

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

GRENADA

CLAIM NO. GDAHCV2016/0421

BETWEEN:

ELLIOT BISHOP

Claimant

and

**IMPACT PRINTERS GRENADA LTD
WAYNE MODESTE**

Defendants

Before:

The. Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Alban John with Ms. Vern Ashby for the Claimant

Mr. Ian Sandy for the Defendant

2021: December 7.
2022: May 31.

JUDGMENT

- [1] **ACTIE, J.:** The claimant, Elliot Bishop, a former trade unionist and former president of the Commercial and Industrial Workers Trade Union (hereafter called “CWIU”) in a statement of claim for libel filed on 11th November 2016 seeks general, aggravated and exemplary damages against the defendants for an article published in the New Today Newspaper. The defendants admit the publication but rely on the defence of qualified privilege.

Claimant's case

- [2] It is the claimant's pleaded case is that the first defendant, Impact Printers Grenada Ltd, is the owner and publisher of the New Today Newspaper (hereafter "the Newspaper") with the second defendant, Wayne Modeste, as the editor.
- [3] The claimant alleges that the Newspaper, which is available in Grenada, online and internationally, in its 13th February 2015 issue, published a story under the rubric "Bishop: I did not threaten to kill her". The claimant states that the story confirmed the fact that the claimant had been called in by the Royal Grenada Police Force in connection with a report that he had threatened to kill, one Barbara Fraser of Park Estate, Permatemps, St David's.
- [4] The story continued on page three of the Newspaper in the following words:
- "Fraser confirmed to this newspaper that she had notified the police about the issue and had attended the session at the CID office in which Bishop was also present. She said that she had enough of the "slander" and "lies" allegedly being told by Bishop over the years in an attempt to damage her character"
- [5] The claimant contends that the publications in their natural meanings were intended and understood to mean and convey as fact to the public that:
- (i) Barbara Fraser had confirmed to the said newspaper that she had notified the police that the claimant had made a threat to kill her.
 - (ii) Fraser had confirmed to the newspaper over the years that the claimant had slandered her and told lies about her, all in attempt to damage her character.
 - (iii) Fraser had confirmed to the said newspaper that she had made a report to the RGPF that the claimant had threatened to kill her or that she had heard from some source that the claimant had threatened to kill her.
 - (iv) The claimant had formed an intent to kill Fraser.

- (v) the alleged threat had been confirmed and caused to be published to members of the RGPF and to the newspaper by Fraser and or some other source.
- (vi) the claimant had formed an intent to deprive Fraser of her life and threatened to do so.
- (vii) the claimant was of criminal disposition.
- (viii) Fraser had confirmed and caused to be published to members of RGPF and to the said newspaper that the claimant had formed an intent to deprive her of her right to live.
- (ix) the claimant was intending to act towards Fraser in a manner in breach of the laws of the State of Grenada; and
- (x) the claimant was not a law-abiding citizen.

[6] The claimant contends that the defendants in the said article either expressly or impliedly published matters of truth or fact to be mixed falsehoods, not caring how it affected the claimant or how it would be perceived by the public.

[7] The particulars of facts/truths being that (i) the claimant is a former president of CIWU (ii) He was called in by the CID and attended for questioning and had attended (iii) Barbara Fraser had notified the CID that she had been told that the claimant had expressed his desire to kill her to a third party.

[8] The particulars of falsehood being that the allegation that the claimant had had a conversation with someone in which conversation he indicated that he wanted to kill the said Barbara Fraser.

[9] The claimant contends that the defendants caused the offending words to be printed and published without consulting him; knowing them to be false or not caring about the truth or falsity of the contents or not caring how it affected the claimant or was perceived by the public; knowing it would cause offence, contempt or ridicule of the claimant or not caring whether it did so; not caring about the number of persons to

whom the said offending article or words were published or circulated via the medium of the newspaper itself and the internet.

Defendants' case

- [10] The defendants admit the publication and meanings set out by the claimant at paragraph 5 (i) to (iii) above but deny the meanings from 5 (iv) – (x).
- [11] The defendants aver that Barbara Fraser confirmed to one of its reporters that she made a report to the police that she had been informed by a third party that the claimant told the said third party that he (the claimant) wanted to kill Fraser.
- [12] The defendants admit the statement of facts but deny the mixed truth and fact with falsehood or not caring how it affected the claimant or how it would be perceived by the public as alleged by the claimant.
- [13] The defendants state that the allegation made by Barbara Fraser was published on an occasion of qualified privilege listed as follows:
 - (i) Fraser made a report to members of the RGPF.
 - (ii) The report concerned Fraser's understanding of a threat being made against her life.
 - (iii) The report was in the necessary protection of her own interests.
 - (iv) The RGPF is responsible for maintaining law and order, preventing and detecting crimes and other infractions of the law.
 - (v) Fraser and the RGPF had a common or corresponding interest in the subject matter of the report and the RGPF had a legitimate interest in receiving it.
 - (vi) There is a corresponding public interest in the defendants' publishing the report made by Fraser and also in publishing the denial of that report by the claimant.

- [14] The defendants state that the claimant first reported to one of the first defendant's reporters, and the reporter, instead of rushing to report the story, sought to get Barbara Fraser's version of the story. The defendants state that the claimant informed the first defendant's reporter that he was innocent of the allegation made by Fraser. The Newspaper accordingly published the article under the rubric: "Bishop: I did not threaten to kill her" which was the claimant's initial comment when the claimant first brought the story to the reporter.
- [15] The defendants further state that the article was reported in a balanced and responsible way, including the claimant's denial of the allegations made against him. The defendants allege that the publication was in full compliance with the duties and obligations of responsible journalism and accordingly the claimant is not entitled to damages at all.
- [16] The claimant in his reply denies reporting or bringing the story to the attention of any of the first defendant's reporters as he only knows George Worme, a reporter and writer for the Newspaper. The claimant avers that he was stopped by George Worme while he was walking along the Marian Public Road on the day prior to the publication. George Worme asked him whether it was true that he (the claimant) had been called to the CID for questioning in relation to the allegation by Fraser. The claimant confirmed that he had been so called but there was no truth to the alleged threat. The claimant said he declined to discuss the matter further with Mr. Worme. However, the defendants published the offending article despite the clear denial. The claimant contends that the defendants were malicious and reckless and actuated by commercial imperative.

Law and analysis

- [17] The court accepts that that the defamatory words published by the defendants impute all the possible literal meanings ascribed by the claimant in his pleaded claim. The

only issue to be determined is whether the defendant can rely on qualified privilege as a defence.

[18] The well-known litmus test to succeed in qualified privilege defence was set out by Lord Nicholls of Birkenhead in **Reynolds v Times Newspaper Ltd**¹. namely:

- (i) The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
- (ii) The nature of the information and the extent to which the subject matter is a matter of public concern.
- (iii) The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind or are being paid for their stories.
- (iv) The steps taken to verify the information.
- (v) The status of the information. The allegation may have already been the subject of an investigation, which commands respect.
- (vi) The urgency of the matter as news is often a perishable commodity.
- (vii) Whether comment was sought from the claimant or some other person with knowledge of the facts.
- (viii) Whether the publication contained the gist of the claimant's side of the story.
- (ix) The tone of the publication. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statement of fact.
- (x) The circulation of the publication, including the timing.”

[19] The **Reynolds** privilege protects the publication of a defamatory matter to the world at large where (i) it was in the public interest that the information should be published and (ii) the publisher had acted responsibly in publishing the information². Lord Nicholls added that the list was not exhaustive and that the weight to be given to the ten factors and any other relevant factors would vary from case to case.

[20] The House of Lords in **Flood v Times Newspaper Ltd**³ held that qualified privilege exists where the public interest justified publication notwithstanding that it carried the risk of defaming an individual who would not have any remedy. In determining whether such privilege arose the court has to strike a balance as between the desirability that

¹ [2001] 2 AC 127

² Per Lord Phillips in *Flood v Times Newspapers Ltd*. [2012] 2 AC 273

³ [2012] 2 AC 273

the public should receive the information and the potential harm which might be caused to the person defamed.

[21] The defendants in their pleaded particulars of privilege aver as follows:

- (1) Fraser made a report of the members of RGPF.
- (2) The report concerned Fraser's understanding of a threat made against her life and the report was in the necessary protection of her own interests.
- (3) Fraser and the RGPF had a common or corresponding interest in the subject matter in the reporting and receiving the matter respectively.
- (4) As a result there was a corresponding public interest in publishing the report made by Fraser and the denial of the report by the claimant.

[22] In **Loutchansky v Times Newspaper Ltd**⁴ it was held that at the end of the day the court has to ask itself the single question, whether in all the circumstances the "duty - interest test, or the right to know test" has been satisfied so that the qualified privilege attaches.

[23] The overriding test is that of responsible journalism. The defendants must establish that the story if true must be of high public interest which lay not only in the fact but also in the nature and concern that the allegations might not be properly investigated since the allegations themselves were the whole story identifying the claimant against whom the allegations had been made.

[24] Lord Brown in **Flood v Times Newspapers Ltd**⁵ stated that:

"In deciding whether Reynolds privilege attaches (whether the Reynolds public interest defence lies) the judge, on true analysis, is deciding but a single question: could whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?

⁴ (2002) Q B 783

⁵ [2012] 2 AC 273 para 113:

In deciding this single question, of course, a host of different considerations are in play.”

[25] The court must perform a balancing act of opposing matters namely whether the public interest in publishing the information in question outweighs the defendants’ right to the protection of his reputation. The defendants in order to benefit from a defence of qualified privilege must satisfy the court on their pleadings and evidence that they acted responsibly and also had a corresponding duty to publish and broadcast the allegations made against the claimant.

[26] Baroness Hale in **Jameel v Wall Street Journal** states that:

“It is not helpful to analyse the particular case in terms of a specific duty and a specific right to know. That can, as experience since Reynolds has shown, very easily lead to a narrow and rigid approach which defeats its object. There must be some real public interest in having this information in the public domain. But this is less than a test that the public “need to know”, which would be far too limited.⁶

[27] It is the evidence that the alleged threat was not made directly by the claimant to Barbara Fraser. The allegation is that Fraser said that she was informed by a third party of the alleged threat made by the claimant. There is no evidence of the identity of the alleged third party or any steps taken to verify the source of the purported threat.

[28] Mr. Alban John for the claimant, states that the report made by Fraser to the police is a different matter whether it was true or not as she had an interest to protect and a duty to make a report to the police. Counsel contends that the occasion of making that report to the police could attract qualified privilege however the publishing by the defendants cannot bring itself under the defence of qualified privilege. I totally agree with counsel’s position.

⁶ Jameel V Wall Street Journal Para 147

- [29] The tort of defamation exists to protect the reputation of the person defamed. In publishing the defamatory words complained of, the court is of the view that the defendants have failed to establish that they had a duty to the public to publish them. In **Flood**, it was held that the answer to it will usually depend on a number of specific considerations, which include some or all of the litmus test outlined by Lord Nicholls in **Reynolds**. The existence of the defence will depend on whether there has been responsible journalism in all the circumstances.
- [30] The court is of the view that the defendants have failed to establish that the dissemination of the publication of the defamatory article satisfies the public interest requirement. The claimant as a retired trade unionist cannot be described as a public person or performing in a public function to bring him under the scrutiny of the public neither does the matter in issue relate to any matter of considerable public importance or interest. The issue in dispute is between two private individuals having their personal axe to grind that did not engage any public interest to necessitate reporting.
- [31] The tone in which the information is conveyed is relevant in deciding whether the defendants have behaved responsibly in passing on the information. The defamatory words could only suggest that the claimant intends to kill Barbara Fraser who appears to be the stumbling block frustrating the payment of monies due to the claimant. This is no doubt a very serious and damaging allegation especially if it is not true. The totality of the article conveys the literal impression that the claimant is of criminal disposition and intends to kill Barbara Fraser who had been frustrating his efforts to recover monies due to him from the CIWU.
- [32] The defendants have failed in their pleadings and evidence to establish that the publication of the defamatory statement was in the public interest. The claimant as a trade unionist had not laid himself open to scrutiny to the public at large. The heading of the article of the claimant's assertion of his innocence "I did not threaten to kill her" seeks to exonerate the claimant. However, the article when read in totality conveys serious imputations as to the reasons why the claimant would have wanted Fraser

killed. The article speaks of a third person informing Fraser of the threat made by the claimant. The article failed to identify the third party and efforts made to verify the third party's information. There is no evidence that the claimant was charged by the police or of the status of the said investigation. The defendants further alleged that the claimant first reported the matter to one of their reporters but failed to name the reporter or to use him as a witness.

[33] The court applying the principles of law to the facts is of the view that the single heading "Bishop: I didn't threaten to kill her" is insufficient to absolve the defendants. The article speaks to the conflict between the claimant and Barbara Fraser. The article states that the claimant is known to have an issue with the CIWU with gratuity payments for his years of service with the union. The article further states that the claimant had often pointed an accusing finger at Fraser as the one who is spearheading within the trade union not to pay him.

[34] The defendants have failed to establish that there was a public interest in publishing the story to the public at large or that they had acted responsibly in publishing the damaging accusation. The defence of qualified privilege can only be achieved where the publisher has taken reasonable steps to satisfy himself that the allegation is true before he publishes it. As Lord Nicholls said, the more serious the charge, the more the public is misinformed and the individual harmed, if the allegations are not true. The claimant in the circumstances has accordingly proved his case on a balance of probabilities.

ORDER

[35] It is ordered and directed as follows:

- I. Judgment is entered in favour of the claimant.
- II. The defendants whether by themselves, servants or agents or howsoever are restrained from further publishing and distributing in any form or manner or

causing to be printed, published and distributed in any form or manner the said libel.

- III. Damages to be assessed, if not agreed within twenty-one days from today's date.
- IV. Failing settlement, the claimant shall file and serve witness statements, submissions with authorities in support of the assessment.
- V. The defendants shall file and serve witness statements, submissions with authorities in response within twenty-one (21) days of service by the claimant.
- VI. The claimant shall apply to the court office for the scheduling of the assessment of damages.

Agnes Actie
High Court Judge

By the Court

Registrar