

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA
CLAIM NO. DOMHCV2003/0432

BETWEEN:

KIERON PINARD-BYRNE

CLAIMANT

VS

**LENNOX LINTON
ISLAND COMMUNICATIONS CORPORATION LTD
REGLAN RIVIERE**

DEFENDANTS

Appearances: Mr. Anthony Astaphans SC with Mrs. Francine Baron-Royer Counsel for Claimant
Mr. Duncan Stowe with Roysdale Forde for the 1st & 2nd Defendants
Mr. William Riviere for 3rd Defendant

13th February, 2006
DECISION – 10th April 2006

[1] **LEWIS S. HUNTE J (AG.):** The Claimant states in paragraph 1 of the Amended Statement of Claim that he is, and was at all material times a citizen of the Commonwealth of Dominica, a Chartered Accountant and partner in the accounting firm, Coopers & Lybrand and that after 1 January 1998, he was a partner of the accounting firm, KPB Chartered Accountants.

[2] In paragraph 2 of the Statement of Claim, the Claimant alleged that the first Defendant held himself out, at all material times, to be an investigative journalist; that he was the host of a television talk show called “What about” which was telecast on Marpin’s

television; that he was an occasional host of a morning talk show, “the Heng” on kairi FM radio; that he was a frequent caller to talk show programmes on Kairi FM radio and that he appeared on public or political platforms dealing with issues against the “present Coalition Government.” Observation of the date of the filing of the Statement of Claim would indicate that the words ‘present Coalition Government’ is a reference to the previous administration whose mandate expired in the year 2005 and not to the present administration.

- [3] It is alleged in paragraph 4 of the Statement of Claim that the second Defendant, Island Communications Corporation Limited, is the owner of the aforesaid Kairi FM radio station; that it broadcasts on FM frequencies throughout most of Dominica, on the World Wide Web (WWW) via the internet and that its broadcasts can be heard by any user of the WWW.
- [4] The third named Defendant, Reglan Riviere, is alleged in paragraph 2 of the Statement of Claim to be a Dominican writer who resides in Canada, owns and operates a website on the WWW known as “Sir Reglan presents.” It is also alleged that this website is a source of news for Dominicans at home and abroad and is accessible by any user of the WWW.
- [5] A number of counts of defamation have been alleged in the Statement of Claim against the Defendants and this Court has been asked to determine, as a matter of law, the preliminary issue as to whether the words complained of are capable of the meanings ascribed to them in the Statement of Claim. The decision of the Court, after the hearing of this issue will, naturally, determine the future course of the case. For purposes of convenience, I will deal

with the words complained of in the same order as they appear in the Statement of Claim.

- [6] The first set of words complained of, affect the first and third Defendants only. In paragraph 7 of the Statement of Claim, the Claimant states that in May, 2002 and for sometime until around September, 2003 the first Defendant published or caused to be published of the Claimant and the third Defendant made available on his website and thereby published or caused to be published of the Claimant, the following defamatory words:

“Seems to me that Mr. Pinard-Byrne- an immigrant from strife torn Ireland –is perfectly placed to wax poetic of reigns of terror. The world is as we are...with glasses of green we see green ...with glasses of terror we see terror ...and even when the terror is of our own making we see its genesis in others.”

The Claimant says that those words, in their natural and ordinary meaning meant and were understood to mean that:

- “(a) The Claimant as an Irish man from strife torn Ireland knows about or is familiar with acts of terror and being such a person committed several acts of mental and/or financial terror against the people of the Commonwealth of Dominica.**
- (b) The Claimant perpetuated a fraud on the people of this country and used as a pretext for the act of terror or fraud, the construction of a 5 Star Hotel at Layou, to sell passports and receive or accumulate millions of dollars for his**

personal benefit as illegal or ill-gotten gains.

- (c) The Claimant abused the trust placed in him by the Government or people of the country for the purpose of misappropriating millions of dollars of money earmarked for Dominica and applied it for his own personal gain and use, and was accordingly dishonest and guilty of criminal conduct.**
- (d) The Claimant planned and perpetuated vile injustices and participated in a scandalous abuse of the economic citizenship resources for his own private and unlawful benefit.**
- (e) The Claimant devised or participated in a scam or vehicle of deception by advocating the construction of a 5 star hotel as a fraudulent pretext for selling Dominican passports in order to unlawfully acquire or plunder proceeds from such sales.**
- (f) The Claimant executed a campaign of lies, deceit and propaganda in order to hide or conceal his acts of terror, fraud, injustices, abuse, illegal acts and/or misappropriation of million of dollars.**
- (g) The Claimant is a terrorist and conducted acts of mental and/or financial terror against the people of Dominica.**
- (h) The Claimant has openly flouted and violated section 160 of the Companies Act No 21 of 1994.**
- (i) The Claimant terrorized or used acts of terror against the 1st Defendant to silence him.”**

[7] The Claimant has relied exclusively on the natural and ordinary meaning of the words. No innuendo has been pleaded and the question, therefore, is whether the words, in that sense, are capable of bearing the defamatory meaning pleaded in the Amended Statement of Claim. In my view, the correct test to be applied is, the objective test. That is, whether the meaning, as pleaded, is the meaning that an ordinary, reasonable person, reading those words, would infer from them. Refer to **Ralph Nabarro and Caribbean Corporate Services Limited v Edward Thomas Powell and others: BVI Civil Appeal No 8 of 1994 at page 6 of the Judgment of Sir Vincent Floissac CJ.**

[8] On reading the words and applying the objective test, the impression they convey to me is that Kieron Pinard-Byrne is an immigrant from strife torn Ireland and, as a consequence should know about terror but chooses not to recognize terror when he sees it in Dominica. The various acts of terror, as specified in the words complained of, would seem to be acts being committed in Dominica which, in the writer's view, Mr. Pinard-Byrne chooses not to observe. To infer from the words that they are capable of the defamatory meanings ascribed to them by the Claimant is, in my view, far-fetched. While they refer to the Claimant and are critical of him, I do not find them defamatory.

[9] The second set of words complained of, which also affect the first and third Defendants are set out in paragraph 9 of the Amended Statement of Claim. On 22 May, 2002 they appeared in an article on the website of the third Defendant and were allegedly written by the first Defendant. The headline read: "Professional Conduct Procedure – The KPB Version". The text of the article was as follows:

“Self styled Owners Representative Keiron Pinard-Byrne must know that the record of squander mania and crass deception presented in the Layou 5 Star hotel accounts speaks for itself. It was audited by KPB Chartered Accountants of which Mr. Kieron Pinard-Byrne is Chairman and CEO. It formed part of the Directors Report to the shareholders which Mr. Pinard-Byrne signed as Secretary to the Board...”

“As Owners Representative Mr. Byrne confirms in the audited statements that he received over 300 thousand dollars for his services to the shareholders of Oriental Hotel (Dominica) Ltd. His actual share of the audit payment and “administrative expenses” of Oriental Hotel have not been disclosed. The hundreds of thousands of dollars he must have cashed in from Dominican passport money siphoned through International Development & management (IDM) have not been disclosed either.

This paragon of great Irish virtue has said publicly that he became involved with the Layou River Economic Citizenship Programme as Owner’s Representative of the shareholders of Oriental Hotel in 1995. At that time he claims, he was merely acting on behalf of Coopers & Lybrand. He also disclosed that the last shareholders meeting of Oriental Hotel was held in 1994. How then was Mr. Byrne appointed owner’s representative? And who

made the appointment? Keep in mind that shareholders of Oriental Hotel resident in Dominica have publicly expressed their dissatisfaction with the conduct of this gentleman and have rejected suggestions that he represents them.

Notwithstanding Mr. Byrne's assurances that he only became involved in 1995, Government records indicate that as far back as 1993 he was having audiences with shareholders in his Roseau office and traveling to Hong Kong to clarify issues of concern.

What he would love to hide from the public is the fact that he was up to his ears in service to the Grace Tung group of companies at the very same time that he was liquidator of the Fort Young Hotel whose operating assets were sold to the Chinese immigrant in a web of intrigue.”

The Claimant alleges that these words, in their natural and ordinary meaning meant and were understood to mean that:

- “(a) The Claimant appointed himself Owners Representative and fraudulently and dishonestly held himself out as such for his own personal and/or illegal gain.**
- (b) The Claimant was guilty of professional misconduct and dishonesty in that he produced or caused to be produced accounts for the year ending December 31 1999, which were intended or calculated to deceive and/or hide or conceal “the**

record of squandamania” practiced at the Layou 5 Star Hotel.

- (c) The Claimant dishonestly, fraudulently and/or secretly acquired, stole or obtained hundreds of thousands of dollars via a company called International Development & Management Limited (IDM) which money was received from the sale of Dominican passports and dishonestly failed to disclose that he had received that money in the said accounts as at December 31 1999.**
- (d) The Claimant was in relation to the said accounts as at December 31 1999 guilty of professional misconduct and dishonesty.**
- (e) The Claimant was, at the time of his appointment as Liquidator of the Fort Young Hotel, fully in the service of Grace Tung’s group of companies and as a result used his position as Liquidator of the Fort Young Hotel for the benefit of Grace Tung, and sold the said assets to Grace Tung in a manner, which was unlawful or inconsistent with his obligations as Liquidator and/or to the detriment to the shareholders of the Fort Young Hotel.**
- (f) In view of (a) to (e) above, the Claimant is also guilty of unprofessional or criminal acts and conduct.**

[10] Once again, the Claimant has not pleaded any innuendo. However, in applying the objective test, I find that the words are capable of no other meaning than that pleaded by the Claimant in paragraph 10 of the Amended Statement of Claim. It is my finding that a reasonable man would, on reading them, ascribe that meaning to them.

[11] The third utterance relates to the first and second Defendants. The Claimant alleges in paragraph 11 of the Statement of Claim that on 26 February, 2002 on a local radio station, owned and operated by the second Defendant, the first Defendant spoke and published and the second Defendant published and broadcast or caused to be published and broadcast the following words of and concerning the Claimant personally and in the way of his office and in relation to his conduct therein.

“So no one will challenge him face to face even as he plays the race card and to perfection he talks in a phobia to perfection, he mercilessly insults the intelligence of Dominicans from whose passports he has become a major beneficiary. Tonight he is doing it again.....”

“When you go back to that record of deception in the 1999 Report and Accounts where they tell you all sorts of stories about the reengineered citizenship Programme of the Government that caused problems for Dominicans in Canada and so on, all these statements are not borne out by the facts.”

“What Mr. Byrne and Company must do is present to the people of Dominica incontrovertible evidence of a revenue stream and you asked the question to IDM that is independent of economic citizenship investment. That is important because I will put it to the promoters that the company IDM was set up specifically to find some clever way of purchasing the Layou River Hotel property in the name of a

company owned and operated by Grace Tung. That is what I am putting to them.”

“In other words they got a cheque and it was time to distribute the money to the shareholders who had invested in that company. But interestingly, when the statement of account was presented by Coopers and Lybrand it did not carry 1st of February as the Chairman of Fort Young claimed as the date of the sale. It carried the 4th of February. Again, the significance of the 4th of February date is that, that is the date on which International Development and Management was incorporated in Dominica. Therefore the 1st of February did not exist and they could have bought anything on the 1st of February.”

The Claimant, in paragraph 12 of the Statement of Claim, pleads that those words in their natural and ordinary meaning meant or were understood to mean:

“(a) The Claimant, a caucasian, is a racist or plays the race card against 1st Defendant and other persons of the Commonwealth of Dominica who are of a different race, in order to protect or hide his involvement in and the fact that he has benefited personally, substantially and unlawfully from the sale of passports purported for the Layou River Project, which was designed or calculated by the Claimant as an instrument of fraud and deception for his own personal benefit.

(b) The Claimant in presenting the facts on Kairi FM on the 26th February 2002 relating to the Layou

River Hotel Project lied, was deceitful and misled the people of the Commonwealth of Dominica.

- (c) The Claimant dishonestly and/or in breach of his professional obligations prepared the 1999 Report and Accounts in a manner, which was intended or calculated to deceive the people of the Commonwealth of Dominica and hide the fraud perpetuated at the Layou River Hotel Project or the illegal gains or benefits obtained by the Claimant from that deception or fraud.**
- (d) The Claimant, in his said presentation on the 26th February 2002 dishonestly omitted to mention certain figures, which were spent on the Layou River Project by the promoters with the deliberate intention of misleading the people of the Commonwealth of Dominica.**
- (e) The Claimant concocted the issue of construction fraud as a rouse or scam in order to perpetuate a fraud on and deceive the people of the Commonwealth of Dominica in relation to the Layou Hotel Project.**
- (f) The Claimant as a partner in the firm of Coopers & Lybrand, set up or knew that the company called IDM was set up in 1992 with the specific intention of finding a dishonest or insidious way of purchasing the assets of the Fort Young Hotel for Grace Tung or hiding the fact that the real purchaser of the said assets was Grace Tung and in fact used money from the sale of passports and economic citizenship program to do so.**
- (g) The Claimant as a partner of Coopers & Lybrand deliberately and dishonestly doctored the dates relating to the sale and purchase of the assets of the Fort Young Hotel in order to show a purchase date of the assets of Fort Young Hotel as the 4th February instead of the 1st for the benefit of IDM and Grace Tung. And for the purposes set out in paragraph (f) above.”**

(sic.)

[12] Here again, no innuendo is pleaded and once more I am left to apply the objective test. Upon reading the words, it is my view that a reasonable man would interpret them to mean that the Claimant is a racist; that he was instrumental in the incorporation of a Company called International Development Limited (IDM), a company owned by Grace Tung, to purchase by deception the Layout River Property; that the date of incorporation of the Company was 4th February and not 1st February; that the wrong date was willfully inserted in the records of IDM in order to deceive persons as to the true date the Fort Young Hotel was bought.

[13] The fourth utterance is contained in paragraph 13 of the Statement of Claim and is as follows:

“And I would want to say this morning again and this will come out at the court cases as well, it is an act of terror that well over \$18 million of Dominican passport money has been collected by immigrants and spent on the false pretence of building an 80 room five star hotel which is still nowhere near to completion more that twelve years later.

It is also an act of terror that immigrants can abuse the trust placed in them to the extent of becoming multi-million dollar beneficiaries of Dominican passport money even as poverty continues to choke this nature island.

We will hear all of that and more in the court case and you can understand why I am excited. You can understand why I am grasping the opportunity with both hands to go into a court of law where people

finally will be able to, under oath, say what they know about one of the most savage injustices ever visited on a people anywhere in the civilized world.

We have had as an act of terror as well as a campaign of lies deception and propaganda against the government and people of Dominica by immigrants who believe as a result of who they are where they come from, perhaps the colour of their skin, they enjoy some sort of intellectual superiority in Dominica which puts them beyond question.”

The Claimant alleges that those words were spoken sometime in September 2003 by the first Defendant over a local radio station owned and operated by the second Defendant. The Claimant, again, does not allege any innuendo. He relies on the ordinary meaning of the words that were spoken. This is what he says:

“(a) The Claimant repeats paragraph 7 of the Statement of Claim.

(b) The Claimant executed and/or participated in acts of fraud, abuse, illegalities and/or injustices in the Layou River Hotel economic citizenship program project and thereby committed acts of illegality and/or economic terrorism on the people and Government of the Commonwealth of Dominica.”

[14] In the absence of other evidence, there is nothing that would indicate that the Claimant is the person to whom the words bear reference. Consequently, I am of the view that no reasonable person reading them as they stand would attribute to them the

meaning attributed to them in paragraph 14 of the Statement of Claim or would, in anyway, connect them to the Claimant.

[15] This brings me to the fifth and final allegation. It is contained in paragraph 15 of the Statement of Claim and it is pleaded to relate to the first and second Defendants. It alleges that around 4 or 5 September, 2003 the first Defendant spoke and published over a local radio station owned and operated by the second Defendant, the following words:

“He should know that unlike a number of Dominicans I have no reverence for his white supremacist posturing.”

[16] The Claimant alleges that those words in their natural, ordinary and “inferential” meaning meant or were understood to mean that:

“(a) the Claimant was a racist bigot

(b) the Claimant advocates the supremacy of the white race over other races particularly the people of African heritage and descent

(c) the Claimant intends to sue the first Defendant in order to impose his white supremacist views on the first Defendant.”

[17] I find no reference, direct or indirect, to the Claimant in those words, whether by inference or otherwise and so I am unable to hold that a reasonable person reading those words objectively

would assign to them the meaning that the Claimant assigns to them in paragraph 15 of the Statement of Claim or would connect them to the Claimant.

[18] In conclusion, for the reasons given, I do find that there is an issue to be tried in respect of the words complained of in paragraphs 9 and 11 of the Statement of Claim.

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LEWIS S. HUNTE J.(Ag.)