23

12th October, 1982

DATELINE CHANNEL ISLANDS LIMITED

- v -

SELECTA VISION LIMITED

Advocate G.Le V. Fiott (on behalf of H.M. Viscount) for Plaintiff.
Advocate K. H. Valpy for defendant.

DEPUTY BAILIFF: This is a continuation of an earlier hearing before the Court between the same parties. Judgment on liability was given on the 30th August, 1979. We set out the relevant dates. The plaintiff company opened its discount electrical business in April 1977. The offending letter was published on the 20th July, 1977. The managing director of the plaintiff company resigned in September 1978. The plaintiff company was declared 'en désastre' at the instance of Comet, which had been instrumental in setting it up, on the 8th August, 1980, the first hearing having taken place as we've said on the 30th August, 1979. On the 6th March, 1980, the plaintiff company was given leave by the Judicial Greffier to amend its pleadings to allege special damages. Now, over two years later after the first hearing, we have been asked by the plaintiff company to assess general damages. It has not however persisted in its claim for special damages for reasons that are not clear to us. On the other hand Mr. Fiott has submitted that in an award of general damages the Court should include a sum for aggravated and exemplary damages because he said not only was the letter written at least in part libellously and contributed substantially to the subsequent failure of the plaintiff company but it was written maliciously, that is to say with a malicious motive. That latter allegation was not pleaded. He cited a number of awards in the English courts of damages for liable. They are of little use to us for, as Mr. Valpy said, there is no doctrine of precedent in damages for libel. After hearing Mr. Sims-Hilditch who, with another person,

had invested a substantial sum in the plaintiff company, and Rear Admiral Sandford, its managering director for a year or so, and Mr. Grainger, the beneficial owner with his wife of the defendant company, we have come to the following conclusions:-

1. The letter was part of an advertising and price war.

2. Its wording was deliberately chosen by Mr. Grainger on behalf of the defendant company.

3. He was not actuated by a malicious motive.

4. Because coloured television sets, the items mentioned in the advertisement, made up only 30% of the plaintiff company's business it would not be reasonable to attribute more than that proportion to its eventual collapse some three years later in spite of the suggestion that was made to us that there was a "knock-on" effect. Moreover it must be remembered that at the time there were at least twenty other retailers selling coloured television sets although there was only one other discount store.

5. The frank admissions of Admiral Sandford concerning over-manning in the plaintiff company show that the complaint of Comet on this subject were justified by events.

6. Exemplary damages should not be awarded, the plaintiff company not being in the position of an individual with feelings which had been hurt.

Two matters were advanced by Mr. Fiott for including in the damages a sum for aggravated damages. The first was the failure of the defendant company to plead justification. In our opinion that is not a matter which by itself should increase a normal award of damages which, as is quite clear in these cases, is compensatory and not punitive; for as Lord Diplock said in Broome and Cassell 1972 1 A. C. at page 1125 - "The difference between compensatory and punitive damages is that in assessing the former the jury must consider how much the plaintiff ought to receive, whereas in assessing

the latter they must consider how much the defendant ought to pay." Secondly Mr. Fiott submitted that the defendant company did not either withdraw the letter or apologise. If it was advised by its advocate, as it clearly was, accepting the evidence of Mr. Grainger as we have on this point, that the letter was not libellous, it was entitled to stand on it; wrongly as it turned out. Again we do not think that that is a matter for awarding aggravated damages. But Lord Radcliffe in a passage in Associated Newspapers and Dingle (1946) A.C. at page 359 says this:- "They" (that is the Jury) "should allow for the sad truth that no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm it has done or the hurt it has caused." We have taken that matter into account in assessing the damages. As far as the plaintiff company is concerned it has not provided a satisfactory explanation for the delays in bringing these actions to trial. Both parties agreed that we should make an award in the light of the damage done to the plaintiff company in July 1977. We have had little or no evidence what that damage was; only summise, but obviously some damage was occasioned. Nevertheless, the defendant company persisted at the first hearing, at which Mr. Grainger was not called, in a submission that the action was wrongly instituted. It was sure it was right; it was not. Accordingly we have taken that attitude of the defendant company into account in making our award of damages. Unfortunately we have had no figures at all from the plaintiff company to help us to decide what measure of damage it suffered. It seems to us that the plaintiff company was hoping that in our award there would be reflected a sum justifying its submissions on its behalf that the letter led in a substantial degree to the company's collapse. We cannot agree. To some extent of course an award will be artificial inasmuch as it will be merely added to the assets of the plaintiff company now in the hands of the Viscount for distribution among the company's creditors. Under all the circumstances we have come to the conclusion that the proper sum to award of

compensatory damages is the sum of £3,500 with interest at 10% from the date of the publication until the 30th June, 1980. We think that by that time the plaintiff company should have taken steps to have had the question of the damages assessed by this Court. The plaintiff company will have its costs, and as regards the implementation of our award there will be a stay of execution for four weeks pending any appeal.