

PARTIES: Jovanovich and Diamond Leisure
Pty Ltd

TITLE OF COURT: In the Supreme Court of the
Northern Territory of Australia

JURISDICTION: Interlocutory Application

FILE NO.: 143 of 1992

DELIVERED: 23 November 1995

REASONS OF: Master Coulehan

CATCHWORDS

DEFAMATION - pleading - foreign jurisdiction -
claim must give rise to civil liability where it
occurs - particulars necessary to establish law
of place where defamation said to have occurred.

PRACTICE - Northern Territory - amendment -
O.36.01 Supreme Court Rules - statute barred cause
of action - Limitation Act s48 - O.36.01(6) Supreme
Court Rules - prejudice.

PRACTICE - Northern Territory - pleading -
defamation - O.13.02(1)(a) Supreme Court Rules
- facts necessary to establish cause of action.

Cases followed:

A v IPEC Australia Ltd (1973) VR 39
Bruce v Odhams Press Ltd (1936) 1 KB 297
Kettman v Hansel Properties (1987) A.C. 189
McKain v Miller & Co. (S.A.) Pty Ltd 174 CLR 1
Mehta v Commonwealth Bank (1990) 12 ATPR 41-026
Rubenstein v Truth and Sportsman Ltd (1960) VR
473

Representation:

Counsel:

Plaintiff Mr Wyvill
Defendant Mr Bradley

Solicitors:

Plaintiff Messrs Elston & Gilchrist
Defendant Messrs Ward Keller

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

143 of 1992

BETWEEN:

DEBBIE JOVANOVICH

Plaintiff

DIAMOND LEISURE PTY LTD

Defendant

MASTER COULEHAN: REASONS FOR DECISION

(Delivered 23 November 1995)

By this proceeding, commenced on 2 June 1992, the plaintiff alleges that on 18 May 1992 she was wrongfully, and in breach of contract, dismissed for stealing and that the dismissal was "harsh, unjust, unfair and unreasonable". It is further alleged that on the same day, servants or agents of the defendant falsely and maliciously imputed the commission of a crime by the plaintiff, which injured her in her credit and reputation.

By summons filed on 6 October 1995 the plaintiff seeks to amend her statement of claim by adding allegations of defamation arising out of the showing of a video at a conference in Malaysia in September 1992. The video is alleged to show the plaintiff at work at the Darwin Casino and words were spoken to the effect that she had been dismissed for stealing.

The application is supported by an affidavit sworn by the plaintiff's solicitor who deposes that the plaintiff became aware of the events in Malaysia after the issue of the writ. It is not stated when she became so aware.

The defendant objects to the amendment, arguing that it is an attempt to introduce a cause of action which has no relation to the issues raised in this proceeding and which is statute barred, presumably pursuant to s12 of the Limitation Act.

The plaintiff relies on O.36.01 of the Supreme Court Rules which reads as follows:-

"(1) For the purpose of determining the real question in controversy between the parties to a proceeding or of correcting a defect or error in a proceeding or of avoiding multiplicity of proceedings, the Court may at any stage order that a document in the proceeding be amended or that a party have leave to amend a document in the proceeding."

S48A of the Limitation Act and O.36.01(6) of the Supreme Court Rules provide that the Court may amend notwithstanding the expiration of a relevant limitation period, provided the other party has not suffered prejudice which could not fairly be met by an adjournment, order for costs or otherwise.

Pursuant to O.9.01 a plaintiff may join any number of claims against a defendant. This provision is subject to O.9.04 which makes provision for relief where a joinder of claims may embarrass or delay the trial. There has been no suggestion that such is the case.

The question in controversy between the parties is the plaintiff's dismissal and the allegations made as to stealing in May 1992. There is a common thread in the video and its proper interpretation and the effect of the events in Darwin and Malaysia on any damages which may be awarded to the plaintiff for diminution of her employment prospects. I consider that the proposed amendments may have the purpose of determining the real question in controversy between the parties to the proceeding.

The defendant has alleged general prejudice flowing from the loss of the benefit of the limitation period. This is not the type of prejudice contemplated. (See Ketteman v Hansel Properties (1987) A.C. 189,203, Mehta v Commonwealth Bank (1990) 12 ATPR 41-026).

No specific prejudice is alleged. It was requested that an adjournment be granted so that this may be considered but there was no evidence or argument offered in support. The adjournment is refused and the objection fails.

The defendant objects that there is no specific allegation that the words were defamatory. I understand that the plaintiff will make appropriate amendments.

The defendant objects that the plaintiff does not plead that the defamation is actionable in the place it was published.

The plaintiff must plead all facts necessary to establish her cause of action (see O.13.02(1)(a), Bruce v Odhams Press Ltd (1936) 1 KB 297,712, and Rubenstein v Truth and Sportsman Ltd (1960) VR 473, 476). Part of her cause of action must be that the claim gives rise to a civil liability of the same kind in the place where it was alleged to have occurred. (See McKain v Miller & Co. (S.A.) Pty Ltd 174 CLR 1). The plaintiff has failed to plead this allegation and the pleading is therefore defective.

The defendant asserts that Malaysia is a Federation and the laws of defamation may differ according to where the acts complained of took place. I do not know if this is the case, however, it is a matter that the plaintiff should consider. It is necessary that the defendant be able to establish the laws of the place where the defamation is said to have been published (see A v IPEC

Australia Ltd (1973) VR 39, 51).

The defendant objects to paragraph 16 which refers to the video and the words spoken by "servants or agents of the defendant". It is argued that there is no description of the plaintiff's actions relevant to the words spoken. However, it is pleaded in paragraph 15 that the video depicted the plaintiff carrying out her work at Darwin Casino. This, if established, may be sufficient to associate the plaintiff with the words spoken. It does not appear that the plaintiff is relying on the video to establish any other facts.

The defendant objects that the words spoken are alleged to have been spoken by more than one person. Unless it is intended to prove that they spoke in unison, which is unlikely, the allegation is embarrassing and should be more specifically pleaded.

The defendant objects to allegations comprised in the proposed amended statement of claim which are presently before the Court. These are not part of the plaintiff's application to amend and the defendant has not applied to strike them out. In the absence of a formal application on notice it is not appropriate that these objections be considered.

The plaintiff's application to amend in the terms of the proposed amended statement of claim annexed to the summons filed on 6 October 1995 is refused.

The application is adjourned to enable the plaintiff to consider further amendments, if so advised.