

SUMMARY

Doves Group Proprietary Limited (the “**Applicant**”) launched an application against Johan Daniel Etzart Rousseau (the “**First Respondent**”), and Funeral Industry Reformed Association (the “**Second Respondent**”) (collectively referred to as the “**Respondents**”), in order to interdict and prevent the Respondents from posting defamatory information on all social media platforms about the Applicant.

The First Respondent was employed by the Applicant from January 1987 until 1991. Although, the First Respondent was once again employed by the Applicant in June 1994, he was summarily dismissed on 11 May 2011, following charges of unacceptable behaviour. When the matter was heard by the Commission for Conciliation Mediation and Arbitration (the “**CCMA**”), it found that the dismissal was substantively fair but procedurally unfair. Be that as it may, a settlement was reached between the parties and the matter was not pursued further at this stage.

In or during 2014, the Chief Executive Officer of the Applicant was informed via email correspondence that the First Respondent was defaming the Applicant on Twitter, a social media platform. In light hereof, the Applicant requested the First Respondent to remove all the posts which refer to the Applicant and to refrain from posting any defamatory statements. The First Respondent rejected the Applicant’s request to remove the posts.

In response to this application, the Respondents launched an interlocutory application seeking an order that: the main application be dismissed; the Applicant’s founding affidavit, filed on 27 October 2017 be set aside; and the Applicant’s Indexes, Practice Note, and Heads of Argument be set aside; costs *de bonis propis* be awarded to the Applicant and its attorneys; the Applicant be barred from taking any further steps during these legal proceedings until the taxed legal costs of the respondents have been paid in full.

The interlocutory application was, however, dismissed with costs and the Court ordered the Respondents to file their answering affidavit within 10 (ten) days of the order. On the 10th day, the Respondents failed to file their answering affidavit, instead they launched an application for leave to appeal against the above order which was dismissed with costs on an attorney and client scale on 11 December 2018. On 18 April 2019, the Respondents filed an application for leave to appeal the aforesaid order to the Supreme Court of Appeal.

In the meantime, the Applicant proceeded to set this matter down on 27 May 2019 for hearing seeing as the Respondents failed to deliver their answering affidavit. The matter was; however, postponed sine dies and with the Respondents to pay the cost of the postponement and the Court once again order the Respondents to file their answering affidavit within 10 (Ten) days from that order, which they did.

The Respondents raised a point *in limine*, namely that there is a material dispute of fact, therefore, the matter should be referred to oral evidence. The Applicants disputed this and stated that the Respondents admitted that the defamatory statements were made by the First Respondent. Furthermore, the Applicant stated that the Respondents defence is not valid, because the respondents have failed:

- 1.to prove the truthfulness of the social media posts;
- 2.to raise the issues upon which it seeks to rely in its affidavit; and
- 3.to put up any allegation of fact;

Based on the above, the Applicant stated that a dispute of fact does not exist, therefore the matter can be resolved through motion proceedings. In addition to the above, the Applicant contended that if the interdict is not granted, the Applicant will suffer harm in that members of the public are likely to believe the defamatory statements published by the First Respondent, therefore irreparable harm will be caused to the Applicant's reputation. The Applicant stated, that in the event that the court finds that a dispute of fact exists, the Applicant is entitled to an interim interdict preventing the First Respondent from publishing defamatory statements on social media until the matter is heard during action proceedings. The Applicant submitted that, a claim for damages will not restrain the infringement, nor will it be able to quantify the damage, therefore the applicant has no alternate remedy.

The Second Respondent opposed the application, it contended that the Applicant should have brought a claim for damages through action proceedings, so that the Respondents would have been given the opportunity to submit sufficient evidence and cross-examine witness, to prove that the publications were fair comments and of public interest.

HELD

In determining, whether there is a material dispute of fact the Court should refer the matter to oral evidence, the Court held, that action proceedings are appropriate in matters where a factual dispute exists, which can only be resolved through oral evidence. Furthermore, the Court held, that the Court may exercise its discretion in deciding whether to refer motion proceedings to oral evidence, in cases where a dispute of fact exists. The Court held, that no reasonable grounds exist for doubting the correctness of the allegations concerned and therefore the matter can proceed on motion proceedings and does not need to be referred to action proceedings.

The Court then turned to consider if the actions of the First Respondent amounted to defamation. The Court agreed with the Applicant in that the Respondents' answering affidavit amounts to a bare denial and the Respondents have not adduced evidence proving that the social media publications were fair comment. In answering the question above, the Court held that the Respondents have failed to discharge that there is a real and genuine dispute of fact.

The Court held that the Applicant has a right to protect its reputation and good name, and therefore, the first two elements of an interdict have been established, namely; a clear right, an injury actually committed or reasonably apprehended. In deciding whether there are any alternative means through which the Applicant can protect its rights, the Court held that an interdict would have the desired result of protecting the Applicant's reputation and image, it would also prevent further harm. The Court stated, that a claim for damages would not offer the Applicant such protection.

Lastly, the Court held, that a claim for damages would not protect the Applicant from future losses. Furthermore, the Court held that the balance of convenience favours the Applicant and failure to grant the interdict would result in irreparable harm being suffered by the Applicant, to which there is no alternate remedy.

The First and Second Respondents were interdicted and restrained from posting any defamatory content on social media pertaining to the Applicant.

VALUE

Doves Group Proprietary Limited v Rousseau and Another
(68975/2017) [2020] ZAGPPHC 98 (19 March 2020)

The case highlights the relevant elements that must be proved in order for a court to grant an interdict against another party.

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