



SUPERIOR COURT OF JUSTICE

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Date: *March 1, 2004*

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M.A. Sanderson J.

TOTAL PAGES (INCLUDING COVER PAGE): *7*

MESSAGE:

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Toronto Police Services Board et al

Feb 27/04

Endorsement

This is a motion for summary judgment brought by the defendants ~~for~~

The Police Defendants

Counsel for the Toronto Police Services Board and the individual police defendants submitted the News Release relating to a charge ^{of sexual assault} against the plaintiff (a) is not defamatory
 (b) is justified - justification provides a complete defence
 (c) is privileged - the defence of qualified privilege provides a complete defence

(a) Is the Press Release defamatory?

Counsel for the plaintiff submitted that the press release should have mentioned that the plaintiff had "adamantly" denied the charge. The use of the word "victim" sent the message the charge was proven. The police wanted to "railroad" the plaintiff. A person reading the words would think the plaintiff was a "pervert".

On considering whether the words in the press release in their natural and ordinary meaning, considered in the context ~~with~~ they were presented would reasonably lower the plaintiff in the estimation of ordinary reasonable members of society who have common sense, are reasonably thoughtful and well informed but who do not have an overly fragile

(2)

Sensibility (Myers v CBC (1999) 47
 CCLT (2d) 272 aff'd (2001) 54 OR
 (3d) 633 leave to appeal dismissed
 [2001] 3CCA # 433 (QL) I have
 considered that the press release
 makes it clear the plaintiff had
 only been charged, had not yet appeared
 in court and that certain allegations
 of sexual assault were being made.

The natural and ordinary meaning
 of words is determined from the
 perspective of the ordinary reader
 who is not naive or unduly
 suspicious or averse to scandal
 but rather a person with common
 sense who is reasonably thoughtful
 and informed Colour your World v CBC
 (1998) 38 OR (3d) 97 Silver v TD Star
 [1998] OJ 6491 aff'd 2002 OJ 1960
 (CA)

On my view such a person would be
 mindful that an accused is
 presumed innocent until proven
 guilty.

(b) Is Justification a Complete Defence?

"Truth" is an absolute defence.

The News Release in my view simply
 reports that the plaintiff had been
 arrested and charged with sexual
 assault. The press release was true.

(3)

The news release made use of the word "alleged" and made it clear the proceedings against the plaintiff were in the early investigative stage and that the search for evidence was continuing.

In my view, the news release was true and accurate and the defence of justification provides a full defence to the police defendants. The words are not capable of bearing the meanings pleaded by the plaintiff where as here the meaning of the words is that an allegation has been made, the defendant need only prove the allegation was made. *See supra and Bhaduria v City TV (1987) OJ 5116*

Therefore the police defendants are entitled to a summary dismissal of the action against them.

The North York Mirror / Inside Toronto

On November 8 and 10, 2002 the North York Mirror published News Briefs based on the Toronto Police Services press release.

Having viewed those news briefs I am of the view that the words complained of were true and could not be reasonably understood

(4)

to bear the meanings pleaded by the plaintiff in his Statement of Claim at pages 24-25

I am of the view the News Briefs are not capable of bearing the meanings pleaded by the plaintiff for instance that he is "as violent as the other man charged with a string of sexual assaults in the area" The natural and ordinary meaning of the words complained of is that the plaintiff was charged with one count of sexual assault following allegations made by a 19yr old woman and was scheduled to appear in court on December 16, 2002

The news briefs are true. The defence of justification is a complete defence

Therefore the North York Mirror / Enquirer Toronto is entitled to a summary dismissal of the action against it

The Defendant Metro Toronto

Metro Toronto seeks an order for Summary Judgment dismissing the action against it

On November 7 2002 it contained the following under the title Lawyer faces sex assault rap

Toronto An immigration lawyer has been charged with sexual

(5)

assault after a 19 yr old woman told police she was attacked during a meeting in the Yonge St - Sheppard area of Toronto last month.
 Miguna Miguna¹⁰ of Bradford is charged

Toronto police urge anyone else who might have been a victim to call them at 416 808 2204

Council for the Metro Submitter ^{of 10 p.m.} and ^{the} words in the Metro constituted a fair and accurate synopsis of the Toronto police press release

I do not agree. The press release does not contain the word "attacked" and could be understood to mean ^{by account at trial} that violence was being alleged when the press release makes no mention of an "attack" but only mention of a "sexual assault".

Section 3(3) of the Libel and Slander Act affords protection for a fair and accurate synopsis in a newspaper of a notice issued for the information of the public by a public authority unless ~~made~~ proven to have been made maliciously

⑥

In my view there is a genuine issue for trial as to whether s.3 of the Libel and Slander Act provides a defence to the defendants Metro Toronto

On the result the plaintiffs action for defamation is dismissed against the Toronto Police Services Board, Sergeant L Murarotto, Detective Constable Alessandro "Alex" Randolfi Badge Number 7501, Detective Audrey Chan Badge Number 5627 Inside Toronto & North York Mirror.

The summary judgment motion of Toronto Metro is dismissed.

Counsel may make written submissions on costs on or before March 9, 2004.

MA Gundersen

Released March 1, 2004