

PARTIES: GRAHAME JOHN WARREN WEBB and
JOHN BACHE

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

JURISDICTION: INTERLOCUTORY APPLICATION exercising
Territory jurisdiction

FILE NOS: 31/93

DELIVERED: Delivered at Darwin 1 July 1993

HEARING DATES: Heard at Darwin 17 June 1993

JUDGMENT OF: Master Lefevre

CATCHWORDS:

PRACTICE AND PROCEDURE - defamation - pleadings - allegation in statement of claim or oral and written statements by press release made by defendant with intention that they be published in Northern Territory "and possibly elsewhere in Australia" - particulars provided of "other possible places" as being the 6 states and the Australian Capital Territory "being places where other publications or other media may have picked up and further published the statement" - whether relevant parts of statement of claim should be struck out as embarrassing

PRACTICE AND PROCEDURE - defamation - pleadings - allegation in statement of claim of facts of publication and of collective imputation of 3 statements "rolled up" with plea of falsity of statements and malice - whether should be struck out

PRACTICE AND PROCEDURE - defamation - pleadings - allegation of oral and written statements by press release made by defendant with intention that they be published in newspaper - statement of claim not containing entire newspaper - newspaper editorial omitted from statement of claim - whether statement of claim should be amended to contain whole of the article and editorial

REPRESENTATION:

Counsel:

Plaintiff: Mr Waters
Defendant: Mr Berner

Solicitors:

Plaintiff: Crowe Hardy
Defendant: Cridlands

Judgment category classification:
Court Computer Code:
Judgment ID Number: lef93022
Number of pages: 10

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

No. 31 of 1993

BETWEEN:

GRAHAME JOHN WARREN WEBB

Plaintiff

and

JOHN BACHE

Defendant

MASTER LEFEVRE: REASONS FOR DECISION

(Delivered 1 July 1993)

On 18 February 1993, the plaintiff filed a writ against the defendant alleging defamation.

The plaintiff in the statement of claim endorsed on the writ alleges that -

"The plaintiff is a Zoologist with a specialist knowledge of crocodiles. The defendant at the relevant time was the President of the Northern Territory Crocodile Farmers Association. On or about the 10th day of June 1992 the defendant falsely and maliciously made statements concerning the plaintiff to Frank Alcorta, a journalist with the Northern Territory News, believed by the plaintiff to be both oral and written (by way of press release)."

I take this to mean it was the statements that were oral and written and not Frank Alcorta or the N.T. News.

Then follows some 8 sub-paragraphs alleging what the statements were.

In paragraph 2 of the statement of claim the plaintiff alleges that -

"The plaintiff well knew and intended that the statements made both written and oral would be published in the Northern Territory News and possibly elsewhere in Australia and intended such publication to occur." (emphasis mine).

Paragraph 3 of the statement of claim contains an extract from the mentioned newspaper (the News). What is clear is that the article in the News has not been fully extracted. A number of ellipses show that portions of the original have been omitted. Also at the end of the original article appears the words: **"Editorial P10"**. The text of the editorial does not appear in the statement of claim.

The statement of claim contains a further paragraph 3 (I assume that it should have been numbered 4) which reads -

"By oral and written publication of the statements by the defendant and their subsequent publication in the Northern Territory News in the form set out above the plaintiff has been greatly injured in his credit and reputation and has been brought into scandal odium and contempt."

Paragraph 4 of the statement of claim sets out in 6 sub-paragraphs the imputations that the plaintiff ascribes to the words in the alleged statements.

Paragraph 5 of the statement of claim reads as follows -

"Collectively the said statements by the defendant were meant and were understood to mean that the plaintiff was dishonest, unscrupulous and lacking in ethics and was

endeavouring to improperly profit from his relationship with the Northern Territory Government. The statements were false and were calculated to and did disparage the reputation of the plaintiff in the pursuit of his profession as a zoologist and were part of a sustained and malicious campaign by the defendant."

Paragraph 6 of the statement of claim contains an allegation that the defendant has failed to apologise or retract the words in the statements of which the plaintiff complains.

On 28 April 1993, the defendant's solicitors sought of the plaintiff's solicitors certain further and better particulars of the statement of claim. The relevant parts of that request are -

"As to paragraph 2:

...

(c) Please specify the other possible places in Australia referred to;" ...

"As to paragraph 5 :

"(a) Please identify the 'said statement';

"(b) Is this paragraph intended to make a claim in defamation, or in some other and if so which cause of action?"

The letter requesting the further and better particulars then contains the three following paragraphs -

"The word 'collectively' in that paragraph (i.e. paragraph 5) is embarrassing and should be deleted.

"Further, we respectfully suggest that the words 'were part of a sustained and malicious campaign by the defendant' are also embarrassing and should likewise be deleted.

"Finally, as to paragraph 6, that paragraph is also, we suggest, embarrassing and should be

deleted. The question of an apology is properly one for particulars."

On 26 May 1993, the plaintiff's solicitors replied to the plaintiff's solicitors. Relevant to the matters I have mentioned the reply is to the following effect -

. as to paragraph (2) (c) of the statement of claim and paragraph 2 (c) of the request for particulars, "the other possible places in Australia" are -

"Queensland, New South Whales (sic), Victoria, Tasmania, South Australia, The Australian Capital Territory and Western Australia being places to which the Northern Territory News is distributed and being places where other publications or other media may have picked up and further published the statement;" and

. as to paragraph 5 of the statement of claim the plaintiff replied -

(a) "The statements referred to are of course those statements set forth in paragraph (2) and (3) (first appearing) of the Statement of Claim. An ordinary reading of the claim could allow for no other interpretation."; and

(b) "Your concerns about the word 'collectively' and the other allegations of alleged embarrassment do not in our respectful view prevent the defendant from properly pleading to the statement of claim in its present form. At best paragraph (6) of the Statement of Claim goes to a particular of damage."

In their letter seeking particulars, the defendant's solicitors also made the following observation namely -

"We respectfully suggest that it is not permissible, for the purpose of pleading meanings alleged to arise from the material in paragraph 3 (first appearing), to exclude those portions of the newspaper article that have not be (sic) included in paragraph 3 and the

editorial in the same edition of the newspaper to which the article refers at its conclusion. We therefore respectfully suggest that the Statement of Claim be amended to include all of the words used in the newspaper article complained of."

In answer to that, the plaintiff's solicitors said -
"We do not say that the meanings alleged have arisen from elements from the newspaper article or editorial not set forth in the statement of claim. We trust this clarifies your concern."

The defendants allege that paragraph 5 (b) of their request for particulars was not answered.

On 15 June 1993, the defendant filed an application seeking an order that -

- (a) the words "and possibly elsewhere in Australia" (emphasised by me earlier) contained in paragraph 2; and
 - (b) paragraph 5,
- of the statement of claim, be struck out or amended.

In addition, the defendant seeks an order that paragraph 3 (first appearing) of the statement of claim be amended so as to include -

- (a) the parts missing from the article extracted; and
- (b) the editorial.

The whole of the article and editorial appear as annexure "C" to an affidavit of Gordon Munro Berner (Berner), sworn 15 June 1993. Berner has also sworn a second affidavit on 16 June 1993. The latter affidavit does no more than annex a copy of the editorial to which I have referred.

I now turn to deal with the first of the defendant's submissions, namely that the words which I have underlined in citing paragraph 3 (first appearing) of the Statement of Claim are embarrassing. The defendant says that those words should be struck out or amended or particulars of the places "**elsewhere in Australia**" should be ordered to be given by the plaintiff.

He relies on A.v.Ipec Aust. Ltd and anor (1973) VR 39 (which was followed in Vasta v Queensland Newspapers Pty Ltd (1991) 2 Qld 354) in which it was held, in the context of that case, that the words "**and elsewhere**" were objectionable in that it was difficult for a defendant to know exactly where the further alleged publications may have taken place. Counsel for the defendant in the present proceeding submits that the defendant may wish "**to plead various defences available**" in the different jurisdictions and is hampered in so doing. He admits that, "**to some extent**", the plaintiff has provided particulars, but that the pleading here is "**slightly different**" from that in the Ipec case.

He says:

"This is not a pleading that the material was published elsewhere but rather possibly elsewhere, so from the defendant's point of view, we're still unsure about exactly which jurisdictions the publication occurred in."

He concedes however that the particulars supplied in answer to the request has made it "**probably pretty clear that the plaintiff is endeavouring to cover the whole of Australia and probably nowhere else**", but says that those particulars seem to suggest that there may have been a republication or

republications. He adds that, inasmuch as the word "elsewhere" is embarrassing, the word "possibly" compounds the embarrassment because "it's still not altogether clear that it's those jurisdictions and only those jurisdictions or completely those jurisdictions."

The plaintiff submits that the cases cited by the defendant are no more than authority for the principle that, where there is a pleading alleging publication of defamatory matter in certain places or elsewhere, it is proper for particulars to be provided to identify the places covered by the expression "elsewhere".

The particulars provided have said that the "elsewhere" referred to are the 6 states stipulated in the reply to the request for particulars, those places being where the publication may have been picked up and additionally published. So, the places in which possible re-publication, (which is the matter for concern for the defendant), are clearly in those states and nowhere else. I accept that submission.

I now turn to the defendant's objections to par 5 of the statement of claim. The allegation is that there were 3 publications. The first, oral by the plaintiff to the journalist, Frank Alcorta, the second in writing in a press release and the third by the publication of the oral and written statements in the News which publication it is claimed the defendant well knew would, and intended to, take place. The plaintiff's argument is that paragraph 4 of the statement of claim pleads the imputations that arise from the natural and ordinary

meanings of the alleged words used in each separate or individual publication, whether oral or written. Then he says, paragraph 5 of the statement of claim pleads the imputations that arise from the collective effects of those publications. In other words, it is one thing to say that the defendant has acted dishonestly or unscrupulously and another to say that he is therefore to be seen or perceived as a dishonest or unscrupulous person. One is a statement of breach of principles and the other is a reflection on character. The plaintiff's counsel says that the two paragraphs (i.e. paragraphs 3 (first appearing), pleading the facts, and (5), pleading the imputations), make this point with clarity. Were that the only matter for concern, I would have no quarrel with the paragraph.

The defendant says the wording of the paragraph implies that a cause of action other than defamation is being pleaded. Malicious falsehood might be what is being alleged. The plaintiff's reply is that he is "doing no more than alleging that the plaintiff has been injured as a result of the defamatory statements by the defendant, and nothing more than that." Were that the only matter for concern, I would have no quarrel with the paragraph.

The plaintiff's counsel says that, whilst it is not necessary to allege malice as part of the original pleading in defamation, it is here pleaded to put the defendant on notice that malice is contended. Were that the only matter for concern, I would have no quarrel with the paragraph.

The plaintiff's counsel refers to the paragraph as "a classic rolled up plea". This is an allusion to

the defence plea of justification and fair comment which seems not to be an appropriate categorization of paragraph 5. If I may be excused for resorting to the same terminology, there seems to be too much rolled up in that paragraph to make it clear and precise.

The defendant's third objection to the statement of claim is to the omission from what is pleaded in paragraph 3 (first appearing) of certain portions of the article in the News and the complete omission of the editorial. This seems to me to stem from a misunderstanding by the defendant of the defamation in respect of which the plaintiff is claiming damages. What is being alleged is not against the publishers of the News. The claim of defamation is in respect of the alleged statements made to the newspaper by the defendant with the intention that they be published in the newspaper. What appears in the article are not only quotations of what was allegedly said by the defendant (which are rightfully included in the statement of claim), but observations in the nature of reportage which are not the words of the defendant and are rightfully omitted from the statement of claim. This is clearly so with regard to the editorial.

Whilst I have held that the defendant has failed in 2 out of his 3 objections, I cannot say that the statement of claim is a masterpiece of pleading. It appears to me that the plaintiff would be better served were the document to be re-examined with the view to being presented in clearer form. I say this, however, as a broad criticism only. Leaving aside paragraph 5, the document needs re-numbering of paragraphs, and then there are the other matters to which I have referred in the course of these reasons. The statement of claim is, at best, passable as a pleading.

Paragraphs 1(a) and 2 of the defendant's application are dismissed. Paragraph 5 of the plaintiff's statement of claim is struck out, with liberty to the plaintiff to amend the statement of claim as he may be advised. I further order that the amended statement of claim be served and filed within 14 days. I will hear counsel as to costs.