

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2014 – 04344**

**Between**

**FRANKLIN ALI**

**Claimant**

**And**

**AZARD ALI**

**First Defendant**

**DAILY NEWS LIMITED**

**Second Defendant**

**Before the Honourable Mr Justice Ronnie Boodoosingh**

**Appearances:**

Mr Stefan Mungalsingh for the Claimant

Mr Kirk Bengochea instructed by Ms Jewel-Ann Troja for the Defendants

**Date:** 17 May 2017

**Judgment**

1. This claim concerns two articles about the claimant written in the Newsday newspaper on 17 August 2014 and 24 August 2014 by the first defendant, Mr Azard Ali. The claimant, Franklin Ali, had been appointed the Chairman of TTPOST in 2003. TTPOST is an essential service statutory body entrusted with the public's mail and related services. It is also part owner of a subsidiary company providing courier and other services called TT Mailing Systems Limited (TTMSL). The second defendant is the publisher of the Newsday newspaper.
2. The first article had a front page headline: 'TTPOST CONFLICT: Chairman Ali Private Company Under Question' with a sub-headline, inside the paper, 'Conflict of Interest'. Both the headline and article are challenged here as being defamatory.
3. The second article was headlined: 'Questions Over Credentials of TTPOST's Chairman, Senior Manager'. The contents of the second article, the claimant says, is also defamatory.
4. The defendants say the articles are not defamatory. If, however, they are considered as defamatory, they say they are protected by the defence of qualified privilege.
5. The court has to determine the meaning of the words and then if the meaning is defamatory: **Gatley on Libel and Slander, 12th edition**, quoting **Sir Anthony Clarke MR in Jeyes v News Magazines Limited [2008] EWCA Civ 130 para 3.14** states:

“(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must not be treated as being a man who is not avid for scandal or someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any ‘bane and antidote’ taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, ‘can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...’ (8) It

follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.”

6. The court must consider what meaning the ordinary reasonable person would understand the words to mean. The words are to be construed in their natural and ordinary meaning which may include by implication or inference or may be interpreted by way of innuendo.
7. The claimant alleged the headline meant that he owns and operates a private company in competition with TTPOST and he is using his position as Chairman in conflict with TTPOST.
8. The claimant also says the first article meant:
  - He owned and operated a private company (Justal Limited) in competition with TTMSL and had a present conflict of interest.
  - The claimant was under investigation by TTPOST concerning his ownership and operation of a competitor.
  - The claimant was in competition with TTPOST and was using his position as Chairman to gain an unfair advantage.
  - Justal was operating at the time of his Chairmanship of TTPOST.
  - He was involved in its operations.
  - There were undertones of shadiness and illegality that led to his resignation as General Manager, Operations, in 2007 from TTPOST.
  - There were investigations concerning a conflict during his tenure as General Manager.
  - Justal was operational during his tenure as GM.
  - The claimant as GM met with clients of TTMSL and attempted to solicit them for the benefit of Justal.
  - The claimant was in breach of section 14(1) of the Postal Corporation Act.
  - The claimant was not fit to be Chairman of TTPOST.
9. Regarding the second article, the claimant alleged it meant:
  - The claimant was in competition with TTPOST and using his position to profiteer off of TTPOST.

- Senior managers left for the sole reason that the claimant was acting in conflict of interest.
- The conflict was so severe it caused numerous managers to leave rather than work with the claimant.
- The validity of the claimant's qualifications was questioned by the management of TTPOST in August 2013.
- A certificate awarded to the claimant by the Universal Postal Union was a false document.
- The online courses done by the claimant was for employees of TTPOST only.
- The claimant illegally participated in the course because he was not an employee of TTPOST.

10. He also alleged that the article by way of innuendo meant his qualifications were fraudulent, there having been reference to another employee whose resume, it was suggested, contained a misrepresentation. Thus he was lumped with her too.

#### **The first headline and first article**

11. I did not agree with all of the meanings the claimant sought to attribute to the words of the article and headline. The first headline, in my view, meant that the claimant had a private company which was under question as a conflict. It suggested that this was an existing circumstance.

12. The article detailed that seven years before there was an issue raised that the claimant as then General Manager of TTPOST had set up a company, Justal Limited, which would have been involved in the same business as TTMSL and which would therefore have been in competition with TTPOST. This was supported by reference to letters from one Edward Ince, Chairman of TTMSL at the time, who had written a letter about it and from a conversation with Ms Margaret Rose, an attorney-at-law, who was then a director, who confirmed that the matter had been raised then. The letter made reference to the claimant soliciting clients at the time.

13. This aspect of the article can be put to one side. The first defendant was setting out circumstances from 7 years before which could still have some bearing as to the suitability or appropriateness of the claimant to hold the position of the Chairman of TTPOST. This

is distinct from any issue as to his unfitness. In my view, none of those matters can be seen as defamatory.

14. Where there is a defamatory meaning concerns five paragraphs of the article in particular. These are paragraphs 1, 2, 5, 11, 14. These suggested that the claimant was still involved with Justal Limited while he was serving as Chairman of TTPOST. This meant he was in a conflict of interest circumstance with involvement with a competitor. Further, it referred to the Postal Corporation Act which at section 14 provided that each Board member must give a written undertaking that he would not engage, directly or indirectly, in any business or professional activity in conflict with TTPOST. It was not, however, suggested that he had failed in any event to give such an undertaking.
15. The evidence of the claimant shows that the claimant had severed relations with Justal in 2010. However, it was noted that he had originally been in business with relatives in Justal Limited.
16. The thrust of the headline and these paragraphs therefore was to suggest that **a present** conflict of interest existed which may have impacted on his suitability to hold the position of Chairman. Such an assertion of a present conflict can be considered to be defamatory where no conflict existed because he was not then a director of Justal Limited. However, this, in itself, is not conclusive since having a potential conflict of interest does not necessarily mean that such a person is either disqualified or unfit to be appointed to a public office. The critical issue would be, how is that conflict of interest being managed?
17. In other words, even though a potential conflict of interest can exist, appropriate measures can always be taken to ensure that there is full disclosure of that interest and that measures can be taken to ensure that the conflict of interest does not impact adversely on the affairs of the company.

## **The second article**

18. Similarly, I did not agree with all of the meanings the claimant asserted about this article. In my view, the second article meant that a certificate awarded to the claimant by the

Universal Postal Union was questioned as being illegitimate by the management because the claimant was not an employee of the company at the time the course was done in 2013.

19. That article had also stated that the perceived conflict of interest on the part of the claimant was the only reason why senior managers were leaving the company. This statement was contained in the first paragraph and bolded. It would have drawn the attention of the reader. The defendants' witness, Mr Azard Ali, however, explained that the important word "not" was missing from that line as the perceived conflict was not the only reason managers had left. An examination of the article, such as the reasonable reader would have undertaken, showed that the "not" was indeed missing since the thrust of the article went on to raise other matters why managers may have left including the question over the claimant's certificate, that another employee's qualifications were questioned and that one manager was residing abroad.
  
20. The article went on to assert that the certificate of the claimant was returned since the claimant was not an employee of TTPOST in 2013. The claimant has of course confirmed that to be true. What an ordinary reasonable reader would get from this is that the claimant had not been an employee of TTPOST at the time, so that the qualification would have been obtained based on the assumption that he was an employee of TTPOST. How the Postal Union would have come to that conclusion that he was an employee tended to suggest that the claimant would have signed on to the course in that capacity. Another explanation that the reasonable reader may have come to may have been that the certificate was sent in error to TTPOST. However, the evidence is clear that the claimant was not an employee in June 2013; he having left the company in 2007.
  
21. To the extent that the article meant that top management questioned the "legitimacy" of the certificate awarded to the claimant this can be seen as defamatory since they had not questioned the legitimacy of the certificate. They had only told the Postal Union that the certificate was sent to TTPOST as the employer of the claimant when in fact they were not his employer at the time in 2013 and they returned it accordingly. Thus the "legitimacy" of the certificate in the sense of its authenticity was not directly questioned nor was it raised that it was a forged document or a fraudulent one. What was stated was that it was sent to them but the claimant was not employed there. I should add that the word "legitimacy" relates to validity. It does not reasonably suggest there was fraud or forgery.

22. Thus there are two aspects of the articles which can be seen as defamatory in all the circumstances in the manner described above. The next issue is whether these statements are protected by qualified privilege.

### **Qualified Privilege**

23. The defendants assert that qualified privilege applies to the defamatory statements identified above. They rely on the case of **Reynolds v Times Newspapers Limited [2001] 2 AC 127, HL**. The first limb of the test is whether the subject matter of the publication was of sufficient public interest. The claimant was the chairman of a statutory body to which is entrusted the public mail and related services. All matters concerning the workings of TTPOST, its management and qualifications of its management and issues of conflict of interest would be matters of public interest and for which the public is entitled to be informed. The governance of public bodies are clearly the subject of public interest: see **Gatley on Libel and Slander, 12<sup>th</sup> edition, para 15.6**.

24. Since all of the matters raised concerned governance issues related to TTPOST including the suitability and qualifications of the claimant, I am of the view that there was a sufficient public interest element in respect of the subject matter of the publications. The defendants in my view had a societal duty to write, print and publish the articles and the readers of the newspaper had a corresponding interest to receive and read articles about the subject matter concerned. This much has been conceded by the claimant.

25. The second limb of the Reynolds test concerns whether it was reasonable to include the material complained of in the publication. The court has to be satisfied that the material applied to the entire contents. The test is reasonableness as far as the inclusion of the material.

26. Considering the first article as a whole, it was entirely on the subject of there being the possibility of a conflict of interest. It related the registration of Justal Limited; that the company was still listed as 'active'; that the matter was to be discussed at the next Board meeting; that managers had been leaving; documents and interviews were referred to; and the text of section 14 of the Postal Corporation Act was set out. It was an integrated article and it was reasonable, given the tenor of the article, to have included the material that was in fact contained in the headline and article.

27. I come to a similar conclusion concerning the second article. It was obviously a follow up from the previous article. It was referring to the credentials issue as an additional matter to the conflict of interest issue. I accept the explanation of the first defendant that the all-important word “not” was omitted by mistake from the article. In reading this article as a whole it is reasonable to conclude that the credentials issue was being raised in addition to the conflict of interest issue as a possible explanation for the exodus of managers from the company.
28. In neither article can it be said that specific charges were made against the claimant. Both articles sought to raise questions based on information received from credible sources about the claimant. Some of these sources were identified or quoted in the respective articles either by way of interviews or by documents prepared by them.
29. The third limb of the Reynolds test concerns whether the publisher had met the standards of professional journalism or publication.
30. Lord Nicholls gave a non-exhaustive list of 10 factors to be considered. These are not to be considered in a mechanical, box-ticking fashion, but are to be considered in the round in all of the circumstances. They must be considered in a practical and flexible way with some deference to editorial discretion. The court has to conduct a delicate balancing exercise. Having said that, it is of use to consider each factor and then to draw conclusions in the round. I will therefore look at each of these factors in turn based on the evidence placed before me and then express my general conclusion on the issue.
- 31. The seriousness of the allegation: the more serious the allegation, the more the public is misinformed and the individual harmed, if the allegation is not true.**
- i. As noted, two statements have been identified as being defamatory. The first is the statement which suggested an existing conflict of interest. The second concerned the legitimacy of the claimant’s certificate.
  - ii. The evidence suggested that there was no existing conflict of interest. As noted, alleging that a conflict of interest where there is none can harm an individual and misinform the public. However, to allege a potential conflict of interest, without more,



is not as serious as showing that in a specific case or instance a party benefitted from the conflict of interest in question. Here, there was no assertion that the claimant had benefitted from a specific conflict of interest circumstance or had in any specific way used his position as Chairman of TTPOST to advance his private interest.

- iii. At its highest what was being raised was a potential that this could happen. It could be said that inherent in this was alerting the public to the possibility that this could occur. It did not necessarily suggest he was unfit for the position. A conflict could go to appropriateness, not necessarily unfitness.

**32. The nature of the information and the extent to which the subject matter is of public concern.**

- i. In both instances the nature of the information can be considered to be significant. Both matters would have been of public concern. In neither article was rumour-mongering resorted to. The articles quoted from documents and persons concerned with TTPOST. The writer would therefore have been entitled to raise them given the claimant's position.

**33. The source of the information: some informants have no direct knowledge of the events. Some may have their own axes to grind or are being paid for their stories.**

- i. The evidence of Mr Azard Ali is that a Board director had raised an issue. The Managing Director, Mr Sheldon Cyrus, had resigned on the day the claimant was appointed as Chairman. Information was received from a board director, one Cherry Ann Rajkumar. Furthermore, Ms Margaret Rose, a previous board member, had given some background information about a conflict of interest issue arising while the claimant was General Manager. Further, reference was also made to a letter sent by Mr Edward Ince, former Chairman of TTMSL, which had complained about Justal Limited soliciting TTMSL's potential clients. These sources must be considered to be highly credible and the first defendant was entitled to rely on what they had put forward. None of these persons were busybodies. They were persons who the first defendant and the publisher would have been entitled to reasonably conclude would have direct and considerable knowledge of the matters to which they referred.

**34. The steps taken to verify the information.**

- i. The defendant's witness, Mr Ali, said that he tried to contact the claimant at TTPOST. He further said he spoke to and left a message with one Reynold Baldeosingh, a director of TTPOST, who promised to relay a message to the claimant. The claimant seems to acknowledge some communication by Mr Azard Ali with Mr Baldeosingh because he refers to Mr Baldeosingh speaking to him, albeit to the effect that Mr Baldeosingh had told him after the publication that the first defendant had contacted him and interrogated him about the claimant.
- ii. There is also evidence of efforts made by the first defendant to verify the information with different sources such as Ms Rose, Mr Ince, among others, to obtain documents and to conduct an online search of the Companies Registry.

**35. The status of the information: the allegations may have already been the subject of the investigation which commands respect.**

- i. The first defendant noted that an online search was done at the Companies Registry which identified the claimant's name as being involved with the company. The first defendant could have gone on to have a proper search done at the Companies Registry to find out who were currently the directors of Justal Limited. He ought not to have limited himself to an online search since the information online may not have been fully up to date since sometimes online information is not promptly updated. However, there was some limited investigation undertaken by the first defendant.
- ii. Additionally, it is clear from the persons the first defendant had in fact spoken to, that, at least in the past, there was an allegation about the claimant being involved in a potential conflict of interest situation in 2007 by having registered a company in 2006 while he was the General Manager of TTPOST to conduct business in a field which would have been in competition with the operations of TTPOST's subsidiary, TTMSL. The question of writing about this as to the "appropriateness" if not the "unfitness", which is a stronger term, of the claimant, would legitimately have arisen in the first defendant's mind as a journalist chasing a story and in the mind of the newspaper publisher.

- iii. In respect of the second article, the first defendant noted that managers who had left TTPOST had contacted him under condition of anonymity and raised questions about the claimant's credentials. Certain documents were then provided to him. It was in that context that the second article was written, which did reveal some discrepancy in the sending of the certificate to TTPOST.

**36. The urgency of the matter: it is often said that news is a perishable commodity.**

- i. The claimant had been appointed Chairman of TTPOST. It was the defendants' judgment call to go with the article without receiving a comment from the claimant. This can be legitimately criticised. The first defendant could have waited and try to get a comment. There must have been other ways to contact the claimant. On the other hand, it is of note that the Guardian newspaper ran an article on the issue on 21 August, 2014. This suggests that the issue was one that was current. The obtaining of the claimant's comment may have avoided the unjustified aspects of the article while at the same time allowing legitimate concerns to be raised about the appropriateness of the claimant's appointment having regard to the past conflict allegation.
- ii. As to the legitimacy issue, the claimant may have been able to explain why the certificate was sent to TTPOST. However, on the other hand, the claimant has not here sought to proffer any explanation as to why the certificate was sent to TTPOST.
- iii. Furthermore, the number of resignations from a statutory company would have legitimately been a circumstance which would lead an investigative journalist to pursue.

**37. Whether comment was sought from the claimant who may have information to share which others may not know or may not have disclosed. An approach to the claimant will not always be necessary.**

- i. Circumstances here may have demanded an approach to the claimant. The first defendant's explanation is that he had tried to contact him. I accept there were efforts to do so.

**38. Whether the article contained the gist of the claimant's story.**

- i. It cannot be said that the gist of the claimant's side was contained in the story.

**39. The tone of the article: a newspaper is entitled to raise questions or call for an investigation. It need not adopt allegations as statements of fact.**

- i. The tone of the articles raised questions about TTPOST and the claimant's role there and whether his being there was an important factor in the resignation of senior managers. As indicated, these were legitimate subjects of inquiry for an investigative journalist. The articles used language such as "has raised concerns as to a possible conflict", "understands this matter of conflict of interest would be discussed", "perceived conflict", "senior managers have been questioning". The language was that of reporting and of allegations or questions being raised. The tone was neither inflammatory nor condemnatory of the claimant. It was asking questions, not making definitive conclusions about the claimant.

**40. The circumstances of the publication including the timing.**

- i. These articles were published within a week of each other. It was some time after the resignations and the claimant's appointment. However, it can be said that the issues concerning the claimant would have remained current given the position he held.

**Conclusion on Qualified Privilege**

41. Considering all of these factors therefore it can be concluded that there was a context and background to the articles written. The first defendant received information from credible sources which raised legitimate concerns at least about the appropriateness of the claimant being the Chairman of TTPOST. The first defendant conducted interviews of persons and conducted an online search. He received documents including a letter complaining about Justal Limited, some years before. He also received a copy of the certificate and a letter returning the certificate stating that the claimant was not an employee of TTPOST at the time the certificate was sent and at the time the course was done.

42. On the other hand, the first defendant could have done more to get the claimant's side. He might have also done an actual Companies Registry search to verify the current principals of Justal Limited. A defendant must show he took adequate or reasonable steps to verify the information or to get a comment. This does not mean he must take perfect steps. The evidence of the first defendant, which I accepted, was that he had made calls to TTPOST before the publication of each article. Further, he had left a message with a director giving particulars of what he was engaged in.
43. The court in balancing the various factors must weigh heavily that this was a matter of public interest and importance. It concerned good governance issues in the functioning of a public corporation. The articles concerned someone who had placed himself in a public position by accepting the appointment as Chairman of TTPOST. This made the claimant properly the subject of careful scrutiny. If a journalist errs in such circumstances, the court must necessarily weigh the interests of free speech and the right of the public to be informed significantly in the equation. This is but a necessary consequence of the freedoms we hold to dearly. On the other hand, rests the individual's right to the protection of a good name which is also an important consideration. Depending on all of the circumstances of the defamation, the scales will, in a given case, tip one way or the other.
44. The majority of the Reynolds case factors weigh in the defendant's favour. There was justification for raising the issues; there were efforts to verify the information; the tone of the article was fair in the circumstances; there were credible sources; the matters were current and of public interest. The first defendant could have done more to verify the information and to get the claimant's side. Thus, having conducted that balancing exercise called for, I am of the view, on a balance of probabilities, that the articles were the product of responsible journalism in all of the circumstances. The defence of qualified privilege therefore succeeds.
45. The claim is accordingly dismissed. The claimant must pay the defendants' costs, on the prescribed basis, as a \$50,000.00 claim in the sum of \$14,000.00.

Ronnie Boodoosingh

Judge