

Hotel de l'Europe Limited - - - - - Appellants

v.

William Dudley Currie-Fryer and another - - - - Respondents

FROM

**THE COURT OF APPEAL OF THE COLONY
OF SINGAPORE**

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 2ND OCTOBER 1956**

Present at the Hearing:

EARL JOWITT
LORD OAKSEY
LORD TUCKER
MR. L. M. D. DE SILVA

[Delivered by LORD TUCKER]

In this case the appellants appeal from a judgment of the Court of Appeal of Singapore dated 1st July, 1955, dismissing their appeal from a judgment of the High Court of Singapore (Murray Aynsley, C.J.) awarding the respondents (plaintiffs in the action) £250 arrears of salary and dismissing the appellants' counterclaim.

The respondents are cabaret artistes and were engaged by the appellants to perform at their hotel for a period of two months from 24th March, 1954, at a salary of £250 per month plus free board and lodging and certain other emoluments.

The respondents started their engagement on 24th March and continued their performances until 12th May when the appellants, who had paid the respondents £250 for the first month, repudiated the contract and refused to make any further payments thereunder on the ground that it had been induced by fraudulent misrepresentation on the part of the respondents.

The misrepresentation relied on is contained in a letter dated 18th February, 1954, written by the first-named respondent on behalf of himself and the second-named respondent in the following terms:—

“ Ritz Hotel,
Bombay.
18th February, 1954

The Manager,
The Cockpit,
Hotel de L'Europe,
Singapore.

DEAR SIR,

We have been advised to get into touch with you, as we are told you have the best venue for our act in Singapore.

We work under the name of Sylvia Martin and Bill Currie and are top flight cabaret in Europe, etc., this being our first trip East.

Our engagements in London include every top spot such as the Berkeley Hotel, Café de Paris, Grosvenor House, Dorchester, Ciro's, Embassy, Bagatelle, Colony, Astor, etc., in Paris the Lido and Newaille Eve, New York Blue Angel, Astor Roof, Hollywood, Ciro's, etc. We are Radio and T.V. stars of many years standing, both writing and acting.

We find we have to leave India during the first week in March to avoid very heavy Income Tax charges, and therefore offer ourselves for your immediate consideration.

We work with only the services of a pianist if necessary, though a band is useful.

Please cable us right away if you can use us or not as we are delaying our bookings to the U.K.

Yours truly,

p.p. SYLVIA MARTIN AND BILL CURRIE.

(Sgd.) BILL CURRIE."

On 19th May, 1954, the respondents issued a writ claiming arrears of salary and damages for breach of contract. Statement of Claim was delivered on 21st May, on which day an order was made for taking the evidence of the respondents on commission de bene esse as they were leaving immediately for Australia. Their evidence was taken on the following day.

On 3rd June the appellants' Defence and Counterclaim was delivered. It set out the material parts of the letter of 18th February and continued:—

"The defendants say the said part or parts of the said letter and the representations and statements comprised therein were calculated to cause the defendants to believe, and did cause the defendants to believe, the following, viz. :—

(A) that the plaintiffs working as Sylvia Martin and Bill Currie together were top flight cabaret in Europe and elsewhere before their present trip East ;

(B) that as such cabaret they had been engaged by the various hotels, restaurants, and night clubs mentioned by name in the letter, amongst others".

It went on to allege that these representations were untrue in that the respondents had only appeared together on three separate nights in cabarets, all in London, that they had never appeared together as Sylvia Martin and Bill Currie in cabaret at any of the places named except the Dorchester Hotel and Grosvenor House in each of which they appeared one night at private parties and were not engaged by the hotels, and that the representations were false and fraudulent to the knowledge of the respondents and were made with intent that they should be acted on. In the course of his evidence taken on commission the respondent Currie put in a list showing the various places at which they had appeared together, individually, or in concert with others. These included those referred to in the letter of 18th February and many others.

In his cross-examination the following passages appear:—

"Q. In para. 2 of Ex. E (letter of 18th February) you intended to convey that you were top flight cabaret?

A. Yes.

Q. In para. 3 by 'our engagements' did you intend to mean the engagements of Sylvia Martin and Bill Currie working under that name together in top flight cabaret?

A. Not necessarily.

Q. Can you tell us what you mean?

A. That we have appeared either together or individually or individually with others at the places named.

Q. Do you think then that the meaning you meant to convey is clearly expressed in paras. 2 and 3 of your letter dated 18.2.54 (Ex. E.)?

A. I think it is clear enough."

He went on to admit that the only places referred to in the letter of 18th February at which he had appeared with Sylvia Martin as his partner were Grosvenor House and the Dorchester Hotel where they had not been engaged by the management.

It was not put to either of the respondents in cross-examination that the wording of the letter with regard to their appearances in combination was deliberate and intended to deceive or calculated to improve their chances of engagement.

On 25th August, 1954, the evidence of Pierce Allix, the appellants' manager, was taken on commission de bene esse. It dealt exclusively with the quality of the performances given by the respondents. He said that at first their customers or patrons were well disposed towards them, but later on the attendances were poor and the quality of entertainment compared unfavourably with other artistes who had appeared at the hotel. He said his criticism was largely directed to Sylvia Martin.

On 19th April, 1955, the trial before Murray-Aynsley, C.J., took place. He did not have the advantage of seeing either of the respondents, against whom the charge of fraud was made, nor was any witness called on behalf of the appellants except a director named Chi Chye Fong who said he had discussed the letter of 18th February with Mrs. Hilborne, who appears to have been the managing director. The note of his evidence proceeds as follows:—"Thought they should be artistes of standing. Offered engagements". The remainder of his evidence dealt with figures relating to loss of business.

On 17th May, 1955, the Chief Justice delivered his judgment in which, after referring to the letter of 18th February and the facts with regard to the combined and individual appearances of the respondents as disclosed in their evidence taken on commission, he said: "After giving the matter careful consideration I have come to the conclusion that the construction put upon the passage by the plaintiffs is a possible one. Therefore, I don't think that the charge of fraud is established".

He accordingly gave judgment for the respondents and dismissed the counterclaim.

In the Court of Appeal Taylor, J., with whose judgment Storr, J., and Knight, J., agreed, expressed the view that in construing the letter in the ordinary sense of the language used the respondents represented themselves as top flight cabaret performers, which is a matter of personal opinion, and as a team of two who had appeared as such at the places named, which is a matter of pure fact and was substantially false. He held, however, that although the appellants acted on the letter it did not appear that they were in any way influenced by its falsity with regard to the joint appearances of the respondents. Their complaint was not that they were a poor team, but poor individually. He added moreover that it had not been shown that the respondents had any intention to deceive when they framed the letter. He said:—"It seems impossible to hold either that the distortion was intended to deceive, in a business sense, or that the distortion induced the contract or that it enhanced the loss".

He concluded with the observation that to engage a professional entertainer on his own description of himself as "top flight" involves the risk of engaging a waning star, and that the appellants had made a bad bargain but had not established the grounds on which they sought to avoid it. The appeal was accordingly dismissed.

Their Lordships are now asked to reverse the concurrent findings of both Courts on an issue of fraud involving as one of its essential elements the intention with which the language complained of was used by the authors of the letter, the onus of establishing which lay upon the appellants. They are of opinion that no case has been made out for taking such a course. With regard to the meaning of the letter it is sufficient to say that even if the respondents' construction is not a "possible" one to a Judge or lawyer it by no means follows that it may not be a mistaken but honest one to persons in the position of the respondents.

Their Lordships are in agreement with the conclusion reached by both Courts and will humbly advise Her Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs of the appeal.

In the Privy Council

HOTEL DE L'EUROPE LIMITED

v.

WILLIAM DUDLEY CURRIE-FRYER
AND ANOTHER

DELIVERED BY LORD TUCKER

Printed by HER MAJESTY'S STATIONERY OFFICE PRESS
DRURY LANE, W.C.2.
1956