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ONLINE DEFAMATION AND ITS CONSEQUENCES

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In *Sanchez-Pontigon v. Manalansan-Lord* [2009 CanLII 28216 (ON S.C.)], Justice Elizabeth Quinlan of the Ontario Superior Court of Justice held that plaintiff Pontigon was defamed when defendant Lord, author of a book published in the Philippines, posted one of its chapters on the internet. The court awarded Pontigon \$37,500 in damages and also awarded \$13,716.46 in substantial indemnity costs because of the severity of the defamation.

Facts

Udis Sanchez Manalansan-Lord and Leodegaria Sanchez-Pontigon are first cousins. Lord wrote a book entitled; “From Fieldhand to Ph.D., Ms. Asia International Motivation for Success and Happiness” (the names of Pontigon and her husband in the book have since been changed). In it, Lord chronicles her life, from growing up in poverty in the Philippines to winning the Ms. Asia International Pageant, to earning her Ph.D. She uses her own experiences to counsel others on how to achieve happiness and success in their own lives. In the book’s very first chapter, she alleges that Pontigon and her husband, Luisito Pontigon, kidnapped Lord’s mother and forced her to transfer the deed to her property into Pontigon and her husband’s name. The book also insinuates that both Pontigon and her husband were involved in the disappearance of Lord’s Uncle Pulo.

Chapter 1 of the book was posted online. Pontigon became aware of the book and its contents on March 10, 2004, when she consulted it online. Other members of her Filipino community did as well.

Pontigon suffered greatly and for a long period following the publication of Lord’s book, both physically and emotionally. Pontigon and her husband sued both Lord

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and the publisher of her book, Philippine - American Educational Press, alleging defamation and damage to her reputation. At trial, Pontigon dropped the claims against Philippine-American Education Press, and sought \$37,500 in damages from Lord. Luisito Pontigon was unable to make it to the trial, and no one appeared on behalf of defendant Lord.

Law

Before rendering judgement, the court had to decide whether Ontario was the appropriate forum for the proceedings. Lord's book was published in the Philippines, but the damages resulting from the alleged defamation occurred in Ontario. Rule 17.02(h) of the Ontario Rules of Civil Procedure permits a plaintiff to serve a party outside of Ontario, provided that the plaintiff's claim concerns damages sustained in Ontario arising out of a tort, such as defamation. Given that the damages occurred in Ontario, and that Lord did not seek a stay of the proceedings for lack of jurisdiction, the court found that it had the requisite competence to hear the merits of the defamation claim.

The common law of Ontario presumes that defamatory words are false. The plaintiff must prove that the words were published by the defendant, but the onus falls to the defendant to show that the defamatory words are true. The defamer's use of pseudonyms or other names to describe the plaintiff is not a valid defence.

Justice Quinn relied on the Supreme Court of Canada's *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130 to determine the quantum of damages for defamation. The standard factors to consider are the plaintiff's position and standing, the nature and seriousness of the defamatory statements, the mode and extent of publication, the absence or refusal of any retraction or apology, the whole conduct and motive of the defendant from publication through judgment, and any evidence of aggravating or mitigating circumstances. Justice Quinn cited *Barrick Gold Corporation v. Jorge Lopehandia and Chile Mineral Fields Canada Ltd.*, [2004] O.J. No. 2329 (C.A.), which held that the mode and extent of publication in online defamation cases is particularly pertinent given the universality of publishing via the internet.

Arguments

Pontigon testified to the extent that the publication of Lord's book affected her. She was continually questioned about the veracity of the book's allegations by members of her Toronto Filipino community, and by members of her own family.

Lord filed a statement of defence, but did not appear before the court at trial. She admitted that she wrote the book, but that she had replaced the names of the

defamed parties since becoming aware of the lawsuit. Pontigon's name was changed to "Kamatis", which in English means "tomato". Pontigon's husband received the name "Balasenas", which means "eggplant". Since Pontigon's name is not in the revised edition, Lord claimed that the book cannot be defamatory. Lord also provided the court with documents she claimed proved the veracity of the allegations made in her book.

Judgement

The court categorically rejected all of Lord's arguments and found that the words published in Chapter 1 of her book were defamatory. Justice Quinn noted that even the revised version of the book still contains defamatory statements because the use of pseudonyms, especially as degrading as those used, does not protect the defamer.

In determining the quantum of damages, the court weighed the facts against the criteria set out in *Hill*. The defamatory statements reduced Pontigon's standing in the community and were very serious. The court found that the publication of the book on the internet was an aggravating factor because anyone in the world could now read these defamatory words. Lord did not retract her statements or offer an apology, and the book is still available online. Finally, Lord did not provide any acceptable evidence as to the truthfulness of her allegations.

The court awarded the full quantum of damages claimed by Pontigon, \$37,500. The court also awarded substantial indemnity costs of \$13, 716.46 against Lord because she made unfounded allegations that were seriously prejudicial to Pontigon's character.

Most of Lord's book can be viewed for free on Google Books, and it is also being sold by Amazon.com. As of June 30, 2009, it had a sales ranking of 5,967,663.

Held, damages awarded for the above reasons.



