SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.9 OF 2003

BETWEEN:

DR. RALPH E. GONSALVES

Appellant

and

EWARDO LYNCH et al

Respondent

AND

CIVIL APPEAL NO.11 OF 2003

BETWEEN:

DR. RALPH E. GONSALVES

Appellant

and

KELVIN GIBSON

Respondent

Before:

His Lordship, The Hon. Sir Dennis Byron	Chief Justice
His Lordship, The Hon. Albert Redhead	Justice of Appeal
His Lordship, The Hon. Adrian Saunders	Justice of Appeal

Appearances:

Mr. Anthony Astaphan S.C. with Mr. Grahame Bollers instructed by Mr. Ronald Burch-Smith for the Appellant (9 & 11/2003)
Mr. Stanley K. John instructed by Dr. Lorraine Friday for 1st Respondent (9/2003)
Ms. Mira Commissiong for 2nd Respondent (9/2003)
Mr. Stanley K. John for the Respondent (11/2003)

2003: July 2

JUDGMENT

[1] BYRON, C.J.: On 10th September 2002, Dr. Gonsalves, the Prime Minister of St. Vincent and the Grenadines, instituted separate claims for damages for defamation against the respondents, in relation to a radio broadcast on a program sponsored by a opposition political party. The claims are being dealt with together.

[2] On 20th September 2002, the first interlocutory process was initiated. The respondents applied to the court to dismiss the claims on the ground that the words complained of were not defamatory. On the 31st October 2002 the court dismissed those applications. Subsequently, the Respondents filed defences disputing the claim on the grounds that the words were not defamatory, they were fair comment and they were published on an occasion of qualified privilege.

[3] On 11th February 2003, the second interlocutory intervention occurred. Dr. Gonsalves applied to the Court to strike out the defences and enter judgment against the respondents on the ground that there was no reasonable ground for defending the case and/or the defence was an abuse of the process of the court. Affidavit evidence was filed in support of this application. It supported the proposition that there was no factual basis for the allegations in the defence. The respondents filed no rebuttal evidence.

[4] On 2nd June the Master dismissed the application to strike out the defence and ordered that the matter should proceed to trial. His decision was based on the conclusion that the issues raised on the pleadings would have required findings of both law and fact to justify striking out the defence and it was inappropriate for such findings to be made at that stage of the proceedings.

[5] This appeal is against that order of the Master. During argument the issues in dispute became narrowed when counsel for the applicant conceded that a decision to strike out the defences in this case did involve questions of fact. However, he contended that his application had included a claim for dismissal on

the ground of abuse of process and he was entitled to adduce evidence and require the court to make findings of fact. It was his contention that the rules of natural justice would not have been breached by the failure of the respondents to adduce rebuttal evidence, because they could have done so, and the court was entitled to make findings on the evidence that was adduced. He referred to McDonald's Corp v Steel[1] where the practice in dealing with applications to strike out pleadings in defamation cases was closely examined. In that case the plaintiff had applied to strike out the defence after witness statements had been served and it appeared that there was no clear and sufficient evidence to support the plea of justification. The application did not succeed. Neill LJ in giving the court's decision affirmed the courts power to strike out pleadings in libel cases where it became clear that the defendant had no evidence available other than rumour and there was no possibility that the case was going to be improved by discovery. He pointed out, however, that if there were particulars in the defence, it was open to the litigant to rely on evidence gathered during the discovery process of the trial. He restated the principle that while a defendant should not be allowed to plead justification or fair comment unless he was satisfied that;

(i) the words complained of were true,

(ii) he intended to support them with evidence at the trial, and

(iii) he had reasonable evidence to support the plea at the trial, a court should regard these defences as part of the framework by which free speech is protected. It is therefore important that no unnecessary barriers to these defences be erected while at the same time ensuring that the process of the court is not abused by irresponsible and unsupportable pleadings.

[6] On the facts of this case, I have come to the conclusion that application to strike out the defences was premature. Although it is true that the application did not contain the abuse of process issue, the grounds did not address it, and the proceedings were not conducted on that basis. The respondents argued the matter on purely legal submissions and did not address the factual question on

[1] (1995) 3 All ER 815.

which a decision would have had to be based. The application came before the discovery process and relied only on the evidence of the applicant. The respondent had not been required to disclose what evidence if any had to support its allegations, nor had it had the opportunity to examine any material it was entitled to require the appellant to make available on discovery.

[7] In these circumstances we support the ruling of the learned Master and direct that the matter be remitted to case management conference for full directions.

[8] During the argument counsel for the respondent warned against rushing the proceedings and I think that it may be appropriate to use this opportunity to comment on my expectation of management of the process under CPR 2000. These proceedings have been in progress since September 2002. Some nine months have elapsed. The proceedings have been two appearances before the judges on pleading points, and one appeal on a pleading point. No directions have been given on the essential issued of discovery and related matters necessary for determination of the real issues. My criticism is that, one of the intentions of the case management process was to reduce the incidence of multiple interlocutory applications, which used to be a major factor in causing delay between the initiation and disposition of cases. I would like to encourage the use of the case management conference to address as many issues at the same time as is reasonable. It is quite likely that had these proceedings followed that procedural route, a final resolution would have been reached by now.

[9] On the issue of costs, we invited counsel to agree on quantum to be awarded to the respondents. Instead, there was an unbecoming exchange between them. I intervened and we reserved the question of costs. I note that at the hearing at first instance it was directed that costs for these matters be considered at the end of the proceedings and I would make a similar order on this appeal. This is not inconsistent with the rationale of the CPR 2000, which was intent on avoiding wastage of expenses, which could easily occur if appearance costs were ordered

to be paid on each of several appearances before the court. I must note, however, that it was not the respondents who initiated this appeal.

[10] We therefore order as follows:

1. The appeal is dismissed.
2. The matters are remitted to case management for full directions.
3. Costs to be considered on the conclusion of the matter.

Sir Dennis Byron
Chief Justice

I concur.

Albert Redhead
Justice of Appeal

I concur.

Adrian Saunders
Justice of Appeal