

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

GRENADA

Claim Number: GDAHCV2020/0411

BETWEEN:

SANDIFORD RUEL EDWARDS

Claimant

-and-

DENNIS CANNING

Defendant

Appearances:

Benjamin Hood for the Claimant; and
Rena L. Banfield for the Defendant.

2021: December 17;
2022: January 24 – via email

DECISION

Claimant's assessment of damages

[1] **PARIAGSINGH, M (Ag.):** - Before the Court is the Claimant's assessment of damages pursuant to a default judgment entered on May 05, 2021.

THE CLAIM:

[2] By claim commenced on October 15, 2020 the Claimant seeks damages for libel; aggravated damages and costs.

[3] The Claimant is a Certified Chartered Accountant who served as a member of the Board of the Marketing and National Importing Board (MNIB) during the period March 2013 to April 2014. He also served as Chief Executive Officer of the MNIB during the

period April 2014 to March 2018 and as a Director for Technical and Economic Cooperation at the Ministry of Finance from April 2018.

[4] The Defendant is a businessman who resides in Mt. Craven, Saint Patrick, Grenada. He is the person who made the defamatory statements about the Claimant on a television interview.

[5] On September 04, 2018 during a television interview the Defendant made the following statement:

“..... they have all been head by crooks who take our money and instead of those guys going to jail, if you find they are taken to the Ministry of Finance and given even bigger position that has just happened in the MNIB, that supposed to be a body that we are finding markets for all our products..” “.. that Mr. Ruel Edwards who was the Chief Executive Officer of the Marketing Board cannot account for thousands of millions of dollars and instead of this man going to jail, he is in the Ministry of Finance with the Prime Minister...”

[6] This publication was made on a national television station (MTV Broadcast) which has a local and international market according to the Claimant.

[7] The Claimant contends that these words refer to the Claimant and were understood in their natural and ordinary to mean that the Claimant was engaged in fraudulent activities whilst carrying out his job, was responsible for unaccounted thousands of millions of dollars, had committed crimes for which he should be jailed and was a crook or dishonest person.

[8] The Claimant further contends that these words were calculated to hinder the Claimant who is a Chartered Accountant from sourcing future employment prospects in Grenada, the Caribbean and in the international community.

[9] On September 21, 2019 and on October 12, 2019 the Claimant caused the Defendant to be served with letters prepared by his Attorney calling upon the Defendant to make a public apology and an offer of compensation. Instead of acceding to this request, the Claimant contends that the Defendant caused an article to be published by one David Allard in which the Defendant commented on the legal letters saying “if they had come and asked me for some money I would have given it to them like I helped out many other people”

[10] On October 25, 2019 the Claimant contends that the Defendant published or caused to be published the letter written to him dated September 17, 2019 within an article written by the said David Allard.

[11] The Claimant also seeks aggravated damages as a result of the Defendant’s conduct, particularly after having gotten two legal letters.

[12] The Defendant was served with the proceedings on November 20, 2020. Between then and May 05, 2021 default judgment was granted the Defendant took no steps to defend this claim.

THE EVIDENCE:

[13] At the assessment of damages, only the Claimant gave evidence. The Claimant’s evidence in chief which was contained in his witness statement filed on November 03, 2021 largely mirrored his pleaded case set out above.

[14] Counsel for the Defendant pursued an interesting line of questioning in cross examination. Counsel referred the Claimant to a previous High Court matter in which he had brought against the Integrity Commission and sought to suggest that what was said in the interview was based on information already in the public domain.

[15] Counsel for the Defendant also sought to suggest that the context of the article was in the nature of comments about the Claimant's lawyer and not necessarily about him. Counsel also suggested that the matters commented about were all in the public interest.

[16] Despite the valiant attempt by Counsel for the Defendant in cross examination to show that the matters referred to were already in the public domain in respect to which findings were made and the matters of public interest, I do not discredit the Claimant's evidence.

[17] Counsel for the Defendant adopted a line of questioning which establishes defences to this claim, in particular, fair comment on matters of public interest and justification. Respectfully, these are all matters which go to liability, a matter which I do not have to decide. The Defendant's challenge to the Claimant's evidence on these aspects are not material to the issue of quantum and I so find.

[18] I also find no traction in the line of questioning that the letters written approximately one year after the alleged defamatory statements to be indicative of damage suffered being somehow less. Surely, the Claimant could have properly written those letters and commenced his claim long after he did, as long as his so doing was within the relevant limitation period.

[19] In cross examination however the Claimant did confirm that after he was fired from the Ministry of Finance he did obtain employment in Guyana in or about October 2020. I also do not accept the Claimant's evidence that he is unaware of any findings of an investigation against him. I find that evidence improbable having regard to his astuteness on all other aspects of this evidence.

THE APPROACH TO THE ASSESSMENT:

[20] The approach to the assessment of damages in defamation claims was helpfully set out by Master Actie (as she then was) in the case of **Roxane Linton v Louisiana Dubigue and the Attorney General of the Commonwealth of Dominica, DOMHCV2011/0062** where the then learned Master stated at paragraph 19 of her decision:

There are several factors that are to be taken into consideration in any assessment of damages in a defamation action namely:

- i. The extent of the publication;
- ii. The gravity of the publication;
- iii. The extent and nature of the impact upon the claimant's feelings, reputation or character;
- iv. The conduct and behaviour of the defendant taking into consideration matters of aggravation or mitigation.

ANALYSIS:

The extent of the publication:

[21] The extent of the publication was submitted, by the Claimant, to be substantial. The Claimant says that it is highly possible that this broadcast containing the defamatory words not only reached the entirety of Grenada but the Caribbean and the world at large.

[22] The Defendant submits that the Claimant has exaggerated and there is no evidence that MTV Broadcast was actually seen by many persons in Grenada.

[23] Neither party led any direct evidence on the extent of the publication. The only evidence I have is what the Claimant says is highly probable because of the medium used, that is, a television broadcast. There is no evidence of how long this broadcast was, how long the interview was, whether the television station streamed the program

online, whether it was it offered for repeat viewing or whether the television station rebroadcasts interviews. None of these pertinent matters were addressed by the Claimant, evidentially.

[24] Conversely, it is not disputed that the words were uttered in a television interview or that this medium had a wide reach (that is, internationally). .

[25] The onus was on the Claimant to put before the Court evidence on which I can determine, on a balance of probabilities, whether the extent of the publication was severe or minimal. The Claimant has not proven the extent of the publication and as such damages have to be assessed in the context of the extent of the publication being unknown.

The gravity of the publication:

[26] The impugned words are a serious attack on the Claimant's character. The statements made contained grave allegations which all have a hint of dishonesty in them.

[27] The Defendant submits that I should consider the gravity of the allegation in light of the decision of Mr. Justice Smith SC (as he then was) in **GDAHCV2019/0038 between Sandiford Ruel Edwards v The Integrity Commission of Grenada**.

[28] I have read the decision referred to and I do not share the view of Counsel for the Defendant. In this case, the learned Judge made no findings regarding the Claimant. This case concerned an entirely separate matter. This was a public law challenge of the Integrity Commission's decision to commence an investigation against the Claimant on its own.

[29] The paragraphs referred to by Counsel for the Defendant are not findings of the learned Judge. They are the paragraphs in which the learned Judge repeated what were allegations that triggered the investigation. What I do take from the judgment is that as far back as July 2018 there has been in the public domain some allegation of impropriety on the part of the Claimant. That however, in my respectful view is not a licence for defamatory statements to be made about him.

[30] In my view saying that the statements were true or substantially true in the context of a default judgment does not advance the position of the Defendant at all. The Defendant had the opportunity to advance that in a defence and for reasons best to known to him he chose not to. I therefore do not discount the gravity of the allegation made in the interview on account of the previous decision involving the Claimant delivered by Mr. Justice Smith SC (as he then was).

The extent and nature of the impact upon the Claimant's feelings, reputation or career:

[31] Having heard and seen the Claimant give evidence, particularly in cross examination, I am of the view that the Claimant has exaggerated any impact these statements have had on his feelings and certainly his reputation and career.

[32] The Claimant suppressed a material fact in his evidence that changed the complexion of his evidence when they were revealed in cross examination. It was only in cross examination that the Claimant revealed that he was fired from the Ministry of Finance. The Claimant makes the blanket statement that as a result of the defamatory statement his professional reputation has been injured and brought into public scandal, odium and contempt but has not said how. The Claimant's evidence advances supposed facts with no corroborative material. I attach little weight to such blanket statements.

[33] I find that there has been very little impact on the Claimant's reputation or career or feelings from the evidence contained in the Claimant's witness statement.

The conduct and behaviour of the defendant taking into consideration matters of aggravation or mitigation:

[34] The conduct of the Defendant after these statements were made leaves a lot to be desired. After two letters were written to him by Counsel there was no acceptance of any responsibility for his actions. Instead, the Defendant treated the letters in a dismissive, flippant manner which this Court cannot condone.

[35] A letter from Counsel is a serious matter. It is not a matter to be drawn into public debate, debacle or worst yet appear in newspaper articles without even giving Counsel the courtesy of an acknowledgment.

[36] The Defendant's conduct was inflammatory and added fuel to the fire instead of attempting to turn down the heat.

[37] At the barest minimum, the Defendant ought to have engaged counsel in a meaningful way by the time the second letter was received instead of making or causing to be made comments about Counsel or his client.

[38] I consider the Defendant's conduct after the statements were made and receiving the letters from counsel to be so egregious as to warrant an award of aggravated damages.

[39] I am unable to decipher any mitigating factors in the Defendant's favour from the material before me or the evidence.

[40] I do not propose to order aggravated damages separately but to give an uplift on the damages awarded to reflect the aggravating facts of this case.

DAMAGES:

[41] Damages in defamation proceedings are very subjective. They depend on what an independent third party thinks about a person and not what the person thinks about himself/herself.

[42] **Halsbury's Laws of England/Defamation (Volume 32 (2019))/1 at 515** states that:

At common law, if a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as 'general damage'

[43] This “some damage” which will result is only the starting point. It is for the Claimant to lead evidence to show how his feelings were injured and the distress associated with the libel. Kangaloo JA in **TNT News Centre Ltd v John Rahael, Civil Appeal No. 166 of 2006** (Trinidad and Tobago) stated that:

Although the claimant starts off with a presumption of damages and is not required to testify, evidence of damage should still be presented since a claimant offering no evidence at all may find himself with a small award of damages. To attract more than this small award for injured feelings and the distress associated with the libel, evidence is required.

[44] In this case, the evidence of actual damage, hurt feelings or injury to reputation is very scant. There are general statements about damage to reputation but nothing more. In the absence of such evidence, the award has to be on the lower end of the scale.

[45] The Claimant has relied on the cases of **Roxane Linton v Louisiana Dubrique and the Attorney General DOMHCV 2011/0062**; and **Dr. Philibert Aaron v Abel JNO**

Baptiste DOMHCV2013/0015 in support of his submission that damages should be in the vicinity of \$160,000.00.

[46] In **Roxanne Linton**, the sum of \$120,000.00 was ordered as general damages and aggravated damages. The Claimant in **Roxanne Linton** was a customs officer and the defamatory allegations contained elements of claims of impropriety and dishonesty, as in this case. In that decision however, it does not appear that the learned Master had to grapple with the evidential challenges which are present in the case at bar.

[47] In **Dr. Philibert Aaron**, \$75,000.00 was awarded for general damages. This case involved a song which imputed the Claimant to be involved in buggery. There was evidence that the song was recorded in a more permanent form and even reached forums such as YouTube. The persona of the Claimant was also clearly set out in the judgment. There was evidence before the Court that the Claimant held prominent public positions in Dominica and the words complained of were frowned upon. The words were contained in a calypso which was played on the road during Carnival multiple times for everyone to hear.

[48] The Defendant submits that the award to the Claimant to vindicate his good name or for damage to his reputation ought to be none or in the alternative, on the lower end of any scale in light of the absence of any evidence from any person other than the Claimant. I disagree that there was a need to bring another person to give evidence to entitle the Claimant to an award of damages.

[49] Having considered both authorities relied on and in the circumstances of the lack of evidence identified above, I agree that damages should be assessed on the lower end of the scale.

[50] I am of the view that an appropriate award to vindicate the Claimant's feelings and compensate for any damage to his reputation is the sum of \$50,000.00.

[51] As stated above, I am of the view that the Defendant's conduct after the statements, upon receiving the two letters and upon receiving this claim has been less than becoming. In light of this conduct, there shall be an uplift of general damages by 20% to reflect aggravated damages.

[52] In the circumstances, it is hereby ordered that the Defendant shall pay the Claimant :

- a. General damages assessed in the sum of \$50,000.00 together with an uplift of 20% for aggravated damages in the total sum of \$60,000.00;
- b. Interest at the rate of 6% per annum from the date of the service of the claim (November 20, 2020) to today's date (430 days) calculated in the sum of \$4,241.10; and
- c. 60% of his prescribed costs on the total value of the awards made (\$64,241.10) quantified in the sum of \$5,781.70.

**Alvin Shiva Pariagsingh
Master (Ag.)**

By the Court,

Registrar