

**EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. SKBHCV 2013/0116

BETWEEN:

VICTOR WILLIAMS

Claimant

and

SHEFTON CROSSE

Defendant

Appearances:

Ms. Robin Herbert for the Claimant

Ms. Natasha Grey for the Defendant

2020: September 30
October 1
November 11

JUDGMENT

- [1] **GILL, M.:** This is an assessment of damages for libel. By claim form and statement of claim filed on April 25, 2013, the claimant alleged libellous broadcasts of statements made by the defendant on two separate occasions transmitted on a call-in programme on a radio station and on the worldwide web. On July 5, 2013, judgment in default of defence was entered against the defendant with damages to be assessed. Written submissions were filed by both sides, both parties were cross-examined on their witness statements and the court entertained oral submissions from both counsel.

Background Facts

- [2] At all material times, the claimant, Victor Williams was the chairman of the Board of Planning and Control working in conjunction with the Ministry of Sustainable Development. He is also the owner of Williams Architectural, an architectural and planning service company. The defendant, Shefton Crosse, is a national of St. Christopher and Nevis and a national of the United States of America, having spent most of his professional life in the US. When he is in St. Kitts, he resides at premises he built at Mattingley Heights in the parish of Trinity.
- [3] On September 18, 2012 and on April 17, 2013 on the locally based radio station WINN FM 98.9, the defendant uttered the offending words on the talk programme "Voices". In the statement of claim, the statements made on April 17, 2013 appear first as follows:

"There is a piece of land in Mattingley Heights, the government told everybody there,...everybody bring something to that ghaut, and stop once government say you can't build there, once government say you can't build there, nobody can build there, now the man is trying to build his place and he is sitting right on the lamp post, no back yard no front yard you gonna have to put everybody on a stance. And the building board was over ruled by the head of the Building Board to build it. \$117,000.00 for a piece of land! In a ghaut. Go up Mattingley Main road make a right as soon as you pass the track it's a dirt road go down to a pink house and a pink section and go up that street that's the only house in that place facing east all the other land belong to the other people, but the man is scared but they did it because they think the man stupid, he said that the building board over ruled the building board and had this land sold because his sister had bought the land this ghaut is going to be running come rainy season and its going to wash out this sole man's house, and the man's house is going to get executed because his family lived there but he is panicking because he want to get his house build but it is not suppose to be there."

- [4] The statements made on September 18, 2012 are quoted in the claim as follows:

"...This is wrong, we cannot go on like this as black people. We are losing our country, we are losing our people but you

go look at that piece of land in Mattingley Heights where the Head of the Building Board over ruled everybody and I'm calling up Prime Minister Douglas to have to have that whole Board resign, the whole Board. And I say that just not to youTony knows about it in fact she is running away from it. You guys get on the air and talk but they run away from things. Go and see the piece of land, it is in a revile and this man just come from England and don't know what's happening. The Building Board must resign, we cannot go on like this or else people gonna take the law into their hands, ok! We cannot go on and blame the white man forever, and our own people doing it to us. This must stop, ok! Thank you sir, have a good day."

[5] The claimant avers that the foregoing words in their natural and ordinary and/or inferential meaning meant and/or were understood to mean to the ordinary listener that the claimant:

- (a) was the chairman of the Board of Planning and Control;
- (b) is and continues to be unprincipled in his capacity as head of the Building Board;
- (c) was a dictator who usurped the power of the Board of Planning and Control;
- (d) was capable of impropriety within his office of chairman/head of the Board;
- (e) performed inappropriately in his role as head of the Board particularly regarding building approval at Mattingley Heights in the island of St. Christopher;
- (f) without consent and support from the Board, single-handedly changed or interfered with a policy decision already made by the Board regarding building permission;
- (g) while employed as a chairman of the Board, overturned a rejected submission for building by a landowner and approved the building, hence having improper dealings with land owners;
- (h) was involved in the unlawful activities with landowners regarding approval for building at Mattingley Heights.

[6] The claim further states that the said words were calculated to disparage the claimant in his said profession by identifying him by profession and rank to be a

well-known scheming chairman whose intention was to use and abuse his powers for overruling decisions made by the Board. The claim alleges that the said words were calculated to mislead the public by broadcasting impropriety of the chairman in the conduct of his office by alleging cunning and crafty activities in relation to overriding policy decisions.

- [7] Originally, the claim was for damages including aggravated and exemplary damages. However, in oral submissions, learned counsel for the claimant, Ms. Herbert, conceded that the evidence was not sufficient to ground a claim for exemplary damages as counsel was satisfied that the defendant's statements were not calculated to make a financial profit. Therefore, the claimant seeks only general and aggravated damages. Further, at first, the claimant requested a total award of \$400,000.00. Ms. Herbert conceded that this figure was a bit on the high side and asked the court to award the claimant the sum of \$150,000.00 as appropriate in the circumstances of this case.

The claimant's evidence

- [8] The claimant filed a lengthy witness statement in support of his claim for substantial damages. At the hearing, he was ably cross-examined by learned counsel for the defendant, Ms. Grey.
- [9] The claimant avers that the defendant's comments have damaged his reputation. He states that he is very proud of his good name, he has done a lot of public service and he has a well-known and highly respected public persona. His witness statement shows that over the years he has held several positions including President of the Heritage Society, President of the Chamber of Industry and Commerce, Deputy Chairman of the White Gate Development Corporation, Deputy Chairman of the Solid Waste Management Corporation, Chairman of the Basseterre High School Reunion Organizing Committee of 1990 and consultant to the Eastern Caribbean Home Mortgage Bank. He maintains that people hold him in high regard although admitting in cross-examination that he did not provide

evidence of this in his witness statement. It was revealed in cross-examination that some people told him they were disappointed in him after hearing the defendant's statements.

- [10] The claimant further states that the defendant was so vocal and appeared to be so seemingly convincing that it is a real possibility that he lost potential clients for his business Williams Architectural. Again, in cross-examination, he conceded that his witness statement did not contain any information showing that he lost any clients because of the defendant's libellous statements. He does not agree with counsel for the defendant that Williams Architectural is still the same strong architectural business it has been over the years.
- [11] On April 17, 2013, the claimant informs that he called the programme "Voices" and called upon the defendant to cease and desist from his defamatory remarks and he indicated he would commence legal action as the defendant was damaging his reputation. It appears that after the claimant's attorneys wrote to WINN FM, the defendant's statements were controlled by the radio station, but the claimant avers that the defendant began focusing on calling other talk shows talking about the claimant. At one point, the claimant states he asked for the defendant to apologise. However, the defendant persisted in making defamatory statements about him on WINN FM and other radio stations. Further, the defendant refused to apologise. Learned counsel Ms. Grey questioned the claimant as to why he did not make claims for defamatory statements allegedly made by the defendant on occasions other than the two specifically mentioned in his statement of claim. The claimant stated that while there was nothing stopping him from making a claim for other statements on other dates, he could have taken out one every week. He contended that the defendant was on radio defaming him every single month, numerous times for the month. He rejected counsel's suggestion that after April 17, 2013, the defendant made no other defamatory statements about him.

[12] The claimant is clearly distressed by the libel. Besides the evidence in his witness statement, the claimant's general demeanour at the hearing made it evident that this matter has taken toll on him emotionally. He avers that he suffered acute embarrassment and severe distress as a result of the defendant's actions. He states that the defendant's actions have affected him to the core, disrupted his sanctum and his sleep. Notwithstanding the absence of evidence in his witness statement that he needed or received professional counselling, in cross-examination, he stated that his wife counselled him. His statement alleges that his wife, a very principled person, was extremely upset and traumatised by the allegations against him. The claimant impresses upon the court that his name means everything to him and it is also important to his work and the various positions he has held, and his business.

[13] In relation to the allegations, at paragraph 6 of his witness statement, he states:

"Mr. Warner submitted drawings to the Board for approval and was granted approval. I did not grant the approval myself. The approval was granted by a building sub-committee which the Board had set up for standard approval matters. The Board deals with major planning and development decisions and this sub-committee deals with matters of a smaller scale. I did not sit on that sub-committee nor was I involved in their deliberations relating to the portion of land in issue. However, as Chairman I was able to verify that approval was sought and properly granted. At no time did I intervene in the approval process nor did I overturn any decision of the sub-committee. I never usurped the Board's power, interfered with the decision for Mr. Warner's approval, rejected any policy decisions of the Board or any of the other improprieties attributed to me by the Defendant. The Defendant's statements claiming that I carried out such improper and unprincipled acts are completely false."

The defendant's evidence

- [14] Much of the defendant's witness statement amounts to a defence. The court must be wary of the default judgment and not delve into the merits of the defendant's case, only to say that in my assessment of his evidence (witness statement and cross-examination), the defendant sought to justify his defamatory statements on the basis of fair comment in the public interest. He explains that his statements on the radio programme were based on what Mr. James Warner told him. Mr. Warner is the landowner who was given permission by the Board headed by the claimant to build on property at Mattingley Heights, which the defendant considers a watercourse, more commonly referred to as a ghaut in St. Kitts. His information is that Mr. Warner was previously denied permission to build in the watercourse, but that he was assisted by the claimant. He was further informed that the property was sold to Mr. Warner by a real estate agent who is the claimant's sister.
- [15] The defendant avers that his statements were concerned with the nature of the Board's decision and called into question the circumstances that he was led to believe surrounded it, and that they concerned the manner in which the decision of the public body had come to be made. He faults his previous attorney for not filing his defence.
- [16] Whereas his witness statement indicates that he is willing to make a statement in court retracting the statements, his evidence at the hearing appeared to me to be a 'doubling down' of the libel. He was virtually uncontrollable in cross-examination and declared, "I exposed the corruption in St. Kitts. I wanted to expose what's going on in St. Kitts. I had to expose the corruption. I called on the Prime Minister. He put Victor Williams on the Board." There is no appreciation or acknowledgment by the defendant that the default judgment establishes that he

defamed the claimant. He insists that the Board wouldn't let Mr. Warner build there (in the watercourse), but Mr. Williams overruled them.

- [17] The defendant's witness statement contends that his statements did not impact the claimant's reputation significantly. He was not forced to resign from the position he held on the Board. He remained as chairman until after the general elections of 2015 when many of the boards managing public bodies were changed with the change in composition of the government. The defendant further contends that his statements did not call into question the claimant's professional competence in the field of architecture and were not concerned with any of his business practices. He claims that the statements were confined to issues regarding the proper administration of a public body.

Issue

- [18] The court must determine the quantum of damages to be awarded to the claimant for the libel committed by the defendant.

The law

- [19] In **Hubert O'Neal v Julian Willock D.B.A. Advanced Marketing and Professional Services Ltd.**,¹ the court provided a definition of libel as follows:

"A man commits the tort of defamation when he publishes to a third person words containing an untrue imputation against the reputation of another. If the publication is made in a permanent form or is broadcast, the matter published, is libel."

- [20] The purpose of an award of damages in a defamation case is set out in **Gatley on Libel and Slander**² where it is stated:

¹ BVIHCV2012/0038, per Taylor-Alexander M., as she then was, at paragraph 7 of the judgment

² Gatley on Libel and Slander 10th Edition at paragraph 9.2

“The purpose of general damages is to compensate the claimant for the effects of the defamatory statement, 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: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including where relevant his business reputation); and as a vindication of his reputation.”

[21] In **John v MGN**,³ involving a newspaper libel of the celebrity Elton John (subsequently Sir Elton John), Sir Thomas Bingham MR. highlighted the various factors to be taken into account in awarding general damages for defamation as follows:

“A successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of the publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way.”

³ [1997] QB 586, 607

[22] The learned master in **Roxane Linton v Louisiana Dubique and Attorney General of the Commonwealth of Dominica**⁴ summarised the factors thus:

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

[23] The tort of libel is actionable per se. Injury to the reputation of the claimant is presumed and the claimant is entitled to, at least, nominal damages. A claimant seeking substantial damages is required to prove by evidence that he is entitled to more than a nominal award. Kangaloo JA in **TnT News Centre Ltd v John Rahael**⁵ explained:

"Therefore although the claimant starts off with a presumption of damage 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."

[24] The applicable principles and factors must now be considered in relation to the circumstances of this case.

The extent of the publication

[25] The claim states that WINN FM 98.9 is the host of the popular two-hour radio talk programme "Voices", aired weekly Monday through Friday, and that the programme enjoys a large number of followers and provides a forum for persons locally, regionally and internationally to discuss their views on current issues. The

⁴ DOMHCV 2011/0062, per Actie M. (Ag.), as she then was, at paragraph 19 of the judgment, citing **TnT News Centre Ltd v John Rahael**, Civil Appeal No. 166 of 2006 (Trinidad and Tobago)

⁵ See note 4 above, Civil Appeal No. 166 of 2006, at paragraph 13 of the judgment

programme is also transmitted live on the website www.winn.fm.com. Therefore, the claimant asserts that the defamatory statements were broadcast not only over the local radio airwaves but also to an unknown mass of online listeners around the world. He reasons that it would have been possible for any one of the online listeners, via a simple search, to discover that the chairman of the Building Board was the claimant. To my mind, it is safe to conclude that there was wide circulation of the publication and the court must take this into consideration in making the award. However, this must be weighed against the submissions of the defendant in this regard. While not suggesting that the claimant could not reasonably be identified as the subject of the statements, the defence submits that the court should take into consideration the impact of identification on the extent of the publication. Learned counsel for the defendant, Ms. Grey, contends that the position of chairman of the planning board is not a position of such notoriety in St. Kitts and Nevis that the court should presume that a substantial number of persons would have readily identified the claimant. The statements referred to the head of the Building Board and counsel argued that it cannot be assumed that the reasonable listener, having heard the defendant's statements on the programme, would know who that person was, or conducted investigations to find out about whom the defendant was speaking.

The gravity of the allegation

- [26] The essence of the libel is that the claimant, in his capacity as chairman of the Board of Planning and Control, overruled a decision of the Board in relation to permission to build on a parcel of land at Mattingley Heights. The claimant obtained judgment in default so that the allegations in the claim are to be taken as proved. The claim alleges that the defamatory words uttered by the defendant meant or were understood to the ordinary listener to mean that the claimant is unprincipled, a dictator, capable of impropriety in office, had improper dealings with landowners and was involved in unlawful activities with landowners regarding approval for building at Mattingley Heights.

[27] At paragraph 22 of his witness statement, the claimant avers that the defendant sold the idea that the claimant allowed the sale of the piece of land for his sister to get a commission. Earlier at paragraph 6 of the said statement, he explained that his sister Joycelyn Glasford is the realtor who sold the property in question to Mr. Warner. He states that he was unaware of this at that point in time, as his sister does not involve him in her real estate business. In oral submissions, learned counsel for the claimant asked the court to infer that the reference in the defamatory statement of April 17, 2013 to \$117,000.00 speaks to collusion between the claimant and his sister calculated to make a profit for her. Sir Anthony Clarke MR in **Jeynes v News Magazines Ltd & Anor**⁶ summarised the applicable legal principles relevant to determining the meaning alleged defamatory words are capable of bearing. At paragraph 14 of the judgment, Sir Anthony stated:

“(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 not 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 or 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” (see Eady J in *Gillick v Brook Advisory Centres* approved by this court [2001] EWCA Civ 1263 at paragraph 7 and Gately on Libel and Slander (10th edition), paragraph 30.6). (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.” **Neville v Fine Arts Company [1897] AC 68** per Lord Halsbury LC at 73.”

[28] I have scrutinised the statement repeatedly and, in my view, no reasonable listener to the statements of the defendant aired on April 17, 2013 would ascribe to

⁶ [2008] EWCA Civ 130

them the meaning that there was collusion between the claimant and his sister to sell the property in order for her to make a profit. Therefore, as urged by learned counsel for the defendant, I disregard any reference to \$117,000.00 mentioned in the statement as amounting to a defamatory statement regarding impropriety between the claimant and his sister. I will proceed on the basis that the substance of the libel is with reference to the overruling of the Board by the claimant in granting permission to build in a watercourse. When compared with several of the authorities cited by both sides involving allegations of serious criminal offences, receiving bribes, misappropriation or misuse of public funds, I agree with learned counsel for the defendant that the gravity of the libel in this case is on the lower end of the scale.

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

[29] The claimant submits that he was touched "to the core" by the defendant's defamatory statements. He proffers that his personality is one that is highly principled and value-based and he considers his good name to be of immeasurable importance to him. In his witness statement, he expressed the anguish and distress he suffered mentally and emotionally because of the defendant's statements. He informs also of the continuing effects on his interactions with persons, wondering how people feel about him. He feels that his business dealings have been affected negatively. He states that he was hurt, embarrassed and traumatised in his own stead, and also traumatised by the effect of the defamatory remarks on his wife. He urges the court that it is essential that the award made must be of a nature that compensates him for the extensive damage to his reputation and public profile and that properly vindicates his good name.

[30] The defence contends that the claimant is entitled only to nominal damages. This is because the defendant has not supplied the court with any evidence of damage to his reputation or business. In cross-examination, while insisting that the public held

him in high regard and that some people came to him and said they were disappointed in him, the claimant was constrained to admit that he has not brought any evidence to show that people held him in high regard or that his good name was taken away from him. He maintains that there was a fall-off in his business but concedes that he has not provided any information to indicate what his clientele was before and after the libel. There is nothing before the court to demonstrate that he suffered financially. He acknowledges that he has not submitted anything quantitatively.

- [31] Learned counsel, Ms. Grey, referred the court to the Trinidad and Tobago case of **Carl Tang v Charlene Modeste**⁷ where a defamatory letter by a teacher alleging sexual harassment by another teacher at the same school was published to several school officials. In awarding damages for libel, the court noted that the claimant provided no specifics of alleged “serious” damage to his character, and found that there was no evidence of any irreparable damage to his professional reputation or fall-out in his career advancement and position. The court observed that the evidence of the impact of the publication on his professional reputation was “surprisingly vague and non specific”, but was of the view that based on the nature of the allegations, some damage to the claimant’s reputation could be presumed.⁸ Ms. Grey impresses upon the court that there is nothing before the court that shows that the claimant’s reputation went downhill or that his business was adversely affected. No documentary evidence in terms of his professional life has been presented. That being the case, counsel argues that in the absence of the required evidence for an award of substantial damages, the court is in a position to order nominal damages only. Owing to the lack of evidence, counsel suggests an award of \$15,000.00 maximum, if any.

⁷ Claim No CV2010-03657. See also the seminal case of *Hayward v Hayward* (1887) 34 Ch. D. 198

⁸ *Ibid* at paragraph 22 of the judgment

The conduct of the defendant – aggravated damages

- [32] In support of a claim for aggravated damages, the claimant is entitled to rely on the conduct of the defendant. The claimant contends that prior to court proceedings being commenced, the defendant was deliberate in continuously defaming him on WINN FM and other radio stations. Further, despite several opportunities, the defendant refused to apologise, retract his statements, or stop making statements at all. The claimant submits that the defendant displayed a deliberate and malicious disregard for the truth and was intent on publicly destroying the claimant's reputation. The defendant made no attempt to mitigate the damage caused and instead aggravated a situation in which he had already caused serious harm.
- [33] Additionally, learned counsel, Ms. Herbert, insists that the court is allowed to take into consideration that the defendant 'doubled down' on his allegations in the assessment hearing. For this proposition, counsel relied on the pronouncement of Edwards JA in **Elwardo Lynch v Ralph Gonsalves**⁹ at paragraph 13 of the judgment. Her Ladyship stated:
- “It is settled law that the defendant's conduct after the publication may afford cogent evidence of his malice in the original publication of the defamatory statements and thus evidence upon which aggravated damages may be awarded....On the authority of **Praed v Graham**, [(1889) 24 QBD 53, 55 per Esher MR.] “the trial court in assessing damages is entitled to look at the whole conduct of the defendant from the time the libel was published down to the time the verdict is given. It may consider where his conduct before action, after action and in court during the trial.”
- [34] Learned counsel for the defendant, Ms. Grey, submits that there are no aggravating factors in this case. Counsel argues that the court cannot go any further than the statement of April 17, 2013 to determine that the libel persisted. Counsel acknowledges that where a defendant repeatedly publishes a defamatory allegation about a claimant, this is likely to increase injury to the claimant's reputation and feelings. However, she relies on the case of **Collins Stewart Ltd &**

⁹ HCVAP 2009/002, consolidated with HCVAP 2009/004 BDS Limited v Ralph Gonsalves

Another v The Financial Times Ltd.¹⁰ to illustrate that in order to influence the court to take such repetition into consideration, the claimant must plead each publication as a separate cause of action. Edwards JA also dealt with this issue in **Elwardo Lynch**¹¹ when drawing from the learning in **Clerk & Lindsell on Torts**¹² as follows:

“...it will be a matter of aggravation if the defendant has persistently and deliberately given publicity to the defamation complained of, or if he has on other occasions disparaged or assailed the plaintiff's reputation; or if in the conduct of the litigation he has shown a spirit of determined hostility, or has persisted in unfounded imputations and introduced new ones. The plaintiff is not precluded from giving other facts of the defendant in evidence to prove malice by the fact that they were in themselves causes of action, but that evidence may be treated only as matters of aggravation.”

[35] In light of the foregoing, I am of the view that this court is permitted to consider the conduct of the defendant in persisting with defamatory comments about the claimant even though the specific instances have not been pleaded as separate causes of action. The claimant, in his witness statement, alleges the defendant's persistence in repeating defamatory statements about him. The defendant has not denied this allegation.

[36] The defence further submits that the court should consider the effect of the evidence related to fair comment raised by the defendant.¹³ The contention is that the defendant rested his opinion on the decision of the Board to allow the construction of a building in a watercourse by Mr. Jason Warner. His witness statement explains that his statements were concerned with the nature of the Board's decision and called into question the circumstances that he was led to believe surrounded it.

¹⁰ [2005] EWHC 262 (QB)

¹¹ Supra at note 9, at paragraph 14 of the judgment

¹² Twelfth edition at paragraph 1636, at page 873

¹³ See Pamplin v Express Newspapers Ltd [1988] 1 WLR 116

[37] In determining whether the claimant is entitled to an award for aggravated damages in this case, I take into consideration the following:

- 1) The defendant has refused to apologise to the claimant even in the face of the default judgment which has determined his liability. This speaks to malicious intent;
- 2) The defendant has not retracted his statements and has persisted in what has been deemed a libel by the default judgment, even at the assessment hearing, declaring that he exposed the corruption in St. Kitts. This also goes to malicious intent;
- 3) The witness statement submissions of the defendant have not mitigated the damages. I am not persuaded that the evidence of the defendant that his statements were on a matter of great importance in the public interest negatives a malicious intent on his part. His statements were based on what he said Mr. Warner told him. He never sought to verify the accuracy of Mr. Warner's alleged utterances and proceeded to make the statements on the airwaves.

[38] Therefore, being mindful that damages in a libel case are meant to compensate the claimant and not to punish the defendant, I am of the view the claimant is entitled to an award for aggravated damages.

The authorities on quantum

[39] Learned counsel for the claimant highlighted three cases to persuade the court to make a significant award to the claimant. As stated earlier, the claimant seeks a total award in the region of \$150,000.00.

[40] In **Hubert O'Neal v Julian Willock D.B.A. Advanced Marketing and Professional Services Ltd. and Carmelita Jamieson**,¹⁴ Taylor-Alexander M., as she then was, awarded US\$20,000.00 to an orthopaedic surgeon and politician for

¹⁴Supra at note 1

an online publication of an alleged family feud. Damages were assessed on a default judgment. The defendants did not proffer an apology to the claimant. The court considered that “the statements made were not directed at the profession of the claimant, although directed to undermine his social standing”.

[41] Learned counsel Ms. Herbert also relied on the earlier cited principle-setting authority of **John v MGN Ltd.**¹⁵ In that case, a photograph of Elton John was displayed on the front page of a national newspaper with the words “World exclusive” and Elton’s ‘diet of death’”. The related article appeared at pages 4 and 5 in which it was alleged that the rock superstar was hooked on a bizarre new diet which involved him chewing food and then spitting it out. A proposed apology was rejected by Mr. John’s solicitors. The Court of Appeal, in reducing the sum awarded by the jury, substituted a total sum of £75,000, being £25,000 compensatory damages and £50,000 exemplary damages.

[42] St. Vincent and the Grenadines Prime Minister Dr. Ralph Gonsalves was awarded the sum of \$140,000.00 for general damages including aggravated damages in the **Elwardo Lynch** appeal. The Prime Minister who was also the Minister of Finance was libelled on a political radio programme hosted by Mr. Lynch. The offending statements alleged that Dr. Gonsalves allowed money from the consolidated fund to be used to purchase tickets for his mother and daughter to travel to Rome to see the Pope. This imputed criminal conduct on the part of Dr. Gonsalves. There was no acknowledgment that the defamatory statements were not true.

[43] The claimant, in written submissions, also referred to the case of **Victoria Alcide v Helen Television System Limited and Radio St. Lucia Company Ltd**¹⁶ in which the claimant, the deputy director of the national prison, was defamed in a newscast aired on television and radio. The claimant obtained judgment in default

¹⁵ Supra at note 3

¹⁶ SLUHCV2011/0398, delivered October 25, 2017

on the allegations that she had an intimate relationship with an inmate for whom she brought contraband items into the prison, and encouraged female prison officers to have sexual relations with male inmates. After what appears to have been a protracted dispute on the contents of the apology broadcast by the television station, Smith J, SC, ruled that the claimant was entitled to a modest award for aggravated damages. The claimant was awarded total damages in the sum of \$135,000.00, broken down into general damages of \$100,000.00, aggravated damages of \$20,000.00 and exemplary damages of \$15,000.00.

[44] In this case, the claimant submits that apart from general damages, he is entitled to aggravated damages for the continued persistence, refusal to retract or apologise and other aggravating conduct of the defendant. The claimant impresses upon the court that the effect or the closeness with which the defamatory statements touch him and his reputation are extremely significant. The effects on him were extensive given the regard with which he holds his reputation. It is submitted that the award to the claimant should be significant because of the specific circumstances present wherein the extent of the defamatory statements was worsened by this claimant's values and regard for his reputation.

[45] Learned counsel for the defendant counters that with due respect to the claimant, his status does not come close to being comparable with that of a prime minister as in **Elwardo Lynch** or a world famous singer like Elton John. Ms. Grey maintains that the evidence before the court does not reach \$150,000.00 as suggested by learned counsel for the claimant.

[46] Ms. Grey referred the court to **Charles Hunte v Loretta Phillip et al**¹⁷ where statements were made via a radio broadcast to the effect that the claimant, the president of the Antigua and Barbuda Pensioner's Association, was alleged to have mismanaged the funds of the Association in not properly accounting for them. No apology was made to the claimant. Ventose M. (Ag.), as he then was,

¹⁷ ANUHCv 2014/0449

declined to make a separate award for aggravated damages and awarded general damages in the sum of \$25,000.00.

[47] In **Dr. Edmond Mansoor v Eugene Silcott**,¹⁸ the defendant sang in a calypso the words “Mansoor bribing Ministers, imagine how much he got for computers”. The claimant was a government minister. Michel J., as he then was, found that there was no evidence beyond the claimant’s own witness statement of actual harm or injury to his reputation and awarded \$10,000.00 for “any hurt, offence, embarrassment or distress reasonably suffered” by the claimant as a result of the publication. A claim for aggravated damages was denied as His Lordship was of the view that the fact that the defendant did not respond to the claimant’s letter demanding a retraction and apology did not justify an award of aggravated damages in the circumstances of the case.

[48] The defendant submits that the court should make a nominal award to the claimant to vindicate his reputation given the lack of evidence of serious injury to the claimant’s reputation.

The assessment

[49] Bearing in mind the principles laid down in the authorities, and taking into consideration comparable awards, I must determine a sum that will adequately compensate the claimant for the injury he has suffered.

[50] I have considered that the defamatory statements had wide circulation in the sense that the programme that aired them was available locally and internationally. This must be weighed against the probability of the claimant being readily identifiable as the subject of the libel.

[51] According to Sir Thomas Bingham in **John v MGN Ltd**, the gravity of the libel is the most important factor in assessing the appropriate damages for injury to

¹⁸ ANUHCv 2010/0209

reputation. I do not consider the defamatory statements in this case to be particularly serious. In our Caribbean disposition, the overruling of a decision of a planning Board by the head of the Board does not carry much sting and does not attract much, if any, outrage. Still, the inferences to be drawn of the claimant being unprincipled, a dictator, capable of impropriety and being involved in unlawful activities with landowners certainly make the statements actionable.

[52] This does not take away from the claimant's distress and injury to his feelings. It is evident that his reputation is extremely important to him and the defendant's statements have affected him to the core. The defendant's statements were an attack on his integrity and professionalism in his capacity as head of the Board.

[53] However, I must consider the absence of cogent evidence in this case to support the claimant's claim for significant damages for injury to his personal and professional reputation. The claimant did not call witnesses to show that he was lowered in anyone's estimation because of the defendant's statements. As pointed out by Michel J., as he then was, in the **Mansoor** case,¹⁹ "Since reputation is not what a person thinks of himself but what others think of him, the Court cannot in the circumstances make a finding of actual injury to the Claimant's reputation based only on the evidence of the Claimant himself." In relation to his business, Williams Architectural, no quantitative evidence was produced to illustrate a fall-off in business or clientele resulting from the libel. Further, there is nothing to suggest that the claimant was removed from his position on the Board because of the statements. On the evidence, therefore, I am of the view that the claimant is not entitled to a substantial amount for damage to his reputation. Nonetheless, some damage to his reputation is presumed. In the circumstances of this case, I consider an award of general compensatory damages in the sum of \$15,000.00 to be sufficient to compensate him for any distress or hurt feelings caused by the defamatory statements of the defendant.

¹⁹ Ibid at paragraph 35 of the judgment

[54] As I concluded earlier, the claimant is entitled to an award for aggravated damages on the basis of the conduct of the defendant. The defendant continues to rely on the alleged statements of Mr. Warner as justification for his utterances on the airwaves. As a result, he has refused to apologise to the claimant and/or to retract his statements and at the hearing, in effect, reaffirmed the libel. I consider the sum of \$10,000.00 as fair and reasonable to take into account the aggravating conduct of the defendant.

Order

[55] Based on the foregoing, it is hereby ordered as follows:

- 1) The defendant shall pay the claimant the sum of \$15,000.00 in general damages.
- 2) The defendant shall pay the claimant the sum of \$10,000.00 in aggravated damages.
- 3) The defendant shall pay the claimant prescribed costs in the sum of \$2,250.00.

[56] I thank both counsel for their useful assistance in this matter.

Tamara Gill

Master

By the Court

Registrar