

1982 November 23

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.]

DIAS UNITED PUBLISHING COMPANY LTD.,

*Appellants,*

v.

THE POLICE,

*Respondents.*

*(Criminal Appeal No. 4250).*

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*Criminal Law—Parties to offences—Company—Newspaper publishers  
—Publishing false news, contrary to section 50(1) of the Criminal  
Code, Cap. 154 (as amended by Law 70/65)—Article written  
by Chief Editor who was, also, responsible for the management  
5 or control of the newspaper for the purposes of section 3(A) of  
the Press Law, Cap. 79—Whether Chief Editor to be indentified  
with the Company.*

The appellants were a company which owned and published  
10 the daily newspaper “Simerini”. On 31st July 1981 they were  
found guilty by the District Court of Nicosia of the offence  
of publishing, on 30th May 1981, in the issue of “Simeini”  
newspaper of that date, in an article written by a certain Aleccos  
Constantinides, of Nicosia, false news, contrary to section 50(1)  
15 of the Criminal Code, Cap. 154, as amended by the Criminal  
Code (Amendment) Law, 1965 (Law 70/65).

The said Constantinides was a co-accused of the appellants  
before the trial Court and he was found guilty of the same offence  
as the appellants.

It was common ground that Constantinides was the Chief  
20 Editor of “Simerini” newspaper and that he has been named  
by the appellants as the person responsible for the management  
or control of such newspaper for the purposes of section 3(A)  
of the Press Law, Cap. 79, as amended by the Press (Amendment)  
Law, 1965 (Law 69/65).

Upon appeal against conviction it was contended that the trial Court was wrong in law in finding that the appellants were criminally liable in respect of the publication of the article in question.

*Held*, that having in mind the relevant principle of law, on the basis only of which, in conjunction with section 20 of Cap. 154, the appellants might have been found guilty of the offence of which they were convicted in the present instance (see *Tesco Supermarkets Ltd. v. Natrass* [1971] 2 All E.R. 127); and that as the article in question was an article in respect of which Constantinides must, in the circumstances of this case, be regarded as bearing full responsibility in his capacity as the Chief Editor of the newspaper and, also, as the person who had been named as having the management or control of the newspaper for the purposes of section 3(A) of Cap. 79, as amended by Law 69/65, it was reasonably open to the trial Court to find that, in respect of the article in question, Constantinides was so identified with the appellants that in law his writing and publishing of the aforesaid article became an act of the appellants as a company and, therefore, the appellants could be and were rightly convicted of the offence of which they were found guilty.

*Appeal dismissed.*

Cases referred to:

*Tesco Supermarkets Ltd. v. Natrass* [1971] 2 All E.R. 127  
at pp. 131, 132;

*R. v. Andrews Weatherfoil Ltd. and Others* [1972] 1 All E.R. 65  
at p. 70.

*Appeal against conviction.*

Appeal against conviction by Dias United Publishing Company Ltd. who was convicted on the 31st July, 1981 at the District Court of Nicosia (Criminal Case No. 10353/81) on one count of the offence of publishing false news contrary to section 50(1) of the Criminal Code Cap. 154 (as amended by Law 70/65) and was sentenced by Nikitas, S.D.J. to pay C£250.- fine.

A. *Markides*, for the appellants.

A. *Evangelou*, Senior Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following judgment of the Court. The appellants are a company which owns and publishes the daily newspaper "SIMERINI".

5 On 31st July 1981 they were found guilty by the District Court of Nicosia of the offence of publishing, on 30th May 1981, in the issue of "SIMERINI" newspaper of that date, in an article written by a certain Aleccos Constantinides, of Nicosia, false news, contrary to section 50(1) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 10 1965 (Law 70/65).

The said Constantinides was a co-accused of the appellants before the trial court and he was found guilty of the same offence as the appellants. He was sentenced to three months' imprisonment, which was suspended for three years, and the appellants 15 were sentenced to pay a fine of C£250.

The appellants have appealed against their conviction.

Constantinides appealed, also, but, during the hearing of his appeal (Criminal Appeal No. 4249), which was being heard together with the present appeal, he withdrew it.

20 The appellants have limited their appeal, during its hearing, to only one of the grounds in the notice of appeal, namely that the trial court was wrong in law in finding that the appellants were criminally liable in respect of the publication of the article in question.

25 It is common ground that Constantinides is the Chief Editor of "SIMERINI" newspaper and that he has been named by the appellants as the person responsible for the management or control of such newspaper for the purposes of section 3(A) of the Press Law, Cap. 79, as amended by the Press (Amendment) 30 Law, 1965 (Law 69/65).

Counsel on both sides have agreed that the relevant principle of law, on the basis only of which, in conjunction with section 20 of Cap. 154, the appellants might have been found guilty of the offence of which they were convicted in the present 35 instance, was laid down by the House of Lords in England in *Tesco Supermarkets Ltd. v. Natrass*, [1971] 2 All E.R. 127, where Lord Reid stated the following (at pp. 131, 132):

“Where a limited company is the employer difficult questions do arise in a wide variety of circumstances in deciding which of its officers or servants is to be identified with the company so that his guilt is the guilt of the company.

I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these; it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company’s servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.

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Normally the board of directors, the managing director and perhaps other superior officers of a company carry out the functions of management and speak and act as the company. Their subordinates do not. They carry out orders from above and it can make no difference that they are given some measure of discretion. But the board of directors may delegate some part of their functions of management giving to their delegate full discretion to act independently of instructions from them. I see no difficulty in holding that they have thereby put such a delegate in their place so that within the scope of the delegation he can act as the company. It may not always be easy to draw the line but there are cases in which the line must be drawn. *Lennard’s case*<sup>1</sup> was one of them.

1. [1915] A.C. 705.

In some cases the phrase alter ego has been used. I think it is misleading. When dealing with a company the word alter is I think misleading. The person who speaks and acts as the company is not alter. He is identified with the company”.

The *Tesco* case, *supra*, was followed in, inter alia, *R. v. Andrews Weatherfoil Ltd. and others*, [1972] 1 All E.R. 65, where Eveleigh J. stated (at p. 70):

“It is not every ‘responsible agent’ or ‘high executive’ or ‘manager of the housing department’ or ‘agent acting on behalf of a company’ who can by his actions make the company criminally responsible. It is necessary to establish whether the natural person or persons in question have the status and authority which in law make their acts in the matter under consideration the acts of the company so that the natural person is to be treated as the company itself. It is often a difficult question to decide whether or not the person concerned is in a sufficiently responsible position to involve the company in liability for the acts in question according to the law as laid down by the authorities. As Lord Reid said in *Tesco Supermarkets Ltd. v. Natrass*<sup>1</sup>:

‘It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company’s servant or agent. In that case any liability of the company can only be a statutory or vicarious liability’.

Lord Reid added<sup>2</sup>:

‘I think that the true view is that the judge must direct the jury that if they find certain facts proved then as a matter of law they must find that the criminal act of the officer, servant or agent including his state of mind, intention, knowledge or belief is the act of the company’.

It follows that it is necessary for the judge to invite the jury

1. [1971] 2 All E.R. 127 at 131, 132.

2. [1971] 2 All E.R. at 134.

to consider whether or not there are established those facts which the judge decides as a matter of law are necessary to identify the person concerned with the company”.

It is useful, also, to refer to the general exposition of the law on this point as it is to be found in Halsbury’s Laws of England, 4th ed., vol. 7, p. 451, paragraph 757: 5

“757. Directing mind of company. Since a company cannot act of itself, but only through an individual, and even then not necessarily through one and the same individual, the question arises whether on the one hand a person so acting is acting as a living embodiment of the company, or whether, on the other hand, he is merely acting as the company’s employee or agent. 10

For most civil purposes it is not necessary to decide the matter, since, usually as a result of the doctrine of ostensible authority, the company will be bound by the acts of the person acting on its behalf. But the question is frequently a live one so far as the criminal law is concerned, since for the acts of a person who can properly be classified as ‘the directing mind of the company’ the company will undoubtedly be liable criminally if those acts are in breach of any of the provisions of the criminal law; but, if the person who has acted is merely an employee or agent, the company may well be able to refute any charge or take advantage of any exempting provision based on actual fault in the actor. 15 20 25

The directors may delegate part of their functions of management in such a way as to make their delegate an embodiment of the company within the sphere of the delegation; but they do not do this merely because, of necessity, ministerial functions have to be delegated. Once the facts relating to the precise position of the person alleged to form the directing mind of the company have been ascertained, it is a question of law whether that person, in doing a particular act, is or is not to be regarded as the company. The main considerations are the relative position in the company which he holds and the extent to which, as matter of fact, he is in actual control of its operations or a section of them without effective superior control”. 30 35

As has been, already, stated, on the present occasion the article in question was written by the aforementioned Constantinides himself. It was an article in respect of which Constantinides  
5 must, in the circumstances of this case, be regarded as bearing full responsibility in his capacity as the Chief Editor of the newspaper and, also, as the person who had been named as having the management or control of the newspaper for the purposes of section 3(A) of Cap. 79, as amended by Law 69/65.

10 In the light of all the foregoing we have reached the conclusion that it was reasonably open to the trial court to find that, in respect of the article in question, Constantinides was so identified with the appellants that in law his writing and publishing of the aforesaid article became an act of the appellants as a company and, therefore, the appellants could be and were rightly  
15 convicted of the offence of which they were found guilty.

Consequently, this appeal fails and it is dismissed accordingly.

*Appeal dismissed.*