

DISTRICT COURT  
CIVIL JURISDICTION  
JUDGE WHITE

No 119 of 2001

PETER PAL

Plaintiff

and

JAMES MURRAY WEIR

Defendant

CAIRNS

..DATE 24/03/2003

JUDGMENT

HIS HONOUR: This is an action for defamation. On the 13th of October I heard an application by the defendant for various interlocutory orders, but which also included an application to strike out various parts of a further amended statement of claim.

...

HIS HONOUR: There's an application by the plaintiff, that a signing of a request for trial date by the solicitors for the defendant be dispensed with. On 11th of March 2003 I formally published my reasons, and made one order as follows:

"That within 28 days hereof, the plaintiff provide to the defendant further and better particulars of the 'circumstances' relied on in paragraph 6 of the Further Amended Statement of Claim."

In my reasons I indicated that because the defendant had succeeded in obtaining such an order, but because it was a success to only a very minor degree in respect of all of the issues raised by the defendant, that I would make no order as to costs.

The plaintiff now applies, in effect, for me to reopen the defendant's application on the basis, firstly, that the particulars have already been provided, and secondly, if I agree with such a proposition that as a result, the defendant will have failed completely and, therefore, the plaintiff should have the costs of the application.

In relation to that particular matter in my judgment at

JUDGMENT

paragraph 8 I said,

"Paragraph 3 simply alleges that the defendant on or about 12th of July 1995 published to a named employee of The Cairns Post newspaper certain words. There is no allegation as to exactly how the defendant published such words. It may well be that the plaintiff is not in any position to give such particulars. One would have thought, however, that actual knowledge of the defendant that he was publishing the words to an employee of The Cairns Post newspaper would be a particularly material relevant circumstance, and those circumstances alleged in the pleadings. If, for instance, the defendant used the words alleged in circumstances where he was not aware that the newspaper employee was present, or was not aware that she was an employee of a newspaper, it might be difficult for the plaintiff to fix the defendant with liability for the publication contained in the newspaper. It is of relevance that paragraph 6 alleges that the circumstances were such that the defendant knew that the publication would be repeated, or further published in The Cairns Post newspaper. In light of the hypothetical possibility, as I've set out above, I think the defendant is entitled to particulars of the circumstances relied on."

A little later I said,

) "I also take the view that the defendant is entitled to particulars of the facts and circumstances relied on to support paragraph 8(b) of the further amended statement of claim."

) Once again, it may simply be that he knew he was publishing the words alleged to an employee of The Cairns Post newspaper. If that is so, then he is entitled to know that that is all that is relied in by the plaintiff. If there are additional facts and circumstances, then he is entitled to know what they are. The submission on the plaintiff's behalf is that when the issue was raised in correspondence between the solicitors for the parties, and before the application was filed, the

plaintiff's solicitor in a letter of the 16th of October 2002 to the defendant's solicitor gave the particulars of which I ordered.

I take the relevant extract of the letter from the outline of argument contained in written submissions given to me by Mr Miller, they are as follows:

"a) The circumstances referred to in paragraph 6 are that the words were spoken to an employee of The Cairns Post newspaper; b) The publication of a newspaper article is the natural and probable result of publishing allegations of the kind to a newspaper reporter intending that they be published in the newspaper, and without any request that they not be published in the newspaper. The publication was intended or authorised by the defendant, because he spoke the words to a newspaper reporter without any request that they not be published in the newspaper, and the obvious inference is that they were spoken with the intention that they be published; c) The publication was causing the material to be read, or causing it to be delivered, with a view to it being read by a person other than the plaintiff."

In my view these particulars do not address the issue as I indicated it should be addressed in my reasons. These particulars say only that the words were spoken to an employee of The Cairns Post newspaper.

I think that, whilst it might be argued, there are some factual particulars contained in paragraphs (b) and (c). Really the bulk of those paragraphs contain the argument, that is the inferential argument which should be drawn from the

fact that the words were published to an employee of The Cairns Post Newspaper. What is required in my view is the circumstances in which the words were spoken to an employee of The Cairns Post newspaper.

For instance, it may well be that the defendant wishing to air his grievances towards the plaintiff, phoned The Cairns Post indicating that he something to say, and that might be of interest, and bringing the named reporter to visit him, or to record what he had to say over the phone, and thereby writing a story, implied under those circumstances would be an implied request on the part of the defendant, to have the defamatory words, or allegedly defamatory words, published in the newspaper.

- ) On the other hand, it could be that the defendant was having a few beers in a hotel on the Atherton Tableland at which time
- ) he was talking to some friends and simply having a "whinge" about the activities of the plaintiff. His whinge might have been overheard by The Cairns Post reporter who happened to be in the same hotel.

It may be that the defendant did not know her at all, and did not know who she was. It could be that the reporter, seeing that this might be a matter of public interest, made a mental note of what she overheard the defendant saying, and used that

to frame the article in The Cairns Post newspaper.

Under those circumstance it might well be that the defendant could not be held responsible for the publication of his words in the newspaper. What is required in my view is particulars of the circumstances in which the publication was made to The Cairns Post reporter.

If it be the fact that the plaintiff alleges that the defendant knew he was publishing the words to The Cairns Post reporter, then that might well be the only particular that needs to be given. That particular is not given, and was not given in the letter of the 16th of October 2002.

It is said that the words were spoken to an employee of The Cairns Post newspaper, but whether it is suggested that the plaintiff knew that he was speaking to an employee of The Cairns Post newspaper, or should have known by reason of the surrounding circumstances, and if so, what those circumstances were is not contained in the pleading, and is not contained in the letter of the 16th of October 2002.

I hope that further explains what I had in mind in the original judgment. It follows, therefore, that I am not in any way satisfied that I made a slip. I might be wrong, but I did consider the issue, and that is what is required. If that

is to be corrected, then it can be correct during the course of the appeal which the defendant has brought against other parts of my judgment.

Since the matter is now before me I should also say this: during the course of the matter raised by the defendant, an issue was raised concerning the necessity to set out particulars in a pleading, rather than in a separate document. I rejected the view that it was necessary that all particulars be set out in a single pleading.

However, there is some validity to the point raised by the defendant that the trial will be conducted by a jury. It will be necessary for the pleading, and any particulars of pleadings, to be presented to the jury in a formal way.

)

In my view the particulars, whilst not necessarily having to be set out in a single pleading, should be set out in a formal document which can at least be provided to the trial judge and to the opposing legal representatives so it is clearly understood before the trial commences, and before the case is opened, what factual issues are being placed before the jury.

I do not consider that the letter of the 16th of October is a sufficient form in which the particulars should be given.

Although it is perhaps not necessary for a response to a

request for further and better particulars to be filed in the Court, it should at least be contained in a formally styled document so that all parties, and the Court, and the jury understand that they are the particulars of the factual issues which are to be litigated during the course of the trial.

It follows, therefore, that I do not propose to alter or vacate any order I made, and nor do I propose to take a different view to the question of costs of the application.

As I have said, also before me at that time was an application by the plaintiff to dispense with the need for the solicitors for the defendant to sign a request for trial. I must confess frankly that I cannot remember now whether I directed my mind to that application.

However, if I did I would have taken the view that I would have not made the order sought, because the action, in my view, was not ready for trial by reason of the fact that I had ordered that further particulars be provided, and it was only after that was satisfactorily resolved that, in my view, any justification for ordering that a signing of a request for trial date be dispensed with. It is also the case now that there is an application for leave to appeal by the defendant in respect of my judgment.



...

HIS HONOUR: On the 29th of August 2002 the plaintiff filed an application that the signing of a request for trial date by the solicitors for the defendant be dispensed with.

In my view, there is sufficient evidence to suggest that the tendering of the request for trial date was premature, because it was accepted by later further disclosure of the existence of documents by the plaintiff. That proper disclosure had not been complete on either of the occasions upon which a request for trial date was tendered.

By reason of additional matters which subsequently arose out of complaints by the defendant's solicitors, and by reason of my order made on the 11th of March 2003, Mr Miller properly accepts that the application should be dismissed, but I think also that the application was premature, and that the plaintiff, or the plaintiff's solicitors, should have known that that was so.

Under the circumstances, therefore, I will order that the plaintiff pay the defendant's costs of that application.

However, upon any assessment of those costs, there must be a very clear distinction made between the costs associated with that application, and the costs of the defendant's

application, which I substantially dismissed, and respect of which I declined to make any order as to costs.

I formally order that the plaintiff's application filed on the 29th of August 2002 be dismissed. I order that the plaintiff pay the defendant's costs of and incidental to that application to be assessed on a standard basis.

...

HIS HONOUR: The order in relation to the costs of the plaintiff's application filed on the 29th of August 2002 is to include reserved costs of the adjournment of that application on the 26th of September 2002. For completeness it does not include the reserved costs of the adjournment on 29th of November 2002.

...

HIS HONOUR: I order that the plaintiff pay the defendant's costs of today's hearing.

-----