

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2018/0149

BETWEEN:

GEFFREY TELESFORD

Claimant

and

SHOLTO AGARD

Defendant

Before:

The Hon. Justice Raulston L.A Glasgow
Judge

High Court

Appearances:

Ms. Sheriba Lewis for the Claimant
Mr. Nazim V. Burke for the Defendant

2024: May 23rd
: July 25th

JUDGMENT

BACKGROUND

[1] **GLASGOW, J.:** The claimant (Mr. Telesford) and the defendant (Mr. Agard) are neighbours, who both reside in Westerhall Heights in the parish of Saint David. Mr. Telesford initiated this claim alleging that Mr. Agard made certain defamatory statements about him to third parties,

which Mr. Telesford claims caused him considerable hurt, distress and embarrassment, exposing him to ridicule and contempt by members of his neighbourhood and the public. Mr. Telesford seeks damages (including aggravated damages) for slander, an injunction restraining Mr. Agard from further publishing the same or similar slander, interest and costs. In response, Mr. Agard denies that he uttered any slanderous words concerning Mr. Telesford and further asserts that the words allegedly uttered do not bear any of the defamatory meanings as claimed by Mr. Telesford.

Mr. Telesford's Case

- [2] Mr. Telesford alleges that on 24th March, 2017, Mr. Agard made the following defamatory statement to Mr. Telesford's partner Natalie Bruce at their shared residence:

"Me and my wife were away and just got back and I noticed that the chain to my driveway was cut. I want to have a man-to-man conversation with Mr. Telesford. I have cameras around my house. One of them faces directly to your house. I am not making confusion. I am just saying that the cameras face directly to your house and the chain was cut."

- [3] Mr. Telesford further alleges that in December, 2017, Mr. Agard made another defamatory statement to Tahera Philbert in the Town of St. George:

"You must come by me to have a glass of red wine. I live at Westerhall and there is a neighbour there who is something else. His name is Geffrey Telesford and he cut my chain."

[4] Mr. Telesford claims that the natural and ordinary meanings or innuendoes of the words quoted in paragraph 2 and 3 above were that he, Mr. Telesford had committed a criminal offence punishable by imprisonment – namely that of damage to property – by the cutting of the chain to Mr. Agard's driveway. Mr. Telesford further claims that he understood the words to mean that he was a malicious man, a disreputable person and a bad neighbour, who without any proper reason, caused damage to Mr. Agard's property.

[5] Consequently, Mr. Telesford avers that his reputation has been seriously harmed due to Mr. Agard's constant repetition of the defamatory statements, and contends that unless Mr. Agard is restrained by the court, Mr. Agard intends to further publish the same or similar slanders. Mr. Telesford denies cutting Mr. Agard's chain and claims that he ought to receive aggravated damages because:

- a) Mr. Agard failed to make any sufficient enquiries and investigations into the alleged damage to his chain before accusing Mr. Telesford of damaging it;
- b) Mr. Agard compounded the defamation by alleging or imputing that he had irrefutable proof of Mr. Telesford committing the act by way of video recordings, which in the circumstances must be either untrue or conclusively prove Mr. Telesford's innocence;
- c) Mr. Agard has failed to produce the recordings as proof of the truth of the defamatory statements; and
- d) Mr. Agard has refused to apologize for the defamatory statements, despite requests from Mr. Telesford that he do so.

Mr. Agard's Case

[6] Mr. Agard denies uttering the statements as alleged by Mr. Telesford in paragraphs 2 and 3 above, and further denies being in Grenada in December, 2017. Mr. Agard however admits that he spoke to Mr. Telesford's partner, Ms. Bruce. His defence is that Ms. Bruce told him that one of their workmen cut the chain. Mr. Agard indicates that he asked Ms. Bruce why the chain was cut, and she responded that 'she normally walks up there'. It was on this basis that Mr. Agard claims that he informed Ms. Bruce that the area was private property, and that he wished to speak to Mr. Telesford.

[7] Mr. Agard similarly admits having a conversation with Officer Tahera Philbert in the town of St. George's, but counters that the conversation took place in April, 2017. He claims that Officer Philbert called out to him, asking why he was in such a hurry, and commenting that he looked worried. Mr. Agard further maintains that Officer Philbert informed him that she was recently in his neighbourhood. Mr. Agard claims that he asked her why she did not come up, as he had lots of fruits and she could have gotten some. Mr. Agard then contends that he told Officer Philbert that one of his neighbour's workmen cut the chain across the driveway, leading Officer Philbert to enquire about the identity of the neighbours. Mr. Agard claims that he told her about Mr. Telesford, but asks that the claim be dismissed with costs, because he did not utter the defamatory statements as alleged.

TRIAL OF THE MATTER

[8] The claim came on for trial on 23rd May, 2024. Mr. Telesford called 3 witnesses, being himself, his partner Ms. Natalie Bruce and Officer Tahera Philbert. Mr. Agard called 2 witnesses in his defence, being himself and his wife Mrs. Merle Agard.

Geffrey Telesford's evidence

[9] In his witness statement, Mr. Telesford testifies that he and his wife, Natalie Bruce reside in the Westerhall Heights community for the last 6 years, and that he is an outstanding member of the community. There is an association of residents in the Westerhall Heights community. Mr. Telesford indicates that members of the association attend meetings at the homes of the residents who are members to discuss matters arising in the community. Mr. Telesford further testifies that he is a businessman and owner of Telesford Countertop and Construction Services, which he has operated for 13 years. He asserts that he is well known throughout Grenada for his services and has upheld a good reputation in his business and his personal life.

[10] Mr. Telesford deposes that Mr. Agard lives a short distance from his home. Sometime in March 2017, whilst he was going on his early morning walk, Mr. Telesford claims that he noticed a chain lying on the ground at the entrance of the public road leading to Mr. Agard's property. Mr. Telesford indicates that he knew that Mr. Agard had placed the chain there, but he thought that maybe Mr. Agard had left the chain lying down, so he continued on his walk. Sometime shortly thereafter, Mr. Telesford indicates that his wife informed him that Mr. Agard had spoken to her and informed her that he wanted to have a "man to man" talk with him about the chain.

[11] Mr. Telesford recalls that one day after this conversation with his wife, he observed Mr. Agard passing by, and he heard his wife informing Mr. Agard that he was home and that they could speak. He claims that Mr. Agard replied that he would buy back the chain and 'let sleeping dogs lie.' Mr. Telesford indicates that he did not say anything to Mr. Agard, as Mr. Agard had never approached him about the chain.

[12]Shortly thereafter, Mr. Telesford testifies that he came to learn that Mr. Agard had been telling persons that he had cut his chain. He was shocked to learn this, as he had not cut the chain and Mr. Agard had not spoken to him about it. Mr. Telesford further recalls that he was informed by Officer Tahera Philbert, a police officer with the Royal Grenada Police Force, that sometime in the month of December 2017, Mr. Agard informed her that he had a neighbour there who was something else. Mr. Telesford further claims that Officer Philbert told him that Mr. Agard told her that it was Geffrey Telesford and that Geffrey Telesford had cut his chain.

[13]Mr. Telesford observes that since the month of March 2017, Mr. Agard has ceased speaking to him when he passes by, and only addresses his wife. Further, Mr. Telesford alleges that he is no longer invited to the association meetings held at the community member's homes. Shortly after the accusations were made by Mr. Agard, Mr. Telesford recalls that an association meeting was held at Mr. Agard's home and that he was not informed. Mr. Telesford further notes that he has not been informed of events being held by the association, although this has never been an issue before. Prior to March, 2017, Mr. Telesford expresses that he was neighbourly with Mr. Agard and that they would greet each other in passing, but he cannot explain Mr. Agard's behaviour, as they had never had any issues in the past.

[14]Mr. Telesford states that he does not know why Mr. Agard would accuse him falsely of criminal activity, and that when he was informed that Mr. Agard had been making these comments, it made him feel embarrassed and humiliated. Mr. Telesford further states that he was even more hurt that Mr. Agard had never spoken to him about his beliefs to try to ascertain the truth, or even produce any evidence to prove the statements made, but was telling persons that he had cut the chain. Mr. Telesford asserts

that his reputation has been seriously harmed, as business associates have enquired about the issue. He concludes that the statements can hurt his reputation both as a businessman and in his personal capacity, as persons may feel that he is capable of damaging the property of others.

[15]In cross examination at trial, Mr. Telesford confirmed that Mr. Agard was already living at Westerhall Heights when he moved there. He recalled that Mr. Agard placed the chain at the entrance of a public road, which blocked access to that public road. When questioned about whether he heard Mr. Agard utter the words 'let sleeping dogs lie', Mr. Telesford confirmed that he did in fact hear Mr. Agard say these words, and asserted that this occurred after his wife informed him of her conversation with Mr. Agard. Mr. Telesford also observed that it was after the 'letting sleeping dogs lie' statement that he learned that Mr. Agard was telling persons that he had cut the chain. Mr. Telesford also admitted that Mr. Agard never addressed him by his first name - Geoffrey, and only ever addressed him as Mr. Telesford.

[16]Mr. Telesford was questioned about the conversation which occurred between his wife and Mr. Agard. He stated that his wife told him that Mr. Agard had accused him of cutting the chain, relaying that she had asked Mr. Agard if that was the accusation he was making against her husband. Mr. Telesford however could not confirm whether his wife informed him of what Mr. Agard told her in response to her question about Mr. Agard's accusation. Mr. Telesford explained that he only decided to file a claim against Mr. Agard after he heard that Mr. Agard was scandalizing his name, and not after his wife told him of the conversation between Mr. Agard and herself. He also confirmed that Officer Philbert told him what Mr. Agard said about him in the same year when the event occurred.

[17]When questioned about whether he was a member of the association in his neighbourhood, Mr. Telesford asserted that he became a member of the association by virtue of being a resident of the community. However, he could not identify the president or the treasurer of the association. When asked about payment of membership fees, Mr. Telesford explained that all members were required to pay fees to the association, which he did pay, not to the treasurer but to the bank. He also admitted that he never provided evidence of payment to the treasurer, but could not confirm if the association ever required persons to provide such a receipt for payment. When it was put to Mr. Telesford that he was never a member of the association, he conceded that the association was no longer active, as he could only remember attending one meeting some time ago.

Natalie Bruce's evidence

[18]In her witness statement, Ms. Bruce recites that she is Mr. Telesford's wife. She recalls 24th March, 2017 at 6:30 pm when she was in her backyard preparing a surprise birthday dinner for Mr. Telesford's birthday. She had just returned to Grenada the night before the party. While she was busy preparing, Ms. Bruce testifies that she observed Mr. Agard standing on the side of the road outside of their residence. Ms. Bruce recounts that Mr. Agard called out to her and said "*Hey Natalie how are you, can I talk to you?*" She replied sure. Mr. Agard then told her that her husband was a jealous man who does not like anyone talking to her, so he had to ask. Ms. Bruce indicates her response was that her husband was not a jealous man and that Mr. Agard could come and speak with her at any time.

[19]Ms. Bruce states that Mr. Agard came into their yard and told her that he and his wife had travelled overseas and had just returned to Grenada. On

his return he noticed that the chain to his driveway was cut and he wanted to have a man to man conversation with Mr. Telesford. Ms. Bruce's further evidence is that Mr. Agard then told her that he had cameras around his house and one of them faced directly to the Telesford's house. Ms. Bruce states that she asked Mr. Agard what he was trying to say and if he was saying that her husband had cut the chain. Ms. Bruce deposes that Mr. Agard replied "*no no no I am not making any confusion, I am just saying the cameras face directly to your house and the chain is cut, so I need to speak to Mr. Telesford.*"

[20]At the time that he made this statement, Ms. Bruce observes that she felt that Mr. Agard was accusing her husband of cutting the chain. In that regard, she deduced that Mr. Agard was suggesting that he had some proof of the chain cutting event on his cameras. Ms. Bruce testifies that she informed Mr. Agard that they had some workers doing work around their house, but she doubted that they did it. Ms. Bruce insists that she never told Mr. Agard that the workers had cut the fence, since she had been out of state for approximately 3 months and had no knowledge of the chain being cut prior to Mr. Agard informing her of the same.

[21]Ms. Bruce also maintains that Mr. Agard never spoke to her about private property as he alleges in his defence. Prior to Mr. Agard's installation of the chain, Ms. Bruce indicates that she would use the public road to walk up the hill and look at the valley. However, the chain restricted access to the public road, as it was placed across the opening of the public road, some distance from the entrance to Mr. Agard's property. Ms. Bruce recalls that Mr. Agard told her that he would talk to Mr. Telesford, and she said "*okay, when he gets home I will let him know.*" When her husband got home, Ms. Bruce testifies that she informed him of the conversation that she held with Mr. Agard.

[22]The next day, Ms. Bruce states that she and her husband were in their backyard when Mr. Agard and his wife were passing by in their car, which Mr. Agard was driving. She deposes that Mr. Agard stopped the car, and that he and his wife both said '*hi*' to her. Mr. Agard then asked her how she was doing and she told him that she was okay and that '*Geff was here now so he could come and speak with him*'. She recounts that Mr. Agard said that he had thought about it and he was not going to say anything, he would buy a new chain and let sleeping dogs lie. Ms. Bruce maintains that she never spoke to Mr. Agard about the chain after this conversation.

[23]In cross examination, Ms. Bruce was questioned about whether she had seen the chain before, and if it blocked access to the public road. She confirmed that she had seen the chain and that it did block the road. She doubted that the workers had cut the chain, but accepted that she could not be sure if her workers had actually cut the chain. When asked if Mr. Agard had specifically said that Mr. Telesford had cut the chain, Ms. Bruce indicated that she could not remember, as it was a long time ago. She also confirmed when asked that Mr. Agard had always called her husband by his last name – Mr. Telesford, and she could not recall an instance when Mr. Agard had called her husband Geoffrey.

[24]In respect of her conversation with Mr. Agard, she was questioned at length about whether she had left out any aspects of their conversation. Ms. Bruce indicated that she discussed the conversation she held with Mr. Agard with her husband on the same night that the conversation occurred. She accepted that a portion of what was said to her by Mr. Agard was left out of the statement of claim – namely the portion of her statement where Mr. Agard responded "*no no no, I am not making any confusion*", after she asked him if he was accusing her husband of cutting the chain. She confirmed that Mr. Agard had in fact said "*no no no, I am not making any confusion*" during their conversation.

Officer Tahera Philbert's evidence

[25]In her witness summary, Officer Philbert indicates that she has served as an officer of the Royal Grenada Police Force for the past 14 years. She states that she is familiar with both parties in the matter. Officer Philbert deposes that sometime in December, 2017 close to the Christmas season, she was in the town of St George's when she met Mr. Agard. Officer Philbert recalls that Mr. Agard greeted her and that Mr. Agard invited her to have a glass of red wine. She claims she responded "*red wine? I do not even know where you live.*" Officer Philbert then deposes that Mr. Agard informed her that he lived in Westerhall, and he has a neighbour there who is something else. She recalls that Mr. Agard informed her that the neighbour's name was Geoffrey Telesford and that he had cut his chain.

[26]At trial, Officer Philbert accepted the witness summary as her evidence. She testified that she knew Mr. Telesford for over 15 years as a businessman, as his business is located in Morne Delice in Westerhall where she lives. She also indicated that she considers Mr. Telesford a friend, but had no idea where he lived in 2017. Officer Philbert also confirmed when questioned that she met Mr. Agard in December 2017, but it was not yet the Christmas season. She also indicated that she had met Mr. Agard a couple times before, when she had worked previously at the Grenada Port Authority. She also recalls meeting Mr. Agard on the streets of St. George. Officer Philbert was asked if she spoke to Mr. Telesford about her conversation with Mr. Agard. Officer Philbert confirmed that she did speak to Mr. Telesford once about the conversation over the phone on the same day that she met Mr. Agard in town.

[27]When asked if she started the conversation, Officer Philbert confirmed that she did. She further confirmed that Mr. Agard invited her over for a glass of red wine. Officer Philbert also testified that the conversation between herself and Mr. Agard took place at some time before the lunch hour. When questioned about the location of the conversation and the time of year, Officer Philbert explained that the conversation took place in front of the Bruce Street Mall before the Christmas season. She was also dressed in her police uniform since she was on duty. When questioned about Mr. Agard's address, she replied that Mr. Agard informed her that he lived in Westerhall Heights.

[28]It was pointed out to Officer Philbert that her statement indicated the community of Westerhall, and not Westerhall Heights. Officer Philbert replied that it had to be an error. When asked if Mr. Agard said anything else to her, Officer Philbert responded that Mr. Agard replied that he has a neighbour giving him some trouble and the neighbour is something else. She testified that she asked Mr. Agard the identity of the neighbour, and that he told her that the neighbour's name is Geoffrey Telesford. Mr. Agard then told her that Mr. Telesford had cut his chain.

Sholto Agard's evidence

[29]In his witness statement, Mr. Agard deposes that he and his wife are the owners of a dwelling house in Westerhall Heights which they have owned since 2004. Mr. Agard testifies that the driveway to the property leads from the public road on the opposite side from the properties of their neighbours, Mr. Anthony Forsyth and Mr. Telesford. For the past 13 years, Mr. Agard states that he and his wife live approximately 4 months – from

January to May – in Grenada, and the other 8 months in Canada. He further states that from March 15th to 22nd, 2017, he and his wife were overseas, returning to Grenada on the night of 22nd March, 2017. On their return to their property, they found that the chain, which was installed in January 2017 across the entrance of their driveway from the public road was cut.

[30]Mr. Agard testified that he was very concerned, and over the next few days, he began informing the neighbours and asking if anyone saw anything. He indicates that he went to look for their neighbour, Mr. Forsyth but he was not there. He recalls that he spoke with Natalie Bruce, Mr. Telesford's partner. He explains that he and Ms. Bruce were usually cordial. This caused him to enquire of Ms. Bruce how her father and brother were feeling, as she had previously informed him that they were involved in a serious accident in Texas in the United States of America. He recalls that Ms. Bruce remarked that her father was okay and that her brother was doing much better.

[31]Mr. Agard states that he then told Ms. Bruce that he and his wife were away for a week, and upon their return on the night of 22nd March, 2017, they found that the chain across their driveway was cut. He also recalls informing her that the camera on his house picked up someone walking towards the chain. Mr. Agard states that Ms. Bruce then told him that it was one of their workmen who cut the chain, and when he asked her why, she responded that she usually walked up there.

[32]Mr. Agard explains that he told Ms Bruce that it was private property and that he wished to speak to Mr. Telesford. Ms. Bruce then invited him onto their property to continue the conversation because she was preparing for Mr. Telesford's birthday, but he declined and left. Mr. Agard denies

uttering the words as alleged by Ms. Bruce. He avers that the cameras on their house were installed facing the public road long before Mr. Telesford built his house. He insists that he does not speak in the manner to say “*I want to have a man to man conversation.*”

[33] Subsequent to speaking to Ms. Bruce, Mr. Agard indicates that he visited Mr. Forsyth and told him that Ms. Bruce said – ‘*it was one of the workmen who had cut the chain across their driveway because she normally walked up there*’. Mr. Agard testifies that he related this to Mr. Forsyth because his wife had previously informed Mr. Forsyth about the cutting of the chain, and asked him if he had seen anything.

[34] On the evening of 1st April, 2017, Mr. Agard states that he and his wife returned home and noticed Ms. Bruce and Mr. Telesford sitting in the back of their house, while he was in the process of putting a lock on the new chain. Mr. Agard recalls that Ms. Bruce asked him if he wanted to speak with her husband, and he answered ‘*no, but the chain stays*’. After he received the letter from Mr. Telesford’s lawyer accusing him of defamation, Mr. Agard explains that he ceased any conversation with Ms. Bruce and Mr. Telesford.

[35], Mr. Agard states that in early April, 2017 he was walking outside the cruise terminal in St. George’s along the Melville Street area, and as he attempted to cross at the pedestrian walk, Officer Tahera Philbert, who was dressed in police uniform called out to him. Mr. Agard testifies that Officer Philbert asked him why he was in such a hurry, and that he stopped to converse with her. He explains that he knew Officer Philbert when she worked at the Grenada Port Authority in Lagoon Road, St. George’s. He met her there on his occasional visits to the Port to conduct business.

[36]Mr. Agard recounts that he mentioned to Officer Philbert that he was in the town to visit the bank, FLOW and to attend to other business. Officer Philbert then told him that she was recently in his neighbourhood below his house. Mr. Agard recalls that he asked her why she did not come up to the house, because he has a lot of fruits and she could have gotten some. Mr. Agard testifies that Officer Philbert then mentioned that he looked worried, and he responded that the chain he placed across his driveway in January, 2017 was cut by their neighbour's workmen while he and his wife were away in March, 2017. He recalls that she then enquired about the identity of neighbour, and that he told her that it was Telesford. Officer Philbert asked him if it was Telesford who drives a truck, and he said no, it was Telesford who makes the countertops. Mr. Agard deposes that at the time of the conversation, he did not know that Mr. Telesford's name was Geoffrey, as he only knew him as Telesford.

[37]Mr. Agard refutes that he has widely repeated the alleged defamatory statements and maintains that he has only repeated what was said to him by Ms. Bruce. Mr. Agard insists that he was justified in mentioning to Mr. Forsyth and Officer Philbert what Ms. Bruce had said to him concerning the cutting of the chain by the workmen and that he does not know why Mr. Telesford would have been subject to ridicule. He denies the contentions in that regard.

[38]During cross examination, Mr. Agard confirmed that he and his wife lived in Westerhall Heights for many years before Mr. Telesford, and that they put a fence around their property. He pointed out that there is a road that leads from the public road to his property, which he refers to as his driveway. When asked if the road he calls a driveway is actually an allowed road giving him access to the property, he stated that he did not know about that. When questioned about his absence from Grenada, Mr. Agard confirmed that he was out of state from 15th March, 2017 to 22nd

March, 2017, but when asked if he provided any documentary evidence to support this, Mr. Agard replied that he did not think so.

[39]Mr. Agard also confirmed that he did not see who cut the chain as he was not in Grenada when the chain was cut. He also accepted that he never made a report to the police about the chain being cut. When asked about the truth of Ms. Bruce's alleged statement about the workmen cutting the chain, Mr. Agard also accepted that he would not be able to say if it was true. However, he expressed that Ms. Bruce told him that and he believed her, as he would have to believe what she said. When asked about the cameras on his property, he denies telling Ms. Bruce that one of his cameras faced directly to their house, or saying '*no no no, he was not trying to make confusion*', explaining that he does not speak that way and that he did not use those words to Ms. Bruce.

[40]Mr. Agard also acknowledged, when questioned, that he did not have a conversation with Mr. Telesford about the chain being cut, and that he did not speak to the workmen. He admitted telling Ms. Bruce that the chain stays, but denied making the '*let sleeping dogs lie*' statement. When asked if he was aware that cutting a chain is considered damage to property, he said he was aware. He equally accepted that damage to property is punishable by imprisonment.

[41]When asked if he knew Officer Philbert, Mr. Agard responded that he knew the name, but he did not recognize the lady in the witness box. Mr. Agard also testified that he had only found out that day that Officer Philbert was an officer. When asked to explain, Mr. Agard replied that he knew Officer Philbert because she helps him with shipping every year, but he thought they were just employed as watchmen. Mr. Agard was asked if he was friendly with Officer Philbert. He responded that they are not friendly, just acquainted. When questioned about the tenor of his conversation with

Officer Philbert, Mr. Agard confirmed that they were having a friendly conversation. He recalls that she stated several times that she had been in his neighbourhood just below his home, causing him to ask her why she had not come up to the house.

[42] Mr. Agard however denied that he invited Officer Philbert for a glass of wine. He insisted that Officer Philbert knows where he lives because she came to her brother, who is Mr. Telesford. When asked if he had provided any evidence that Mr. Telesford is Officer Philbert's brother, he accepted that this was not in his evidence. Mr. Agard however explained that he came to this knowledge because Officer Philbert told him so. He also accepted that he had not provided the court with any evidence or reason why Officer Philbert would be untruthful in her evidence before the court.

Merle Agard's evidence

[43] In her witness statement, Mrs. Agard confirms that she is Mr. Agard's wife. She testifies that in 2004, they took occupancy of their house in Westerhall, St. David's. She indicates that Mr. Anthony Forsyth and his family have been their neighbours since that time, as his house is across the street directly opposite to theirs. Mrs. Agard recalls that their stay in Grenada is usually from January to May of each year, and that her husband always informs Mr. Forsyth of their departure. Mrs. Agard states that she and her husband were overseas in Canada from March 15th to 22nd, 2017. On their return on the night of the 22nd March 2017, they found the chain across their driveway had been cut.

[44] Mrs. Agard deposes that the next day her husband started telling neighbours of the incident and asking if anyone saw anything. She recalls that he went to speak with Mr. Forsyth, but he was not home. Mrs. Agard recalls that she saw Mr. Forsyth and asked him if Mr. Agard had spoken

to him and that he replied no. She informed Mr. Forsyth about the cutting of the chain, and asked him if he had seen anything, and he again replied no. Mrs. Agard states that she then told Mr. Forsyth that if neighbours had any issues or concerns about the chain, they could have come and spoken to them about their concerns.

[45]Mrs. Agard recalls that Mr. Forsyth responded that persons contacted him as president of the neighbourhood association to inquire whether the Agard's driveway was a private driveway. Mrs. Agard testifies that Mr. Forsyth told her that he told the neighbours that he did not know whether the driveway was private, but that the Agards' should know if their driveway is private or not. Mrs. Agard states that Mr. Forsyth made the point that the person was not Telesford, but she does not know why he did so. When she went back home, she told Mr. Agard about her conversation with Mr. Forsyth.

[46]During cross examination, Mrs. Agard was asked whether she had ever seen the deed for the property on which she lived. Mrs. Agard confirmed that she did. She was asked to point out where exactly her husband erected the chain on a copy of the plan attached to the deed. She had some difficulty doing so. Mrs. Agard was also questioned about whether she had provided documentary evidence of her contention that she and her husband usually stay in Grenada in January and May of each year. Mrs. Agard responded that there are documents that show when they arrive in Grenada, but there are no documents to show when they depart. Mrs. Agard was also asked if Mr. Forsyth was still alive, which she confirmed. She accepted that Mr. Forsyth was not before the court to give evidence on their behalf. Mrs. Agard also confirmed that Mr. Telesford was not present when she held the conversation with Mr. Forsyth.

ISSUES FOR THE COURT'S CONSIDERATION

[47] At the conclusion of the trial, counsel for the parties were asked to file closing submissions for the court's consideration by 21st June, 2023. Both counsel duly complied. In light of the claim, the evidence and the closing submissions, I determined that these were the issues for consideration and determination by the court:

- 1) Whether Mr. Agard made the statements about Mr. Telesford to Natalie Bruce and Officer Tahera Philbert;
- 2) Whether the statements which Mr. Telesford alleges were made by Mr. Agard are capable of bearing the meanings which Mr. Telesford ascribed to them or any other meaning;
- 3) If the statements are capable of bearing the meanings ascribed by Mr. Telesford, whether the meanings are in fact defamatory of Mr. Telesford;
- 4) Whether the defamatory statements complained of are actionable per se without proof of material loss; and
- 5) What relief, if any, may be awarded Mr. Telesford.

DISCUSSION AND LEGAL ANALYSIS

Whether Mr. Agard made the statements about Mr. Telesford to Natalie Bruce and Officer Tahera Philbert.

[48]In English law, every person is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation should not be disparaged by statements made about him to a third person or persons without lawful justification or excuse¹. This area of law is found in tort, and is known as defamation. Defamation as defined in **Gatley on Libel and Slander** is committed when a defendant publishes to a third person words or matters containing an untrue imputation against the reputation of the claimant². When the untrue imputation is in an oral and transient form, the cause of action is that of slander, and where the untrue imputation is in a written, printed or in a more permanent form, the cause of action is that of libel.

[49]An essential element in the law of defamation is that of publication³, as a person's reputation is based on what others think of them, and not how a person regards themselves. The law dictates that a person publishes a slander when they speak words defamatory of the claimant to, or in the presence of a third person who hears them. It is therefore the essence of the nature of defamation that the defamatory charge reach a destination, or should at least become known to someone⁴.

[50]There is sufficient publication if the statement is made to a third party other than the claimant themselves⁵, including the claimant's wife. The burden therefore lies on Mr. Telesford to convince the court that the statements were in fact published, and that they were made in reference to him. It is important to note at this juncture that Mr. Agard in effect filed a bare denial

¹Halsbury's Laws of England, Defamation (Volume 32 (2023) at 501.

² (13th Edition, Sweet & Maxwell, 2020).

³ Knupffer v London Express Newspaper Ltd [1944] 1 All ER 495.

⁴ Evans & Sons v Stein & Co. (1904) 7 F 65.

⁵ Pullman and Another v Walter Hill Limited & Co. Limited [1891] 1 QB 524 at 520.

by stating that he did not make the alleged defamatory statements, and he did not seek to avail himself of any of the defences of truth/justification, fair comment, qualified or absolute privilege available under the law. From his evidence, Mr. Telesford was never present when any of the alleged defamatory statements were made. Therefore, Ms. Natalie Bruce's and Officer Tahera Philbert's evidence as to the persons to whom the statements were allegedly uttered and the evidence from Mr. Agard himself were of assistance in determining this issue.

[51] Counsel for Mr. Telesford submitted that the evidence from Mr. Telesford's witnesses remained consistent throughout and they ought to be accepted as truthful, as the witnesses' evidence remained unchallenged, truthful and clear throughout cross – examination. Counsel for Mr. Agard counters that no one other than Officer Philbert and Mr. Agard can confirm whether he actually made the statements, and asks the court to find that Officer Philbert's evidence is unreliable. Mr. Agard's counsel's challenge to Mr. Telesford's witnesses is threefold.

[52] Counsel for Mr. Agard submits that both parties accept that the chain cutting incident occurred in March, 2017. However Officer Philbert states that she spoke to Mr. Agard in December, 2017. Counsel argues that this is not possible because Mr. Agard was not in Grenada in December, 2017, and submits that Mr. Agard has provided evidence of his passports for the years 2012, 2014, 2016, 2017, 2018, 2019, 2020 and 2022 showing his absences from Grenada, which evidence remains unchallenged. Counsel also contends that both Mr. Telesford and Ms. Bruce admitted that Mr. Agard never called Mr. Telesford by his first name, and invited the court to investigate the chances that *'at 11:00 one morning, an 82 year old man would walk up to a police officer in uniform and on duty and say to her, 'you must come by me for a glass of red wine'⁶.*

⁶Paragraph 7(v) of Defendant's closing submissions.

[53] Having observed the demeanour of Ms. Bruce and Officer Philbert and their respective answers to counsel for Mr. Agard in cross – examination, I have determined that their evidence is credible and that they are witnesses of truth. Both witnesses were steadfast and adamant about what Mr. Agard had said to them, but also readily admitted where there were lapses in their statements.

[54] For example, Ms. Bruce acknowledged that part of what Mr. Agard said to her when she asked him directly if he was accusing her husband of cutting the chain– “no no no” was omitted from the statement of claim. Ms. Bruce was however unwavering in her position that Mr. Agard actually uttered those words to her when questioned. Officer Philbert also readily admitted that there was an error in her statement, as she indicated in cross – examination that Mr. Agard told her that he lived in Westerhall Heights, and not Westerhall as recounted in her evidence. Both witnesses could have stuck to what their statements related, but were honest and forthright which established their credibility before the court.

[55] Mr. Agard’s counsel sought to impugn Officer Philbert’s recollection of her conversation with Mr. Agard on the basis that it is unbelievable that an elderly man would invite an on-duty police officer for a glass of wine. I do not find this to be unbelievable, given that both Officer Philbert and Mr. Agard acknowledged that they had known each other for quite some time before that day’s meeting in St. George’s. Mr. Agard also indicated that he invited Officer Philbert to get some fruits from his property. It is not out of the realm of reality that he would invite Officer Philbert to his home for some wine as well.

[56] Having reviewed the documentary evidence filed, and Mr. Agard’s passports, I am minded to believe that the conversation with Officer

Philbert took place in April, 2017 and not in December, 2017 as alleged. However, counsel's qualms over whether the conversation with Officer Philbert occurred in April or December is of no moment in my determination, as both parties accepted that the conversation did take place. The time when the conversation took place is, in my opinion, quite immaterial on the present facts.

[57]Juxtaposed to Mr. Agard's evidence, I found Mr. Agard to be very combative and argumentative in cross – examination, as he seemed to be deliberately evading directly answering questions posed to him. Mr. Agard instead insisted on posing questions in response to questions asked by this court and Mr. Telesford's counsel. His demeanour and attitude did not lend me to believe that he did not make the statements to Ms. Bruce and Officer Philbert as alleged. I am constrained to find that he appeared to be trying to cover his tracks by repeatedly saying that '*he did not want to get tied up.*' I therefore find as a matter of fact that Mr. Agard made the statements attributed to him by Ms. Bruce and Officer Philbert respectively.

Whether the statements which Mr. Telesford alleges were made are capable of bearing the meanings which Mr. Telesford ascribes to them or any other meaning.

[58]Before assessing whether the allegedly offending words uttered by Mr. Agard are defamatory of Mr. Telesford, the court must first consider whether the offending words are capable of bearing the meanings ascribed to them⁷. Whether words are capable of bearing a defamatory meaning is a question of law and whether words do bear a defamatory meaning is a question of fact⁸. The legal principles in relation to this issue are well settled.

⁷ Vaughn Lewis v Kenny D. Anthony [2007] Civil Appeal No. 2 of 2006.

⁸ Halsbury's Laws of England, Defamation (Volume 32 (2023) at 544.

[59]The court's first task is to determine the single natural and ordinary meanings of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words to bear⁹. **Jeynes v News Magazines Ltd and another**¹⁰ provides a comprehensive but non exhaustive list of considerations for the court as drawn from Thomas Bingham MR in **Skuse v Granada Television Limited**¹¹:

- “ (1) the governing principle is reasonableness;
- (2) the hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non – defamatory meanings are available;
- (3) Over elaborate analysis is best avoided.
- (4) The intention of the publisher is irrelevant.
- (5) The article must be read as a whole, and any ‘bane and antidote’ taken together.
- (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
- (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, “can only emerge as the produce of some strained or forced, or utterly unreasonable interpretation ...

⁹ Koutsogiannis v Random House Group Ltd [2019] EWHC 48 (QB) at 11.

¹⁰ [2008] EWCA Civ 130 at 14.

¹¹ [1996] EMLR 278.

(8) It follows that “it is not enough to say that by some person or another the words *might* be understood in a defamatory sense...”

[60] Counsel for Mr. Telesford referred the court to the eight considerations in **Skruse** as quoted above, and further referenced **Jones v Skeleton**¹², to make the point that the court should give the words in question their natural and ordinary meaning, which may be either the literal meaning or an indirect meaning, which includes any implications or inferences which a reasonable reader would draw from the words.

[61] In relation to Ms. Bruce, counsel for Mr. Agard contends that in their totality, the words allegedly uttered to her do not bear a defamatory meaning, as Ms. Bruce admitted that the response made by Mr. Agard was omitted from that statement. Counsel submits that if the court examines the totality of the statement and its context, the words complained of relate to the suggestion that it was one of Mr. Telesford’s employees that cut the chain, which is the good interpretation.

[62] Counsel further puts forward that it is unreasonable to seize only on the bad interpretation that Mr. Agard was accusing Mr. Telesford of the chain cutting to give the words a defamatory sense. Counsel for Mr. Agard submits that the court should take note of the reasonable man test as set out in **Jeynes** in determining the meanings of the words, as the reasonable man is not avid for scandal, and does not select one bad meaning where other non – defamatory meanings are available.

[63] When the facts of this case are examined in the lens of the legal principles, I find that it would be perverse to conclude that the natural and ordinary meanings of the statements made to Ms. Bruce and Officer Philbert are not capable of bearing at least some of the meanings as

¹² [1963] 3 ALL E.R. 952.

alleged by Mr. Telesford. The statement made to Ms. Bruce suggest that Mr. Agard was alleging that Mr. Telesford was responsible for his chain being cut. Ms. Bruce herself indicates that she formed this conclusion during the conversation, and I am inclined to agree with her. The natural and ordinary meaning of the discussion between Mr. Agard and Ms. Bruce lends to the conclusion that when Mr. Agard came back to find his chain cut and viewed his cameras, he found that Mr. Telesford was the culprit, and this caused him to want to have a man to man conversation to discuss the issue with him.

[64]Counsel for Mr. Agard's submissions ignore that I am assessing the statements made by Mr. Agard to Ms. Bruce and not what Mr. Agard claims Ms. Bruce said to him, which I disbelieve in any event. Notably, counsel for Mr. Agard made specific reference to Ms. Bruce's statement but made no submissions about the meanings to be attributed to the statement made to Officer Philbert. I hypothesise that this posture may be due to the obvious fact that the natural and ordinary meanings of the words uttered to Officer Philbert expressly identify Mr. Telesford as the person who cut Mr. Agard's chain.

[65]I therefore find that the natural and ordinary meaning of the words spoken to Ms. Bruce is that Mr. Telesford was responsible for cutting Mr. Agard's chain, and the words spoken to Officer Philbert need no further elucidation. I do not think that the statements are capable of meaning that Mr. Telesford is a malicious man in our Caribbean parlance or a bad neighbour and disreputable person, but the natural and ordinary meaning would definitely communicate to the reasonable person that Mr. Telesford committed a criminal offence by cutting Mr. Agard's chain.

If the statements are capable of bearing the meanings ascribed by Mr. Telesford, whether the meanings are in fact defamatory of Mr. Telesford.

[66]As stated by Stephenson J in **Lexi Maximea v The Dominica Agricultural Industrial and Development Bank et anor**¹³,

“ a defamatory statement is a statement which tends to lower a person in the estimation of right thinking members of society generally or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule...”¹⁴.

[67]Counsel for Mr. Telesford submits that the words stated by Mr. Agard have lowered Mr. Telesford in the estimation of right-thinking members of society, as any person hearing the words would conclude that Mr. Telesford had committed a criminal offence of damage to property. Damage to property is in fact a criminal offence, as will be discussed in the subsequent issue, and I believe that any right-thinking member of society would think less of Mr. Telesford upon hearing the accusations made by Mr. Agard. Any allegation of criminal activity is surely offensive to right thinking members of society.

[68]Counsel for Mr. Agard however avers that the statements were not in fact defamatory of Mr. Telesford, but of his workmen. Counsel bases this assertion on Ms. Bruce’s response in cross – examination when she accepted that Mr. Agard said ‘*no no no I am not making any confusion*’, and further on Mr. Agard’s claim that Ms. Bruce told him that her workmen cut the chain. Counsel submits that Mr. Telesford “cherry picked” the

¹³ DOMHCV2016/0160.

¹⁴ DOMHCV2016/0160 at 26

words to be placed in the statement of claim, and by wilfully omitting the answer given by Mr. Agard, came to the court with unclean hands and was motivated by malice. In this regard, counsel refers the court to **Charleston and Another v News Group Limited and Another**¹⁵, where Farquharson LJ said:

“There is no doubt that the publisher of an alleged defamatory statement is entitled to have the entire statement looked at in its full and proper context. The Claimant who contends that a statement is defamatory of him cannot select part of the statement to justify his claim and ignore passages or words which qualify or negate the effect of the part complained of”.

[69]With respect to learned counsel, this submission fails on the same point as discussed in the previous issue. I am assessing the statements made by Mr. Agard to Ms. Bruce, and not the converse. In any event, the allegation of cherry picking, while frowned upon, does not assist Mr. Agard. I glean the guidance from Lord Bridge of Hardwich in **Charleston and Another v News Group Newspapers Ltd**¹⁶ which referenced Alderson B's passage in **Chalmers v Payne (1835) 2 C.M. & R. 156, 159:**

“But the question here is, whether the matter be slanderous or not, which is a question for the jury, who are to take the whole together, and say whether the result of the whole is calculated to injure the plaintiff's character. In one part of the publication, something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together.”

¹⁵ [1993] Lexis Citation 3087.

¹⁶ [1995] 2 A.C. 65.

[70]I find that even if the ‘*no no no*’ comment is added to the statement made to Ms. Bruce, it does not rise to the level of an ‘antidote’ to take away the sting of the inference which Mr. Agard made against Mr. Telesford about the chain being cut. If I am to believe, as suggested by counsel for Mr. Agard, that Mr. Agard was not accusing Mr. Telesford himself, but his workmen, then Mr. Agard could easily have said that in conversation with Ms. Bruce.

[71]Instead of saying “*no no no I am not making any confusion*” in response to Ms. Bruce’s question, he could easily have said that he was not accusing Mr. Telesford, but the workmen. The need to speak to Mr. Telesford “man to man”, especially after viewing his cameras, suggests to me that Mr. Agard thought or had found by viewing his cameras that Mr. Telesford was the culprit who committed the allegedly criminal act of cutting the fence, and wished to confront him. I therefore find that the words were defamatory of Mr. Telesford as they would tend to lower him in the estimation of members of society.

Whether the slanderous statements complained of are actionable per se without proof of material loss.

[72]Usually, in an action for slander, the aggrieved party must allege and prove as special damage some form of actual material loss.¹⁷ There are exceptions to this general rule, as an oral defamatory statement is actionable per se (without proof of special damage) in three distinct circumstances:

- 1) Where the statement disparages the claimant in any office, profession, calling, trade or business held or carried on by him at the time of the publication;

¹⁷ Cassell & Co Ltd v Broome [1972] AC 1027 at 1073.

- 2) Where the statement is published about the claimant in the way of his office or calling in relation to his conduct for it, and imputes unfitness for or misconduct in that office or calling; or
- 3) Where the statement imputes that the person of whom the words are published has committed a crime punishable by imprisonment¹⁸.

[73] Counsel for Mr. Telesford relies on the third limb as referenced in **Hellwig v Mitchell**¹⁹, submitting that Mr. Agard's words suggested that Mr. Telesford had committed the criminal offence of damage to property by cutting the chain to Mr. Agard's driveway. She argues that this criminal offence is punishable by imprisonment pursuant to section 94(2) of the Criminal Code²⁰. Further, counsel for Mr. Telesford submits that the slander as alleged consists of words actionable in themselves and the mere use of those words constitute the infringement of Mr. Telesford's rights which is a wrong which gives rise to a cause of action.

[74] Counsel for Mr. Agard counters that Mr. Telesford has not alleged or proven actual material loss, and therefore has not made out a case for special damages. In this regard, counsel contends that Mr. Telesford will not be able to maintain his action against Mr. Agard unless he convinces the court that the slander is actionable per se. Counsel further contends that the crime of which Mr. Telesford complains is that of chain cutting, which is governed by section 89 of the Criminal Code, where the penalty is a fine and not imprisonment.

[75] Further, counsel for Mr. Agard explains that sections 94(2) and 271 of the Criminal Code have no application to the case at bar. Counsel is of the view that even though section 89 does not make specific reference to a

¹⁸ Halsbury's Laws of England, Defamation (Volume 32 (2023) at 517.

¹⁹ [1910] 1 K.B. 609.

²⁰ Cap 72A of the 2010 Revised Edition of the laws of Grenada.

‘chain’, section 89 makes it unmistakeably clear that damage to any class of items listed in that section would result in a fine. In counsel’s view the chain falls within the purview of this section as it was erected to act as a barrier to entry by unauthorized persons.

[76] Counsel also submits that sections 94(2) and 271 of the Criminal Code have not been made out, as these sections require that the damage to property amount to sums as set out in the legislation, which Mr. Telesford has not proven. On this basis, counsel contends that the slander complained of is not actionable per se, and judgment should be entered for Mr. Agard, as the existence of material loss is essential to the cause of action of slander outside of the exceptions.

[77] I agree with counsel for Mr. Agard that the case can turn on the issue of whether the claim is actionable per se. Counsel for Telesford’s contention that the slander is actionable because it constitutes an infringement of Mr. Telesford’s rights borrows language from constitutional law, which is not the cause of action at bar. The law on this point has been settled as early as the 18th century in cases such as **Ratcliffe v Evans**²¹ and **Alexander v Jenkins**²² that actual material loss must be alleged and proven in cases of slander unless the slander falls within the exceptions mentioned above.

[78] Guidance on the issue of slander which imputes a criminal offence punishable by imprisonment can be found in **Halsbury’s Laws of England**:

“...The distinction is not between indictable and non-indictable offences, but between the offences for which a person can be made to suffer by imprisonment and those for which the

²¹ [1892] 2 QB 524

²² [1892] 1 QB 797.

punishment is the mere imposition of a fine. It makes no difference in the case of an offence punishable by imprisonment that a fine may be imposed in addition or in the alternative nor, in the case of an offence punishable by fine, that imprisonment may be ordered for non – payment of a fine, or that it involves a liability to arrest for a summary offence...²³

[79]I now turn to the sections referenced by the respective counsel in the Criminal Code, and recite them below for ease of reference.

Section 89 provides:

“Whoever intentionally and unlawfully destroys or damages any part of any live or dead fence whatsoever, or any post, pale, rail or wire used as a fence, or any stile or gate or any part thereof respectively, shall be liable to a fine of nine dollars and sixty cents.”

Section 94(2) provides:

“ whoever intentionally and unlawfully causes damage not exceeding twenty – four cents to any land, or to any animal or thing, in any case not specially provided for in this Title shall be liable to imprisonment for three months.”

Section 271 provides:

“whoever intentionally and unlawfully causes damage exceeding twenty four dollars to any land or to any animal or thing in any case not specifically provided for in this Title shall be liable to imprisonment for six months.”

²³ Halsbury's Laws of England, Defamation (Volume 32 (2023) at 555.

[80]In relation to this issue, I agree with counsel for Mr. Agard that no amount has been given by Mr. Telesford or Mr. Agard as to the extent of the damage for the cutting of the chain. I however find that arguments about the applicability of a particular section are a futile attempt at parsing that ignores the purport and intent of the law. If one examines the extract from Halsbury recited above, what is clear is that the requisites of the exception in cases alleging conduct which may attract imprisonment may be met even in cases where the offence is one that stipulates a sanction of a fine. This is so where, as Halsbury explains, the person who is ordered to pay a fine is confronted with the possibility of imprisonment for non-payment of the fine. When one examines Title VIII of our Criminal Code²⁴, it is quite apparent that the Code clearly articulates the procedure that may lead to the imprisonment of someone who does not pay a fine ordered by the court. In a word, the threat of imprisonment looms over one who is ordered to pay a fine by our courts and fails to do so.

[81]Accordingly, in the circumstance of this case, it matters not whether the offence of which Mr. Telesford was being accused fell under the section imposing a sanction of only a fine or one stipulating only imprisonment. Pursuant to the Criminal Code, Mr. Telesford could have been confronted with the possibility of imprisonment in either event. As such, this satisfies the requisites of the rules recited in Halsbury. This would mean that the slanderous statements made by Mr. Agard are actionable per se.

What relief, if any, may be awarded to Mr. Telesford.

[82]In his claim for relief, Mr. Telesford has sought damages (including aggravated damages) and an injunction restraining Mr. Agard from repeating the slanders or similar slanders. Having found that Mr. Agard

²⁴ See sections 71 and 72 of the Criminal Code for an example.

made the statements, which were slanderous, and the slander is actionable per se, I now deal with the issue of damages.

[83] Damages in defamation cases are awarded to compensate the claimant for damage to his reputation, vindicate his good name and take account of the distress, hurt and humiliation which the publication has caused²⁵. These damages operate to vindicate the claimant's good name in the public and to console him for the wrong done and they are better viewed as a 'solatium' than as monetary recompense for harm measurable in money terms²⁶. The court is also entitled to take into account the gravity of the defamation and the extent of the publication, and the actions of the defendant both prior to and after the initiation of the claim. The more serious the defamation, and the more extensive the publication, the higher the quantum of damages.

[84] Mr. Telesford argues that he is entitled to his good name, he is an outstanding member of his community, and a well-known businessman in Grenada, but that this reputation was affected by Mr. Agard's utterances. Mr. Telesford's claim for aggravated damages was principally based on Mr. Agard's refusal to investigate the issue or apologize. The claim for aggravated damages was also pinned on Mr. Telesford's contention that he was no longer invited to association meetings held at community members' homes. This latter assertion all but fell away during cross examination when Mr. Telesford admitted that he had only ever attended one meeting of the association and that the association was now defunct. As stated in **Phonographic Performance Limited and Andrew Ellis Trading**²⁷:

²⁵ John v MGN Ltd [1997] QB 586.

²⁶ Uren v John Fairfax & Sons Pty Ltd (1965 – 66) 117 CLR 118 at 150.

²⁷ [2018] EWCA Civ 2812.

“Aggravated damages are awarded for a tort as compensation for the complainant’s mental distress, where the manner in which the defendant has committed the tort or his motives in so doing or his conduct subsequent to the tort has upset or outraged the claimant. Such conduct or motive aggravates the injury done to the claimant, and therefore warrants a greater or additional compensatory sum.”

[85] At best, I can see and understand how Mr. Telesford might have felt embarrassed about the statements made. However, from the evidence presented on the whole case, I am only able to find that the statements were published to 2 persons – Officer Philbert and Mr. Telesford’s wife, Ms. Bruce. Mr. Telesford’s assertions of opprobrium from his neighbours, business colleagues and the publication to the wider society have not been made out. I have already addressed his claims that he is no longer invited to association meetings. I have not been able to find that there was widespread repetition of the statements in Grenada as he has alleged. I pause also to comment that Mr. Agard admitted that he made certain statements to Mr. Forsyth but these statements did not form any grounds of the complaints in this case.

[86] In assessing the quantum of damages in cases such as these, the learning dictates that the court must look at the circumstances of the case and awards in comparable cases in the jurisdiction. The court must also consider whether there are any mitigating factors which may reduce any award to which Mr. Telesford may be entitled. Counsel for Mr. Telesford submits that Mr. Agard has never sought to mitigate his wrong and referred the court to the case of **Dorset Mitchell v Keith Gurley**²⁸, wherein the claimant was awarded the sum of \$5,000.00. Counsel

²⁸ GDAHCV2005/0060.

submits that Mr. Telesford should be awarded the sum of \$10,000.00 in damages, but gives no indication as how this sum was calculated, given that the award in the case to which she referred amounted to half of the sum of the \$10,000 which counsel asks this court to award.

[87]Counsel for Mr. Agard referred the court to the case of **Dr. Edmond Mansoor v Eugene Scott**²⁹, wherein the claimant was awarded \$10,000.00 as compensation for an allegation of bribery in public office as a Minister of Government. Counsel submits that there are sufficient similarities between Dr. Mansoor's case and the case at bar, in that both parties claimed that they were humiliated by the defamatory statements but brought no independent evidence of being lowered in the estimation of members of society or any significant injury to reputation.

[88]Mr. Agard's counsel contends that as there is no evidence of harm to reputation, and on the principle that '*reputation is not what one thinks of himself, but what others thinks of him*', all that is left is Mr. Telesford's feelings of hurt and embarrassment to be compensated in damages. Counsel therefore submits that an award of \$5,000.00 should be adequate to compensate for Mr. Telesford's injured feelings.

[89]In **Jenny Lindsay et al v Harriet Carty**, Baptise JA elucidated that:

"the appropriate amount of compensation depends on the nature and extent of the harm done to the claimant's reputation and feelings and must take account of any award to vindicate reputation. The extent of the injury to reputation will depend upon matters such as gravity, its prominence, circulation and any repetition. Matters tending to reduce harm to reputation include an apology. Injury to feelings may be aggravated by the conduct of

²⁹ ANUHCv2010/0209.

the defendant after publication and should properly be reflected in the award. The total must be proportionate and no more than is necessary to serve these functions.”³⁰

[90] In light of the circumstances, I accept counsel for Mr. Telesford’s assertion that there is no mitigation on Mr. Agard’s part to consider. I however also accept counsel for Mr. Agard’s assertion that Mr. Telesford has not shown extensive or widespread publication of the slander or provided evidence of loss of his upstanding reputation in Grenada as a result. Taking into account comparable cases in the Eastern Caribbean jurisdiction³¹, including those referenced by both counsel, I find that the sum of \$6,000.00 should compensate Mr. Telesford for his hurt feelings and embarrassment. I also find that a permanent injunction restraining Mr. Agard from repeating the slanderous statements is fitting in the context of this case. I make no award for aggravated damages, having found that this aspect of the claim has not been made out.

[91] I pause to comment that this is a claim between neighbours who will continue to reside near each other. It is hoped that matters such as these can be resolved amicably as between parties through alternative methods of dispute resolution in the future. A simple apology or retraction in matters such as these can make a material difference not just in mending fences, but in placating the unnecessary discord as between parties, especially where there is no physical or other proof of the assertions being made. It is hoped that the parties are able to conclude their differences in a more amicable matter going forward, without further recourse to the courts on this matter.

³⁰ AXAHCVP2015/0007 at 36.

³¹ George Rick James v Molwyn Joseph ANUHCv 2011/0007.

Costs

[92] Having found that Mr. Telesford is partially successful in his claim, under the prescribed costs regime, Mr. Telesford is entitled to costs in the sum of \$1,200.00. I will order Mr. Agard to pay the entirety of this sum to Mr. Telesford, as I have found no factors for a reduction of that sum.

Conclusion

[93] In light of the findings above, I conclude that Mr. Agard made the statements to Ms. Bruce and Officer Philbert, and that these statements bore defamatory meanings to the extent that they asserted acts that amount to criminal conduct. I have also found that they were defamatory of Mr. Telesford in that it was clearly stated and/or suggested that he was the person accused of doing the criminal act of cutting the chain put up by Mr. Agard. Mr. Telesford however has not satisfied the court that the damage to his reputation was to such an extent for an award of substantial damages or aggravated damages should be made. I therefore order as follows:

- 1) Mr. Telesford is awarded general damages in the sum of \$6,000.00;
- 2) Mr. Agard is restrained whether by himself, servants or his agents from repeating the same or similar slanderous statements about Mr. Telesford to third parties;
- 3) Mr. Telesford is also awarded interest on the sum of \$6,000.00 at the rate of 6% per annum from the date of this judgment until payment;
- 4) Costs are awarded to Mr. Telesford in the sum of \$1, 200.00

Raulston L.A. Glasgow

High Court Judge

By the Court

Registrar