

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2020/0203 (formerly SLUHCV2018/0624)

BETWEEN:

AGNES FRANCIS

Claimant

And

- 1. RICHARD FREDERICK**
- 2. ALMUS MCDONALD trading as MCDOWALL
BROADCASTING CORPORATION**

Defendants

APPEARANCES:

Mr Fidel Michel and Ms Renee St. Rose for the Claimant
Mr Horace Fraser for the Defendant

2021: October 18; 29 – written submissions;
2023: December 18

JUDGMENT ON ASSESSMENT OF DAMAGES FOR DEFAMATION

- [1] **PHILLIP, J:** This is an application for assessment of damages on a judgment in default of defence entered on 15th May 2019. The claimant filed a claim for defamation seeking damages, injunctive relief, interest and costs. The defendants did not file a defence within the time prescribed under the Civil Procedure Rules, 2000 (as amended) (CPR) and judgment in default of defence was entered against the defendants.
- [2] On 12th February 2021, the claimant applied with a supporting affidavit for the injunction to restrain the second defendant, whether by himself, his servants or agents or otherwise, however, and to restrict the first defendant, whether by himself, his servants or otherwise, howsoever from publishing or causing to be published the said or any similar words contained in the claim herein defamatory of the claimant and fixing a date for the assessment of damages. The court granted the injunction and directed the parties to file and serve their witnesses' statements and written submissions regarding the assessment of damages scheduled for 18th October 2021.

The Claimant's Case

Evidence

[3] The claimant's evidence, so far as relevant in her witness statement filed on 14th June 2021, although a bit lengthy, is set out verbatim:

- "3. I am currently the Managing Director of Accela Marketing Company Limited, an award-winning company offering advertising and marketing solutions to public and private business enterprises in Saint Lucia and the Eastern Caribbean. I also manage a business consultancy enterprise and I have undertaken significant work in tourism, marketing and business diagnostic and development within Saint Lucia and the wider Caribbean. A copy of the Annual Returns for Accela Marketing for the year 2021 is exhibited hereto and marked "A.F.1".
4. Over the years I have performed marketing consultancy services for high-profile clients locally, regionally and internationally. Additionally, the Company has received a number of positive reviews for its services. Evidence of this can be found on the Company's website under "Testimonials". Copies of a non-exhaustive list of clients and testimonials displayed on the company website are collectively exhibited hereto and marked "A.F.2".
5. The Company has received several awards and accolades over the year for its high-quality performance under my directorship. A copy of the list of some of the most notable award received by the Company is exhibited here and marked "A.F.3".
6. I am also a former Director of Tourism, in which capacity I was responsible for the management and coordination of the marketing, public relations and tourism product development of Saint Lucia.
7. I am also a published author of several papers on tourism and I have served on several statutory and private sector boards including the Saint Lucia Chamber of Commerce, Saint Lucia Tourist Board, Saint Lucia Hotel and Tourism Association, Invest Saint Lucia Sports Inc., among others. I served at different times as the Chairpersons of the Saint Lucia Tourist Board, the National Development Corporation and Invest Saint Lucia.
8. Up until 2nd August 2018, I was a person who held significant standing in Saint Lucia as a public and professional figure of excellent repute and my business interests are totally dependent on my reputation for providing honest and trustworthy services to my clients.
9. On or about the 2nd August 2018, the First Defendant hosted a television program called "*Can I help You*", which was broadcast on McDowall Broadcasting Corporation (MBC), a television station owned and operated by the Second Defendant; and which airs on Channel 120 on the FLOW service provider, among other service providers in Saint Lucia, in the course of which programme several defamatory of me were made and published by the Defendants.
10. The statements suggest that I abused my office as director of Tourism and that in effect I am dishonest, corrupt and cannot be trusted with public or private funds or assets. I believe that this is the manner in which the defamatory statements would be understood by a reasonable right-thinking man or an average member of society.

11. I believe that the defamatory statements were published in a manner intended to excite and incense viewers of the Defendants' programme and that the Defendants knew or ought to have known that the words used or meaning conveyed by such words were untrue.
12. I believe that the Defendants at the time of publication knew that the statements made were defamatory, and decided to make and publish the statements on their broadcast because the prospects of material advantage outweighed the prospects of material loss. The Defendants were motivated by malice and published the defamatory statements intending to negatively affect my reputation. I also believe that the Defendants were motivated by monetary considerations, and published the defamatory statements with a view to maintaining ratings, sponsorship and advertisements, regardless of whether the statements were defamatory or not.
13. I am aware that the Defendants are very popular in television broadcasting in Saint Lucia, especially the Can I help You programme hosted by the First Defendant. This programme is followed by not only a large number of Saint Lucians locally, but also by Saint Lucians residing abroad. I am also aware that the programme is broadcasted over the internet, which guarantees a limitless amount of access and availability to persons all over the world. The Defendants' medium is therefore as extensive as any publication could be in the jurisdiction of Saint Lucia; and also, has wide reach outside of Saint Lucia by virtue of its availability on the Worldwide Web.
14. The defamatory statements published by the Defendants have caused serious injury to my reputation, particularly due to the fact that the allegations and defamatory statements made relate to my profession and reflect poorly on my personal integrity. I feel that my reputation has diminished significantly as a result of the said publications of the Defendants.
15. I was unquestionably appalled when I learnt of the contents of the defamatory statements published by the Defendants. I also became infuriated that the Defendants who had no basis or proof of the validity or creditability of these defamatory statements, had nevertheless published such slanderous remarks in relation to my character and career.
16. The said publication of the Defendants caused me much distress, grief, humiliation and embarrassment. I received significant public opprobrium as a result of the Defendants' publication.
17. On 3rd August 2018, the morning after the Defendants' broadcast of the defamatory statements against me, I received a call from the Chairman of the Water and Sewage Company of Saint Lucia, Mr. Francis Denbow, who indicated to me that he had heard my name on the broadcast and indicated that if he did not know my character, he would believe that I was dishonest, corrupt and a thief.
18. Mr. George "Fish" Alphonse also approached me and informed me that he was praying for me, and indicated to me that whatever is going on in my life, he hoped that I will get over it and that he was shocked by what he had heard on the broadcast of the Defendants. I informed him that what he had heard was not true and Mr. Alphonse said that his 'belly stopped hurting' him, meaning that he was relieved by my assurance.
19. Ms. Drenia Frederick and Ms. Celeste Burton, at an Events Saint Lucia Board meeting, enquired of me whether I was okay in light of the Defendants' broadcast and the comments which it generated in various WhatsApp group chats and other social

media. I informed them that the things said were untrue. Ms. Frederick and Ms. Burton both indicated that until I assured them otherwise they had believed the statements broadcasted by the Defendants.

20. Whilst I was passing by the JQ Mall in Rodney Bay, Gros Islet, I saw persons pointing at me in an accusatory way. This had never happened to me prior to the Defendants' broadcast.
21. My friend, Ms. Berthia Parle, was also stopped by people whom she met in the period following the broadcast and asked whether she had heard the statements made in the broadcast and whether they were true.
22. I also received calls from as far as Canada, the USA and the United Kingdom from persons asking if the statements in the Defendants' broadcast were true.
23. Needless to say, although I was able to assure persons who knew me personally and who made enquiries of me, that the defamatory statements were untrue, there would have been many thousands of people who heard the broadcast but did not know me well enough to know that these statements were untrue.
24. The slanderous statements published by the Defendants have therefore caused me significant embarrassment, humiliation and distress. The effect of the publication was far-reaching and had implications on my social, professional and business relationships as well as my standing in society.
25. What has caused further aggravation is that I caused my Legal Practitioners to write a letter to the First Defendant requesting an apology and a public retraction of his defamatory statements against me. This letter was written and served on him on 20th August 2018, but he refused to apologise and/or retract his defamatory statements. On 18th December 2018, I caused my Legal Practitioners to file a claim against the Defendants [f]or defamation. The claim was served on both Defendants on 4th January 2019, but neither of them filed any defence to the claim.
26. An apology was never offered by the Defendants nor was a retraction of the statements made, which added further injury to my feelings.
27. I believe that the defamatory statements against me published by the Defendants were effectively passed off as factual information and current affairs on a news programme by the First Defendant, who holds himself out to be a whistle-blower and purveyor of truth, and one who backs his stories with documentary evidence to prove allegations of misconduct against public officials.
28. As my business interests are totally dependent on my reputation for providing honest and trustworthy services to my clients and customers both in the public and private sector, these statements have significant potential to affect my income by detracting and warding off would-be clients and customers, locally, regionally and internationally, who may believe that I am dishonest, corrupt, and cannot be trusted with public or private funds or assets, as a result of the Defendants' publication.
29. This is exacerbated by the fact that the Defendants' statements were made specifically in relation to my professional life and professional integrity.
30. Further, the Defendant's comments were related to my work in the field of Tourism; which is my passion and a field in which I have spent a lifetime building a successful career, conducting research and publishing papers. The Defendants' statements have tarnished my reputation in this field and is likely to result in significant financial loss to me, as this is my primary field of expertise and generates my most lucrative professional engagement.

31. As a result of the defamatory statements published by the Defendants, I have suffered significant financial loss with respect to my marketing consultancy business, which is heavily dependent on my upstanding reputation as an honest and trustworthy member of society. I have always enjoyed a busy practice as a marketing consultant and would regularly procure several projects per year. In fact, in 2017, the year prior to being defamed by the Defendants, I was awarded a total of nine consulting contracts, amounting to over \$2,000,000. Conversely, in the two years since the publication of the defamatory statements by the Defendants in 2018, I have only been awarded two consulting contracts to a total value of approximately \$200,000. This represents a stark difference in the business which I received before and after the publication of the defamatory statements by the Defendants. I believe that this significant decline in business is as a direct result of the reckless conduct of the Defendants in publishing the defamatory statements against me, thereby negatively affecting my reputation and my ability to attract work in the marketing industry. A copy of the consulting revenues which I earned throughout the period of March 2017 to March 2020 is exhibited hereto and marked "A.F.4".
32. Further, the Defendants' statements exist in a permanent form, as copies of the First Defendant's programme can be requested and obtained by members of the public from the Second-Defendant's television station any number of times, now and at any time in the future.
33. I therefore respectfully ask this Honourable Court to award substantial damages against the Defendants for their unfounded, vicious and egregious attack on my character and reputation, which damages should include general damages, aggravated damages and exemplary damages, together with interest at such a rate as the Court may deem just.

[4] In cross-examination, the claimant confirmed that she had seen the program 'Can I Help You' before November 2018 and regularly appeared on radio and television during her stewardship of the Saint Lucia Tourism Authority. The claimant was referred to several paragraphs of her witness statement. First (para 13), she acknowledged that she stated there were thousands of viewers and provided the court with proof of her assertion. Still, she conceded that she did not provide evidence of the television coverage. Next (paras 14, 16 and 24), she stated that the witness statement did provide some examples of these assertions, and the attachments were clear and proof of these assertions. She could not recall whether a photograph of her was displayed during the broadcast.

[5] When referred to paragraphs 25 and 26 of the witness statement, the claimant stated that she did not understand as her legal representative handled these matters. However, she agreed that she did not provide the court with the letter referred to in these paragraphs and that no proof was provided that the letter was served on the defendants. Regarding paragraphs 28 to 31, the claimant stated that she provided audited documents by an audit firm of these assertions. She indicated

when one reads the documents, the decline in her business had to do with the publication, which was the only change in her situation. The statements/documents show that the decline was before March 2020, when the COVID-19 impact was not yet felt. The claimant maintained that any decline should be attributed to the defamatory publication without more and did not agree that the audit documents were not helpful to her case.

- [6] The claimant also accepted in cross-examination that the defamatory publication included a series of questions by the first defendant. Still, she denied that he asked her to confirm the story in the publication and that he was asking for a response. She also denied that the defamatory publication was a one-off or non-repeat publication and stated that in her pleaded case, she said it happened more than once. The claimant agreed that the defamatory publication did not outright say she was a thief, dishonest or professionally incompetent. Finally, she disagreed that the defamatory publication was largely harmless and the defendants did not set out to harm her.

Submissions

- [7] The claimant, relying on the cases of ***Victoria Alcide v H.T.S Limited et al.***¹ and ***Rishatha Nicholls v Arnhim Eustace***², where the court awarded general damages to the claimant of \$100,000.00 and \$120,000.00, respectively, submitted that in the instant case, the court should make an award of general damages comparable to the award given in these cases which reflects the fact that the claimant suffered the fate of being robbed of her pristine reputation as a hard-working, honest and upstanding member of society, as a result of the untrue defamatory statements published by the defendants.
- [8] Moreover, the claimant submitted adequate compensation should be awarded to the claimant to console her for the considerable stress, anxiety and embarrassment that the defamatory words published by the defendants have caused her. Further, in making an award of general damages, the court should consider the severe reputational damage and hurt suffered by the claimant, both in her personal and professional capacity, especially having regard to the fact that her success as a marketing consultant and businesswoman is hinged on her maintaining her good reputation and her image as an honest and upstanding member of society.

¹ SLUHCV 2011/0398

² SVGHCV2014/0240

- [9] Additionally, in determining the quantum of general damages to be awarded to the claimant, the court should also have regard to the significant financial loss suffered by her as a direct result of the defamation of her character by the defendants. The claimant's submission is that the evidence that she has put before the court sufficiently establishes the nexus between her and Accela Marketing Ltd, so that the significant loss in revenue by Accela Marketing Ltd. following the publication was a direct result of the defamatory and untrue statements published by the Defendants. The Defendants have not refuted this evidence.
- [10] Further, the claimant submitted that it is settled law that in defamation claims, a claimant can rely on a defendant's conduct as aggravating the damages to which the claimant is entitled. The claimant referred to the following authorities:³ ***Sutcliffe v Pressdram Ltd*** [1991], ***Rantzen v Mirror Group Newspapers*** (1986), ***Keith Mitchell v Steve Fassihi et al.***, ***Dr Philbert Aaron v Abel Jno Baptiste***, and ***Dr Edmond Mansoor v Eugene Silcott*** and submitted that in the instant case, the defendants failed to file a defence to the claim instituted by the claimant. Furthermore, the claimant's legal practitioners wrote to the first defendant; they requested that he publicly retract his statement and apologise to the claimant for the defamatory statements made of her. Unlike in ***Dr Edmond Mansoor***, the first defendant responded to the letter from the claimant's legal practitioners and vehemently refused to retract his statements or offer an apology to the claimant. Instead, he arrogantly defended his statements and denied that they were defamatory. The first defendant's manner of delivery of the defamatory words against the claimant was scornful, and he was not acting with a proper motive or with genuine journalistic inquiry. The claimant should receive an award of aggravated damages reflecting the nature of the defendants' conduct.
- [11] Citing ***Gatley on Libel and Slander*** and ***Manson v Associated Newspaper Ltd.***⁴, the claimant submitted, in defamation claims, a successful claimant may also be entitled to an award of exemplary damages by the court, depending on the circumstances of the case. In the instant matter, the claimant should receive an award of exemplary damages to reflect that the defendants were aware of the risk of publishing such scandalous content. Moreover, the court ought to take into consideration the fact that the first defendant in particular, is an experienced Attorney-at-Law,

³ Neither copies nor full citation were provided to the court

⁴ [1965] 2 ALL E.R. 58

‘and talk show host’ who is certainly aware of the detrimental impact of the defamatory statements made of the claimant and the irreparable damage which they are likely to cause to her.

- [12] The claimant submits that the defendants’ publication of the defamatory statements against her has caused her considerable distress, anxiety and humiliation. Additionally, it has had a detrimental impact on her once untarnished and pristine reputation and caused significant financial loss to her. Regarding the defamatory words used and the extent of its publication, the impact on the claimant, and the defendants’ conduct, the claimant surmised the court should award her substantial damages, including general, aggravated, and exemplary damages. The quantum of damages awarded should be not less than \$150,000.00

The Defendants’ Case

- [13] The defendants did not file any witness statements but, on 6th July 2021, filed a document styled ‘Reply to Application for Assessment of Damages’. They contend that:

1. The claimant in her pleaded case averred that she is the Managing Director of Accela Marketing Company Limited (“the Company”) to base her contention that she is a person of significant standing in Saint Lucia with a public and professional image but never asserted that the Company suffered loss as a result of the publication which is the subject matter of these proceedings. Further, assuming but not admitting the Company did suffer loss as alleged in the witness statement, the matters upon which the claimant founded the claim of loss were hearsay material. Therefore, the claim regarding the alleged loss suffered by the Company was unsustainable and not made out.
2. The claimant has failed to prove that she has suffered any financial loss over and above any loss to her reputation; therefore her claim for special damages was unsustainable. The claimant has failed to prove by way of evidence that she suffered reputational injuries due to the publication complained of. The evidence relied on by the claimant to prove reputational damage was premised on what she thinks of herself.
3. The claimant has failed to make out a case for aggravated, punitive or exemplary damages. She presented no proof that the defendants knew they were committing a tort or were reckless and intended to profit from their wrongdoing. In this regard, the defendants will rely on the first defendant’s questions and his invitation to the claimant to answer those questions.

4. The claimant provided no proof or supporting evidence of the matters in paragraphs 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 22, 24, 27, 29 and 32 of the witness statement. While paragraphs 20 and 21 are hearsay and irrelevant, and as to paragraph 30, the publication had nothing to do with the claimant's competence in the field of tourism.
5. Regarding paragraph 25 of the witness statement, the defendants could not file a defence to the claim as they sought information from the claimant, who stole a march by applying for the judgment in default while counsel were engaged in discussions.
6. The defendants contend that the claimant is not entitled to an award of damages on the evidence presented.

[14] In their closing submissions, the defendant reiterated that the claimant's witness statement (paras 8, 10, 11, 12, 13, 14, 16, 17, 18, 22, 24, 27, 29 and 32) were unsupported by evidence and that the matters referred to (paras 19-23) were inadmissible hearsay. The alleged persons mentioned needed to testify to the matters she spoke to in the said paragraphs, but she did not call them.

[15] The claimant did not plead malice nor set out evidence of malicious intent regarding the publication in her witness statement. She did not prove the extent of the publication. Still, she agreed in cross-examination that the words complained of were published on one occasion⁵.

[16] In paragraphs 28-31 of her witness statement, the claimant tried to make a case for loss of business. This effort was frustrated for two reasons: (1) it was not part of her pleaded case, and (2) she provided no evidence upon which this court could rely to award damages. In that regard, the document⁶ she seeks to rely on does not speak to any loss of revenue due to the publication. Also, it is a document prepared by an expert, and the claimant did not comply with Part 32 of the CPR regarding expert evidence.

[17] The claimant failed to prove that she wrote to the defendants demanding an apology and that the letter was served to them. Under cross-examination, the claimant agreed that the statement complained of never said she was dishonest, nor was anything said about her professional competence.

⁵ The court's note is that she did not agree to this suggestion

⁶ Exhibit A.F.4

- [18] On the issue of the award of damages, the defendants submitted the premise of aggravated/exemplary/punitive damages lies in proof of malice. General damages may be aggravated by evidence of the circumstances of the publication. For example, the defendant's conduct during and after the publication (including a defendant's pursuit of the case in court) and especially if the defendant repeats the publication: ***Elwardo Lynch and BDS Limited v Ralph Gonsalves***⁷. Further, relying on ***The Law of Damages***⁸ and ***Elwardo Lynch***,⁹ damages may be aggravated when the defamation is particularly egregious or hurtful. Still, a claimant must give evidence to prove the existence of a malicious motive in the mind of the publisher of the words complained of, that the defendant knew he was committing a tort and was reckless and or intended to profit from his wrong. The defendants submitted that since the claimant failed to plead and particularise malice and further failed to provide evidence that the publication had malicious intent, she is not entitled to an award of aggravated, exemplary or punitive damages.
- [19] Further, the defendants submitted where a defamatory statement is largely harmless or technical, an award of nominal damages may be appropriate as injury to the claimant's reputation is presumed, entitling the claimant to at least an award of nominal damages. However, a claimant seeking substantial damages must prove by evidence that they were entitled to more than a nominal award. In particular, a claimant must lead evidence to show whether people held them highly; reputation is what others think of one, not what one thinks of oneself. The evidence must also show that the claimant's reputation was diminished. In support of this submission, they relied on ***Victor Williams v Shefton Crosse***¹⁰ and ***Elwardo Lynch***¹¹.
- [20] In assessing the damages, the court will regard the extent of the publication, the gravity of the impact upon the claimant's feelings, reputation or career, and the defendant's conduct. The claimant adduced no evidence to prove reputational damage or a diminution in her reputation. She has failed to establish the extent of the audience that viewed or heard the publication. The publication was a one-off one consisting of several questions where the first named defendant called on the claimant to confirm the questions asked. The words complained of were largely

⁷ SVGHCVP2009/002 and 004, paras 9, 11, 12, 13 and 14

⁸ Professor Tettenborn, paras 18.16, 18.34, 18.36

⁹ Ibid, footnote 7, paras 30-32 and 52

¹⁰ SKBHCV2013/0116, paras [23], [47], [51] and [53]

¹¹ Ibid, footnote 7, paras [53] - [58]

harmless, so the claimant is only entitled to nominal damages. In **Victor Williams**, the general damages awarded were \$15,000.00 and aggravated damages of \$10,000.00. In **Kevin Huggins v Nisha Vanmali**,¹² where the claimant proved no reputational damage, the court awarded damages of \$28,000.00. The defendants urged, given the fact in this case, the court should grant the sum of \$10,000.00 to the claimant as nominal damages.

Discussion

[21] In **Gatley on Libel and Slander**,¹³ the learned authors observed:

“9.4 General Damages Compensatory. The purpose of general damages is to compensate the claimant for the effects of the defamatory statement,³⁵ but compensation here is a more complex idea than it is in the case of injury to person or property by negligence. General damages serve three functions,³⁶ albeit that the emphasis placed on each will vary from case to case³⁷: to act as a consolation to the claimant for the distress he³⁸ suffers from the publication of the statement³⁹; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation.⁴⁰ ... Although deterrence may not be a formal *purpose* of general damages for defamation, yet where such damages are substantial (as they are in England) deterrence is an *effect* of them.⁴⁵ Indeed, the law goes further and in some cases allows damages which are designed to punish.⁴⁶

While actual financial loss (such as loss of business or employment) which is not too remote is clearly recoverable⁴⁷ (and in some cases of slander has to be shown in order to establish a cause of action⁴⁸) it is a comparatively rare case in which evidence of such loss is given,⁴⁹ simply because it is not available.⁵⁰ It has been said that the most serious defamations are those that touch the “core attributes of the plaintiff’s personality”,⁵¹ matters such as integrity,⁵² honour, courage, loyalty and achievement⁵³ and in these cases it is most unlikely that he will be able to point to provable items of loss flowing from the words. Even where the libel goes to the claimant’s financial credit it may be virtually impossible to prove financial loss but the damage is insidious and merits a substantial award.⁵⁴ ... In cases of libel and slander actionable per se the law therefore presumes damage arising from the publication and the claimant is entitled to look to an award of damages sufficient to vindicate his reputation according to the seriousness of the defamation, the range of its publication⁵⁷ and the extent to which the defendant has persisted with the charge.⁵⁸

Our system does not regard the claimant’s reputation as vindicated by a symbolic award of a token or conventional sum of damages and the jury in a serious case is entitled to award a large sum perhaps equalling or exceeding the damages in a case of serious personal injury⁵⁹: While the level of damages should not be so high as unduly to curtail freedom of expression, “the court should be careful not to drive down damages in libel cases to a level which publishers might with equanimity be tempted to risk having to pay”.⁶⁰ Nevertheless, “the figure of Justice carries a pair of scales, not a

¹² NEVHCV2018/0008 (5th March 2019)

¹³ 12th Edition, paras 9.4 and 9.5

cornucopia”⁶¹ and “it serves no public purpose to encourage plaintiffs to regard a successful libel action, risky though the process undoubtedly is, as a road to untaxed riches”.⁶² The jury may, of course, take the view that the libel is not very serious in its nature or effect and award a low or even token sum, but it is contrary to principle for it to find that the claimant has been defamed and to award no damages.⁶³

9.5 Matters affecting the level of award.⁶⁴ Damages are “at large” in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula⁶⁵ and they are peculiarly the province of the jury (where there is a trial by that method).⁶⁶ The jury (or judge if sitting alone) is entitled to take into consideration a wide range of matters⁶⁷ including the conduct of the claimant,⁶⁸ his credibility,⁶⁹ his position and standing⁷⁰ and the subjective impact that the libel has had on him,⁷¹ the nature of the libel, its gravity⁷² and the mode and extent of its publication,⁷³ the absence or refusal of any retraction or apology,⁷⁴ and the conduct of the defendant from the time when the libel was published down to⁷⁵ the verdict. The conduct of the claimant⁷⁶ is relevant not only in respect of matters which go to “partial justification” of the libel⁷⁷ but also to his conduct in the course of the litigation, as where he engages in an elaborate and long-lasting attempt to pervert the course of justice involving making and procuring false testimony and making the most damaging allegations of corruption and lying against innocent third parties.⁷⁸ [Footnotes omitted]

[22] Therefore, in a defamation claim, the court awards compensatory damages that are ‘at large’ for injuring the claimant’s reputation and hurt feelings. The damages include injury to the claimant’s feelings, pain and suffering, loss of amenity, the anxiety and uncertainty of the litigation, the absence of apology, the reaffirmation of the truth of the matters complained of, or the defendant’s malice. The court considers the defendant’s conduct from the defamation - before and after filing the claim and at the trial. The claimant’s bad conduct may also properly enter into the reckoning where, for example, the claimant has provoked the defamation or has defamed the defendant in reply. Accordingly, speaking of aggravated and exemplary damages separately in defamation claims may be inappropriate.¹⁴

[23] I now apply the above principles to determine an appropriate quantum of damages in this case. I found that on or about the 2nd August 2018, on a television program called “*Can I Help You*”, hosted by the first defendant and broadcast on McDowall Broadcasting Corporation (MBC), a television station owned and operated by the second defendant, and which airs on Channel 120 on the FLOW service provider, among other service providers in Saint Lucia, the defendants published the words complained of, namely:

¹⁴ See, *Cassell & Co Ltd v Broome* (No 1), [1972] 2 WLR 645, [1972] AC 1027, [1972] UKHL 3 (23rd February 1972)

“Now speaking about transparency, what exactly is happening at the tourism authority. I haven't said tourist board, you know, because I am kind of immune to some of those changes that were being made or that are made. Tourism authority. Yes, Agnes Francis, has resigned as Chairman of the board, Chairperson of the board. Agnes Francis I want you to tell us exactly what happen. I want you to tell us what happen. Is it true that notwithstanding Allen Chastanet had assisted you and your husband, that you were so sick of him, that you spoke negativity overtly in relation to him. Is that true. Um. And is it true it got back to him. Now Agnes Francis what was your salary supposed to have been? What was your salary supposed to have been? Wasn't your salary supposed to have been twenty-five thousand dollars/ um, wasn't it? Were you actually causing yourself to be paid forty thousand dollars a month? Is that true? I'm asking. What about the per per diem that you paid yourself when you travel? Now for those persons who don't know what pay diem is, a per diem sorry, per diem is am when you travel as a government employee, you are given a daily allowance to spend in the country that you are going on government's behalf. That's what it is. So there is a stipulated rate for some officers, it may be a hundred dollars, others one twenty one thirty it all depends. But, is it true Agnes, that your per diem was supposed to have been one twenty, a day, but when you travelled, you were paying yourself, or causing yourself to be paid seven hundred dollars a day? Is that true? What about a chair? Is it true you bought a chair for five thousand dollars? Huh? Huh, but, but, did they threaten to make all those deductions from the cacaduh you will get now? Did they? I'm asking. By the way what happened on Tuesday Agnes? Is it true you were denied access to the office? Were you denied access and why? And were you brought or taken to the office yesterday the holiday, under escort, to supervise what you were taking? Mmh? But Agnes, you caan feel bad if they deny you access you know. That is a trait of the united workers party. It is. When Stephenson King unfortunately was replaced as leader of the opposition by Gale Reigobert, they locked Stephenson King out of his office, and denied him access. You remember that. So who are you? Who are you? You're a small fry. Mmh. They did it to an ex prime minister. If they can do it to an ex prime minister, what on earth do you expect. So we need to know what is happening. And Agnes I look forward to you answering those questions. But what I can tell you folks, there is trouble brewing in the camp. Oh yes

- [24] There was no challenge that the words complained of were defamatory. Instead, the defendants contended they were largely harmless or technical, and an award of nominal damages may be appropriate. However, I found the words complained of to mean or were understood to mean, among other things, that the claimant abused her position as chairperson of the Tourist Board to be paid \$15,000.00 per month above her salary and paid herself *per diem* of \$580.00 above the prescribed rate when she travelled on government business, and was threatened with having the overpaid sums of monies deducted from her final benefits on termination of employment from the Tourist Board. These words complained of raised allegations of criminal offences (stealing by reason of employment, for example, recognised by the Criminal Code of Saint Lucia) and are therefore actionable per se. Also, the allegations that the claimant was denied access to offices she previously occupied except under escort to supervise what she took from the office reinforced

the suggestion that her past employer, the Tourist Board, could not trust her. Thus, I do not accept that the words complained of were largely harmless or technical.

[25] The claimant was a well-recognised senior consultant and executive in the field of Tourism and has spent a lifetime building a successful career, conducting research and publishing papers. She deposed that she was unquestionably appalled when she learnt of the contents of the defamatory statements published by the defendants. The defamatory publication caused her significant distress, grief, humiliation and embarrassment, and she received significant public opprobrium due to the defendants' publication. She received several calls, locally and from Canada, the USA and the United Kingdom, of empathy from various persons. While passing by the JQ Mall in Rodney Bay, Gros Islet, she saw persons pointing at her accusingly. This had never happened to her prior to the defendants' broadcast. Also, the defendants never offered an apology, nor retracted the defamatory statements, which added further injury to her feelings. The defendants have not seriously controverted this evidence.

[26] However, I agree with the defendants' submissions that the claimant has failed to prove by way of evidence the impact of the reputational injuries suffered due to the publication complained of. The claimant adduced no evidence to prove reputational damage or a diminution in her reputation. She failed to call as witnesses any of the several persons she said contacted her regarding the publication to testify of their view of her because of the publication. On the other hand, there is no evidence of any bad conduct of the claimant regarding the defamation that would diminish the likely award of damages.

[27] The claimant has also alleged significant financial loss with respect to her marketing consultancy business due to the defamatory statements published by the defendants. She deposed (para [3] above at para 31 of the quoted affidavit) that she had always enjoyed a busy practice as a marketing consultant and would regularly procure several projects yearly but suffered a stark difference in the business she received before and after the publication of the defamatory statements by the defendants. However, this was not part of her pleaded case, and the Company was not a party to the claim. There was no pleading that the Company suffered any loss or damages. Moreover, the evidence upon which the claimant seeks to rely for the significant financial loss is not linked in any material way with the defamatory publication.

[28] Similarly, the claimant did not plead malice nor set out evidence of malicious intent regarding the publication in her witness statement. Nor did she plead that the defendants did not apologise even after the preaction letter was served on them as a basis of aggravated damages. Further, I adopt the reasoning in ***Dr. Edmond Mansoor v Eugene Silcott***¹⁵ that:

“The fact that the Defendant did not respond to the claimant’s letter demanding a retraction of and apology for his publication of the words complained of and the fact that the words complained of contained an untrue imputation against the reputation of the claimant, are precisely the factors which render the Defendant liable to the claimant for defamation. These facts do not, in the circumstances, justify an award to the claimant of aggravated damages.”

[29] Consequently, considering the authorities cited by both sides, particularly ***Victoria Alcide, Rishatha Nicholls, Victor Williams*** (and the authorities referred to therein), and ***Kevin Huggins***, and the facts of this case, and the time that has elapsed since some of these authorities. I acknowledge a presumption of damage in a defamation case for injury to the claimant’s reputation. I determined that an appropriate award to the claimant for the defamation is \$60,000.00 in general damages for her injured feelings, distress, grief, humiliation and embarrassment, and presumed reputational damage.

[30] For these reasons, IT IS ORDERED that:

1. The defendants shall pay the claimant damages for the defamation of \$60,000.00 together with interest under Article 1009A of the Civil Code at the statutory rate of 6% per annum from the date of judgment to payment.
2. The defendants shall pay the claimant the prescribed costs of \$9,000.00.

Justice Rohan A Phillip
High Court Judge

By the Court



Dp. Registrar

¹⁵ ANUHCv2010/0209 (1st March 2012), para [42]