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Equity: Injunctive Relief Against Business Libels

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restrictions apply only against transfers of ownership, and in the pledge area there is no transfer until the foreclosure sale.[26]

The instant case is one of first impression in Florida; it may serve as a guide in imposing effective restrictions on alienation of corporate stock certificates. If Florida follows the weight of authority, it will not allow a restriction that does not provide an expedient alternative to the sale of stock certificates on the market. Reasonable restrictions on transfers and pledging will probably be upheld. Such provisions should be included in the corporate charter and bylaws, printed on the stock certificates, and incorporated in agreements among the stockholders or between the stockholders and the corporation. Any serious deviation or omission from this procedure may render the restriction invalid.

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EQUITY: INJUNCTIVE RELIEF AGAINST BUSINESS LIBELS

Upton House Cooler Corp. v. Aldritt, 73 So.2d 848 (Fla. 1954)

Petitioner, a business competitor of respondent, published an illustrated catalogue advertising his merchandise. Included was a picture of respondent's power ventilator through which an *X* had been marked and which was captioned "Old," indicating that the equipment was obsolete. Respondent's amended bill alleged damages to his business reputation and prayed for an injunction restraining petitioner from using pictures of respondent's product in a false or degrading manner. A motion to dismiss was denied. On certiorari, HELD, an injunction will not issue to restrain advertisements that injure a competitor's business reputation by illustrating his products in a false or degrading manner. Order quashed.

The doctrine that equity will refuse to enjoin a libel is rooted in an early English dictum.[1] When the issue of a libel injurious to business first arose, however, it was held that because the business of

[26]Good Fellows Associates v. Silverman, 283 Mass. 173, 176, 186 N.E. 48, 50 (1933) (dictum).

[1]Gee v. Pritchard, 2 Swans. 402, 413, 36 Eng. Rep. 670, 674 (1818).

a merchant is valuable property equity would grant an injunction.[2] Only a few years later this decision was overruled and an injunction refused in *Prudential Assurance Co. v. Knott*,[3] a case often cited and relied upon by American courts.[4] Since that time, by liberal construction of a limited statute,[5] English courts have returned to their original view.[6] Although American courts admit that the right to conduct a business is a valuable property right, they have generally refused injunctive relief against a libel of business rights as such because of the existence of an adequate remedy at law,[7] the right of jury trial to determine the credibility of the publication,[8] and the danger of infringement upon freedom of speech and press.[9]

There is doubt in some cases whether any of the bases propounded by the courts are grounded on sound reasoning or whether in actuality they are bound by the strong arm of precedent.[10] As to the adequacy of the legal remedy, in some cases it is impossible to determine what the damages will be.[11] The fact that a jury trial is within the constitutional guarantees[12] should not preclude the granting of an injunction;[13] if the complainant must first prove the publication libelous in a law action before seeking the injunction,[14] the resulting lapse of time may render the injunction nugatory. The literal conception

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[2]Dixon v. Holden, L.R. 7 Eq. 488 (1869).

[3]L. R. 10 Ch. 142 (1875).

[4]See deFuniak, *Equitable Protection of Business and Business Rights*, 35 KY. L.J. 261, 291 (1947).

[5]English Judicature Act of 1873, 18 HALSBURY, LAWS OF ENGLAND 85 (2d ed. 1931).

[6]See Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 HARV. L. REV. 640, 665 (1916).

[7]*E.g.*, Francis v. Flinn, 118 U.S. 385 (1886); Kidd v. Horry, 28 Fed. 773 (C.C.E.D. Pa. 1886); Reyes v. Middleton, 36 Fla. 99, 17 So. 937 (1895); Voltube Corp. v. B. & C. Insulation Products, Inc., 20 N.J. Super. 250, 89 A.2d 713 (Ch. 1951); Kwass v. Kersey, 81 S.E.2d 237 (W. Va. 1954).

[8]Flint v. Hutchinson Smoke Burner Co., 110 Mo. 492, 19 S.W. 804 (1892); Marlin Fire Arms Co. v. Shields, 171 N.Y. 384, 64 N.E. 163 (1902).

[9]Near v. Minnesota *ex rel.* Olson, 283 N.W. 697 (1931); Marlin Fire Arms Co. v. Shields, *supra* note 8.

[10]See Singer Mfg. Co. v. Domestic Sewing Machine Co., 49 Ga. 70, 15 Am. Rep. 674 (1873).

[11]Toledo Computing Scale Co. v. Computing Scale Co., 142 Fed. 919, 922 (6th Cir. 1906) (dictum); Dehydro, Inc. v. Tretolite Co., 53 F.2d 273 (N.D. Okla, 1931) (dictum); see Kwass v. Kersey, 81 S.E.2d 237 (W. Va. 1954) (dissenting opinion).

[12]U.S. CONST. amend. VII.

[13]RESTATEMENT, TORTS §933 (2), comment *c* (1939).

[14]Flint v. Hutchinson Smoke Burner Co., 110 Mo. 492, 19 S.W. 804 (1892).

of freedom of speech given by courts in some instances may put business at the mercy of a malicious insolvent defamer[15] and enable the constitutional grants to be used as a shield for tortious harms against private interests.[16] Moreover, even if the bases for refusing injunctions in this area are sound, equity should weigh these arguments against interference with such precious property rights as the right to carry on a business and the right to earn a living, either of which may be encroached upon if the injunction is refused.[17]

Even though most courts still pay lip service to the doctrine that equity will not enjoin libelous statements injurious to business,[18] many have realized the inequities imposed by the rule, and a growing number of exceptions and methods of avoidance have been invented to pierce what was once an impregnable doctrine. Some courts have avoided the doctrine by seizing upon an established label of equitable jurisdiction and granting an injunction as an incident thereto,[19] while others have avoided the difficulties by terming a particular case a disparagement of property or business.[20]

Exceptions have been made when there has been an injury to good will and credit,[21] a continuing injury to business,[22] coercion or intimidation of customers as a means of unfair competition,[23] a deliberate attack on business or merchandise,[24] or inducement of employees or customers to breach contracts.[25]

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[15]Pound, *supra* note 6, at 668.

[16]RESTATEMENT, TORTS §942, comment *d* (1939).

[17]WALSH, A TREATISE ON EQUITY §262 (1930).

[18]See Black & Yates, Inc. v. Mahogany Ass'n, Inc., 129 F.2d 227 (3d Cir. 1941), *cert. denied*, 317 U.S. 672 (1942), for a repudiation of this doctrine.

[19]*E.g.*, Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 439 (1911); Dehydro, Inc. v. Tretolite Co., 53 F.2d 273 (N.D. Okla. 1931); Nann v. Raimist, 255 N.Y. 307, 174 N.E. 690 (1931); see Pound, *supra* note 6, at 655.

[20]Paramount Pictures, Inc. v. Leader Press, Inc., 106 F.2d 229 (10th Cir. 1939); Lawrence Trust Co. v. Sun-American Pub. Co., 245 Mass. 262, 139 N.E. 655 (1923); Allen Mfg. Co. v. Smith, 224 App. Div. 187, 229 N.Y. Supp. 692 (4th Dep't 1928).

[21]Carter v. Knapp Motor Co., 243 Ala. 600, 11 So.2d 383 (1943); Allen Mfg. Co. v. Smith, *supra* note 20.

[22]J. C. Pittman & Sons, Inc. v. Pitman, 29 Del. Ch. 189, 47 A.2d 721 (Ch. 1946); Menard v. Houle, 298 Mass. 546, 11 N.E.2d 436 (1937).

[23]Bourjois, Inc. v. Park Drug Co., 82 F.2d 468 (8th Cir. 1936); Maytag Co. v. Meadows Mfg. Co., 35 F.2d 403 (7th Cir. 1929); Emack v. Kane, 34 Fed. 46 (C.C.N.D. Ill. 1888); Allen Mfg. Co. v. Smith, *supra* note 20.

[24]Carter v. Knapp Motor Co., *supra* note 21; Menard v. Houle, *supra* note 22.

[25]American Malting Co. v. Keitel, 209 Fed. 351 (2d Cir. 1913); Citizens' Light, Heat & Power Co. v. Montgomery Light & Water Power Co., 171 Fed. 553 (C.C.N.D.

The Florida Court has in the past recognized that the right to pursue a lawful business is a valuable property right[26] and has implied that interference with property rights by false statements, acts of coercion, or threatened injury may be enjoined;[27] yet it has also indicated that an injunction will lie only when there is a breach of trust or contract.[28] By the instant decision, however, it has adopted the doctrinaire view. This result may perhaps be explained by the fact that the complainant pleaded in terms of injury to personal rights rather than property rights and by the Court's greater concern with freedom of speech than with protection of property rights when the two policies clash. The decision does not necessarily foreclose the right to injunctive relief in future cases.

There is no one solution that will guarantee the desired result, for the cases in this area lack uniformity and often seem irreconcilable.[29] Although pleading should not control the case,[30] the possibilities of obtaining injunctive relief will be greatly enhanced by pleading within the exceptions and methods of avoidance that other courts have set up rather than in terms of libel and slander, personal rights, or personal reputation.

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INSURANCE: CONSTRUCTION OF EMPLOYEE-EXCLUSION CLAUSE IN AUTOMOBILE LIABILITY POLICY

National Surety Corp. v. Windham, 74 So.2d 549 (Fla. 1954)

Plaintiff minor was engaged by insured, who was under the influence of alcohol and in need of medical attention, to drive him 200 miles to a sanitorium. The automobile was furnished by insured. During the trip, insured, in a drunken attempt to climb over the seat,

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Ala. 1909).

[26]State *ex rel.* Davis v. Rose, 97 Fla. 710, 744, 122 So. 225, 238 (dictum).

[27]Paramount Enterprises, Inc. v. Mitchell, 104 Fla. 407, 418, 140 So. 328, 333 (1932) (dictum).

[28]Reyes v. Middleton, 36 Fla. 99, 17 So. 937 (1895); Moore v. City Dry Cleaners & Laundry, Inc., 41 So.2d 865, 873 (Fla. 1949) (dictum).

[29]2 HIGH, A TREATISE ON THE LAW OF INJUNCTIONS §1015 (4th ed. 1905).

[30]Pound, *supra* note 6, at 668.