

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCv2023/0137

BETWEEN

[1] SUSANNA ADDARI
[2] ROBERTO FALANGOLA
[3] ANTIGUA SLIPWAY LIMITED

Claimants

and

[1] ERIC PIQUENET
[2] ISABELLE PIQUENET
[3] MARY JOHN

Defendants

Appearances:

Mr. Hugh Marshall Jr. and Mr. Jonathan Marshall for the Claimants
Ms. Sherrie-Ann Bradshaw for the First and Second Defendants
Mr. Sherfield Bowen for the Third Defendant

2025: October 27
November 21, 24 (Submissions)
December 18

JUDGMENT

- [1] **Byer, J:** In a world without rules or structure, individuals may speak and act freely without repercussion. However, the society in which we live is governed by rules, supported by structure, and there are consequences for our actions. One such consequence may arise when we speak or write of another person without care or in the heat of the moment, which, if our actions are not carefully considered, those words may give rise to the possibility of being deemed defamatory.

- [2] Although a precise definition of defamation has proven to be elusive, the authors of the classic text *Winfield and Jolowicz on Tort*¹ expressed it in the following terms: “*It has been said that a statement is defamatory if it tends to bring a person into hatred, contempt or ridicule,*” or that such a statement must “*tend to lower the claimant in the estimation of right-thinking members of society generally.*” It is these ramifications that the claimants allege the defendants triggered on various dates and times through their Facebook posts in 2023.
- [3] The Claimants, on the 12th day of April 2023, filed a Claim form and Statement of Claim seeking:
- (1) Damages including aggravated and exemplary damages for defamation against the defendants for words published and broadcasted on Facebook on or after the 14th March 2023.
 - (2) An injunction restraining the Defendants whether by themselves their agents, servants, or howsoever otherwise from publishing or causing to be published the said or similar defamatory words about the claimants.
 - (3) Interest pursuant to *section 27 of Eastern Caribbean Supreme Court Act Cap 143* or the Laws of Antigua and Barbuda 1992 (R.E.).
 - (4) Costs on the indemnity basis and/or wasted costs against the Defendant.
 - (5) Such further and other relief as this Honourable Court deems fit.
- [4] The first and second defendants filed an amended defence on 14th June 2023 and relied on the defences of truth (justification) and fair comment, or that the words were mere words of heat or vulgar abuse after the failure to obtain injunctive relief against their eviction notice by the third claimant. The defendant therefore pleaded that the words which they admitted publishing were not actuated by malice and that in any event the Claimants having failed to plead any special damage the words were not actionable, and as such the claimants would

¹ 19th Edition at para 13-002

not have suffered any serious harm to reputation, although the reason for saying so was not pleaded.

- [5] The third defendant, acting in person, filed her defence on 11th May 2023 pleaded that having personally seen certain documents that had been sent to the first and second defendant, she was entitled to speak on the same and in fact she substantiated the statements made by her in her own Facebook post. In essence she relied on the defence of fair comment, although the same was not specifically pleaded.
- [6] The Claimants filed no reply to the defence of the third defendant but did file a reply to the amended defence of the first and second defendants, and denied that the words were uttered in the heat of the moment or disappointment on a ruling issued by the court (differently constituted) in separate proceedings brought by the first and second defendant for injunctive relief against the claimants. They further denied that the words were true or amounted to fair comment or were in fact the honest held opinion of the first and second named defendants.

Background

- [7] The first and second claimants, Ms. Susanna Addari and Mr. Roberto Falangola, are mother and son. Ms. Addari is the majority shareholder of the third claimant, Antigua Slipway Limited (“ASL”), and Mr Falangola serves as its Managing Director. ASL operates a boatyard facility at Nelson’s Dockyard, English Harbour, pursuant to a head lease granted by the Government of Antigua and Barbuda dated 21 July 1966.
- [8] The first and second defendants operated a restaurant business known as La Brasserie d’Antigua on premises sublet from ASL. The parties entered a sublease arrangement beginning in 2017, and a formal sublease was executed on 19th July 2021.
- [9] The sublease expired, and on 14th November 2022, and the first and second Defendants were served with a notice to quit requiring them to vacate the premises on or before 31st March 2023. The first and second defendants sought injunctive relief restraining the notice from taking effect, which was refused by the court on 12th January 2023.

[10] Following the service of the notice to quit and the court's refusal of injunctive relief, posts were published on Facebook sometime between March and April 2023 relating to the claimants and the circumstances surrounding the tenancy and events thereafter. Correspondence was exchanged between the parties' legal practitioners regarding the publication and removal of certain posts.

[11] As the content and publication of the Facebook posts form a central part of the issues before the court, the court considers it necessary to set out the relevant posts in chronological order, together with the circumstances of their publication, before turning to the issues raised in this claim.

The Publications

[12] The court sets out below the Facebook posts relied upon by the claimants, reproduced from Schedule 1 of the Statement of claim filed on 12th April 2023.

Post #1 (herein referred to as the "Hello all post")

Published: 14th March 2023

By: La Brasserie d'Antigua

"La Brasserie d'Antigua"

Hello all our friends customers Antiguan I know the text is long but please read to the end.

We are running a business in English Harbour Slipway Dockyard since November 2017. Our <<landlord>> is Italian / Antiguan citizen but more importantly they have just a public head lease. So they do not own the property.

This open letter today is because despite having spent around 60000 ECD in lawyer's fees, we received a notice to quit our business by the 31th (sic) of March 2023.

Please, could you let me know if its acceptable that a public lease is given to dishonest people??

This dishonest person, public tenant, our landlord, asked us 200000USD to get an empty space, (and since 15 years so much more from others subtenants) and send this money in a private offshore Switzerland bank account.

That is personal enrichment. So nothing goes to ta for the Antiguan economy... and we also pay a rent of 2000usd monthly.

We discovered they had no legal authority to sell and of course sublease our space, but they don't care about the law and their public headlease

So our question is now how come this person is "working" in Antigua for so many years, selling and renting commercial space illegally and was never annoyed/sanctioned by the law of Antigua and Barbuda? It seems the previous tenant of the headlease did the same way: sublease commercial space with no legal authority and their headlease was broken by a court decision.

Will it mean now that the shareholder in this actual company is protecting him??? Andwhy??

Is it acceptable that the dishonest public tenant can do and act as they want without any control??? This public tenant was guilty of criminal association and got 6 million euros (almost 6 millions USD) confiscated for fraud in Italy ...when he died. Now it's his second wife and her son who continue...

Is it acceptable that this illegal landlord vandalized the door of our business?

Is it acceptable that our illegal public landlord increased our rent by 61% + 15\$ with no discussion no negotiation with no respect for Antiguan laws ??? When out contract said no more than 10% each year???

Is it acceptable that our illegal public landlord harassed, intimidated and tried to kill

our business, day after day since for 4 years, in so many ways send us a notice to quit the 31th (sic) of March, as we refused the crazy 76 %increase rent?? Is it acceptable, our illegal public landlord came with a police officer (with no uniform) to threaten us to go to jail if we don't delete the proof and his apologies for their bad behaviour?

Is it acceptable our illegal landlord came in our private business during a closing day to put some dog faeces?

Is it acceptable our illegal landlord paid 2 times his invoices in our business with a card payment (American Express) from a man who died 18 months before??

Is it acceptable our illegal landlord overcharged us 1.25 ec /the electricity unit when APUA charges between 0.38 and 0.45 ec??? And modified the submeter??? We had to pay few months 8000 ec/ month electricity ...but average monthly invoice is 5500 ec..

Is it acceptable our illegal landlord overcharged us to 0.45/water unit when the gov water charge 21 ec/month/1000 gallons?? We had to paid (sic) few months around 1000 usd water per month???

Is it acceptable we don't have a free access to the submeters??? And cant get the APUA's invoices??

Is it acceptable our illegal landlord confiscated the business's bathrooms with all the bad consequences for our customers??

Is it acceptable that our illegal landlord reduced our commercial space after 2 years and of course didn't reduce our rent amount???

Why with this few reasons they still operate with the National Park's headlease?

Do the NP thinks there aren't any Antiguan people competent and honest to get the job??"

His specialized in recovering of scam funds and hacked account all you need do is provide him with all screenshot transaction you made those scammers his fast and legit².

Post #2 – Following soon

Published: 14 March 2023 at 10:07pm

By: La Brasserie d'Antigua

"Following soon all the proofs (sic) one by one if you want??

As our landlord asked us 550ec for diffamation (sic) and continue to send us this 🤔

Just let us know ?? 🤔🤔

Comment: Nick Edwards

Clearly your landlord has some mental health issues or smoking too much cannabis!! Stay strong ❤️"

Post #3

Published: (timestamp indicated as "14h") (herein referred to as the "we apologise post").

By: La Brasserie d'Antigua

"We apologize to all our customers that you have to give your identity at the Antigua Slipway Dockyard to come just for a drink/breakfast/lunch/dinner/collection yours (sic) orders. When you arrive by car. I thinks (sic) we are the only restaurant in the world who get such a bad (sic) treatment from our instruction landlord.

² Per comment on facebook user Lord Ejiro.

And so sorry when you arrive by boat that you are extorted of 100usd by the same landlord (Antigua Slipway manager) just to park the time of your lunch.

Thanks (sic) you all for continuing to support the team and us. We all love you

Post #4

Published: (marked “4 d”)

31st March 2023

By: Turks Lee

“I got word that an alleged illegal act is set to take place at a restaurant located at Antigua Slipway operated by a French couple. Name of restaurant is La Brasserie Antigua. It is alleged that the landlords an Italian family who owns 90% of slipway with the Government owning 10% I’m told are attempting to evict the tenants illegally. It is alleged that the tenants lawyer advised that this eviction cannot be done without a court order which the landlord doesn’t posses. I’ve been following this situation quietly after reading a post penned by tenants which was since removed. I will go to the site tomorrow before 12pm. I think the media should be involved.”

- [13] The publications prompted pre-action correspondence concerning the allegations made and requested that the posts be removed. Those efforts did not resolve the dispute, and the matter ultimately proceeded to trial.
- [14] The matter proceeded as a bifurcated trial. The first and second claimants gave evidence together with the evidence of Mr. Fabio Giorgi, General Manager of the third claimant. The first, second and third Defendants each gave evidence on their own behalf.
- [15] At the conclusion of the evidential stage, the court was satisfied that there were discrete issues requiring determination arising from the publications at the centre of the claim.

ISSUES

[16] Having considered the pleadings, the evidence led at trial, and the publications set out above, the issues that arise for determination in this matter are as follows:

1. Whether the words complained of are capable, as a matter of law, of bearing a defamatory meaning and were defamatory in relation to the claimants?
2. If the words are defamatory whether the defendants are entitled to rely on any of the pleaded defences, including the defences of truth and fair comment (honest opinion).

Law and Analysis

Issue #1: Whether the words complained of are capable, as a matter of law, of bearing a defamatory meaning.

[17] In determining whether the words complained of are capable of bearing a defamatory meaning, the court is guided by established principles of the common law of defamation. As **Henry JA (Ag.)** explained in ***Vere Bird III v Gaston Browne***³ at paragraph [100], “to succeed in a claim of defamation, a claimant is required to prove that the defendant has published material about him to another person or other persons which tends to lower him in the estimation of right-thinking members of the society.” Henry JA (Ag.) further noted that, in construing the meaning of the words used, the court gives the words their natural and ordinary meaning, which may include any implication or inference that a reasonable reader may draw from them. For these purposes, the reasonable reader is one who is guided by general knowledge, has no special knowledge of the subject matter, and is not fettered by strict legal rules of interpretation⁴.

[18] The principle that the words must be capable of lowering the claimant in the estimation of right-thinking members of society, whether expressly or by implication, was also articulated

³ ANUHCVP2023/0024

⁴ In articulating this approach, Henry JA (Ag.) cited the authorities of *Lewis v Daily Telegraph Ltd* [1964] AC 234 and *Jones v Skelton* [1963] 1 WLR 1362.

in **Beulah Mills v Michael Perkins and anor**⁵, where Williams J at paragraph 85 stated that it is established law that for a statement to be defamatory, it must contain either expressly or by implication, statements of fact which tend to lower the claimant in the estimation of right-thinking members of society generally or expose him or her to contempt, public hatred, or ridicule. The learned judge noted that it is trite law that a statement is defamatory if it imputes dishonesty to a person in the context of his trade, business, or profession. In determining whether the statement imputes such a lack of quality, the test remains how the ordinary, reasonable, fair-minded reader, to whom the words are published, is likely to understand them.

[19] Thus, whether words are capable of conveying a defamatory meaning, is a threshold question of law for the court. At this stage, the court is concerned only with the natural and ordinary meaning of the words, including any inferences or implications that a reasonable, fair-minded reader would draw. The court does not consider whether the words were true or whether any defence may ultimately apply. The test remains that stated in **Vere Bird III v Gaston Browne**⁶, and **Beulah Mills v Perkins**⁷: whether the words are capable of lowering the claimant in the estimation of right-thinking members of society.

[20] Additionally, beyond the necessity to establish that the words must be defamatory there is a second and more pressing requirement to be successful on a claim for defamation that the words must refer to the Claimant. As the Learned Author in the text Commonwealth Caribbean Tort Law⁸ stated:

“The second requirement for a successful action in defamation is that the defamatory words must be shown to have referred to the claimant. In most cases the claimant will be mentioned by name, but this is not a necessary requirement. It is sufficient for liability if he is mentioned by, for example, his initials or his nickname, or if he is depicted in a cartoon, photograph or verbal description, or if he is identified by his office or

⁵ NEVHCV2009/0098

⁶ Supra

⁷ Supra

⁸ 5th Edition – Gilbert Kodilinye at pages 260-261; further distilled in the case **Knuaffer v London Express Newspaper Ltd** [1944] 1 All ER 495 at 496 per Viscount Simon LC

post. It may also be sufficient if a particular group of which he is a member is mentioned. In all cases, the test is whether a reasonable person might understand the defamatory statement as referring to the claimant. In *Attorney General v Milne*, for instance, it was held that there was sufficient reference to the claimant where a radio broadcaster referred to 'one irresponsible businessman ... who ... pledges half a million dollars on placards, posters and other subversive material' and in *Gairy v Bullen* (No 1), a newspaper article which alleged sexual impropriety towards young girls seeking employment was held to contain sufficient reference to the claimant, the Prime Minister of Grenada, although it did not mention him by name, because 'a substantial number of ordinary sensible persons who knew the [claimant], reading the article, would believe that it referred to him'. Thus the question must be in this instance not whether anyone did identify the claimant but whether persons who were acquainted with the claimant could identify him or her from the words used⁹. This proposition was no more clearly identified than in the Barbadian case of **Jordan v The Advocate Co. Ltd.**¹⁰ In that case, "[T]he defendant newspaper published an article under the heading, 'Little Help for Junior Doctors', in which it was alleged that junior doctors at the Queen Elizabeth Hospital were often forced to make decisions regarding the treatment of patients without the benefit of consultation with senior medical practitioners. The latter were accused of spending more time playing golf than attending to their duties at the hospital. The claimant, a senior consultant physician and prominent amateur golfer, brought an action for libel against the newspaper, claiming that, although the writer of the article purported to criticise senior practitioners as a group, and the claimant's name was not mentioned, reasonable readers would understand the article to refer to him.

⁹**Beulah Mills case** Supra n10 at para-90.

¹⁰(1998) High Court Barbados No 727 of 1996 (unreported)

Payne J, in the Barbados High Court, considered that the question was ‘whether reasonable readers generally or reasonable readers with the knowledge of certain special facts proved would understand the article to refer to the [claimant]’. He went on to hold that, in the circumstances, reasonable readers generally would not understand the article to refer to the claimant, as distinct from the group of which he was a member, but that persons knowing the special facts, namely, that there was only one other consultant at the hospital who played golf, and that this consultant was in the Department of Radiology and would not, therefore, be involved in the medical care of patients, would reasonably understand the article to refer to the claimant.”¹¹

[21] Those principles guide the court’s assessment of whether the words complained of are, in their natural and ordinary meaning, capable of being defamatory. It is against that legal framework that the court also recalls the related requirement that the words must be capable of referring to the claimants, an issue which often intersects with the question of meaning and assists in determining how the ordinary reasonable reader would understand the impugned publications. Bearing that in mind, the court now considers the relative arguments submitted by the parties.

[22] The claimants contended that the posts published by the first and second defendants were defamatory within the meaning set out in ***Sim v Stretch***¹², as they would plainly lower them in the estimation of right-thinking members of society.

[23] The claimants along with their submissions, relied on the evidence of second and first claimants, who testified that the natural and ordinary meaning of the “Hello All” post conveyed that they were criminals, who were implicated in criminal conduct both in Antigua and Italy, were associated with criminal elements, acted dishonestly and depravedly, and were incompetent in the management of the Slipway. They testified further that the post

¹¹ *Supra*

¹² [1936] 2 All ER 1237 at 1240 Lord Atkin defined defamation as a statement that “tends to lower the plaintiff in the estimation of right-thinking members of society generally”.

conveyed that the third claimant engaged in unethical business practices, was operated by persons of questionable honesty, and was unfit to hold a public lease. In their evidence, they described all these allegations as false and damaging.

[24] In relation to the “We Apologize” post, the claimants proffered that the allegations of “extortion,” “harassment,” “intimidation,” and “robbery” conveyed that the claimants were engaged in criminal or improper conduct. They noted further that the defendants, in subsequent comments, asserted that they had no legal authority to sublease or sell the space and that they continued to “harass,” “intimidate,” and “rob” them. They stated that such allegations went directly to the integrity of the claimants’ business and personal reputations. They also highlighted comments made by members of the public beneath the posts, including “buss a cap in his ass,” “me’d bark a slap cross he face,” and “somebody woulda dead”, which, while not determinative at this stage, demonstrate how the words were understood by readers and the degree to which the publications exposed the claimants to ridicule, contempt, and threats of harm.

[25] With respect to the third defendant’s post (“I got word”), the second claimant testified that the post conveyed that the claimants were attempting to evict tenants illegally, were acting outside the authority of the court, and were otherwise engaged in unlawful conduct. He described the suggestion that the media should attend as encouraging others to view the claimants negatively and to intervene in a manner adverse to their reputation.

[26] The claimants submitted that altogether, the publications made by the first, second, and third defendants contain multiple allegations of dishonesty, illegality, criminal behaviour, fraud, extortion, and misconduct in the running of their business operations, including the allegation that they unlawfully attempted to evict tenants, vandalised property, laundered funds, engaged in criminal association, and exploited subtenants for personal enrichment. They contended that these allegations are inherently defamatory and strike at their character and reputation in both their personal and business capacities as reflected in the comments that followed, demonstrating how the words were understood and the reputational harm that flowed.

[27] In response, the defendants submitted that the words complained of were not capable of bearing the defamatory meanings alleged by the claimants. The first and second defendants in particular, relied on the established principle articulated in ***Charleston v News Group Newspapers Ltd***¹³, that the natural and ordinary meaning of words cannot be assessed in isolation but must be determined in light of the full context in which the words appear and the mode of publication. They further relied on ***Duncan & Neill on Defamation*** which was referenced in ***Charleston*** supra, which emphasized that context may either enhance or neutralize the defamatory sting of particular words, especially in online communication, where tone, informality, and immediacy may affect meaning. The defendants also pointed to the guidance in ***Halsbury's Laws of England***, which stated that the Court must determine the single natural and ordinary meaning the words would convey to the reasonable reader, and that even strong or offensive language may not be defamatory if, given the circumstances, the reasonable reader would not interpret the words as statements of fact.

[28] The first and second defendants also submitted that beyond the clear indication that the words could not be defamatory in their ordinary meaning, that in any event the impugned words constituted mere vulgar abuse, a category of language which, although intemperate or insulting, cannot amount to a defamatory allegation when viewed objectively. For this proposition the first and second defendants relied on the learning in ***Halsbury's Laws of England*** where it made clear that strong language or insults may fall outside defamation where the tone, circumstances, or manner of speech makes it clear that the words are not intended literally but as expressions of anger or contempt. Counsel cited the case of ***Bennette v Cohen***¹⁴, where Bryson JA explained that “vulgar abuse” is relevant to meaning insofar as the words and their context may reveal that no reasonable person would take the statement seriously or view it as affecting reputation. The emphasis in that case was therefore on the inquiry, not as to the rudeness of the language, but whether the imputation conveyed is one that would injure reputation in the eyes of a reasonable person.

¹³ [1995] 2 AC 65

¹⁴ 2005 64 NSWLR 84

[29] The first and second defendants in this regard also referred to *Ward v Zelikovsky*,¹⁵ as cited with approval in *Michelle O'Neill v Carson*¹⁶ referenced in *Bennette v Cohen supra*, where the court held that certain derogatory epithets (such as “bitch”) are incapable of being defamatory because they have no objectively verifiable factual content, and function merely as expressions of personal dislike or emotion. The first and second defendants therefore argue that similar reasoning should be applied to their Facebook posts. Thus, the first and second defendants argued that the ordinary, reasonable reader, aware of the heated landlord-tenant conflict and the informal nature of Facebook, would interpret the statements as exaggerated expressions of frustration rather than literal assertions of criminality, dishonesty, or misconduct. They contended that the words complained of, lacking any definable factual core must fall within the doctrine of vulgar abuse or hyperbolic speech, incapable of conveying the grave meanings alleged by the claimants. The third defendant in her submissions, made it clear that the words she published were not capable of bearing the defamatory meanings pleaded by the claimants. She contended that none of the allegations advanced, in the pleadings of the claimants could reasonably be derived from the words used in her post.

[30] She contended that the claimants’ interpretation, particularly the suggestion that her post amounted to a “dog whistle” that could incite violence, was speculative and unsupported. Indeed, it was submitted that nothing in the post could lead a reasonable reader to infer threats, misconduct, or reputational harm.

[31] The third defendant maintained that her post merely relayed an allegation that an eviction was to occur and indicated her intention to attend, which did not, as a matter of law, lower the claimants in the estimation of right-thinking members of society. She therefore submitted that the words are not capable of being defamatory.

Discussion

¹⁵ 1994 136 NJ 516

¹⁶ [2023] NIMaster 9

- [32] The sole question for the court on this issue is whether the words viewed objectively, are capable of bearing a defamatory meaning. It is not for the court at this stage to consider what the intention of the defendants was or was not or whether the words are true or otherwise defensible. That being said, the first and second defendants' characterization of their posts as "words of heat" or expressions of frustration, and the third defendant's assertions that her post conveyed nothing more than an allegation of an impending eviction, do not and cannot determine the issue. The test remains how the ordinary reasonable reader would understand the words in their natural and ordinary meaning.
- [33] The first and second defendants' submissions emphasised context, tone, and the informality of Facebook as a medium and argue that the impugned words constitute exaggerated expressions of displeasure or mere vulgar abuse and therefore are not actionable. While the Court accepts that context may affect meaning, and that in some circumstances strong or intemperate language may fall outside the law of defamation where it clearly amounts to nothing more than insult or hyperbole, whether language rises to the level of vulgar abuse is itself a question of meaning, and such a finding must be supported by the actual words used and the context in which they were deployed.
- [34] Against that background, the court notes that the first and second defendants' own evidence sits uneasily with their submission that the words are not capable of bearing the meanings alleged. Under cross-examination, the first defendant in fact accepted that the "Hello All" post referred to the claimants and suggested that they did not own the property, were dishonest, acted outside the law, and acted illegally in relation to the headlease. He further accepted that the post accused the claimants of engaging in dishonest conduct, including placing money into offshore bank accounts. These concessions align with the meanings identified by the claimants and are inconsistent with the submission that the words could not bear such meanings.
- [35] This was in fact compounded by the evidence of the second defendant. Under cross-examination she accepted that she regarded the first and second claimants as "dishonest," "fraudsters," and persons who "continued to be criminals," although she acknowledged having no personal knowledge of any criminal conviction. She stated that she published the

posts because she believed the claimants had behaved dishonestly and considered her statements to reflect that belief. Her admissions provide direct insight into the nature of the allegations conveyed in the posts and undermine the contention that the words were mere abuse or rhetorical flourish devoid of defamatory sting.

[36] There is, therefore, a notable conflict between the first and second defendants' reliance on the doctrine of vulgar abuse and their admissions under cross-examination that the posts did in fact accuse the claimants of dishonesty, illegality, fraud, and criminality. Their evidence makes it plain that the posts were intended, at least in part, to convey these allegations. These concessions reinforce, rather than undermine, the claimants' case that the words are capable of bearing the defamatory meanings alleged.

[37] Further, the defendants also contended that insofar as the words complained of stated matters of fact, they were true, and insofar as they expressed comment, they constituted fair comment. That stance implicitly recognises that the words, on their face, allege serious wrongdoing capable of harming reputation; otherwise, there would be no need to justify them as truth or opinion. It is logically difficult to maintain, on one hand, that the words are incapable of bearing defamatory meanings, and, on the other hand, that those same words constitute factual allegations or comments capable of being defended.

[38] In the court's view, these contradictions within the first and second defendants' submissions and evidence are significant. They support the conclusion that the natural and ordinary meaning of the "Hello All" and "We Apologize" posts involve allegations of dishonesty, fraud, illegality, extortion, and serious misconduct. If the publishers of the words understood and intended them to convey such serious imputations, it is difficult to see how the ordinary, reasonable reader would interpret them as mere rhetorical invective.

[39] The claimants' evidence is that the third defendant's post conveyed that they were attempting to evict tenants illegally, were acting outside the law, and were disregarding the authority of the court. The third defendant, for her part, submitted that her post merely relayed an "allegation" that an eviction was to occur and expressed an intention to attend

and involve the media. She argued that nothing in her post is capable of imputing dishonesty, criminality, or misconduct.

[40] However, on cross examination the third defendant accepted that she had in fact described the alleged conduct as “illegal.” At this stage, the court is not required to determine whether that belief was justified. The question is once again, how would the ordinary reasonable reader understand such a statement. An assertion that a person is acting “illegally,” particularly in the context of property rights and court proceedings, is capable of conveying that the person is acting without lawful authority or in breach of legal process.

[41] An allegation of illegality is, on its face, capable of lowering a person in the estimation of right-thinking members of society. Such an imputation goes directly to personal integrity and lawfulness of conduct and therefore falls within the established categories of statements capable of being defamatory. The fact that the third defendant may have viewed her post as commentary or public interest advocacy does not alter the objective meaning the words are capable of bearing.

[42] The court therefore rejects the submission that the words complained of, whether published by the first and second defendants or by the third defendant, amount to mere vulgar abuse or rhetorical exaggeration. While context and tone are relevant, the words used here contain specific allegations of dishonesty, illegality, extortion, and improper conduct which, if understood in their natural and ordinary sense, are plainly capable of lowering the claimants in the estimation of right-thinking members of society.

[43] Accordingly, the court is satisfied that the impugned words are capable, as a matter of law, of bearing the defamatory meanings alleged. The question of what meanings were actually conveyed and whether any defence applies falls to be determined.

[44] Although identification was not an extant issue between the parties, the Court considers it appropriate, for completeness, to address the requirement that the words complained of must be shown to refer to the claimants. The evidence establishes that Antigua is a small and close-knit community and that both the first and second claimants are widely known as

the individuals responsible for the management of the Slipway on behalf of the third claimant. The descriptions used in the impugned posts such as “the landlord,” “the Slipway manager,” “the Italian/Antiguan citizen,” and the reference to an “Italian family who owns 90% of the Slipway”, are, on the uncontested evidence, identifiers uniquely associated with the claimants.

- [45] This is reinforced by the claimants’ testimony that members of the public commonly regard them as the landlords of the Slipway, as well as by the defendants’ own acknowledgment that their posts were directed at the claimants. Applying the well-established principle articulated in ***Commonwealth Caribbean Tort Law*** supra, the question is whether reasonable readers acquainted with the claimants would understand the words to refer to them. In the court’s view, that question admits only one answer on the evidence before it. The references were sufficiently clear as a matter of law and fact, and the requirement of identification is therefore satisfied. The court is therefore satisfied that the words were defamatory and defamatory of the claimants. However, all three of the defendants have raised affirmative defences which if established would stand as an absolute defence to any defamatory meanings that the words created.

ISSUE 2: Whether the Defendants are entitled to rely on any of the pleaded defences, including the defences of truth and fair comment (honest opinion).

Defence of Truth

- [46] Having found that the words complained of are capable of bearing defamatory meanings and that they were understood to bear such meanings in relation to the claimants, the court must now consider whether the defendants have made out any defence which would defeat liability. The primary defence relied upon by the first and second defendants is the defence of truth by paragraph 15 of the amended defence filed on the 14th June 2023 . In Antigua and Barbuda, that defence is no longer governed solely by the common law but has been codified by statute. The applicable law is contained in **section 20** of the **Defamation Act**¹⁷, which the court now sets out in full.

¹⁷ 2015.

[47] **Section 20** in its entirety states as follows:

(1) Defence of truth

- (a) In proceedings for defamation, the defence known before the commencement of this Act as the defense of justification shall, in relation to an action for defamation brought after the commencement of this Act, be known as the defence of truth.
- (b) In proceedings for defamation based on only some of the matter contained in a publication, the defendant may allege and prove any facts contained in the whole of the publication.
- (c) In proceedings for defamation, a defence of truth shall succeed if-
 - (i) The defendant proves that the imputations contained in the matter that is the subject of the proceedings were true, or not materially different from the truth; or
 - (ii) Where the proceedings are based on all or any of the matter contained in a publication taken as a whole was in substance true or was in substance not materially different from the truth, if the words not proven to be true do not materially injure the claimant's reputation having regard to the truth of the remaining imputations." (my emphasis added)

[48] The burden of proving the statutory defence of truth rests squarely on the defendant who raises it. The court is therefore required to identify the imputations found to arise from the impugned words, and then to determine whether the defendant has proven, on the evidence, that those imputations were true, or not materially different from the truth.

[49] The Court also bears in mind that, in determining the meaning of the publications for the purpose of applying **section 20**, the publications must be read as a whole and in their proper context. It is not every detail or subordinate allegation that must be proved with forensic exactitude; however, the defendant must establish the substantial truth of the sting of the imputation(s) complained of. Where a defendant relies on a plea that a publication was partly

fact and partly comment, or that the tone was heated and informal, those matters may bear on meaning and on the availability of other defences, but they do not relieve a defendant who invokes **section 20** of the obligation to prove the truth of the imputations to which the defence is directed.

- [50] The court notes that the claimants having relied on multiple distinct imputations arising from multiple posts is necessary to address the statutory requirements in a structured manner. Thus, the court will consider each publication in turn, identify the imputations found, and then assess, imputation by imputation, whether each defendant has proven the substantial truth of those imputations on the evidence.

(a) The “Hello All” Publication

- [51] The Court turns first to consider the defence of truth as advanced by the first and second defendants in relation to their post which forms the foundation of the claimants’ case and is the publication from which the gravest imputations were alleged to arise.
- [52] In assessing the applicability of the defence of truth under section 20 of the Defamation Act, 2015, the court must examine whether the first and second defendants have proven, on a balance of probabilities, that the imputations conveyed by the “Hello All” post were true or not materially different from the truth.
- [53] The first and second defendants contend that the substance of the post was true. They rely principally on their belief that the third claimant lacked lawful authority to sublet the premises, that payments made under the sale agreement were routed offshore without proper tax treatment, and that information published in an Italian newspaper following the death of Mr. Enzo Addari supported allegations of fraud or criminal association.
- [54] However, section 20 requires more than belief, suspicion, or inference. The court must be satisfied that the defendants have proven the truth of the defamatory sting of the imputations conveyed. The existence of disputes over rent increases, sublease consent or business operations do not establish the truth of the words published.

[55] The court will therefore examine, in turn, the evidential foundation relied upon by the first and second defendants in support of each category of imputation arising from the “Hello All” post. The assessment of the publication is as follows:

(1) “Please, could you let me know if it’s acceptable that a public lease is given to dishonest people??”

[56] These words by their plain meaning impute that the Claimants are dishonest persons and, by reason of that dishonesty, are unfit to hold a public head lease granted by the State.

[57] The substance of the first and second defendants’ case is that the third claimant did not have lawful authority under the headlease to sublet commercial space without governmental consent, and that this alleged unlawfulness supports the characterisation of the claimants as “dishonest people”.

[58] During rigorous cross-examination, the first claimant accepted that the headlease expressly required written consent for subletting and that no written consent was produced before the court. She maintained, however, that written consent was unnecessary because a later arrangement, described as a Deed of Compromise, altered this position. That document, however, was not before the court. Similarly, the second claimant accepted that the headlease contained a requirement relating to consent or notification. He asserted that permission existed by virtue of a “deed of compromise”, said to give generic approval for a specified number of subtenants, but he was unable to produce the document or identify its location.

[59] Be that as it may, the claimants’ evidence was that the third claimant’s right to sublet was confirmed by a settlement agreement dated 10 June 1999, which provided for a defined number of rentable sublease spaces. They stated that subletting on that basis had been treated as accepted throughout the defendants’ period of occupation, including during the years when rent was paid without objection on that footing.

[60] The claimants therefore disputed that the subletting was unlawful. They further disputed that any question about consent, whether proved or not, justifies the broader imputation that they are dishonest people or unfit to hold a public lease.

[61] In contrast, the first and second defendants relied on assertions that they were *told* by a National Parks Authority board member that the third claimant lacked authority to sublet or sell space. However, such assertions amount to hearsay and do not constitute proof of the truth of the imputation of dishonesty for the purposes of **section 20**.

[62] For the purposes of the statutory defence of truth, the issue is not whether there was a dispute about compliance with the headlease, nor whether the defendants genuinely believed that the claimants lacked authority to sublet. The question is whether the defendants have proved the truth of the imputation conveyed, namely that the claimants are dishonest people unfit to hold a public lease.

[63] In looking at the evidence that was used in support of this contention, the Court concludes that this imputation is not proved to be true, nor is it shown to be not materially different from the truth within the meaning of **section 20** of the Defamation Act.

(2) “This dishonest person, public tenant, our landlord, asked us 200000USD to get an empty space ... and sends this money in a private offshore Switzerland bank account. That is personal enrichment. So nothing goes to tax for the Antiguan economy...”

[64] The words imply that the claimants personally enriched themselves, **by** diverting funds to an offshore Swiss bank account, and deliberately evading the payment of taxes in Antigua and Barbuda.

[65] The first and second defendants relied primarily on their evidence that part of the USD \$200,000 paid for the purchase of the business was transferred to a Swiss bank account said to be associated with the first claimant, and that other portions of the payment were made in cash or by cheque. They further assert that they were not provided with tax

documentation relating to those payments and that, in their view, the structure and destination of the payments suggested tax evasion or improper personal enrichment.

- [66] On cross-examination, however, both defendants accepted that they were not tax professionals, that they had no direct knowledge of the claimants' tax affairs, and that their conclusion that "nothing goes to tax for the Antiguan economy" was an inference drawn by them, rather than a fact established by any documentary or expert evidence. The defendants did not adduce evidence from any tax authority, financial institution, or expert witness to demonstrate that the payments were unreported, unlawful, or a breach of tax laws in Antigua and Barbuda.
- [67] The claimants did accept that USD \$200,000 was paid in connection with the acquisition of the business, but dispute that the manner of payment establishes tax evasion or dishonesty. The first claimant gave evidence explaining that the bank account referenced, although bearing her late husband's name, was associated with her account and that she was authorised to operate it. She denied that any payments were concealed or unlawfully diverted and denied any intention to evade tax. Both the first and second claimants denied that the defendants had any basis to assert how funds were treated for tax purposes and contended that the allegation of tax evasion was speculative, unproven, and defamatory, particularly in the absence of any finding or investigation by a competent authority.
- [68] In the court's view, the imputation conveyed by the impugned words is a serious one, alleging deliberate tax evasion and dishonest personal enrichment. Under **section 20** of the **Defamation Act**, the defendants bear the burden of proving that this imputation is true or not materially different from the truth. The court is not satisfied that the defendants have discharged that burden. Evidence that funds were paid into a foreign bank account, or that payments were structured in a particular way, does not of itself establish tax evasion. Still less does it justify the categorical assertion that "nothing goes to tax for the Antiguan economy." No evidence was adduced to show that the claimants failed to declare income, breached tax laws, or engaged in unlawful enrichment. Accordingly, the court finds that the defendants have failed to prove the truth of the imputation that the claimants engaged in tax evasion or dishonest personal enrichment.

(3) “We discovered they had no legal authority to sell and of course sublease our space, but they don’t care about the law and their public headlease”

[69] The words complained of convey the imputation that the claimants acted unlawfully by selling and/or subletting the commercial premises without lawful authority and in disregard of the law and the terms of the headlease. This imputation rests on the factual premise that the claimants lacked authority under the headlease to permit occupation or subletting of the premises. The defendants rely on the same matters in support of this imputation as they did in respect of Imputation 1, including their interpretation of the headlease, the absence of written consent being produced, and information said to have been received from a National Parks Authority board member.

[70] No additional or independent evidence was advanced by the defendants to support the further assertion that the claimants “don’t care about the law.” For the reasons already given in relation to Imputation 1, the court concludes that the defendants have not established that the claimants lacked lawful authority or acted unlawfully. Accordingly, and for the same reasons articulated under Imputation 1, the court finds that the defendants have failed to prove the truth of Imputation 3.

(4) “how come this person is ‘working’ in Antigua for so many years, selling and renting commercial space illegally and was never annoyed/sanctioned by the law of Antigua and Barbuda?”

[71] The words complained of convey the imputation that the claimants have, over a prolonged period, engaged in illegal commercial activity in Antigua and Barbuda and have done so without being subjected to regulatory sanction, thereby implying both ongoing illegality and evasion of lawful oversight.

[72] In support of this imputation, the first and second defendants rely on their belief that multiple subtenants operated under arrangements which they contended lacked lawful consent, their comparison with a previous headlease holder whose lease was terminated by court decision, and their assertion that no enforcement or regulatory action had been taken against the Claimants notwithstanding what the defendants characterize as illegality.

[73] The court notes that this imputation substantially extends the allegation already considered under Imputations 1 and 3, both in scope and seriousness, by asserting not merely an isolated instance of unlawful conduct, but a pattern of longstanding illegality coupled with regulatory failure. However, the evidential foundation relied upon by the defendants remains materially the same.

[74] The court is not satisfied that the defendants have discharged the burden imposed by **section 20** of the **Defamation Act** in respect of this imputation. A belief that other occupants operated under similar arrangements, and a comparison with an unrelated court decision involving a different headlease holder, does not establish that the claimants themselves acted unlawfully over many years. Nor does the absence of enforcement action support an inference of illegality; still less does it prove evasion of regulatory oversight.

[75] Accordingly, and for the reasons already given in relation to Imputations 1 and 3, the court finds that the defendants have failed to prove the truth of imputation 4.

(5) “This public tenant was guilty of criminal association and got 6 million euros ... confiscated for fraud in Italy ... Now it’s his second wife and her son who continue...”

[76] The words complained of convey the imputation that the claimants, or those through whom they derive authority, were involved in criminal association and fraud in Italy, and that such criminal conduct is being continued by the first and second claimants. The imputation alleges serious criminality and continuity of unlawful behaviour.

[77] In support of this imputation, the first and second defendants rely on an Italian newspaper article reporting the confiscation of assets linked to the late Mr. Enzo Addari, and on their own interpretation of that article as evidencing criminal association and fraud. The defendants further rely on the fact of the reported confiscation as supporting an inference of criminal wrongdoing.

[78] The court notes, however, that the defendants accepted under cross-examination that they have no personal knowledge of any criminal conviction against either of the claimants or Mr Addari. The newspaper article relied upon did not establish that the claimants were convicted

of any criminal offence, nor did it demonstrate that they were parties to, or participants in, any criminal association or fraud.

[79] The imputation made by the impugned words goes well beyond what is reported in the article relied upon. The assertion that criminal conduct “continues” through the claimants is a serious allegation for which no evidential foundation was advanced. An asset confiscation, without evidence of a criminal conviction involving the claimants, is insufficient to prove the truth of an allegation of criminal association or fraud, still less its continuation.

[80] Accordingly, the Court finds that the Defendants have failed to prove the truth of Imputation 5.

(6) “our illegal public landlord harassed, intimidated and tried to kill our business, day after day since for 4 years...”

[81] The words complained of convey the imputation that the claimants engaged in sustained harassment and intimidation of the defendants over a prolonged period, with the deliberate intention of destroying the defendants’ business.

[82] In support of this imputation, the first and second defendants rely on evidence of disputes concerning rent increases, dockage fees, inspections, and access to facilities. They further rely on their accounts of inspections, police involvement, and operational restrictions, which they contend formed part of a pattern of conduct designed to force them out of the premises.

[83] The court notes that the matters relied upon by the defendants arise in the context of an ongoing commercial and landlord-tenant dispute. The existence of disagreements over rent, fees, inspections, and access does not, without more, establish harassment or intimidation, still less a deliberate attempt to destroy a business. No independent or objective evidence was adduced to demonstrate that the claimants’ actions were unlawful, oppressive, or carried out with the intention alleged.

[84] The imputation made by the impugned words is a grave one, alleging sustained and malicious conduct over several years. The court is not satisfied that the defendants have discharged the burden imposed by **section 20** of the **Defamation Act**. The defendants’

belief as to the claimants' motivation cannot substitute for proof of a deliberate campaign of harassment or intimidation. Accordingly, the court finds that the defendants have failed to prove the truth of Imputation 6.

(7) "vandalized the door of our business..." "paid 2 times his invoices in our business with a card payment ... from a man who died 18 months before?"

[85] The words complained of convey the imputation that the claimants engaged in criminal conduct, including vandalism of the defendants' business premises and fraud through the use of a deceased person's credit card.

[86] In support of this imputation, the first and second defendants rely on their testimony concerning a broken door and inspection incidents, and on credit card receipts reflecting transactions processed after the death of Mr. Enzo Addari. They further rely on the evidence of the second defendant that she reported the alleged fraud to financial institutions, although she received no confirmation that the transactions were fraudulent.

[87] The court is not satisfied that the evidence relied upon establishes the truth of the imputation. The defendants' testimony concerning a damaged door does not, without independent or corroborative evidence, establish vandalism attributable to the claimants. Nor was evidence adduced demonstrating that the claimants were responsible for any threats or criminal damage.

[88] Similarly, while the credit card transactions occurred after Mr. Enzo Addari's death, no evidence was adduced establishing that the use of the card was unauthorised, fraudulent, or criminal, or that the claimants knowingly engaged in or facilitated fraud. In fact the second defendant during cross examination admitted that she never reported this purported fraudulent activity to her financial institution and that no determination of fraud was made by any financial institution or competent authority.

[89] The imputation made by the impugned words alleges serious criminal conduct. The court is not satisfied that the defendants have discharged the burden imposed by **section 20** of the **Defamation Act**. Suspicion or inference, however sincerely held, cannot substitute for proof of criminality.

[90] Accordingly, the Court finds that the Defendants have failed to prove the truth of Imputation 7.

[91] Accordingly, the court finds that the statements contained in Post 1 are defamatory of the claimants and the defendants are liable in defamation in respect of that publication.

(b) Post 2

“Following soon all the proofs (sic) one by one if you want?? As our landlord asked us 5500ec for diffamation (sic) and continue to send us this 😏
Just let us know ?? 😏😏”

[92] Post 2 does not, of itself, advance any new or distinct factual allegation against the claimants. Rather, it is expressly framed as a follow-on to earlier publications and as a promise that “proofs” would be produced to support the assertions previously made.

[93] In that sense, Post 2 is contingent upon, and intended to reinforce, the allegations already contained in Post 1. It invites readers to anticipate evidence in support of those allegations but does not particularize any additional misconduct.

[94] For the reasons already given in relation to Post 1, the Court is not satisfied that the Defendants have established the truth of the allegations to which Post 2 refers. No such “proofs” were produced capable of substantiating the serious imputations previously published. Accordingly, Post 2 is properly treated as part of the same course of publication as Post 1, adding no independent defamatory sting but serving to reiterate and maintain the earlier allegations.

Post 3 (the “We Apologize” Post)

“We apologize to all our customers that you have to give your identity at the Antigua Slipway Dockyard to come just for a drink/breakfast/lunch/dinner/collection yours (sic) orders. When you arrive by car. I thinks (sic) we are the only restaurant in the world who get such a bad (sic) treatment from our instruction landlord.

And so sorry when you arrive by boat that you are extorted of 100usd by the same landlord (Antigua Slipway manager) just to park the time of your lunch. Thanks (sic) you all for continuing to support the team and us. We all love you
La Brasserie d'Antigua response

(David Rolston) thanks David, but my "landlord" act as he want, since so many years...he has his own laws..we to make our business survive, asked several times some assistance to the National Park have 3 courts claims, we know now that he had no legal authority to sublease our space so even worst no legal authority to sell it 200000usd/for empty space) but he still continues to harassed (sic), intimidated, robbed and of course totally forget the enjoyment of our businesses ..waiting for the National Park board and management wake up to stop this crazy, illegal situation.."

- [95] The opening portion of the post conveys the imputation that the claimants subjected the defendants and their customers to uniquely unfair and improper treatment, including requiring identification as a condition of access, thereby abusing their position as landlord.
- [96] However, no evidence was advanced by the defendants in relation to this post to establish that such requirements were unlawful, improper, or imposed in bad faith.
- [97] For the reasons already given under Post 1, the court is not satisfied that the Defendants have established the truth of this imputation.
- [98] The statement that customers arriving by boat are "extorted of 100usd" conveys a clear imputation of criminal conduct, namely extortion, on the part of the claimants. No evidence was adduced capable of establishing extortion within the ordinary or legal meaning of that term. The use of the word "extorted" goes beyond a complaint about fees or charges and alleges serious criminal wrongdoing. For the reasons already given under Imputations 6 and 7 in Post 1, the court is not satisfied that the Defendants have discharged the burden under section 20 of the Defamation Act in respect of this allegation.
- [99] Additionally, the response appended to the post asserts that the claimants "had no legal authority to sublease" and "no legal authority to sell" the premises for USD \$200,000, and

that this situation had persisted for many years. This imputation mirrors those considered under Imputations 1, 3, and 4 in Post 1. The defendants rely on the same factual premises and advance no new or independent evidence in support of these allegations. For the reasons already articulated in relation to those imputations, the court is not satisfied that the defendants have established the truth of this allegation.

[100] The assertion that the claimants “continues to harassed, intimidated, robbed” conveys the imputation of ongoing criminal and oppressive conduct directed at the defendants. As with Post 1, these are serious allegations of unlawful behaviour. No additional evidence was adduced in respect of Post 3 capable of establishing harassment, intimidation, or robbery on the part of the claimants. For the reasons already given under Imputations 6 and 7 in relation to Post 1, the Court finds that the defendants have failed to prove the truth of these allegations.

[101] Although framed as an apology to customers, Post 3 operates in substance as a further publication repeating and reinforcing the same serious allegations previously made against the claimants. No materially new evidence was advanced to support those allegations. Accordingly, for the reasons already given in respect of the corresponding imputations under Post 1, the Court finds that the defamatory imputations conveyed in Post 3 are not shown to be substantially true or not materially different from the truth within the meaning of **section 20** of the **Defamation Act**.

Post 4

“I got word that an alleged illegal act is set to take place at a restaurant located at Antigua Slipway operated by a French couple. Name of restaurant is La Brasserie Antigua. It is alleged that the landlords an Italian family who owns 90% of slipway with the Government owning 10% I’m told are attempting to evict the tenants illegally. It is alleged that the tenants lawyer advised that this eviction cannot be done without a court order which the landlord doesn’t posses. I’ve been following this situation quietly after reading a post penned by tenants which was since removed. I will go to the site tomorrow before 12pm. I think the media should be involved.”

[102] Even though counsel who assisted the third defendant sought to submit that the complete defence of truth attaches to this post of the third defendant. The third defendant did not plead or rely on the defence of truth in her defence as filed. Rather in her witness statement filed on 5th December 2023 she sought to state at paragraph 7 that “what I posted on facebook was the truth based on the information that was provided to me by the second defendant.”

[103] Further her own statement of the post being the truth was undermined by her answers in cross examination when she admitted that her publication was based on information provided to her and incomplete investigations that she undertook at the court.

[104] Having not invoked the protection of section 20, this court considers that the third defendant has not relied on the defence of truth and her post will be better considered within the parameters of fair comment and I will do so below.

Fair Comment

The court notes that reference was made in the course of the proceedings to freedom of speech and the importance of protecting expressive rights, including by reference to constitutional principles. While no developed constitutional argument was advanced, the court has borne in mind the need to strike an appropriate balance between the protection of reputation and the right to freedom of expression.

[105] The court next turns to the question, whether any of the impugned publications are protected by the defence of fair comment. While this issue was not the subject of focused argument by either party, the court considers it necessary to address the defence and in particular in the context of the third defendant, in order to determine whether the statements complained of, viewed in their proper context, amount to expressions of opinion on matters of public interest rather than assertions of fact.

[106] In the 12th edition of the text Gatley on Libel and Slander, the authors recognized that the defence of fair comment, like truth, is a complete defence to an action of libel or slander where the words complained about are honest or fair comment on a matter of public

interest¹⁸. Indeed, the terminology fair comment has given way to the term honest comment as was recognized by the United Kingdom Supreme court in the case of ***Spiller and another v Joseph and others***¹⁹ which term has now also been codified in the Defamation Act 2013 of the United Kingdom. However, in the Defamation Act of Antigua and Barbuda, the terminology fair comment remains and in sections 21 and 22 the defence is preserved.

[107] Sections 21 and 22 in their entirety state as follows:

21. Defence of fair comment; truth of assertions

- (1) In an action for defamation in respect of words, including or consisting of expression of opinion, a defence of fair comment shall not fail only because the defendant has failed to prove the truth of every relevant assertion of fact relied on by him as a foundation for the opinion, provided that such as the assertions as are proved to be true are relevant and afford a foundation for the opinion.
- (2) Nothing in this section affects the liability of the defendant in an action for the defamation for the acts of his employee.

22. Publication on a matter of interest

- (1) It is a defence to an action for defamation for the defendant to show that:
 - (a) The statement complained of was, or formed part of, a statement on a matter of public interest; and
 - (b) The defendant reasonably believed that publishing the statement complained of was in the public interest.

[108] That being said, the right to comment has been considered “one of the fundamental rights of free speech and writing...and ...of vital importance to the rule of law in which we depend for our personal freedom.”²⁰ Even further in the Hong Kong Court of Final Appeal in the case of ***Tse Wai Chun Paul v Albert Cheng***²¹ the court put it thusly, “the defence of honest comment is intended to promote vigorous free speech, so that “a critic need not be mealy

¹⁸ Paragraph 12.1

¹⁹ [2010] UKSC 53

²⁰ Gatley on Libel and Slander Ibid at para 12.1

²¹ [2000] HKCFA 86; [2001] EMLR 31

mouthed in denouncing what he disagrees with ... [but rather is] entitled to dip his pen in gall for the purposes of legitimate criticism.”

[109] For a defendant to avail himself of this defence he must however show that the words are comments and not statements of facts. They must also show that there is a basis, which has some allusion, to the facts underpinning the comment, that it is based on facts that are true or protected by privilege and the comment is one that is objectively fair in that an honest and fair-minded person could hold that view. “The defence is not in- applicable because the comment was prejudiced or exaggerated or “unfair” in the ordinary sense of the word”²² and finally the comment must be on something that is of public interest. That is, “one which has been expressly or implicitly put before the public for judgment or is otherwise a matter with which the public has a legitimate concern.”²³

[110] Indeed, in **Silkin v Beaverbrook Newspapers**²⁴ Diplock J put it thusly:

“People are entitled to hold and to express freely on matters of public interest strong views, views which some of you, or indeed all of you, may think are exaggerated, obstinate or prejudiced, provided – and this is the important thing – that there are views which they honestly hold. The basis of our public life is that the crank, the enthusiast, may say what he honestly thinks just as much as the reasonable man or woman who sits on a jury, and it would be a sad day for freedom of speech in this country if a jury were to apply the test of whether it agrees with the comment instead of applying the true test; was this an opinion, however exaggerated obstinate or prejudiced, which was honestly held by the writer?

On what the true test is I think what I can best do is to repeat to you, adapting it to the facts of this case, a statement made by a judge some years ago when he said this; “When you come to a question of fair comment you ought to be extremely liberal, and in a matter of this kind... you ought to be extremely liberal, because it is a matter on which men’s minds are moved, in which people who do know, entertain

²²Abraham Mansoor and ors v Grenville Radio Ltd ANUHCv 2004/0408 per Blenman J (as she then was) at paragraph 102.

²³Abraham Mansoor Ibid paragraph 102

²⁴ [1958] 1 WLR 743

very, very strong opinions, and if they use strong language every allowance should be made in their favour. They must believe what they say, but the question whether they honestly believe it is a question for you,” the jury, “to say. If they do believe it, and they are within anything like reasonable bounds, they come within the meaning of fair comment. If comments were made which would appear to you to have been exaggerated, it does not follow that they are not perfectly honest comments.”

[111] However, as the learned authors of Gatley on Libel and Slander²⁵ recognized this concept is not a static one and as such the parameters of the defence have also morphed. Therefore, “[Honest] comment is a defence that is open, in principle, to every defendant. While it has been used constantly by media defendants, the right of comment which the press and broadcasters have is one which they share with every member of the public. ... However, the advent of social media platforms has opened a new field of public discussion in which the defence might become more important to the average person. Indeed, one explicit motivation that underpinned the court’s restatement of the elements of the defence in *Joseph v Spiller* was to allow greater flexibility over how commentators express their views while yet being able to resort to the legal safe harbor. The need to accommodate the advent of social media platforms – and the way in which people relate to one another thereon – in the construction of opinions and to express them to others; they have a right to respond to the world as they find it (even if this involves them in reaching wrong conclusions).”

[112] As was stated in **Joseph v Spiller** by Lord Phillips²⁶:

“...Today the internet has made it possible for the man in the street to make public comment about others in a manner that did not exist when the principles of the law of fair comment were developed, and millions take advantage of that opportunity. Where the comments that they make are derogatory it will often be impossible for other readers to evaluate them without detailed information about the facts that have given rise to the comments. Frequently these will not be set out.

²⁵ Supra at para 12.2

²⁶ Supra at para 99, et seq

100. The cases have none the less emphasized repeatedly the requirement that the comment should identify the subject matter on which it is based, ... If the requirement that the comment should identify the subject matter on which it is based is not imposed in order to enable the reader of the comment to form his own view of its validity, what is the object of the requirement? Bingham LJ in *Brent Walker* [1991] 2 QB 33, 44 said that the true facts must be “stated or sufficiently indicated” – sufficiently for what?

101. There are a number of reasons why the subject matter of the comment must be identified by the comment, at least in general terms. The underlying justification for the creation of the fair comment exception was the desirability that a person should be entitled to express his view freely about a matter of public interest. That remains a justification for the defence, albeit that the concept of public interest has been greatly widened. If the subject matter of the comment is not apparent from the comment this justification for the defence will be lacking. The defamatory comment will be wholly unfocussed.

102. It is a requirement of the defence that it should be based on facts that are true. This requirement is better enforced if the comment has to identify, at least in general terms, the matters on which it is based. The same is true of the requirement that the defendant’s comment should be honestly founded on facts that are true.

103. More fundamentally, even if it is not practicable to require that those reading the criticism should be able to evaluate the criticism, it may be thought desirable that the commentator should be required to identify at least the general nature of the facts that have led him to make the criticism. If he states that a barrister is “a disgrace to his profession” he should make it clear whether this is because he does not deal honestly with the court, or does not read his papers thoroughly, or refuses to accept legally aided work, or is constantly late for court, or wears dirty collars and bands.”

[113] In **Joseph v Spiller** [2010] UKSC 53 at para 3, Lord Phillips considered the requirements for the defence of fair comment to be made out. In doing so he relied on the learning of Lord Nicholls in **Tse Wai Chun Paul v Abert Cheng** [2001] EMLR 777, whereby he stated:

"[16] ... First, the comment must be on a matter of public interest. Public interest is not to be confined within narrow limits today: see Lord Denning in London Artists Ltd v Littler [1969] 2 QB 375, 391. [17] Second, the comment must be recognizable as comment, as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the New South Wales case of Myerson v. Smith's Weekly (1923) 24 SR (NSW) 20, 26:

'To say that a man's conduct was dishonourable is not comment, it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment.'

[18] Third, the comment must be based on facts which are true or protected by privilege: see, for instance, London Artists Ltd v Littler [1969] 2 QB 375, 395. If the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.

[19] Next, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded.

[20]. Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views..."

[114] The court accepts that the publications from all three defendants arose in the context of a dispute which, at least in part, touched on matters of public interest, including the operation of commercial premises at a public dockyard and the involvement of public authorities. However, the existence of a public context does not, in and of itself, suffice to attract the

protection of the defence. Indeed, when the court considers the statements contained in the first to third publications of the first and second defendant, those statements did not amount to comment on anything. Rather, there were clear statements made as to the truth stated therein directed at the claimants themselves.

[115] In this court's mind in no way did they amount to "something which is or can reasonably be inferred to be a deduction, inference conclusion, criticism, remark or observation."²⁷ Rather the publications of the first and second defendant were statements that they sought their audience to accept as truthful and what was stated on the face of those statements.

[116] On the other hand, the post by the third defendant is slightly different.

[117] It is clear that the context in which the third defendant made her post, was that she was relying on information conveyed to her by the first and second defendant. Although it must be stated that the use of the word allegedly does not in anyway minimize the defamatory meaning of what was said by the third defendant, and although she admitted on cross examination her general lack of investigation into the allegations as stated by the first and second defendant, what is clear and accepted is the following 1) the second defendant had forwarded an email to the third defendant which they had received from the second claimant requiring them to leave the premises, 2) that there was no court order made for the possession of the premises and 3) under most circumstances and in which a lay person may consider, a landlord requires an order for possession to effect eviction of tenants.

[118] The third defendant therefore having been armed with this limited information then purported to make a "report" of the same and issued what this court considers her opinion of what was happening between the claimants and the first and second defendant. It was clearly her opinion that the action threatened by the claimants was illegal but it was in fact based on the truth that the claimants were seeking to terminate the occupancy of the first and second defendants. Indeed, there is no requirement that "the opinion be reasonable. It is not [even] necessary that the court should accept that the opinion is correct."²⁸

²⁸ Winfield & Jolowicz on Tort at paragraph 13-100

[119] Having accepted that the post of the third defendant could be considered the opinion of the third defendant based on the true set of facts which were clearly set out in the post, this court finds that the third defendant can avail herself of the defence of fair comment. The actions of a holder of a public lease and the way that they interacted with their sub tenants in this court's mind was a matter of public interest, not a mere private contractual arrangement. The third defendant's post was therefore a commentary in what was happening and her opinion that the circumstances should be a matter of scrutiny by the press and the public. In this court's mind they did not amount to the ringing of a bell to incite violence of any kind or a threat issued to the claimants. It was comment (unfortunate as it was) pure and simple.

- [1] For the reasons set out above, the claim of the claimants against the first and second defendants is successful and the claimant shall file an application for assessment of damages for defamation within 30 days of the date of issue of the decision to be heard and determined before a Master of the High Court
- [2] Costs to the claimant to be determined upon the assessment.
- [3] The claim against the third defendant is dismissed
- [4] The claimant is to pay prescribed costs to the third defendant on an unvalued claim pursuant to CPR 2023.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar