

**IN THE HIGH COURT OF FIJI
AT LAUTOKA
CIVIL JURISDICTION**

Action No.: HBC 323 OF 2019

BETWEEN : **REGINAL ROHIT NARAYAN** trading as **REGINAL MOTORS REPAIRS**
of Wailailai, Ba. **PLAINTIFF**

AND : **SUNIL DAT GOSAI** of Votualevu, Nadi **DEFENDANT**

BEFORE : A. M. Mohamed Mackie- J

COUNSEL : Ms. Vikash , with Ms. Bhavna for the Plaintiff.
Defendant appearing in person.

DATE OF TRIAL : 17th October 2022.

WRITTEN SUBMISSION: By the Defendant on 6th December, 2022 & 27th February, 2023
No written submissions filed by the Plaintiff.

DELIVERRED ON : 14th APRIL 2023.

JUDGMENT

A. INTRODUCTION:

1. The plaintiff brings this action against the defendant claiming damages for publication of libelous word about the plaintiff.
2. The defendant admitted the publication and the contents thereof as they are and pleaded qualified privilege by stating that the contents of the publication are truth about the Plaintiff.
3. At the trial, both parties gave evidence and called their respective witnesses. Only the Defendant, who appeared in person, filed the written submissions as aforesaid, for which I am grateful to the Defendant for filing comprehensive submissions.

B. BACKGROUND FACTS:

4. The background facts, as gleaned from the statement of claim, are as follows:
 - a. That the plaintiff is a skilled tradesperson specializing in automotive repairs and painting, being the owner of Regional Motor Repairs, operates his business in Ba Town.

b. That on or about September, 2019 the Defendant falsely and maliciously published words on a Social Media Platform Facebook. The words posted or published on the Facebook page by the Defendant were:-

Ba people be careful of this painter. No good job and he is unethical chor. Owes me \$500.00 for more than two years and no paying.

5. That the word Chor in English is defined as thief. The said words in their natural and ordinary meaning meant and were understood to mean:-
 - i. The Plaintiff was a dangerous person and people of Ba should be cautious of him,
 - ii. The Plaintiff has stolen from others,
 - iii. That he is a thief and an unscrupulous person ,
 - iv. That it was not safe to do business with the Plaintiff,
 - v. That the Plaintiff was not a trustworthy person,
 - vi. That the plaintiff was not a credit worthy ,
 - vii. That the Plaintiff is a bad automobile painter.
6. That the statement made by the Defendant was an outright and vindictive attack on the integrity of the plaintiff's profession. As a result of the publication the plaintiff has been greatly harmed and seriously injured in his personal and professional character, credit and reputation.
7. That the Plaintiff's existing customers became reluctant to deal with the plaintiff and as a result lost several business opportunities. As a result Plaintiff has suffered public embarrassment and great emotional distress.

C. Defendant's Case

8. The Defendant in paragraph 3 of his statement of defence, while admitting that he made the said comments in the face book as alleged, takes up the position that the words were not defaming, but the truth about the Plaintiff and he did it the same under the depression. The Defendant states that he lost a car air compressor from his Car whilst it was being parked at the Plaintiff's garage. The Defendant's position is that it was reasonable for him to have published the words in the manner which he did.
9. The Defendant says that the word defaming as in the Oxford Learners Dictionary read as Defamation of Character occurs when someone makes a false statement, but here what he said was the truth about the Plaintiff, after which the Plaintiff made a payment of \$200.00 to the Defendant through one Manoj Gosai.
10. The Defendant denies the rest of the contents in the Statement of Claim, save what is expressly admitted and by making a counter claim states as follows;

- i. That he left his car with the Plaintiff for painting in October 2016 (painting) but the Car was not painted properly and the bubbles came up. He gave the Car back in July 2017 to redo the job. But the Plaintiff never did the job to the satisfaction of the Defendant where the Defendant was supposed to repaint the whole Car as he promised. As he never fulfilled the job , promised to pay \$500.00 to the Defendant.
- ii. That he requested the Plaintiff for monies, but the Plaintiff neglected and/ or refused to pay the same.
- iii. That once the Article came on the Facebook, the Plaintiff through one Manoj Gosai sent \$200.00 to the Plaintiff as part payment and had told him that he will pay the balance of \$300.00 by the end of the month.
- iv. That he claims the payment of balance \$300.00 with interest, damages for non-use of the Car, Damages for breach of verbal agreement and all other reimbursements as determined by the Court.

11. The case record does not reveal about any pre-Trial Conference formalities. Hence, no agreed facts or issues are before me.

D. EVIDENCE:

Plaintiff

12. At the trial before me the plaintiff ('PW1') namely, Reginald Rohit Narayan, gave evidence for himself and called 2 other witnesses namely, Ashwin Kumar ('PW2') and Jasmir Singh ('PW3') in support of his claim.

Defendant

13. The Defendant, Sunil Dat Gosai, (DW-1) also gave evidence for him and called 2 other witnesses namely, Shavnil Gosai, Son of the Defendant ('DW2') and Manoj Kumar Gosai, a Cousin Brother of the Defendant ('DW3').

14. I have carefully perused the evidences of the Plaintiff, the Defendant and their respective witnesses and consider only what each witness stated in their evidence as and when necessary.

E. The Law

15. The Defendant totally relies on the defence of qualified privilege, claiming that what he, admittedly, published about the Plaintiff was a Truth concerning as to what transpired from the date of handing over of his Motor Car for painting to the Defendant and till the said publication appeared in the Facebook page.

16. A qualified privilege means that the plaintiff still may be able to prevail, but they must meet a higher burden compared to a standard defamation claim. In addition to proving its core elements, the Plaintiff will need to prove a higher level of culpability by the Defendant. This usually involves intent, recklessness, or malice.
17. Situations in which a qualified privilege may apply include statements made in self-defense or to protect the safety of others, statements by an employer to a former employee's prospective employer, and reports of official proceedings. Members of local governments also have a qualified privilege against defamation, as do people who are testifying in legislative proceedings. Also, professional critics of cultural works are entitled to make negative statements about a subject as long as these are fair criticism. .

Truth

18. This is one of the defenses to a defamation claim that essentially asserts that the plaintiff cannot prove the required elements of the claim. Since defamation involves a false statement of fact, **the claim cannot succeed if the statement is true**. Even if the Defendant face any disadvantage or suffers another serious financial loss, the Defendant will not be liable for damages.
19. The privileged occasion was explained in *Toogood v Spyring [1834] EngR 363; (1834), 1 Cr. M & R 181 as follows (1 Cr.M. & R. at p. 193)*:

"In general, an action lies for the malicious publication of statements which are false in fact, and injurious to the character of another (within the well-known limits as to verbal slander), and the law considers such publication as malicious, unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases, the occasion prevents the inference of malice, which the law draws from unauthorized communications and affords a qualified defence depending upon the absence of actual malice. If fairly warranted by any reasonable occasion or exigency, and honestly made, such communications are protected for the common convenience and welfare of society; and the law has not restricted the right to make them within any narrow limits."

20. Lord Diplock in *Horrocks v Lowe (1974) 1 ALL ER 662 at 669* explained the privileged occasion in this way:

"... With some exceptions which are irrelevant to the instant appeal, the privilege is not absolute but qualified. It is lost if the occasion special reason of public policy why the law accords immunity from suit-the existence of some public or private duty, whether legal or moral, on the part of the maker of the defamatory statement which justifies his communicating it or of some interest of his own which he is entitled to protect by doing so. If he uses the occasion for some other reason he loses the protection of privilege".

F. DISCUSSION:

21. The plaintiffs claim arise out of a notice the defendant, admittedly, published in a Facebook page concerning the Plaintiff. The publication reads:

“Ba people be careful of this painter. No good job and he is unethical chor. Owes me \$500.00 for more than two years and no paying”.

22. As per the evidence, the Plaintiff had admitted his bad workmanship in painting and having failed to make it good, promised to pay the Defendant \$500.00 as compensation. However, as the said amount was not paid, instead of going before the Small Claim Tribunal as alluded by the Plaintiff's Counsel at the trial, the Defendant due to absence of any thing in writing or document form, has resorted to Facebook by making the said publication ‘
23. It is also in evidence that after the said publication, the Plaintiff has opted to pay the Defendant \$200.00 through the Defendant's 3rd witness Manoj Kumar Gosai and undertaken to pay the balance \$300.00 later, after which on the request of the Plaintiff the Defendant has removed the relevant publication from the Facebook page. The Plaintiff does not dispute the above position of the Defendant that was revealed through the evidence.
24. Further, with regard to the claim of the Defendant that he lost his Compressor from his Car while it was parked at the Plaintiff's garage for painting, the Plaintiff in his evidence has admitted that it could have been stolen by one of his staff and volunteered to pay \$40.00 as compensation, which the Defendant refused to accept considering the relationship he had with the Plaintiff in past. Thus, the allegation made by the Defendant in his post to mean that the Plaintiff is a thief is not without a basis. The Plaintiff has tacitly admitted the theft of the Defendant's Compressor while the Car was with the Plaintiff.
25. Once the payment of \$200.00 was made and the balance amount of \$300.00 was promised to be paid later through a 3rd party (DW-3), the Defendant within 3 days has removed the said post, seemingly being satisfied that his mission has brought him desired result.
26. Apart from the conceivable meaning of the words in the said publication, the plaintiff has pleaded several innuendo meanings that:
 - i. The Plaintiff was a dangerous person and people of Ba should be cautious of him,
 - ii. The Plaintiff has stolen from others,
 - iii. That he is a thief and an unscrupulous person,
 - iv. That it was not safe to do business with the Plaintiff,
 - v. That the Plaintiff was not a trustworthy person,
 - vi. That the plaintiff was not a credit worthy,
 - vii. That the Plaintiff is a bad automobile painter.
27. If the plaintiff has pleaded a meaning wider than was necessary, he will enable the defendant to justify that meaning.

The Defence:

28. Since the publication on the Facebook has been admitted by the defendant, I turn to consider the defence of privileged occasion.
29. The defendant has set as defence that the publication was made as the Plaintiff had failed to do a good job in painting his Car, it was faulty and he failed to pay the damages of \$500.00 promised by the Plaintiff.
30. In a defamatory sue, I need to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. For that purpose, I must consider the evidence given by the defendant and his witnesses.

Whether words were capable of being defamatory?

31. Before I make a determination on the issue of qualified privilege, I need to decide on the issue whether the words published were capable of being defamatory to the plaintiff or his business.
32. The Plaintiff did not adduce any evidence to prove his business was affected owing to this publication by the Defendant. The both witnesses called by the Plaintiff in their evidence admitted that they read the post in the Plaintiff's phone. This suggests that it was the Plaintiff who showed his witnesses the relevant post on the Facebook and they had not read it on their own and reacted.
33. Even if the Defendant's defence of privilege does not salvage the Defendant, I find no tangible evidence to prove that any of the current or prospective customers of the Plaintiff had read the post and responded or stopped obtaining the services of the Plaintiff or decrease in his usual business. In my view, both witnesses of the Plaintiff were before the Court only to bolster the claim of the Plaintiff being motivated by the Plaintiff.
34. The test according to authorities is whether, under the circumstances in which the writing was published, reasonable man to whom the publication was made would be likely to understand in libellous senses' (*Capital and Counties Bank v George Henty & Sons (1882)*, 7 App. Cas. 741 at p. 745 (Lord Selborne, L.C.)).
35. In *Nevill v Fine Art General Insurance Co. [1897] AC. p. 68*, Lord Halsbury said:

"What is the sense in which any ordinary reasonable man would understand the words of this communication so as to expose the plaintiff to hatred or contempt or ridicule? It is not enough to say by some person or another the words might be understood in a defamatory sense (at p. 73)."
36. I find that the Defendant should be given the full advantage of the defence of qualified privilege on the basis that what had been published by him was nothing but truth. Even if I am wrong in my conclusion, on the other hand, I would say that the plaintiff has

failed to establish that, under the circumstances in which the post was published, an ordinary reasonable man who reads it would be likely to understand in libelous sense.

37. Once the Defendant was paid \$200.00 and the balance payment of \$300.00 assured through a third person, the Defendant immediately removed the post.

38. I must also rule on the innuendos. The plaintiff has drawn inferences from the notice that:

- i. The Plaintiff was a dangerous person and people of Ba should be cautious of him,
- ii. The Plaintiff has stolen from others,
- iii. That he is a thief and an unscrupulous person,
- iv. That it was not safe to do business with the Plaintiff,
- v. That the Plaintiff was not a trustworthy person,
- vi. That the plaintiff was not a credit worthy,
- vii. That the Plaintiff is a bad automobile painter.

39. The innuendo has been explained in Halsbury's Laws of England (4th Ed, vol.28 at Para 46) as follows:

"The innuendo. Confusion has been caused because "innuendo" has been used to describe both the inferential defamatory meaning of words and their secondary defamatory meaning. However, it is now clear that the secondary defamatory meaning is the true or legal innuendo and that the inferential defamatory meaning is the natural and ordinary meaning, or part of it, the distinction being that the true or legal innuendo depends on knowledge of special facts or circumstances either extrinsic to the words themselves or relating to a special meaning of the words, whereas the inferential meaning must be deduced or inferred from the words themselves and the context in which they were published."

40. What ordinary men would infer without special knowledge has generally been called the natural and ordinary meaning of the words.

41. The Defendant resorted to this act of publication in Facebook in order to recover what the plaintiff had promised him as damages on account of the faulty job performed by the Plaintiff. The Plaintiff had admitted his fault occurred in painting the Defendant's car that the sum of \$500.00 was due to the Defendant on his promise as damages. The Plaintiff also admitted that the Defendant's Compressor could have been taken by one of his servant and offered to pay for it.

42. In my opinion, no reasonable person would draw a defamatory inference from the words in the notice themselves. It follows that the words in the notice are not capable of having the particular meaning which the plaintiff attributes to them. The defence of qualified privilege

43. I have already taken a view that the Defendant should be covered by the defence of qualified privilege as what he has published stands proved to be truth.

44. When the words in the post can have a libelous meaning pertaining to the plaintiff, then the question arises whether the defence of qualified privilege would be available to the defendant in the circumstances under which the notice was affixed.

45. On the evidence, I would hold that what the Defendant had published in the Facebook was Truth about the Defendant. Therefore, the Defendant would succeed in his defence of qualified privilege if the words in the post were capable of having libelous meaning concerning the plaintiff in its ordinary or inferential meaning.

G. CONCLUSION:


46. For the reasons I have set out, I conclude that the Plaintiff has not proved that the words in the said Facebook post complained of are capable of having a defamatory sense towards the plaintiff in its ordinary context or in its inferential meaning which the plaintiff attribute to them. Presumably, even if the words are capable of having a defamatory statement, the defendant would be entitled to claim the defence of qualified privilege as the contents of the post were nothing but the Truth about the Plaintiff. I would, therefore, dismiss the plaintiff's claim with summarily assessed costs of \$ 300.00.

47. I don't think it is proper for this Court to allow the Defendant to recover any sum of money as counter claim through this proceedings. Thus, the counter claim preferred by the Defendant should also be dismissed. However, though the Defendant appeared in person, considering the expenses he would have incurred in defending this action for nearly five years , this court would order \$300.00 as summarily assessed costs.

H. THE FINAL ORDERS:

1. Plaintiff's claim dismissed.
2. The Defendant's counter claim also dismissed.
3. The Plaintiff shall pay summarily assessed costs of \$ 300.00 to the Defendant within 14 days from today.




A.M. Mohamed Mackie
Judge

At High Court Lautoka this 14th day of April, 2023.

SOLICITORS:

For the Plaintiff:

R. Charan Lawyers, Barristers & Solicitors

For the Defendant:

In Person