

Sekisui House, Ltd.,
Petitioner,
v.
The **Superior Court** of the Commonwealth of
the Northern Mariana Islands,
Respondent,
v.
Shigenori Hiraga,
Real Party in Interest.
Original Action No. 99-008
November 23, 1999

Argued and Submitted on November 8, 1999

Counsel for Petitioner: Glen Robles (Mair, Mair, Spade & Thompson), Saipan.

Counsel for Real Party in Interest: Richard W. Pierce (White, Pierce, Mailman & Nutting), Saipan.

BEFORE: DEMAPAN, Chief Justice, LIZAMA, Justice Pro Tem, and ATALIG, Justice *Pro Tem*.

PER CURIAM:

¶1 [1] Sekisui House (“Sekisui”) filed a Petition for Writ of Mandamus to direct the Superior Court to vacate its order denying the Petitioner’s Motion for Summary Judgment entered in *Hiraga v. Sekisui House*, Civ. No. 98-0100 (N.M.I. Super. Ct. Feb. 18, 1999) (Decision and Order Denying Motion to Dismiss, Summary Judgment, Cross Motion for Summary Judgment). We have jurisdiction pursuant to Article IV, Section 3 of the Commonwealth Constitution. N.M.I. Const., art. IV, § 3.

ISSUES PRESENTED AND STANDARDS OF REVIEW

¶2 Petitioner raises two issues for our review:

- (1) Whether sufficient grounds exist to warrant the issuance of a Writ of Mandamus; and

(2) Whether the Superior Court erred in denying Petitioner's motion for summary judgment.

¶3 [2] The standard of review for a Writ of Mandamus is discussed *infra*. This court reviews an order granting or denying summary judgment *de novo*. *Rios v. Marianas Pub. Land Corp.*, 3 N.M.I. 512, 518 (1993).

FACTUAL AND PROCEDURAL BACKGROUND

¶4 Shigenori Hiraga ("Hiraga") filed his complaint on or around February 11, 1998 under seal. The complaint was based upon a legal memorandum and press release issued by Sekisui. Hiraga maintained that the memorandum and press release contained defamatory statements, which were actionable.

¶5 One statement at issue stated:

The old saying about a "leopard not changing his spots" certainly applies to Mr. Hiraga. While Mr. Hiraga was on probation for his felony bribery conviction, he continued with his practice of paying substantial sums of money to government officials. Mr. Hiraga's payments to CNMI government official are undisputed because they are recorded in written documents prepared by Mr. Hiraga and stamped "confidential." This document was discovered during the course of Sekisui House's investigation of the Plaintiffs' baseless claims at issue in this case.

¶6 The other statement at issue stated:

In his deposition, Mr. Hiraga was questioned regarding the "Confidential" list of payments, and Mr. Hiraga admitted to paying hundreds of thousands of dollars to CNMI officials. Mr. Hiraga, of course, says that some of the payments were "loans," but he admits that the vast majority of the money has never been paid back, and he recalls no discussion about payments terms of the loans.

¶7 On September 28, 1998, Sekisui filed a Motion to Dismiss for Failure to State a Claim Upon Which Relief Can be Granted or in the Alternative, for Summary Judgment. Hiraga filed a Cross Motion for Partial Summary Judgment arguing that the statements made by Sekisui were *per se* defamatory and do not constitute an opinion within the meaning of the RESTATEMENT (SECOND) OF TORTS.

¶8 On February 18, 1999, the Superior Court issued its decision and order denying Sekisui's Motion and granting Hiraga's motion for summary judgment, stating that it would be possible for a defamatory meaning to arise out of the memorandum statements, but denying it on all other grounds. Sekisui filed this Writ.

ANALYSIS

I. Grounds for Granting a Writ of Mandamus.

¶9 [3] This Court has jurisdiction over extraordinary writs, pursuant to its general supervisory powers. *Taimanao v. Superior Court*, 4 N.M.I. 94, 97 (1994); *Tenorio v. Superior Court*, 1 N.M.I. 1, 6 (1989).

¶10 [4] There are five guidelines for the issuance of extraordinary writs. *Tenorio*, 1 N.M.I. at 9-10. First, the party seeking the writ must have no other adequate means, such as direct appeal, to obtain the relief desired. Second, the party seeking the writ will be damaged or prejudiced in a manner not correctable on appeal. Third, the lower court's order must be clearly erroneous as a matter of law. Fourth, the lower court's order is an oft-repeated error, or manifests a persistent disregard of applicable rules. Fifth, the lower court's order raises new and important problems, or issues of law of first impression. The decision whether to issue a writ "calls for a cumulative consideration of these factors." *Villacrusis v. Superior Court*, 3 N.M.I. 546, 550 (1993). We find that the conditions in this case warrant the issuance of a writ.

¶11 [5] Sekisui has no means of a direct appeal from the denial of its Motion for Summary Judgment. A summary judgment motion would normally not be subject to immediate appeal. In extraordinary circumstances, a Writ of Mandamus may be issued as a remedy for an improperly denied summary judgment motion. See *Aetna Casualty & Surety Co. v. Superior Court*, 170 Cal. Rptr. 527, 530 (Cal. Ct. App. 1980); *Dzack v. Marshall*, 393 P.2d 610, 612 (Nev. 1964); *Abercrombie v. McClung*, 507 P.2d 719, 721 (Haw. 1973).

¶12

In addition, the lower court's ruling has a chilling effect on free speech in the Commonwealth. The allegedly defamatory statements involved monies paid to persons who held or were seeking public office. The lower court's ruling would also deter the public's ability to freely discuss the receipt of funds from third persons by those seeking public office or holding public office. Since the population of the Commonwealth is so small, third persons could easily influence and control any election by giving gifts and loans.

II. The Lower Court's Ruling is Erroneous.

¶13

We further find that the lower court's order is erroneous as a matter of law. The ruling evidences a disregard of applicable rules and involves an issue of first impression in this jurisdiction.

¶14

The claim for defamation of Hiraga is by "innuendo and implications." Hiraga admits to the "literal truth" of the memorandum at issue, but states that it is "irrelevant." In this case, Sekisui never used the word "bribe," or the statement that any payment was in exchange for official acts. Additionally, Hiraga admits that the reader of the statements at issue need not conclude that the payments were bribes. In his Opposition to Sekisui's Motion for Summary Judgment, Hiraga stated "[e]ven if the loans were paid back that does not show that they were bribes."

¶15

[6] Defamation by implication is disfavored in this jurisdiction. "The language used *may not* be extended by the innuendo or conclusions of the pleader; the defamatory character *must be certain and apparent* from the words themselves." *Camacho v. Santos*, 1 CR 281, 286-87 (Dist. Ct. 1982) (emphasis added).

¶16

[7,8] Furthermore, each of the statements at issue is either true or a permissible statement of opinion. The Restatement of Torts recognizes truth to be an absolute defense to defamation. RESTATEMENT (SECOND) OF TORTS § 581A (1977). To the extent that the statements made by Sekisui are true, they are absolutely privileged and not actionable as a matter of law. Sekisui's motive is irrelevant. *Id.*

¶17 [9] To the extent that Sekisui made statements of opinion, such as a “leopard not changing his spots,” such expressions of opinion are defamatory only in the event that the opinion “implies the allegation of undisclosed defamatory facts as the basis for the opinion.” RESTATEMENT (SECOND) OF TORTS § 566 (1977). Sekisui fully disclosed the facts upon which it based its opinion, and such a statement falls within the ambit of protected expression of opinion.

¶18 In conclusion, Hiraga’s claim for intentional infliction of emotional distress is dependent upon the claim of defamation. *Flynn v. Higham*, 197 Cal. Rptr. 145 (Cal. Ct. App. 1983). The dismissal of the defamation claim also requires the dismissal of the claim of intentional infliction of emotional distress.

CONCLUSION

¶19 Based on the foregoing reasons, this Court grants Sekisui’s Petition for a Writ of Mandamus and directs the Superior Court to vacate the February 28, 1999 order and enter judgment in favor of Sekisui.

¶20 [10] The Court finds that in the Commonwealth of the Northern Mariana Islands, the free exchange of expression, thoughts and ideas requires that the statements be protected as a matter of law.

LIZAMA, Justice *Pro Tem* (concurring):

¶21 [11] I concur with the majority’s reasoning on the issue of whether the Superior Court erred in denying Petitioner’s motion for summary judgment. I also concur with the majority’s reasoning and conclusion that dismissal of the underlying defamation and intentional infliction of emotional distress claims is proper. I further note that the underlying motion for summary judgment could have been granted on the grounds that some of the statements at issue were privileged by virtue of the fact that they were also made “in-court,” thus presenting a defense to the tort of defamation.

¶22 [12] However, I note that a writ of mandamus is a drastic remedy to be used only in extraordinary circumstances. *See Kerr v. United States Dist. Court*, 426 U.S. 394, 402, 96 S. Ct.

2119, 2123, 48 L. Ed. 2d 725, 732 (1976); *United States v. Sherman*, 581 F.2d 1358, 1361 (9th Cir. 1978); and *Bauman v. United States Dist. Court*, 557 F.2d 650, 654 (9th Cir. 1977). Also, courts are “extremely reluctant to grant a writ of mandamus.” *In re Ford Motor Co.*, 751 F.2d 274, 275 (8th Cir. 1984).