

ST. PIERRE v. THE "MICRONITOR"

We conclude the desired end of the appellate process—achieving the maximum justice—will best be served by remanding this case for further hearing and preparation of an adequate record, even though this Court has said, in effect, many times the parties appeal “on the record at their peril.” An inadequate record cannot produce a just and fair decision for either side. If it is necessary to bring the case back to the trial division, let it be on the basis of a complete record in which the trial judge has ruled on the conflicts in the testimony. It is

Ordered, that this appeal be remanded for further proceedings in accordance with this opinion.

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ROGER L. ST. PIERRE, Plaintiff

v.

THE "MICRONITOR", et al., Defendants

Civil Action No. 7-73

Trial Division of the High Court

Mariana Islands District

June 19, 1973

Libel action by Mariana Islands resident against newspaper published in the Marshall Islands and distributed throughout the Trust Territory. The Trial Division of the High Court, Harold W. Burnett, Chief Justice, held that venue was properly laid in the Mariana Islands.

**Torts—Venue—Defamation**

In libel action by Chief Public Defender for the Trust Territory, a resident of Saipan, against newspaper published in the Marshall Islands and distributed throughout the Trust Territory, venue in the Mariana Islands district was, under both statute and the better common law view, properly laid, and motion for change of venue to the Marshall Islands District, made on ground it would be inequitable to require the action to be defended in Saipan, would be denied. (6 TTC §§ 101, 103, 104)

BURNETT, *Chief Justice*

This is an action for libel, with venue claimed in this District under 6 TTC § 103(2) and (3). Plaintiff, Chief Public Defender for the Trust Territory, resides in Saipan. Defendant "Micronitor" is a newspaper, published in the Marshall Islands District, with circulation throughout the Trust Territory, including the Mariana Islands District. Defendant Joe Murphy is an editor of the "Micronitor", and has admitted writing, and responsibility for, the articles published in the "Micronitor" which are alleged to defame plaintiff. Summary Judgment as to other named defendants was granted, without objection by plaintiff, upon showing that they did not participate in the writing, editing, or publication of the allegedly defamatory articles.

Defendants move for change of venue to the Marshall Islands District, contending that the cause of action arose in that District, that defendants have only minimal contact with the Mariana Islands District, and that it would be inequitable to require defendants to defend the action in this District. The "Micronitor", while distributed in Saipan, has neither paid distributors nor writers here.

The question is one presented for the first time in the Trust Territory. Venue provisions of the Code, 6 TTC Ch. 5, do not deal specifically with the question of where a libel action can or must be brought.

Defendant relies principally on 6 TTC § 101(1) which reads:—

(1) Except as otherwise provided, a civil action in which one of the defendants lives in the Trust Territory shall be brought in a court within whose jurisdiction the defendant or the largest number of defendants live or have their usual places of business or employment.

Subsection 101(2) provides further that actions not

based on contract may be brought in a court "within whose jurisdiction the cause of action arose."

Plaintiff, expressly, relies on the first part of 6 TTC § 103(2) authorizing any action (other than one affecting land) to be brought in the district in which one of the parties thereto lives or has his usual place of business or employment . . .". The balance of the section authorizes an action "based upon a wrong not connected with a contract" to be brought where the cause of action arose.

In my view, the operative provisions as to venue are those "otherwise provided" (6 TTC § 101(1)), by Section 103, specifically relating to actions brought in the High Court. Thus, putting aside subsection (1) relating to land matters, an action "shall" be brought in the district where one of the parties lives, or it "may" be brought where the cause of action arose.

Under such a statutory scheme there can be no question that venue can properly be laid in the district where either party resides, unless other considerations mandate removal. State jurisdictions are divided as to where a cause of action for libel arises for purposes of fixing venue. See 15 ALR3d 1253, Section 6. In my mind the better view is that the cause of action arises where injury occurs and is not limited to the place of publication.

Thus under either criteria venue is properly laid in this district.

6 TTC § 104(3) authorizes the Court, "if it deems the interests of justice will be served thereby" to hear an action in a district other than that in which it was brought.

Defendant urges that it would be inequitable to require the action to be defended in Saipan. It would seem, however, as a general proposition, that it would be equally inequitable to require a plaintiff to seek vindication in a place far from his residence. It was the defendant who under-

took to write the allegedly libelous articles and to provide for their circulation here.

“There has been a ‘movement away from the bias favoring the defendant,’ in matters of personal jurisdiction ‘toward permitting the plaintiff to insist that the defendant come to him’ when there is a sufficient basis for doing so.”

*Buckley v. New York Post Corp.*, 373 F.2d 175 (1967). Buckley dealt with an action for libel, brought in New Jersey, against a New York corporation, for alleged libelous matter published in New York. Circulation of the *Micronitor* in this district provides a “sufficient basis” for permitting venue to be laid here. A liberal use of discovery procedures can, of course, minimize the inconvenience to either party.

Adoption of the Uniform Single Publications Act (P.L. 4C-20), 6 TTC Ch. 19, does not determine the question of venue, its primary purpose being to avoid multiplicity of actions. See *Firstamerica Corp. v. Daytona Beach N-J Corp.* 196 So.2d 97 (Fla.), 15 A.L.R.3d 1238 at 1247. To the same effect, see *Buckley v. New York Post Corp.*, supra, at page 179.

Accordingly I find venue to be properly laid in this District. Defendants motion is therefore denied.

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WILLIAM ROBERT HAMRICK, Plaintiff

v.

RODDY MARIE HAMRICK, Defendant

Civil Action No. 36-73

Trial Division of the High Court

Mariana Islands District

June 19, 1973

Divorce action by husband, who had been in the territory eight months, against wife, who resided in Guam. The Trial Division of the High Court,