

IN THE COURT OF APPEAL, FIJI ISLANDS
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL NO. ABU0035 OF

2007S

(High Court Civil Action No. HBC 306 of

2000L)

BETWEEN:

DR GANESH CHAND

Appellant

AND:

FIJI TIMES LIMITED

First Respondent

AND:

MARGARET WISE

Second Respondent

Coram:

**Byrne, JA
Hickie, JA
Bruce, JA**

Hearing:

Wednesday, 26th November 2008, Suva

Counsel:

**Mr V. Mishra for the Appellant
Mr S. Banuve for the Respondents**

Date of Judgment: Tuesday 10th March 2009, Suva

JUDGMENT OF THE COURT

Introduction

- 1 On 26 August 2000, an article was published in the Fiji Times under the heading "Chand faces theft probe". The article concerned certain enquiries that the police had undertaken concerning furniture which was said to be missing from premises which had been occupied by Dr Ganesh Chand. Dr Chand instituted defamation proceedings which were heard in the High Court between 4-6 September 2006 before Phillips J. Judgment in favour of the Defendants was delivered on 13 April 2007.
- 2 On 17 May 2007, Dr Chand filed a notice of appeal against the decision.

Proceedings at trial

Case for the Plaintiff

- 3 At the time of the publication of the article in the Fiji Times the subject of these proceedings, Dr Chand was the National Planning, Local Government, Housing and Environment Minister in the government elected to power in 1999. As a minister in the government, Dr Chand occupied government quarters which were situated at 18 Richards Road, Suva.
- 4 On 26 August 2000, on the front page of the Fiji Times newspaper, an article appeared which concerned the apparent disappearance of furniture from the government quarters occupied by Dr Chand.
- 5 It is appropriate to note that Dr Chand was one of the ministers of the government who was restrained in the Parliamentary Complex on 19 May 2000 by George

Speight and his confederates. Dr Chand was released from the Complex to 13 July 2000.

- 6 The case for the Plaintiff was set out in an amended Statement of Claim dated 8 November 2005. Paragraph 7 of the Statement of Claim is as follows:

7. The natural and ordinary meaning of the article published by the first defendant and written by the second defendant, the text of which is produced below, meant and were understood to mean and by way of innuendo meant and were understood to mean:

Chand faces theft probe -Fiji Times Saturday August 26, 2000 - State quarters stripped of items - by Margaret Wise:-

Police are investigating the theft of government owned furniture and other household items from the home previously occupied by a deposed Cabinet Minister.

Former housing environment and national planning minister Dr. Ganesh Chand will also be questioned, said SSP Emosi Vunisa, head of the Criminal Investigation Department.

The Public Service Commission lodged a complaint with police after it found the residence at Richards Road stripped of all household furniture, including the air conditioning system, washing machine, stove and refrigerator.

And investigations into the theft revealed that funds used to renovate the home was almost double the reported \$47,000 used by the Public Works Department.

The Housing Ministry has revealed it also spent \$54,000 on improvement.

The building was formerly the Environment Ministry's headquarters before it was converted into a residence to be used by Dr. Chand.

PSC Secretary Anare Jale said the commission only found out about the missing items when government officials went to inspect the quarters and prepare it for the new occupant - former President Ratu Sir Kamisese Mara. He is now reluctant to move there.

This means his successor Ratu Josefa Iloilo will have to wait a while longer before he can move in to Government House, the official residence of the Head of State.

Permanent Secretary in the President's Office Luke Raturuki referred all queries to PSC, saying he had submitted his report on the matter.

SSP said a report on the theft had been lodged. He said police investigations would include a search of Dr. Chand's private home.

"Nothing has been recovered and investigations are continuing. We will carry out a search of Mr Chand's private residence," Mr Vunisa said.

Dr. Chand asked for written questions when contacted earlier this week. Yesterday he still had not responded to questions sent to the People's Coalition Office in Samabula.

Housing Ministry permanent Secretary Rishi Ram said he was not aware of the theft.

He said he did not know which items were missing as he had only visited the quarters once, while renovations were being carried out.

Mr Ram said the ministry spent \$54,000 on renovations, of which \$35,000 was provided by the Finance Ministry and the remaining \$18,590 was used from funds allocated to the Housing and Environment Ministry - \$15,000 from the minister's overseas travel vote and \$3,590 from supply and services.

Mr Chand was also responsible for the Ministry of National Planning where he was entitled to another \$15,000 for overseas travel.

Mr Jale could not put a figure to the value of the missing items because improvements were made without the PSC's approval.

"Everything is gone, stove, fridge, furniture, air conditioning and washing machine. The quarters is bare." He said.

"We are now asking the Housing Ministry to furnish us with an inventory of things bought or items that were in the house while the former minister lived there."

- (a) The Plaintiff is a thief and crook.
- (b) He had stolen valuable goods and items from the Government of Fiji of which he is a Minister.
- (c) He is a dishonest person and not a law-abiding citizen
- (d) He is guilty of abuse of Office

- (e) He had spent a great deal of unauthorized government money to improve a premises where he himself was residing and/or that he had spent a great deal of government money on his own personal house.
- (f) He is deceitful and dishonest and unworthy of respect.
- (g) He had stripped all the furnishings and fittings from a government house which he occupies and has converted the same to his own use and/or unjustly enriched himself.

7 The basis of the Plaintiff's claim is set out in paragraph 9 of the amended Statement of Claim as follows:

9. As a result of the above, the Plaintiff has been seriously injured in his normal character, credit and reputation and has been brought into public scandal, odium and contempt.

Case for the Defendants

8 The essence of the case for the Respondents is to be found paragraph 15 of the Defence to the amended Statement of Claim as follows:

15. In answer to the whole of the Plaintiffs claim the First Defendant says:

- (a) The article sued upon is factually accurate;
- (b) To the extent that the article contains matters of opinion, such opinion constitutes comment which was fair and in the public interest;
- (c) In their natural and ordinary meaning the said words are true in substance and in fact

9 In addition, the 1st Respondent pleaded that the Statement of Claim was defective because it did not identify which parts of the text of the article is alleged to contain

the various meanings attributed to it by paragraph 7 of the Statement of claim and did not identify the parts of the text which is alleged to be an innuendo or what the innuendo was alleged to be. In the context of the findings by Phillips J, this is a matter of some significance.

Trial

- 10 The trial came on before Phillips J on 4 September 2006. Evidence was called and full submissions were made by both sides.
- 11 The learned judge found that between 19 May 2000 when Dr Chand was taken hostage at the Parliamentary Complex until his release on 13 July 2000, Dr Chand was not resident at the premises the subject of the article. She accepted that Dr Chand left Suva shortly after his release and lived at Lautoka with his family. The judge found that on 1 August 2000, during a routine inspection of the premises a clerk found that they had been broken into and a number of items were missing. The police investigated. The learned judge noted 29 August 2000, that is, three days after the publication of the article, Dr Chand was interviewed under caution by the police. The judge noted that charges were never filed against Dr Chand. Indeed, she observed that he was returned at the next election with an increased majority.

Judgment

- 12 The starting point for the analysis of Phillips J was a quotation from Halsbury's *Laws of England*, third edition, volume 24, paragraph 40. The passage is as follows:

Any statement is defamatory of a person if, broadly speaking, it is calculated to lower him in the estimation of right-thinking members of the community

or cause him to be shunned or avoided or exposing him to hatred, contempt or ridicule . . . a statement is *prima facie* defamatory if the words, in their natural and primary sense, that is, in their plain and popular meaning are defamatory.

Many of the textbooks contend (with some force) that there is no one satisfactory statement of what, in law, amounts to defamation.

- 13 The judge then considered authorities involving articles concerning the arrest or investigation of conduct by the police. She held, referring to **Lewis v Daily Telegraph** [1964] AC 234, that no ordinary and reasonable reader would conclude guilt merely because the police were investigating a matter. Phillips J that the position might be different if the article in question was capable of conveying the impression that someone was suspected of a crime and that this was a defamatory allegation in itself, albeit less serious.
- 14 The Judge was anxious to stress that the ordinary and natural meaning of the words was critical to her consideration of the matter. She adopted an observation in **Jones v Skelton** [1963] 3 All ER 952, 958 where it was held that the ordinary and natural meaning of words may either be the literal meaning or it may be implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge that is a meaning which is capable of being depicted in the language used can be proud of the ordinary and natural meaning of words. The learned judge added, citing from **Jones v Skelton** (above), holding that the ordinary and natural meaning may therefore include any implication on the inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. As will shortly appear, the judge clearly had in mind the special considerations relating to innuendo.

15 The learned judge held:

The whole of the article here is claimed by the Plaintiff to be defamatory. He alleges that he has suffered considerably because of the portrayal by the defendants of him as a thief and a crook who had stolen valuable goods and items from the Government of Fiji of which he was a Minister.

The learned judge added:

I accept the submission of learned counsel for the defendants that the approach to be adopted in the natural and ordinary meaning of the words used in the article. The language used in the article is simple and there is no need to strain at technical or unfamiliar expressions. Each claimed fact in the article has only one meaning and there is no innuendo.

16 Phillips J then proceeded to examine each of the critical components of the article by reference to the averments in paragraph 7 of the amended Statement of Claim.

The judge held that the averments did not succeed. She added:

I have also upheld the defence submission that there can be no nexus between the report of the investigation into the alleged theft and the facts relating to money expended on renovations to the premises given that it is not the kind of article which reports the facts together with some fact or facts which point to motive for wrongdoing.

The judge noted that paragraph 7 of the amended Statement of Claim alleged innuendo meanings to the words of the article. The judge held that the pleading in this regard was "wholly inadequate" and could not sustain a separate cause of action. She held that no particulars of extrinsic facts and matters relied on to support the alleged innuendo had been pleaded.

17 Phillips J also held that in the event that she had determined that the article was defamatory, the defendant would have succeeded on their defence of justification as pleaded in the amended Defence. The judge noted that the Plaintiff had not filed, as required, a notice in opposition to the defence of justification. Nevertheless, the judge went on to analyse the critical components of the article

by reference to the defence case of justification. As she said, "the evidence established that the sting and substance of the article was true or substantially true." (See judgment paragraph 22)

18 The judge held that the absence of testimony on the part of the 2nd Defendant did not affect the matter.

19 Finally, the judge held that the amended Statement of Claim was defective. She held that merely reproducing the article without referring to the words of which complaint is made or the respect in which they are said to be defamatory rendered the pleadings defective. The judge concluded in this regard that "Had I arrived at a different finding in respect of the alleged defamatory imputations from the article, I would have struck out the pleading as embarrassing and defective." (See judgment paragraph 26.)

The Appeal

Ground 1

20 There are two components to ground 1. The first complaint is that the judge was wrong to hold that Appellants pleadings were so defective and/or fundamentally bad that the claim had to be dismissed with costs. This complaint misunderstands the finding of the judge. The primary basis for her conclusions was a finding of fact that the article was not defamatory. As will shortly appear, the judge did so by reference to the particularised complaints in paragraph 7 of the amended Statement of Claim. In the alternative, as we have noted, the judge found that the defendants would have succeeded their defence of justification as pleaded in the amended Defence.

- 21 The substance of her reasons make it plain that she came to her conclusion without regard to what she saw as the defective nature of the pleadings. It might be said that, in theory, this does not take account of the complaints of the Appellant as to the issue of innuendo because, in theory, even if the words of the article were not defamatory by reference to their plain and natural meaning (including an inferential meaning or implication - as to which see below) they might have been defamatory by reference on the basis of legal innuendo. As will appear shortly, we are of the view that the position of the judge in relation to pleading innuendo is clearly justified. In any event, we are of the view that it is unlikely in the extreme that the Appellant would have claimed words of the article were not defamatory by reference to their plain and natural meaning including an inferential meaning or implication but somehow succeeded by reference to innuendo.
- 22 The second component of ground 1 is more fundamental. The complaint in this component of ground 1 is concerned with the finding of the judge that the words used in the article were not defamatory.
- 23 The methodology of the judge in determining whether the article was defamatory was to look at each of the enumerated particulars in paragraph 7 of the amended Statement of Claim. At first sight, some of the determinations that she made look to be a little strange. An example is in particular (a) where she holds that "This meaning cannot be ascribed to the article as a matter of law." At first blush, this looks a little strange because the issue of whether or not words are defamatory is primarily an issue of fact. The learned judge refers in her finding in respect of particular (a) to "[9] and [10] (ii) & (v)." (Clearly this is a reference in fact to paragraphs [11] and [12] (ii) & (v) of the judgment.) For example, by reference to paragraph [12] (ii), the judge was setting out the parameters for an evaluation of

what the ordinary reader would consider. Further, in paragraph [12] (v), the judge recognised a line of authority which supports the view that a report which does no more than state the person has been arrested and has been charged with a criminal offence is incapable bearing the imputation that he is guilty or probably guilty of that offence. It is clear that what the judge was saying was that applying the standard of the ordinary reader taking into account the whole article that particular (a) was not made out. It is, perhaps, to be regretted that the learned judge did not make explicit in this part of the judgment that she was, in reality, making findings of fact. Looking at the treatment by the learned judge of the particulars in paragraph 7 of the amended Statement of Claim, it is clear beyond any realistic argument that she found fully and firmly against the Appellant.

- 24 As Ground 1 of the Grounds of Appeal asserts that the judge erred in fact as well as law we have reviewed the article afresh. We are firmly of the view that the article is not defamatory by reference to the particulars in paragraph 7. The touchstone for defamation concerns the effect of the article on the estimation of right-thinking members of the community in Fiji. However, the argument by the Appellant went on to suggest that such a person in Fiji was more ready to jump to adverse conclusions where an article suggested a person was possibly the subject of a police investigation. The argument suggested that the right-thinking members of the community in Fiji who read the article would be more likely to conclude that there is, to use the modern aphorism, no smoke without fire. The argument faintly suggested that perhaps the right-thinking members of the community in Fiji who read the article was somehow less educated, less aware of the presumption of innocence and less likely to be aware that a person who is the subject of police enquiries may well be totally innocent. This, we think, ignores modern realities of Fiji. It also makes some unfounded assumptions about education levels and the

absence of prejudice (the no smoke without fire aphorism being the relevant consideration) in countries such as the United Kingdom, New Zealand and Australia from which Fiji traditionally draws some inspiration so far as the law is concerned. This argument on behalf of the Appellant drew, in part, on authority from Fiji of 30 or 40 years ago. Even if that declaration of the nature of right-thinking members of the community in Fiji was right for its time, we cannot accept that it is right for today. In our judgment, the ordinary reader in Fiji is no more likely to jump to the kind of conclusions contended for by counsel for the Appellant than his or her newspaper-reading counterpart in, for example, the United Kingdom, New Zealand or Australia.

Ground 2

25 This ground of appeal complains about the treatment by the judge of the pleadings in relation to innuendo.

26 In order to understand what is at stake in this ground, it is necessary to refer to basic principles. As the learned judge correctly observed, the court looks at the natural and ordinary meaning of the words said to be defamatory or the meaning conveyed either from the literal meaning of the words or by an inferential meaning or implication from those words. However, words may also bear a secondary meaning (that is, one which is not apparent on the face of the words but which depends either upon knowledge of some special meaning of the words or upon knowledge of facts or matters extrinsic to the words in question). This secondary meaning of the words is the legal innuendo meaning. As Mason & Jacobs JJ observed in ***Mirror Newspapers v World Hosts*** (1979) 53 ALJR 243, 246 "When read in conjunction with extrinsic facts words may in the law of defamation have

some special or secondary meaning additional to or different from, their natural and ordinary meaning. This special or secondary meaning is not one which the words viewed in isolation are capable of sustaining. It is one which a reader acquainted with the extrinsic facts will understand the words in the light of those facts." In order for a cause of action in defamation to succeed on this basis, the facts upon which the meaning is based must be demonstrated to be known to the persons to whom the words are published: ***Grubb v Bristol United Press*** [1963] 1 QB 309; ***Lewis v Daily Telegraph*** [1963] AC 234; ***Federal Capital Press of Australia Pty Ltd v Edwards*** (1992) 108 FLR 118.

27 Legal or true innuendo is simply one specific basis upon which an action for defamation may be established: *Grubb v Bristol United Press*. An action based on a legal or true innuendo cannot succeed unless it is proved that there is some extrinsic fact to create the extended meaning. This is to be contrasted with what is sometimes called a false or popular innuendo which does not provide a separate basis. In ***Lewis v Daily Telegraph*** (above), Lord Devlin observed: "it is the law and not popular usage which gives a false and restricted meaning to the word". Indeed, in both ***Lewis v Daily Telegraph*** (above) and ***Grubb v Bristol United Press*** (above), the decision in ***Loughans v Oldhams Press Ltd*** [1963] 1 QB 299 was expressly overruled. ***Loughans v Oldhams Press Ltd*** was authority for the proposition that an innuendo may be established upon the words of the libel themselves, without proof of other factual matters. The disapproval of the decision in ***Loughans v Oldhams Press Ltd***, underlines the fundamental difference between popular innuendo and legal or true innuendo.

28 Where the Plaintiff relies on any legal or true innuendo meaning, he must plead particulars of the facts and matters on which he relies in support of such innuendo in that sense: ***Gatley on Libel and Slander***, 9th edition, paragraph 26.22. (This is in

addition to any requirements to plead particulars where reliance is placed on the natural and ordinary meaning of the words: see **Gatley** paragraph 26.21. The scope of such a requirement does not fall for any extended consideration in this case.) The editors of **Gatley** go on to say in relation to the requirement for pleading with particularity in relation to legal or true innuendo: [citations omitted]

These facts or matters will generally incorporate either a special definition of the word is known only to a limited class of persons or facts extrinsic to the libel which, if known about, affect the way the words are understood. In either case, the Plaintiff must identify the person or persons to whom the words were published and who are alleged to have had knowledge of the special meaning or the extrinsic facts. In default of compliance with the requirements for pleading legal innuendo meaning is, the pleaded meaning may be struck out.

The rationale for such a rule is obvious. The defendant is entitled to know what case he is required to meet. The defendant may have no idea of the extrinsic facts or matters relied on by the Plaintiff. Further, such a pleading enables the judge at trial to be better able to determine the issue.

- 29 It is true to say that Paragraph 7 of the amended Statement of Claim *mentioned* innuendo. However, none of the particulars in that paragraph referred to extrinsic facts or matters known only to a limited class of persons. The particulars refer only to the conclusions which arise from the ordinary and natural meaning of the words including, of course, the meanings derived by inference or implication. It is clear that paragraph 7 of the amended Statement of Claim was directed at the ordinary and natural meaning of the words including the meaning derived by inference or

implication. On a fair reading of paragraph 7 the particulars could not have been intended to invoke any legal or true innuendo meaning of the words in the article.

30 We are far from saying that, so far as it relates to the conclusions which arise from the ordinary and natural meaning of the words including, of course, the meanings derived by inference or implication, the pleading in paragraph 7 could be held up as a model of its kind. It would have been better pleading to have included in the particulars some reference to those parts of the article encompassed in the individual particulars. If the use of the word "innuendo" in paragraph 7 was simply meant to convey meanings derived by inference or implication, then the reference to innuendo was unnecessary. The reason for this is that the natural and ordinary meaning of language includes, as a matter of law, the meaning of words derived by inference or implication. All of the basic definitions of defamatory words make this plain. Legal or true innuendo is an entirely different matter. Clearly, the judge took the reference to innuendo to mean innuendo in the legal sense which we have attempted to define earlier in this judgment. She was right to do so. It is necessary to plead the innuendo meanings of words with appropriate specificity.

31 On the face of the evidence it is difficult to see what special or extrinsic facts could have existed which might found an innuendo in the sense referred to above. It is difficult to see how any claim based on innuendo could have succeeded in the absence of a clear statement of what special or extrinsic facts were said to exist and which were known to at least some of the readers of the article and which provided a defamatory meaning to the words of the article which the words viewed in isolation are capable of sustaining.

- 32 It is always open to plead innuendo (properly particularised) as an alternative to a claim in defamation based on the natural and ordinary meaning of the words; ***Lewis v Daily Telegraph*** (above).
- 33 It is certainly not enough to do as was done here (see paragraph 7 of the amended Statement of Claim) to aver innuendo without more. Absent such particularisation, in the circumstances of this case, a claim based on legal innuendo was doomed to failure.
- 34 The judge was right to conclude as she did that a claim in defamation based on legal or true innuendo was not open on the pleadings.
- 35 In addition, the learned judge found (see paragraph 19 of the judgment) that, pleading or no pleading, the Appellant had failed to prove any extraneous facts which would have given the words of the article any relevant secondary meaning.

Grounds 3, 4 and 5 - defence of justification

Grounds 3 and 5 - whether justification established

- 36 Grounds 3 and 5 can be examined together. These grounds complain about the treatment by the learned judge of the defence of justification. The judge held that even if the words were defamatory, the Respondent had established the defence of justification. The principles upon which the judge based such a determination is that set out in paragraph 20 of her judgment. She said:

The fundamental principle is that the defence will not succeed if the meaning that is proved to be true is a materially less serious meaning than that which the words are held to bear.

The judge added:

Such a defence will succeed if it is proved that the sting or substance of the defamatory words is true, or if the words contained two or more charges, it is proved that some are true and those not proved do not materially injure the Plaintiff's reputation. The defendant is also entitled to rely upon incidents which occurred after the date of publication in order to establish the defence of justification.

Having reviewed the issues pleaded in support of the justification (see paragraph 21 of the judgment), the learned judge concluded: "I uphold the defence submission that the factual matters contained in the article had been sufficiently established so to enable truth as a defence to stand. The evidence established that the sting and substance of the article was true or substantially true."

37 In our view, the careful review of the facts undertaken by the learned judge clearly demonstrate that she was entitled to make a finding that she did. Nothing urged upon us causes us to doubt the correctness of those findings. That disposes of the complaints in grounds 3 and 5 that the judge erred in fact in holding that the defence of justification was established. There is nothing which demonstrates any error of principle on the part of the learned judge and to the extent that grounds 3 and 5 complain of errors of law, such submissions also fail.

Ground 4 - pleading

38 There is also a complaint in ground 4 about the mode of pleading in relation to the defence of justification. The complaint is in three parts.

39 The first component of the complaint is that the particulars of justification were not properly pleaded. The basic principle is that where the charge in an alleged libel is a general one, the Plaintiff is entitled to full particulars of the facts relied on by the defendant in support of the plea of justification: ***Hall v Bryce*** (1890) 6 TLR

344; ***Zierenberg v Labouchere*** [1893] 2 QB 183; ***Marks v Wilson-Boyd*** [1939] 2 All ER 605. Where the charge is specific, it may conceivably be open to a defendant to

make a generalised plea. The particulars should be included in the defence, but if they are not, and if the Plaintiff does not seek particulars before trial, the Defendant will not be precluded from giving any relevant evidence at the trial in support of the plea. The learned trial judge found that the particulars of justification had been pleaded. The particulars of the plea had been found in paragraph 15 of the defence to the amended Statement of Claim. These appear to be appropriate. If they were not, it was open to the Appellant to raise the matter by way of a request for particulars. There appears to have been no such request. On that basis, even if the evidence adduced by the defendant at trial in support of a plea of justification was outside the scope of the particulars pleaded, it appears to us that the Appellant could hardly complain about that.

- 40 The next complaint in Ground 4 is that the judge was wrong to hold that the Appellant was required to file a reply to the defence of justification as pleaded. In the strict sense, the Appellant is correct in this contention. The learned judge cited volume 28 of Halsbury's Laws of England (4th edition) paragraph 196 in support of the observation made at paragraph 20 of her judgment. There is some qualification of the position in paragraph 196 in the footnote. There is no requirement in law to file a reply or a request for particulars in answer to a defence of justification. The only consequences might be tactical and might expose a Plaintiff to real disadvantage in the conduct of a trial. This will very much depend on the circumstances. The real consequence of the failure of a Plaintiff to apply for

particulars is as **Gatley** puts the matter in paragraph 27.10: "However, it has been held that if the Plaintiff omits to apply for particulars, he will be taken to have waived his right and there will be no restriction on the generality of the matters that may be given in evidence in support of the plea '."

- 41 The final complaint in Ground 4 is that the failure of the Appellant to reply was fatal to the case for the Appellant. The short answer to this is that it is not. However, the judge did not say so: either expressly or impliedly. The Appellant failed on the facts on the plea of justification.

Ground 6

- 42 This ground complains that the judge was wrong to accept the testimony of Mr Hunter in light of the admissions he made in the course of his testimony in relation to the second defendant, Ms Margaret Wise. This is clearly a reference to the findings of the judge in paragraph 22 of her judgment. The judge found that the issues were not dependent on the testimony of Ms Wise. The judge found the testimony of Mr Hunter to be compelling.

- 43 The assessment of witnesses was very much a matter for the trial judge. She had a full opportunity to see, hear and assess the credibility and reliability of the witnesses who were in the trial. We are firmly of the view that the judge was entitled to come to the conclusions that she did.

Conclusions

- 44 For the reasons outlined in this judgment we think the judge was right to hold as she did that the Appellant was not defamed by the article. Dr Chand had just gone through what must have been a terrible ordeal having been incarcerated in the Parliamentary Complex. Shortly after his liberation from that ordeal he must have learned of the police enquiry in relation to the furniture in his official residence in Suva. Obviously, the publication of the article made matters worse for him. However, the article did not defame him.
- 45 In our judgment, the judge rose above the difficulties created by the pleadings to get to the heart of the issue. With the conceivable exception of a money had and received claim, pleading in a civil case is a very challenging aspect of the practice of the law. Of all the cases which regularly come before the courts, pleading in defamation cases might rank as one of the more difficult aspects of this difficult art. Drawing pleadings might be made easier if the High Court Rules of Fiji were themselves modernised by, for example, incorporating Order 82 of the former English Rules of the Supreme Court.
- 46 In applauding the learned judge's ruling for, as we say, rising above the pleadings to get to the heart of the matter, we think she struck the right balance between not being unduly bogged down by pleadings on the one hand and, in effect, pleading the case for one party or the other at trial. This latter approach runs the risk of serious injustice because the basic rationale for pleadings is to put an opponent on notice as to the case for the party drawing the pleadings. There is

also another advantage in properly drawn pleadings which is, we think, sometimes overlooked: properly drawn pleadings force the party drawing the pleadings to focus with clarity and precision as to precisely what the case really is. Having said that, as difficult as it is for a judge to strike the right balance where the pleadings are less than perfect, it is easy to strike the wrong balance and be the author of or contributor to what may amount to a serious injustice. That could so easily have happened in a case such as this. It didn't.

Orders

47 In the premises, the appropriate orders are:

- (1) Appeal dismissed;
- (2) The Respondents to have the costs of and incidental to the appeal which we fix at \$3,000.00.

Byrne, JA

Hickie, JA

Bruce, JA

Solicitors:

**Mishra Prakash and Associates, Lautoka for the Appellant
Howards Lawyers, Suva for the Respondents**