MANN v HOGAN

Supreme Court of the Northern Territory of Australia

Martin J.

11 February and 3 March 1988 at Darwin

Practice and Procedure - Application to strike out Statement of Claim pursuant to O.23.02 Supreme Court Rules - Consideration of operation of O.36.03.

Statute:

Supreme Court Rules - O.13.02, O.23.02, O.36.03

Plaintiff appeared on his own behalf

Counsel for the Defendant : T.J. Riley
Solicitors for the Defendant : Ward Keller

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA

No. 794 of 1987

BETWEEN:

RON MANN
Plaintiff

AND:

JOHN E. HOGAN
Defendant

CORAM: MARTIN J.

REASONS FOR JUDGMENT
(Delivered 3 March 1988)

The plaintiff sues the defendant for damages for defamation. He acts in person.

On 21 January 1988 it was ordered that the plaintiff file and serve a Statement of Claim on or before 22 January and that a defence be filed and served within 21 days of the service of the Statement of Claim. A document entitled "Statement of Claim" was filed and served as required. On 9 February the defendant filed a summons by which he sought orders that the Statement of Claim be struck out and that he be given an extension of time within which to file a Defence and as to costs. Those applications were argued on 11 February.

The substance of the defendant's application was that the Statement of Claim offended O.23.02 in that it is scandalous, frivolous or vexatious, or may prejudice, embarrass or delay the fair trial of the proceedings. It was not argued that it failed to disclose a cause of action.

On such an application the Court may order that the whole or part of the pleading be struck out or amended.

The Statement of Claim runs to 43 paragraphs over six and one half pages.

In paragraph 1, the plaintiff identifies himself by reference to his occupation, business, and offices held or anticipated. Whether each of these descriptions is relevant may depend on the question of innuendo referred to later. They may remain for now.

Paragraph 2 identifies the defendant and the capacity in which he is sued, as "editor and publisher of a newspaper". It goes on to allege that the newspaper has "the largest circulation throughout the Northern Territory".

Paragraph 3 identifies the alleged defamatory material and sets it out in full, including references to photographs and "inserts". It is alleged that the defendant did "falsely and maliciously write, print, publish or caused

to be written, printed or published" that material "concerning the plaintiff".

Paragraphs 2 and 3 appear to be in a form commonly used in this sort of case and may remain.

Paragraph 4 reads "The said words in their natural and ordinary meaning meant and were understood to mean as detailed in the following paragraphs".

It seems to me that thus far the plaintiff has followed much the traditional form of pleading in the circumstances he alleges, and that it was then intended to allege a gloss put upon the alleged defamatory material by him, as an innuendo or innuendos. As best I can make out, the innuendos which the plaintiff seeks to bring forward refer to his personal character and to him in his business or calling. These occupy paragraphs 5 to 33 of the Statement of Claim. These allegations are prolix and argumentative, they contain references to evidence, some are not understandable, some are repetitious, there is constant reference to numbered paragraphs which are not otherwise identified, and some seem to anticipate a possible denial. Taken individually and as a whole these paragraphs fall to be struck out.

Paragraph 34 raises a question of vicarious liability on the part of the defendant for the acts of his employees, servants or agents. It is not for me to determine whether or not such a plea is appropriate to the plaintiff's claim but I do not see how the defendant could deal with it by way of defence. Paragraph 35 seeks to deny a possible defence, and paragraphs 36-42 infringe every rule as to pleading imaginable. In particular, in my opinion, they do not disclose material facts. If they do they are not in summary form (O.13.02). Paragraphs 34-42 are struck out.

Paragraph 43, though arguably confused, indicates clearly enough that the plaintiff is seeking damages, aggravated damages and exemplary damages and costs. It is not necessary for the defendant to plead to it and it may remain.

A party may amend a pleading served by him once before the close of pleadings, O.36.03. It is not therefore necessary for me to consider giving leave to the plaintiff in that regard. But any such amended Statement of Claim is to be filed and served within 21 days from today and defence within 14 days after service or expiry of that time if no amended Statement ofClaim is served.

I will hear the parties as to what, if any, orders should be made as to costs, bearing in mind particularly O.63.18 and O.63.04 (3) and (4). Upon what grounds should the Court depart from the principle that each party shall bear his own costs of an interlocutory application? If there is a departure from that rule, upon what grounds should the Court depart from the rule that the costs so ordered to be paid not be taxed until the conclusion of the proceedings?