

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 8 OF 2003

BETWEEN:

JOHANN GREUNER

Appellant

and

MONICA PATSY GREUNER

Respondent

Before:

The Hon. Mr. Albert Redhead

Justice of Appeal

The Hon. Mr. Adrian D. Saunders

Justice of Appeal

The Hon. Mr. Ephraim Georges

Justice of Appeal [Ag.]

Appearances:

Ms. C. Edwards for the Appellant

Mr. R. Benjamin for the Respondent

2003: July 9;
September 22.

JUDGMENT

[1] **SAUNDERS, J.A.:** Mrs. Monica Greuner, the respondent, was at one time married to the twin brother of Mr. Johann Greuner, the appellant and claimant in these proceedings. Mrs. Greuner went through a bitter divorce with her ex husband. She has since alleged that Mr. Greuner, her former brother-in-law, had borrowed \$1million from her and has failed to repay the same. The alleged loan was supposedly the subject of a promissory note. Mrs. Greuner retained solicitors in Grenada to demand repayment of the loan but has not to date commenced any proceedings in Grenada for its recovery.

The Proceedings in the Trial Court

[2] In November, 1999 Mr. Greuner commenced this action against Mrs. Greuner.

The relief claimed in the writ was for

- [1] "A declaration that the claim by [Mrs. Greuner] against [Mr. Greuner] made in 1998 through her Attorney whereby she demanded from [Mr. Greuner] payment of \$1,000,000.00 USC allegedly loaned by her to [Mr. Greuner] is false and fraudulent.
- [2] Damages for Libel.
- [3] Damages for extortion.
- [4] Further or other relief.
- [5] Costs".

After a full trial, the Court dismissed Mr. Greuner's claims and gave judgment for Mrs. Greuner. Mr. Greuner has appealed to this Court.

[3] The learned trial Judge before whom the action was tried treated the suit as a defamation action. It is easy to see why. The Statement of Claim was drawn in a most curious manner. It contained eight paragraphs. Paragraphs 1 and 2 were formal and introductory. Paragraphs 3 to 5 (inclusive) set out in full a case of slander. The words allegedly spoken were pleaded. Plead also were the details of the publication and the meanings attributable to the words. Particulars as to the latter were given and the damage caused by the spoken words was pleaded. Paragraph 6 stated that:

"6. [Mrs. Greuner] has further to the publications as aforesaid in or about October, 1998 caused her attorney to demand from [Mr. Greuner] on her behalf the sum of \$1,000,000.00 USD by letter of 26th October, 1998 on which [Mr. Greuner] will rely for full force and effect".

[4] Paragraph 7 stated that the claim and demand for repayment of the alleged loan is false and fraudulent and amounts to extortion and particulars are given. In paragraph 8, it is stated that by reason of the acts of his former sister-in-law, Mr. Greuner has suffered loss and damage. The relief sought by the action is then detailed. The relief included the declaration previously mentioned and damages simpliciter.

- [5] As indicated, so far as the learned trial Judge was concerned, this was a pure case of slander. The Judge did not consider the details of the loan, and the alleged failure to repay the same, as having any real bearing on the slander action as pleaded. To this end, in the course of the trial, the learned trial Judge stopped Counsel for the defendant from cross-examining Mr. Greuner on issues surrounding the alleged loan of the money.
- [6] During the closing arguments of Counsel, the Judge was surprised to learn that, in his words, "notwithstanding the dominance of defamation in the Statement of Claim, the true interest of [Mr. Greuner] was not in obtaining damages for defamation but in obtaining a declaration that the allegation by [Mrs. Greuner] that [he] owed her US \$1,000,000.00 was false and fraudulent".
- [7] The learned trial Judge found that no action for defamation had been made out. He dismissed that claim. As to the claim for the declaration, the Judge in his discretion refused to grant the same. Mr. Greuner has appealed the judgment of the learned trial Judge to this Court. The claim based on extortion had been previously struck out by the Master and there had been no appeal against the Master's order.

The Issues Raised on Appeal

- [8] Three issues were canvassed on appeal. Firstly, whether it could properly be said that there was a pleaded claim for damages for libel and, if there was, whether the Judge was right to dismiss the same. Secondly, whether the Judge erred in stopping the cross-examination of Mr. Greuner on the issue of the money. Thirdly, whether the Judge erred in declining to grant the declaration sought.

The Libel

- [9] I must say that, like the learned trial Judge, I would never have thought that paragraph 6 of the Statement of Claim (quoted almost verbatim at para. 3 of this

judgment) was intended to ground a claim for libel. It is true that the writ claimed damages for Libel but in the Statement of Claim, there is no pleading as to whom was the libelous matter published nor is there any indication as to what was the alleged sting of the libel. In my view the learned trial Judge was entitled to take the view that paragraph 6 of the Statement of Claim was inserted, not to ground a claim for a separate and distinct cause of action of libel but rather, to support the already pleaded slander action. I agree with the Judge that no claim for libel was made out in the Statement of Claim.

The Stopping of the Cross-examination

[10] In his judgment, the learned trial Judge intimates that, on hindsight, had it been made clear to him, before closing submissions, what the real interest of the claimant was in these proceedings, he may have permitted full cross-examination of the claimant on aspects of the alleged loan. One must bear in mind however that it was Counsel for Mrs. Greuner who was hindered and significantly, that Counsel has no complaint about *his* cross-examination having been truncated. In fact, when it was done by the Judge, Counsel agreed with the learned trial Judge that there was no need for him to explore the issues regarding the money. I cannot see how Counsel for Mr. Greuner can properly complain of being prejudiced if a thorough cross-examination of her client and his witness was thwarted. I would grant however that some prejudice may have occurred to Mr. Greuner not because he was spared cross-examination on this issue but because the learned trial Judge may have disregarded as entirely irrelevant such portions of his and his witness's witness statements as may have shed light on issues surrounding the alleged loan. What is the consequence that should follow as a result of this finding of mine? I would determine that question after I decide the third issue, namely the issue of the declaration.

The Claim for a Declaration

- [11] A considerable amount of time was taken up at the appeal on the issue of whether it was legally proper for Mr. Greuner to claim for the declaration he sought in these proceedings. That was unfortunate. That issue had already come before Master Pemberton, as she then was. Mrs. Greuner had taken out a summons seeking, among other things, to set aside the claim for a declaration as disclosing no cause of action and the Master had heard full arguments on the matter.
- [12] The Master gave her Ruling on 29th April, 2002. In the view of the learned Master, Mr. Greuner was at liberty to seek the declaratory relief in question. There was no appeal from that Ruling. That matter is therefore *res judicata* in these proceedings. During the hearing of this appeal I felt constrained to make a point that I wish here to repeat. A Master's order ought to be given the same effect as that of a Judge. Litigants are not entitled to re-open and re-argue before the learned trial Judge points that have already been determined during the course of the proceedings by the Master. For what it is worth, let me say here that if the point about the propriety of the claim for the declaration were properly before me then I would have affirmed the Ruling of the Master. In substance, what is being sought here is a negative declaration, that is a declaration that Mr. Greuner is not indebted to Mrs. Greuner.
- [13] As outlined in *The Declaratory Judgment by The Rt. Hon. Lord Woolf*, a claimant may seek a negative declaration where no right of theirs has, as yet, been infringed. If the claimant is subjected to a demand or is threatened with action, then it may be useful to obtain such a declaration. "While in these cases no traditional 'wrong' has yet been committed or immediately threatened, a condition of affairs is disclosed which indicates the existence of a cloud upon the [claimant's] rights, a cloud which endangers his peace of mind, his freedom, his pecuniary

interests. This is a tangible interest which the law protects against impairment, and by protecting it, promotes social peace.”¹

[14] The learned trial Judge nevertheless refused to grant the declaration sought. The issue that remains is whether this Court should interfere with that decision especially in light of the action taken by the learned trial Judge in disallowing cross-examination that went towards that issue. To answer that question one must examine the reason why the learned trial Judge declined to grant the declaration.

[15] The learned trial Judge first of all expressed the view that on the state of the pleadings, the claim for the declaration was peripheral to what appeared to be the substantive action, namely the slander. The learned trial Judge then noted that Mrs. Greuner had already, in 1998, filed suit against Mr. Greuner and his brother for collection of the money. The Judge was impressed by the fact that at the time when the Grenada action was filed, there were pending proceedings between the parties in the United States about the alleged loan. In those circumstances the Judge exercised his discretion in favour of refusing the declaration.

[16] From a strictly factual position, the learned trial Judge was incorrect about dates and timing. The 1998 suit filed by Mrs. Greuner was dismissed in 1999 prior to the filing of this present suit in November, 1999. Admittedly therefore, an important plank supporting the Judge’s decision is therefore missing. Nevertheless, it is common knowledge that another suit was filed in the United States involving the ownership of the money. That latter suit has been stayed pending the determination of this suit. Counsel for Mr. Greuner candidly indicated all of this in her skeleton argument.

[17] Although the learned trial Judge fell into error with regards the date when the action in the United States was commenced, the principle that guided him in the exercise of his discretion is still, in my respectful view, unassailable. The

¹ The Declaratory Judgment, 3rd Edn. Para 4.152

transaction involving the money allegedly loaned was said to have taken place in the United States of America. The promissory note was signed in Texas. There are extant proceedings in Texas between the parties on the issue of the alleged loan. A Court should be wary of allowing claimants to derive a jurisdictional advantage by obtaining negative declarations here when it would be more appropriate for the proceedings giving rise to the declaration to be tried in another jurisdiction. See: **Midland Bank v Laker Airways**² and **The Volvox Hollandia**³.

[18] Given this state of affairs, it is my view that the learned trial Judge was entitled to refuse the claim for the declaration sought. The parties should resolve this issue of the loan in the United States in the stayed proceedings. Further, the course of action taken by the learned trial Judge at the trial, in stopping cross-examination of Mr. Greuner, could not in the circumstances have affected the outcome of these proceedings. I would accordingly dismiss this appeal. On the issue of costs, the learned trial Judge had awarded only \$450.00 in the Court below because in his view, even if the claimant had succeeded on the defamation, the damages recoverable would have been extremely small given the very limited scope of publication. There was no appeal against that order. I would therefore order that the appellant pay costs to Mrs. Greuner in the sum of \$750.00.

Adrian D. Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

Ephraim Georges
Justice of Appeal [Ag.]

² (1986) 1 A.E.R. 526

³ (1988) 2 Lloyds Rep. 36