The defence of fair comment must therefore fail. As for public interest, this is but another aspect of fair comment. The important word to bear in mind is "fair" and the words written in this case cannot be said to be fair if there is no evidence to show they were within the bounds of truth or fact. Politicians, judges, businessmen, in fact just about everyone, should be subject to fair and rigorous press scrutiny and comment. However, if he press is unable to prove the truth of what the comment is based on they must be prepared to bear the consequences.

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[1] Hunt v. Star Ltd [1908] 2 K.B. 320
[2] Kemsley v. Foot [1951] 2 K.B. 34
[3] Defamation Act (15 & 16 Geo 6 & Eliz 2, c.66)

11. The question then left to this Court is whether the material published and printed by the Defendants is defamatory. Mr Rano suggests it was the Offices' of Prime Minister and Secretary to the Prime Minister that were being criticised rather than the individuals holding office and therefore there was no defamation. I do not accept that argument. The Office and the person holding the Office cannot so easily be separated. A libel does not cease to be a libel simply because the person wronged holds a public office.

12. Tests as to whether a statement is defamatory previously propounded by the courts ask whether the statement brought the plaintiff into hatred, contempt or ridicule by others. Alternatively the question asked is, did the statement lower the plaintiff in the esteem of right-thinking men ? If the answer to either of these tests was yes, then the statement was defamatory. The material published, that is the article, the editorial and the cartoon, have been shown to have to have no basis in proven fact. The ordinary meaning of the words in the reports and the depiction in the cartoon are clear. There is no room for ambiguity as to their "ordinary" meaning. The most benign reading of the material clearly ascribes to the First Claimant the characteristics of a drunken violent man. As to the Second Claimant, he is portrayed as being incompetent and irresponsible. The published material is defamatory. There can be no other conclusion. I make that finding and in my judgment there is no doubt that the Defendants are liable in damages for the defamation.

13. The liability of the Third Defendant is also clear. Whilst I accept that the printers may not have been aware of the content of newspaper they printed they are part of the defamation. Where a libel is published, everyone who takes a part in publishing it, or in procuring its publication, is prima facie liable. There is authority [4] for saying that mechanical distributors (such as newsagents, carriers or libraries) have a defence if they can show they neither knew nor ought to have known of the existence of the libel. This defence does not extend to printers. The question of whether the Third Defendants are entitled to an indemnity from the First and Second Defendants is not one I can answer at this stage. I will need to hear further argument on that issue.

14. I find all the Defendants liable in damages for defamation against the First and Second Claimants. I will hear argument as to quantum.

Chetwynd J

[4] Vizetelly v. Mudie's Select Library Ltd [1900] 2 Q.B. 170