

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**COMMON LAW AND EQUITY DIVISION**  
**2007/CLE/GEN/00162**

**between**

**Amos Cox**  
**Plaintiff**

**and**

**BRITISH AMERICAN INSURANCE COMPANY OF THE BAHAMAS LIMITED**  
**First Defendant**

**and**

**THE TRIBUNE LIMITED**  
**Second Defendant**

**BEFORE:** His Lordship The Honourable  
Mr Justice K Neville Adderley

**APPEARANCES:** Mr Richard L Boodle for the Plaintiff  
Mrs Nicole Sutherland–King for the First Defendant  
Mr N Leroy Smith for the Second Defendant

**12 June 2008, 30 October 2009**

**DECISION**

## **Adderley J**

By a Consent Order filed 9 May 2008 the court ordered that the following preliminary point be tried before the trial of this action and in the meantime all further proceedings be stayed:

“Are the words and images used in the newspaper advertisement in respect of which the instant action has been brought, capable, as a matter of law, of bearing the meaning for which the plaintiff contends in his Writ of Summons filed herein on 6<sup>th</sup> February 2007”

2. The plaintiff was at all material times a licensed Insurance Agent employed with the first defendant and sold Insurance products on its behalf.
3. The second defendant carried on the business of publishing a daily newspaper called the “Tribune” with circulation to the public.
4. In a notice published in the newspaper on 1 and 5 February 2007 the first defendant and the second defendant allegedly without lawful authority published the picture of the plaintiff in the newspaper together with the telephone numbers and e-mail address as follows:

“ **PUBLIC NOTICE**  
**Amos Cox** [his picture and that of another]  
Are No Longer employed at British American  
Insurance and is not authorized to conduct  
any business on behalf of the Company

For further information please  
call our Independence office  
at 461-1000

[British American Logo]  
242-461-1000      bafinancial@babinsurance.com  
Freeport 242-353-7209 Exuma 242-336-3035”

5. The plaintiff claimed that in their natural and ordinary meaning the plaintiff's picture being published in daily newspapers and the said words, telephone numbers and e-mail address written under the picture were understood to mean that the plaintiff was dismissed from the first defendant's company for dishonesty or some dishonest act or further in the alternative the plaintiff was a dishonest employee.

6. The plaintiff did not plead innuendo but pleaded the following particulars:

“

**Particulars**

- a. The plaintiff has been an insurance Salesman for fifteen years (15). For the past twelve months (12) the plaintiff sold Insurance Products for the Defendant
- b. At all material times while an Insurance Salesman:[sic] the Plaintiff was authorized by the Insurance Companies employing him to receive monies on their behalf.
- c. The first defendant is an Insurance Company, which authorized the Plaintiff to collect monies on its behalf while in their employ.”

7. He further pleaded that the picture, words, telephone numbers and e-mail address were published to any and everyone in The Bahamas and outside The Bahamas.

8. The first defendant admits that it instructed the second defendant to make the publication complained of but denied that it was without lawful authority, or that the words bore or were understood to bear any of the meanings alleged in the statement of claim. It states that the publication was to the readership of the Tribune newspaper.

9. The second defendant admitted to publishing the pictures and words on the dates alleged in the Tribune but denied that it was without authority. It also denied that in their natural and ordinary meaning the picture and accompanying

picture and addresses and numbers together comprising the publication bore or was understood to bear or was capable of bearing any of the meanings alleged by the plaintiff, or any other meaning defamatory of the plaintiff.

10. The plaintiff relied on 3 primary submissions:

- (i) the plaintiff could have used other means of notifying its clients other than publishing to the whole world through the Tribune
- (ii) any right thinking person seeing the advertisement (in particular the display of the plaintiff's picture alongside that of Natasha Dean) could only form the opinion that the plaintiff was dismissed because of dishonesty
- (iii) Innuendo arises having regard to the first defendant's business and the plaintiff's authority to collect money, as knowledge of the nature of the first defendant's business would deem the words defamatory the nature of

11. It should be noted that the plaintiff pleaded that the words in their natural ordinary meaning are defamatory but did not plead any innuendo.

## **THE LAW**

12. Even if it had been pleaded that the words and the pictures were used in a defamatory sense other than their ordinary meaning (an innuendo), under Order 72, rule 3 of the Rules of the Supreme Court the plaintiff was required to plead particulars on which he could rely to support such a sense. Based on the authorities those particulars pleaded should be of extrinsic facts, what I would call surrounding circumstances, known to him which if proven would entitle any reasonable man with such knowledge to interpret the words in the defamatory sense contended by him. On principle there is one cause of action for the libel itself and a different cause of action based on the innuendo. (see *Tolley v Fry & Sons* (1930) 1 KB 467, per Slesser LJ at 484; *Hough v London Express*

*Newspaper* (1940) 2 KB 507, per Slesser LJ at 512; and *Grubb v London Bristol United Press Ltd* (1962) 2 ALL ER 380, per Pearce LJ at 389 to 391)

13. It is the court's view that the particulars pleaded would have been insufficient to support an innuendo of the kind contended by the plaintiff because no reasonable person could, without more, reach the conclusion contended by the plaintiffs upon being informed that the plaintiff was no longer employed with the insurance company and therefore no longer authorized to conduct business on its behalf. In ***Mulligan v Cole*** and ors (174-75) LR 10 QB 549 cited by Mrs Sutherland-King the plaintiff who had left the Walsall Science and Art Museum [the "institute"] and joined the Walsall Government School of Art sued for libel because the defendants (the chairman, treasurer and secretary of the institute) published in the newspaper the following a month after his new employer, the School of Art, had opened:

"The public are informed that Mr M.'s (the Plaintiff's) connection with the institute has ceased, and that he is not authorized to receive subscriptions on its behalf"

He claimed that the words conveyed an innuendo that he falsely pretended to be authorized to receive subscriptions on behalf of the institute. It was affirmed by the Divisional Court (Mellor, Lush, and Quain JJ) that the advertisement was not capable of a defamatory meaning. According to Mellor J at 551, Lush and Quain JJ concurring:

"Reading the words in their ordinary sense, they amount to no more than information to the public that the plaintiff, Mr Mulligan, who had been connected with the institute, no longer had any connection with it, and was therefore not authorized to receive subscriptions for it, and that subscriptions paid to him would not be for it. I cannot help thinking that to an ordinary person it would convey no more than the legitimate information, and that no such defamatory meaning as that imputed by the innuendo, nor any other defamatory meaning, was intended to be expressed."

Lush J compared it to a dissolution of a partnership where it is advertised that only one of the partners is authorized to collect the debts.

14. In ***Beswick v Smith*** (1907) 24 T.L.R. 169 cited by Mr Smith, after the plaintiff left the employ of the defendant as a commercial traveler, the defendant signed and circulated among his customers in unfastened envelopes sheets containing the following message:

“H. Beswick is no longer in our employ. Please give him no order or pay him any money on our account.”

The plaintiff sued for libel. The innuendo put by the plaintiff on these words was:

“that the plaintiff having ceased to be employed by the firm of T.J and J. Smith, had been soliciting and was about to solicit orders by falsely pretending that he was employed by them, with intent to defraud, and further, that the plaintiff was a dishonest person, and that it was unsafe to pay monies to him”.

In allowing the appeal and holding that the words were not capable of a defamatory meaning the following summary of Lord Halsbury’s judgment was given at 170:

“The words complained of, if taken in their natural meaning, would not convey to the mind of a person of ordinary intelligence the impression that any imputation was being made against the plaintiff. ...The ordinary and reasonable inference to be drawn from the notice which was sent was, perhaps, that the employment had terminated because the parties had quarreled, but certainly not that the defendant was imputing anything criminal to the plaintiff. Such an inference seemed to him to be the invention of an imagination already tainted with the idea that there was something wrong in the termination of the employment.”

15. I do not agree, as submitted by Mr Boodle, that the publication of the picture words telephone numbers and e-mail address distinguishes this case from the above authorities to any material extent. They all comprise additional information to the public.

## **RULING**

16. For the reasons set forth above, I find that the words and images used in the newspaper advertisement in respect of which the instant action has been brought are not capable, as a matter of law, of a defamatory meaning as contended by the plaintiff in his Writ of Summons filed herein on 6 February 2007. It would not be any different had he pleaded the innuendo contended in argument.

17. I therefore dismiss this action with costs to each of the defendants to be taxed if not agreed.

Dated the 30th day of October 2009

**K Neville Adderley**  
**Justice**