COURT OF APPEAL FOR ONTARIO

CITATION: Canadian Union of Postal Workers v. Quebecor Media Inc., 2016 ONCA 206
DATE: 201603014
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LaForme, Pardu and Roberts JJ.A.

BETWEEN

Canadian Union of Postal Workers

Appellant

and

Quebecor Media Inc., Sun Media Corporation, TVA Group Inc., Jerry Agar and Avi Benlolo

Respondents

David Migicovsky and Karin M. Pagé, for the appellant

Tycho Manson, for the respondents Quebecor Media Inc., Sun Media Corporation, TVA Group Inc., and Jerry Agar

Stephen Cavanagh, for the respondent Avi Benlolo

Heard: March 7, 2016

On appeal from the order of Justice Robert Pelletier of the Superior Court of Justice, dated July 15, 2015, with reasons reported at 2015 ONSC 4511.

Endorsement

[1] The appellant appeals the dismissal of its action following the respondents' Rule 21 motion. The motion judge held that the appellant's notices did not comply with the requirements under s. 5(1) of the *Libel and Slander Act*, R.S.O.

1990, c. L.12 ("*LSA*"), because, while they identified the matters complained of by the appellant, they failed to sufficiently specify those matters.

[2] The parties agree that the standard of review of a motion judge's order under r. 21.01(1)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, is one of correctness, as these orders determine questions of law. As a result, no deference is owed on this appeal to the motion judge's analysis and decision.

[3] The appellant submits that the motion judge erred in holding that its s. 5(1) notices were deficient and argues that its notices fulfilled the requirement under s. 5(1) of the *LSA* that the notices specify the matter complained of by the appellant.

[4] We agree with the appellant's submissions.

[5] It is well-established that s. 5(1) notices under the *Libel and Slander Act* do not have to be in a specific form or reproduce word for word the statements alleged to be defamatory: *Grossman v. CFTO-TV Ltd.* (1982), 39 O.R. (2d) 49839 (C.A.), at pp. 501, 503, leave to appeal refused [1983] S.C.C.A. No. 463; *Gutowski v. Clayton*, 2014 ONCA 921, 124 O.R. (3d) 185, at para. 36. Further, it is not necessary that s. 5(1) notices contain the same level of particularity as required in a statement of claim: *World Sikh Organization of Canada v. CBC/Radio Canada*, 2007 CarswellOnt 7649 (S.C.), at para. 12.

[6] Rather, the matters complained of in a s. 5(1) notice have to be sufficiently specified so that the notice brings home to the defendant the essence of the matter complained of by the plaintiff and gives the defendant the opportunity to analyze the alleged defamation and then decide whether it calls for a correction, apology or retraction: *Grossman*, at pp. 504-5; *Siddiqui v. Canadian Broadcasting Corporation* (2000), 50 O.R. (3d) 607 (C.A.), at para. 18, leave to appeal refused [2000] S.C.C.A. No. 664; *Shtaif v. Toronto Life Publishing Co. Ltd.*, 2013 ONCA 405, 306 O.A.C. 155, at paras. 57-58.

[7] The appellant's notices achieved all of those objectives. The broadcast and article in issue were short. Given the contents of the notices, there cannot have been any confusion as to the matters complained of by the appellant.

[8] The notices clearly specified that the matters complained of were the statements and inferences from the July 24, 2014 internet broadcast and the July 28, 2014 article in the Toronto Sun print newspaper and internet blog, namely that the appellant and its members are supportive of and partners with terrorist organizations and hate groups, and that they support Hamas, a terrorist organization, and the genocide of the Jewish people.

[9] In particular, the appellant's notices reproduced and tracked actual portions of the allegedly defamatory words in the broadcast and the article, and closely paraphrased their essence and allegedly defamatory inferences.

Attached to the appellant's notices were proposed draft letters of retraction and apology, which repeated the wording of the allegedly defamatory matters complained of in the appellant's notices.

[10] With respect to the broadcast, the respondent Benlolo submits that the appellant's s. 5(1) notice was invalidated by the inclusion of the retraction notice and draft apology because he (Benlolo) could not bring about the retraction demanded by the appellant, as he had no control over the media defendants.

[11] We do not accept this submission. Section 5(1) of the *LSA* stipulates only that notice of the matter complained of be given. While the purpose of the notice is, as this court noted in *Grossman*, *Siddiqui* and *Shtaif*, to allow the defendant to know the essence of the plaintiff's complaint and decide how to respond, there is no requirement that the plaintiff suggest a possible resolution or that the defendant accept any proposal that the plaintiff may offer.

[12] The fact that the respondent Benlolo could not carry out the retraction as requested by the appellant did not take away his opportunity to mitigate the appellant's damages by apologizing or taking other steps. The respondent Benlolo is in no different situation from the respondents in *Janssen-Ortho Inc. v. Amgen Canada Inc.* (2005), 256 D.L.R. (4th) 407 (Ont. C.A.). In that case, at para. 38, this court observed that although those respondents would not have

been in a position to make the decision as to whether or not a retraction would be printed or an apology made, they could take other steps.

[13] With respect to the article, the other respondents argue that the appellant failed to include in its notice the additional allegations pleaded in the statement of claim about the form and placement of the article. As a result, they contend, the appellant's notice is deficient.

[14] We disagree. In the present case, the appellant's notice specified the matter complained of in the article, both with respect to the statements in and the inferences arising from the article in its entirety, and its authors, date and manner of publication. As such, the notice met the requirements of s. 5(1) of the *LSA*. Any further particularity was required in the appellant's statement of claim, but not in its s. 5(1) notice, which, as already noted, does not have to take any particular form.

[15] Finally, the respondent Benlolo did not proceed with his cross-appeal concerning the article. He seeks, however, to raise in response to the appeal an additional argument raised in support of his cross-appeal of paragraph 2 of the motion judge's order, namely that the appellant, as an unincorporated trade union, has no capacity to bring an action in defamation.

[16] As the motion judge did not decide this issue, paragraph 2 of his order was an interlocutory order. As a result, the respondent Benlolo was required to obtain

leave to appeal to the Divisional Court under r. 62.02(1) of the *Rules of Civil Procedure* before he could seek to have this argument heard at the same time as the appellant's appeal: *Royal Bank of Canada v. Société Générale (Canada)*, 2007 ONCA 302, 31 B.L.R. (4th) 83, at para. 5. He did not do so.

[17] It is therefore not necessary for this court to decide whether an unincorporated trade union has standing to bring an action in defamation. In any event, as the motion judge determined, that issue is best left for trial on a full record.

Disposition

[18] Accordingly, the appeal is allowed and paragraph 1 of the motion judge's order dismissing the appellant's action is set aside.

[19] The motion judge's costs orders are also set aside. The appellant is entitled to its partial indemnity costs: for the motion, the amount of $10,000.00 and for the appeal, the amount of $25,000.00, all inclusive, and jointly and severally payable by the defendants.