

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2016/0356

BETWEEN:

MARY JOHN

Claimant

and

CLIFF WILLIAMS

Defendant

Appearances:

Ms. E. Ann Henry Q.C and with her Ms. Mandy Thomas for the Claimant
Mr. Sylvester Carrott for the Defendant

2019: November 18th;
2020: March 5th

JUDGMENT

[1] **WILKINSON, J.:** The Claimant (Ms. John) filed her claim on 11th July, 2016. Therein, she alleged that a statement made by the Defendant (Mr. Williams) in the social media forum of Facebook on 27th July, 2015 was a libellous Facebook publication. The statement being:

“... You on the other hand ...was running a sex trade”

[2] Ms. John pleads that the words “was running a sex trade” were meant and understood to mean that she:

(a) was involved in sex trafficking, and

(b) was involved in trading humans for the purpose of sexual slavery.

She further pleaded that by repeating certain statements which Ms. John had made in her public service announcement, Mr. John had wrongfully introduced a matter which added to the sting and which was wholly untrue.

- [3] Ms. John sought the following relief: (i) damages for libel including aggravated damages, (ii) an order restraining Mr. Williams from repeating, publishing or otherwise disseminating the same or similar words defamatory of Ms. John, (iii) such further or other relief as the Court deemed fit, (iv) interest pursuant to statute, and (v) costs.
- [4] As is customary in defamation actions, a letter before action was sent to Mr. Williams by Counsel for Ms. John dated 14th September, 2015. Mr. Williams filed his defence on 28th July, 2016. At trial Mr. Williams had no witness statement to support his defence. On a point raised in limine, the Court for reasons stated then ruled that since Mr. Williams was without a witness statement to support his defence then no reference could be made to his defence as to do so would be to allow Mr. Williams to put his case in “through the back door”.

Issue

- [5] The sole issue for the Court is whether Mr. Williams’ statement that Ms. John ‘was running a sex trade’ defamed her.

The Evidence

- [6] Historically, Ms. John at July, 2015 was 51 years. She has had her Facebook page for several years and uses it to post her views on various subjects and in her view to speak out on matters of concern to the society.
- [7] She is a businesswoman and social and political activist. Her activism she says started and developed over the course of time because of her personal experience and which was that she had suffered from the disease of drug addiction for approximately 18 years. She has overcome it and has been clean for approximately 14 years. She made a commitment to healthy living and part of her determination on commitment was to help others not make the same mistakes that she had. She started her path to healthy and clean living by acknowledging her past in a public service announcement which was carried on ABS Radio. The text of her public service announcement read:

“I took my first hit of cocaine in 1986.
It was the most amazing feeling in my life.

I spent the next 18 years chasing the feeling I got from that first hit.
During my addiction, I became a thief, a liar, a con-artist and I even sold my body to obtain drugs.
I was hospitalised and institutionalized on many occasions.
I even survived two suicide attempts.
Youth of Antigua and Barbuda, Experimenting with drugs is not worth the consequences.
Choose life.
Do not take that first hit.”

- [8] By July 2015, Ms. John with her new determination to change her life and her commitment to help young people avoid her mistakes had been working with young people at Antigua and Barbuda for approximately 10 years. She educated them about the ills of drugs and drug addiction and used her past experiences to help them avoid her mistakes. She believes that her message was very profound and has reached her audience primarily because she did not believe in sugar-coating and has been both honest and forthright. She worked with young persons who had either been abusing illegal drugs or alcohol or who wanted to learn about substance abuse for school and other projects. In 2010, she travelled to Barbuda and addressed both schools there. At Antigua, she has a standing invitation at the Saint Anthony’s Secondary School where she has worked with the second form students delivering lectures, holding discussions and seminars every year for the past 10 years. During the same period, she has been invited and spoken to students in over 14 secondary schools and 6 primary schools. She had also been invited to speak at the Churches in the Gray’s Farm area, the Seventh-Day Adventist Church in Parham, and the Precision-Centre which involved live-streaming to other countries. She says that there has never been time when she was called upon during those 10 years that she was not readily available to assist. She has borne the cost of her work including the preparation of materials for distribution. People around Antigua know of her work.
- [9] According to Ms. John, two of the things that she has constantly spoken out against both on her Facebook page and in her interaction with young people are the evils of human trafficking and prostitution. She has been very clear that she was extremely concerned about the level of human trafficking and prostitution at Antigua and the extent to which substance abuse was part and parcel of those activities. Young people at Antigua have heard her speak strongly against human trafficking and prostitution. She has written letters on the topic for publication and some have been published in the local press such as the Daily Observer. Her letters have called for strip clubs and brothels to be shut down and also dealt with the level of drug trafficking in Antigua, as a small country.
- [10] She has felt gratified at her being able to save many young persons whose lives were on the brink of disaster. She has received many letters from young persons who have considered her to have made a difference in their lives.

- [11] At July 2015, the Parties were known to each other as acquaintances of about 7 years. Mr. Williams also had a Facebook page. The Parties were “Friends” on Facebook. This in effect meant that they had access to each other’s pages and the posts which are put on each other’s pages.
- [12] According to Ms. John, she met Mr. Williams in or about 2010, when she was trying to get the music of a local artiste produced. Mr. Williams was a businessman who owned and operated a music sound system business. They worked together on her project. During the course of time she expressed her concern to him about the growing practice of bringing in Jamaican Dancehall artistes to perform during Carnival which was a national cultural celebration. Mr. Williams holding a different view, defended the practice. He saw nothing wrong with the practice.
- [13] At July 2015, Mr. Williams was the chairman of the Festival Commission.
- [14] As Carnival 2015 approached, on 27th July, 2015 there occurred an exchange of postings on Facebook between Ms. John and Mr. Williams. Many persons joined in the conversation. There were disclosed 29 pages of postings covering the period 27th July, 2015 to 4th August, 2015.
- [15] Ms. John initiated the conversation with a post to Mr. Williams on the subject of foreign artistes performing during the Carnival. The posts between them and a post by Ms Tamika Camacho read:

The Facebook posts

Posts of the 27th – 30th July 2015 were:

“Mary John

July 27th at 1.29a.m – Edited

So there is a concert on July 28th titled “ESCAPE” featuring

Jamaican artiste Beenie Man and so kina Dexta Daps

A few things

I thought us caring patriotic Antiguan made it clear that we do not want any other type of ‘music’ coming to our shores during our Carnival celebration.

I thought the decision makers understood the disrespect to our Culture and our Indigenous Music, Calypso and Soca.

I though they understood it not about THE ALMIGHTY DOLLAR but about promoting OUR OWN during this, our Biggest Cultural Festival.

So to the lady who said “LETS WAIT AND SEE” when I spoke about Cliff’s association not only with promoting all Jamaican artistes but his sound system being used when they perform here, by their insistence, what do you have to say now?

Wha dancehall singer Beenie man and dis person Daps ah do yah during our Carnival Celebrations?

Can an Indigenous Antiguan go to Jamaica and sing Calypso or Soca while they promote their Reggae Festival?

All about the damn money.

No damn respect for Local talent and our Culture.

....

Mary John I edited post Charlene Brown-Reid cause me so vex when me see Beenie man me na min see some kina Daps person. It is my opinion that it's Cliff Williams who is solely responsible for this. Jamaican to sing 3 reggae song at Queen of Carnival and now two more Jamaican to perform at his concert. Cliff Williams you and I have had countless debates about this. You make it clear that you are very much involved in promoting Jamaican artistes and you said that they insist that only Stone Wall to be used when they perform here. You are head of Festivals Committee and I predicted this would happen. You and your brother operated a dancehall bram session for YEARS in Shanty Town, yards away from ARG where our Carnival Shows take place and you said you saw nothing wrong, because you were offering an alternative for those who don't like Carnival. I was appalled and told you, "no you were not, you were offering an alternative for your pocket!!!" E.P. Chet Greene, why are you allowing this? I am serious like the cancer that killed my Nanny. What the hell are you doing E.P. Chet Greene? I publicly requested an appointment with yourself and Cliff. You hear about all my posts and your read them. So why have you not granted me the appointment?

....

Cliff Williams Why you use cocaine from Columbia and herb grow here. Crack heads. Smh.

Mary John Cliff Williams are you referring to the cocaine that people said you were importing? You know I never wanted to believe that. Is it true?

....

Cliff Williams I am not frustrated or any of that kind. All I did was identify the person. I guess you guys trying to fool yourselves that the description does not fit her.

....

Mary John at 2: 33 a.m. wrote

Cliff Williams, Chairman of our Festival Committee is upset that I speak my mind in the interest of my Country, culture, local artistes so he get personal and insulting.

....

Cliff Williams Caribbean integration exist between all Caribbean Countries and I am great enough to promote that. You on the other hand was heavily promote and using Columbia product and was running a sex trade for it as you said publicly in a commercial format. Now you done off all the coke you now remember your country.
Cliff Williams PS. I am not upset, I was just acknowledging the big up you give me on my claim to fame and I was just giving you your big up in return on your claim to fame. Crack cocaine, \$10 sex etc...

Mary John Cliff Williams, you are great enough to waste taxpayers monies in order to promote the foreign artistes that you work for and to fill your pocket. Find the PSA, interview or any recording you could have done to prove that I was running a sex trade and you're good to go. I cannot "remember" my Country while on cocaine and crack, everybody understands that. I wonder why you don't. Btw, Caribbean integration seems only to exist in Antigua. Go to Jamaica and tell them so nuh.

Mary John I think you are upset Cliff hence dealing with things badly. I suffered from a disease, the one called drug addiction and the drugs made me do the things I did and become the person I became. You on the other have spent your life benefitting from anyone who can put money in your pocket. By your own admission, you have no use for your Culture and before your unfortunate appointment, only attended Carnival Shows at the end, to protect your business interest – Stone Wall Sound System. Having said that, up to now, you have not addressed my questions posed on the first post done last night. Can you please do so.

....

Cliff Williams Me nah pet nor power nor tek back no chat! Tek it and digest it, it will hit the spot.

....

Cliff Williams My FB is my yard, once you trespass I have to option to let go my dogs or spare you.

...

Tamika Camacho Where the matter of Human Trafficking and the present situation is concerned it is my humble opinion that we as a country as a people should take a united stance and handle the matter with uttermost professionalism, transparency, and with Keen attention to the underlying factors. It's not about the head of any particular ministry or department. The implications are serious and wide spreading and can affect many in the society. Human trafficking in (is) a transnational crime and wi..."

...

[16] Both postings attracted considerable attention and responses. Some persons accused Mr. Williams of not addressing the important issue raised by Ms. John and instead "hitting below the belt" and of not understanding the issue of drug addiction and recovery. Some persons felt that there was nothing wrong with Mr. Williams' comments and instead attacked Ms. John.

[17] According to Ms. John, Mr. Williams' attack on her was so widespread a topic of national discussion that articles were printed in the newspaper, the Daily Observer on 28th, 29th July 2015, 6th August, 2015 and 4th November, 2015. At 28th July, 2015 the article reported amongst other matters that a local mental health professional had called for the resignation of Mr. Williams after his disparaging remarks about Mary John. At 29th July, 2015 the article reported that Mr.

Williams said that he was standing by his comments made about Ms. John. At 29th July, 2015 the editorial opinion was headed "How not to be part of the dunce element". 6th

August, 2015 the article stated that the culture minister defended the foreign artistes in Carnival. 4th November, 2015 was an article by Ms. John's witness, Mr. Quinn and wherein he recalled that Ms. John had called out a carnival official for his hiring of Jamaican artistes. The articles were disclosed.

- [18] Ms. John said that given her work and the progress that she had made, since Mr. Williams' post on Facebook that she has been very worried about the impact of his statements on her work and the progress that she has made with the persons that she has been trying to help.
- [19] It was Ms. John's view that Mr. Williams had accused her of "running a sex trade" and which he claims she had publicly stated in a "commercial format". To Ms. John, Mr. Williams' statement that she "was running a sex trade" meant and was taken to mean that she as involved in human trafficking.
- [20] Ms. John was hurt, embarrassed and humiliated by Mr. Williams' statement. In addition, her health was seriously affected. The attack on her being personal and untruthful placed her back in a very dark place where she had to re-live all of her suffering as a result of her 18 years of drug addiction. She had never been involved in the sex trade. She had always known that remaining clean would be an uphill battle for her and that the society could be unforgiving and would remind her of the horrible things that she had done while addicted. But she would not accept that members of the society are permitted to lie about her. For Mr. Williams to say that she was promoting cocaine and running a sex trade, was to put her in a very negative light and made her appear to be a fake and fraud. She had work tirelessly to begin her personal journey of healing and forgiving herself to become the person she is and understands that drug addiction is a disease. Recovery she said was a daily uphill struggle, very difficult and challenging process. She spent many years in therapy, went to Alcoholic Anonymous and Narcotics Anonymous meetings regularly for 10 years. It was very important for her to work and follow the 12-Step program and execute its principles in all of her affairs. She has spoken on many occasions during interviews about her recovery process. It has not been easy. She has received abuse from the public for no reason. At times when walking the street, she would hear her name being called and on turning around she would be met with abuse.
- [21] She said that Mr. Williams' statement caused a series of written and verbal attacks against her. This was supported by the posts on Facebook.
- [22] Ms. John said that despite numerous calls (and this would include her Counsel's letter) being made to Mr. Williams to apologize, he refused to do so.
- [23] Under cross-examination it was put to Ms. John that Mr. Williams never used the words "human trafficking" nor did anyone making comments following his posts. Ms. John denied that and referred to the posting of Ms. Tamika Camacho at page 20 of the 29 pages of postings disclosed. On re-examination Ms. John was asked if she edited Ms. Camacho's comment and she said 'No' and added that it was impossible for her to edit another person's postings.

- [24] Mr. Paul Quinn was a witness for Ms. John. He is an Antiguan who had resided at the United States of America. He now resides at Antigua. He writes articles for publication in the local press. He said that while resident at the United States of America, he was very connected to events on the ground in Antigua by way of monitoring the Antiguan media, through contact with his family and friends, and then more recently through Facebook. He knows both Ms. John and Mr. Williams. He knows of Ms. John's advocacy work with young people and of her speaking out on the issue of human trafficking. He said that due to her staunchly and loudly advocating against human trafficking that he had become concerned about her personal wellbeing.
- [25] He read Mr. Williams' post on 27th July, 2015 on Facebook. He cited the contents of the post about foreign artistes. He was aware that Ms. John had complained about foreign artistes coming to Antigua to perform during Carnival celebrations. He said that when he read Mr. Williams statement of which Ms. John complains, that he was very disturbed because it appeared by his words "running a sex trade" that he was suggesting that Ms. John was or had been involved in human trafficking.
- [26] He observed on Facebook that the subject of human trafficking was discussed amongst the comments which convinced him that he was not the only person who felt that this was what Mr. Williams meant by his comment. He said that human trafficking is quite a topical issue at Antigua and Barbuda and has been for several years. It was illegal and it engaged concern at the highest levels of government. There were frequent reports of the Police at Antigua arresting persons for human trafficking. For these reasons, he thought that Mr. Williams' posts had wronged Ms. John when he made the statement complained.
- [27] Under cross-examination Mr. Quinn said that Ms. John was his friend of many years and still was. He was not at Antigua during the period when she was addicted to drugs but he knew of her public statement. He had not read all 29 of the pages of postings disclosed so as to follow the discussion.

The Law

- [28] In the past, the standard was that a defamatory statement was one which exposed a man to hatred, ridicule or contempt or caused him to be shunned or avoided by right-thinking members of the society generally. In **Tort Law**¹ the authors have updated that view and state that a statement is defamatory if on reading or hearing it, it would make an ordinary, reasonable person tend to (a) think less well as a person of the individual referred, (b) think that the person referred to lacked the ability to do their job effectively, (c) shun or avoid the person referred to, and (d) treat the person referred to as a figure of fun or an object of ridicule.

¹ Mc Bride and Bagshaw, Longman 2008, 3rd ed.

[29] In the recent Trinidad and Tobago case decided at 22nd May, 2019 Civil Appeal No. 252 of 2014 **Faaig Mohammed v. Jack Austin Warner** Jamadar JA said:

“[5] The tort of defamation can be no less injurious than that of assault to the person, though in very different ways. Both can cause pain, suffering and distress. Both can result in irremediable trauma and damage to a person. In a democratic society governed by the rule of law, neither one of these two torts enjoys some unreachable position above or beyond the rule of law. Freedom of expression, even in the political arena, is subject to the rule of law. The law must both protect free speech and also prevent the unjustified (ab) use of free speech to harm and violate others.

....”

[30] At Antigua and Barbuda there is **The Defamation Act, 2015**. It provides:

“2. ‘defamatory matter’ means any matter published by a person that is, injurious to another person’s reputation in the eyes of the reasonable members of society:

‘matter’ includes

(a) ...;

(b) ... or other thing communicated by means of ... the Internet or any other form of electronic communication;

‘publisher’ means a person who has published the matter that is, maybe, or is alleged to be defamatory of another person and

...

8. A person has a single cause of action for defamation in relation to the publication of defamatory matter about the person even if more than one defamatory imputation about the person is carried by defamatory matter.

9. The tort of defamation is actionable without proof of special damage.”

[31] The Court also observes that there was passed at Antigua and Barbuda **The Trafficking in Persons (Prevention) Act, 2010**. The long title of that Act reads that it is an Act to give effect to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime 2000; to combat the trafficking in persons within and across the borders of Antigua and Barbuda; to provide for the offence of trafficking in persons and offences associated with trafficking in persons; to provide measures to protect and support trafficked persons and for incidental and connected purposes. The **Act** provides: “trafficked person” means a person who is the victim or object of trafficking in persons. At section 13 it is stated that a person who engages in trafficking in persons commits an offence and, subject to sections 15 and 16, is liable on summary conviction to a fine

not exceeding four hundred thousand dollars or to imprisonment for a term not exceeding twenty years or to both.”

[32] The Court goes back to first principles on libel and slander actions and in that regard finds **Halsbury's Laws of England** 4th ed. Vol. 28 most helpful. Therein it is stated:-

“1. Libel and slander actions. In English law, speaking generally, every person is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or person without lawful justification or excuse.

If a defamatory statement is made in writing or printing or some other permanent form, the tort of libel is committed and the law presumes damage. If the defamation is oral, or in some other transient form, it constitutes the tort of slander which is not actionable at common law without proof of actual damage, except where the statement is one of a particular character.

The action of libel and slander are thus private legal remedies, the object of which is to vindicate the plaintiff's reputation and to make reparations for the private injury done by the wrongful publication to a third person or persons of defamatory statements concerning the plaintiff. The Defendant in these actions may prove the truth of the defamatory matter and thus show that the plaintiff has received no injury; for although there may be damage accruing from the publication, yet, if the facts published are true, the law gives no remedy by action.

16. Falsity and malice. In an action for libel or slander it was formerly the practice to allege in the statement of claim that the words were published falsely and maliciously. However, the plaintiff does not have to prove falsity or malice to establish his cause of action. If the words are defamatory, the law presumes that they are false, and it is for the defendant to plead and prove that the words are true. In other words, the onus of proving justification is on the defendant.

The malice signified by the phrase “falsely and maliciously” is malice in law, that is to say a wrongful act done intentionally, without just cause or excuse. Malice in that sense is presumed from the fact of publication of defamatory words, so that the plaintiff need not plead or prove it. This is to be distinguished from express malice, which is actual malice or malice in fact.

39. Statement must be published of and concerning the plaintiff. Words are not actionable as a libel or slander unless they are published of and concerning the plaintiff. The plaintiff can rely only on the defamatory matter contained, whether expressly or by implication, in the statement in respect of which the action is brought and not on defamatory matter contained in statements made about the plaintiff by other persons on other occasions.

42. Meaning of 'defamatory statements'. The essence of a defamatory statement is its tendency to injure the reputation of another person. There is no complete or comprehensive definition of what constitutes a defamatory statement, since the word 'defamatory' is nowhere precisely defined. Generally speaking, a statement is defamatory of the person of whom it is published if it tends to lower him in the estimation of right thinking members of society generally or if it exposes him to public hatred, contempt or ridicule or if it causes him to be shunned or avoided.

A person's reputation is not confined to his general character and standing but extends to his trade, business or profession, and words will be defamatory if they impute lack of qualification, knowledge, skill, capacity, judgment or efficiency in the conduct of his trade, business or professional activity.

43. The test of what is defamatory. In deciding whether or not a statement is defamatory, the court must first consider what meaning the words would convey to the ordinary person. Having determined the meaning, the test is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense. Words which tend to diminish the esteem in which a person is held by the criminal classes or by persons out of sympathy with the law will not support an action, for that is not a standard which the court can recognize.

The fact that the particular person to whom the words were published did not believe them to be true is irrelevant and does not affect the right of action, although it may affect the question of damages.

Similarly, words will be defamatory if they impute conduct the reasonable person considers discreditable, even though in the author's stated view such conduct is proper.

44. Meaning of the words. Before it is possible to determine whether or not particular words bear a defamatory meaning, it is necessary to determine their meaning. For the purposes of the law of defamation, the fact that the same words can mean different things to different people is ignored; the court seeks to determine and act upon the one and only meaning that the readers as reasonable persons should have collectively understood the words to bear; this is the natural and ordinary meaning. In determining the natural and ordinary meaning, the court takes into account not only the literal meaning of the words but also the inferences which a reasonable person would draw from them in their context.

The words may also have a secondary or extended meaning which depends upon knowledge of special or extrinsic facts. The secondary or extended meaning is known as the innuendo, or true or legal innuendo.

45. The entire publication. The reasonable reader, including viewers and listeners, is taken to have read the entire publication. It is not permissible to invite a jury to infer that some readers will only have read, for example, the headline, and will have understood that

headline to bear a defamatory meaning which it would not have borne if considered in the context of the article as a whole.

46. Natural and ordinary meaning. The meaning of words for the purpose of the law of defamation is not a question of legal construction, since laymen will read into words an implication more freely than a lawyer. The meaning is that which the words would convey to ordinary persons. The ordinary person reads between the lines in the light of his general knowledge and experience of worldly affairs. Thus, the interpretation of words may vary infinitely, and the right meaning is a question of fact. However, words may be understood by one person in a different way from that in which they are understood by another. Ordinary men and women have different temperaments and outlooks; some are unusually suspicious; some are unusually naïve; and one must try to envisage people between those two extremes and determine what is the most damaging meaning they would put on the words in question.

The court must not put a strained or unlikely construction upon the words. If they are capable of bearing a number of good interpretations, it is unreasonable to seize upon the only bad one to give the words a defamatory sense.

When a plaintiff complains of words in their natural and ordinary meaning he must accept that meaning with all the derogatory imputations that it conveys; the ordinary reader takes the imputations as a whole and does not divide them up. Once the meaning has been determined, the court must decide whether the words complained of are defamatory of the plaintiff.

47. ...

48. Function of judge and jury in deciding the meaning of words. It is for the judge to rule whether or not the words are reasonably capable of bearing a meaning defamatory of the plaintiff. If he rules that they are so capable, it is for the jury or the judge if he is sitting without a jury, to decide whether the words did in fact bear the meaning of the plaintiff.

Where the plaintiff relies on the natural and ordinary meaning, which includes the inferential meaning, no evidence is admissible as to the meaning of the words; but where the plaintiff relies on a 'true' innuendo meaning and adduces evidence of special facts to support it, witnesses may be called to testify as to the meaning they understand the words to bear.

49.....

50. Statement imputing fraud, dishonesty etc. It is defamatory to charge another with fraudulent, dishonest or dishonourable conduct or motives, or to call a person a villain, swindler, rogue or rascal, or to state that he is not conversant with business ethics. It is also defamatory, though considerably less serious, to suggest that a person is being

investigated by the authorities, or is under suspicion or dishonesty or crime, even if the reasonable reader would not infer outright guilt.” (My emphasis)

- [33] Again on examination of the words used, in **Bonnick v. Morris & Ors** (Jamaica) [2002] UKPC 31 Lord Nicholls of Birkenhead said:

“The defamatory meaning

9. Before their Lordships’ Board the issues were reduced to two: meaning and qualified privilege. As to meaning, the approach to be adopted by a court is not in doubt. The principles were conveniently summarized by Sir. Thomas Bingham MR. in **Skuse v. Granada Television Ltd.** [1996] EMLR 278, 285 -287. In short, the court should give the article the natural and ordinary meaning it would have conveyed to the ordinary reasonable reader of the Sunday Gleaner, reading the article once. The ordinary, reasonable reader is not naïve; he can read between the lines. But he is not unduly suspicious. He is not avid for scandal. He would not select one bad meaning where other, non-defamatory meanings are available. The Court must read the article as a whole, and eschew over-elaborate analysis and, also, too literal an approach. The intention of the publisher is not relevant. An appellate court should not disturb the trial judge’s conclusions unless satisfied he was wrong. (My emphasis)

- [34] In **Gatley on Libel and Slander** 12th ed. at paragraph 30.7 the Court is reminded that it must bear an open mind when interpreting the words. It is stated:

“The Court of Appeal has indicated that the first instance judge should be slower to rule out than to rule in pleaded meanings, particularly where the issue is whether the words are capable of falling within one **Chase** level or another. In **Jameel v. Wall Street Journal Sprl** which concerned the claimant’s pleaded meaning, the point was approached from two different directions.

First, at [10] Simon Brown LJ advised judges to bear in mind the observations of Lord Nicholls in **Bonnick v. Morris** on the imprecision of language:

‘Language is inherently imprecise. Words and phrases and sentences take their colour from their context. The context often permits a range of meanings, varying from the obvious to the implausible. Different readers may well form different views on the meaning to be given to the language under consideration.’

Secondly, at [14], Simon Brown LJ emphasized the high threshold of exclusion which must be satisfied:

‘... every time a meaning is shut out, (including any holding that the words complained of either are, or are not, capable of bearing a defamatory meaning) it must be remembered that the judge is taking it upon himself to rule in effect that any jury would be perverse to take a different view on the question. Ever since

Fox's Act 1792 the meaning of words in civil as well as criminal libel proceedings has been constitutionally a matter for the jury. The judge's function is no more and no less than to pre-empt perversity. That being clearly the position with regard to whether or not words are capable of being understood as defamatory or, as the case may be, non-defamatory, I see no basis on which it could sensibly be otherwise with regard to differing levels of defamatory meaning.'

...

Another factor militating against the exclusion of pleaded meanings, to which Simon Brown LJ adverted in **Jameel v. Wall Street Spri**, was the scope for the border between levels of meaning to be blurred and indistinct. The point was further accentuated in **Jameel v. The Times Newspapers Ltd.** in which Sedley LJ remarked, in allowing an appeal from Gray J. (who had ruled out of level 2 meaning), that the distinction between level 2 and level 3 meanings was a fine one."

- [35] In the Antiguan case of **ANUHCv2004/0408 Abraham Mansoor et al v. Grenville Radio Limited et al.** Blenman J. cited the still very relevant authority on the Court's approach to determining whether or not a statement is libelous. She said:

"[72] ... Camacho CJ in **Woolford v. Bishop [1940]** where he stated

"On this aspect of the case, the single duty which devolves on this Court in its dual role is to determine whether the words are capable of a defamatory meaning and, given such capability, whether the words are in fact libelous of the plaintiff. If the Court decides the first question in favour of the plaintiff, the Court must then determine whether an ordinary, intelligent and unbiased person reading the words would understand them as terms of disparagement, and an allegation of dishonest and dishonourable conduct. The Court will not be astute to fine subtle interpretations for plain words of obvious and invidious import.

Where the words are clearly defamatory on their face, a finding that they are capable of being defamatory will almost inevitably lead to the conclusion that they are defamatory in the circumstances. But where the words are reasonably capable of either a defamatory or a non-defamatory meaning, the Court must decide what the ordinary reader or listening of average intelligence would understand by the words." (My emphasis)

- [36] As to the impact of social media, in **The Lord Mc. Alphine of West Green v. Sally Bercow**² the defendant published on Twitter comments implying that Lord Mc Alphine was a pedophile. There Lord Mc Alphine's Counsel stated "Twitter is not just a closed coffee shop among friends. It goes

² [2013] EWHC 1342

out to hundreds of thousands of people and you must take responsibility for it. It is not a place where you can gossip and say things with impunity, and we are about to demonstrate that.”

Findings and Analysis

- [37] Ms. John’s public statement was made in excess of 14 years when Mr. Williams made his statement “... was running a sex trade....” It appears that with the passage of time, determination and the nature of the activist work that Ms. John has pursued, that she must be given due credit.
- [38] Mr. Williams’ Counsel’s cross-examination of Ms. John did not in any way shake her evidence.
- [39] It is uncontested that the statement “was running a sex trade” was published to third parties on Facebook and commented upon over the course of several days both on Facebook and in the local press.
- [40] A review of Ms. John’s public announcement of approximately 14 years prior shows that at all times the statement referred solely to the actions of Ms. John as to her own behaviour and as inflicted upon herself while addicted to cocaine. There are no other individuals referred to. There was no reference to operating with others to achieve some other goal economic or otherwise. There is no mention of “sex trade” or “running sex trade”.
- [41] A review of the postings before that of Mr. Williams focused solely on (a) Carnival being indigenous to the Antiguan culture, and (b) the nature of the artistes being brought in and promoted at Carnival events– reggae as opposed to calypsonian and soca.
- [42] This brings the Court to its first consideration of whether the words “was running a sex trade” are capable of defamatory meaning. The Court believes that the 2 words in issue which are at the heart of the claim are “running” and “trade”. The authorities cited make it abundantly clear that the words are to be given their natural and ordinary meaning and that the Court should be slow to rule out pleaded meanings and the words must take their colour from their context.
- [43] The word ‘running’ is a verb and according to **Collins English Dictionary** 2nd edition it is indicative of the occurrence or performance of an action, the existence of a state or condition. The Court believes that it would not be too far off to say that when one speaks colloquially of for example “**running** a business” that it is usually understood as “operating a business” commercially. So that takes care of defining the word “running” in the context. (My emphasis)
- [44] The word “trade” as defined in **Collins English Dictionary** 2nd edition is a noun and means “1. the act or an instance of buying and selling goods and services either on the domestic (wholesale and retail) markets or on the international (import, export and entrepôt) markets, 2. A personal occupation, esp. a craft requiring a skill, 3. The people and practices of an industry, craft or business, 4... 5... 6...7 a specified market or business: the tailoring trade(My emphasis)

- [45] Given the meanings of the words “running” and “trade”, the Court believes that those words in effect suggest that Ms. John was operating commercially a sex services business.
- [46] The second consideration for the Court is whether the words in fact defamed Ms. John and this necessarily ask the Court to consider whether the words would cause right-thinking members of the society at Antigua and Barbuda on reading or hearing the statement “was running a sex trade” to think less of Ms. John, shun Ms. John, avoid Ms. John, treat Ms. John as a person to be made fun of or as an object of ridicule. The Court’s answer is definitely the words would defame Ms. John.
- [47] The reason for the Court’s position is (i) the “running a sex trade” as defined by the Court above, would necessarily involve persons other than Ms. John; (ii) once additional persons are involved, then the issue of sexual exploitation, sexual slavery and trafficking of persons all arise. The trafficking of persons at Antigua and Barbuda is a crime pursuant to **The Trafficking in Persons (Prevention) Act**. At a minimum, Mr. Williams has accused Ms. John of a crime without proof.
- [48] Locally, it is understood, that “a pimp” or “a john” is usually involved with ‘running a sex trade’. Since Mr. Williams states that Ms. John was ‘running a sex trade’ then she in effect was a “pimp” or “john” holding power.
- [49] The Court bearing in mind **Gatley** paragraph 30.7 that the Court should be slow to rule out the pleaded meanings, would have to agree that at a minimum, the statement “was running a sex trade” could be understood to mean that Ms. John was (i) involved in sex trafficking, and (ii) involved in the trading of humans for the purpose of sexual slavery.
- [50] As to the matter of whether right-thinking members of the society on reading or hearing the words would for example think less of Ms. John or make fun or ridicule Ms. John, while the Court may have in the past speculated on persons’ reactions to statements and assessed using “the man on the Clapham omnibus”, the postings on social media forums has changed all of that. A glance at the 29 pages of postings disclosed puts the Court immediately “in the know” about how members of the public feel about a post. The strength of such opinion is not to be doubted today as it is a fact that such drives many areas of advertisement and commerce.
- [51] It is clear from the posts that some persons considered Mr. Williams’ statement to be “out of order” and “below the belt” but there were others who in fact simply attacked Ms. John, and others yet stated amongst other things that she was an “adult” and one who had to live by her past decisions in her present. Ms. John’s past history in some respects refocused the discussion.
- [52] And then there was the posting of Ms. Camacho cited above in full. She raised the issue of ‘human trafficking’ head-on and stated that there were serious implications which were wide-spread and could affect many in the society.
- [53] In all the circumstances, the Court finds that the words “was running a sex trade” defamed Ms. John.

[54] The Court having found that the words “was running a sex trade” defamed Ms. John, this brings the Court to the matter of assessment of damages for defamation. According to section 9 of **The Defamation Act**, Ms. John’s claim is actionable without proof of special damage.

[55] As to some idea of the impact of the statement on Ms. John, she says that Mr. Williams’s statement (i) caused her to become concerned about the progress she had made with her work and how Mr. Williams statement would affect it, (ii) she was hurt, embarrassed, humiliated and her health was seriously affected, (iii) caused her to go to a very dark place where she had to relived all of her suffering as a result of her 18 years of drug addiction, (iv) caused her to be put in a very negative light and made her appear to be a fake and fraud, and (v) the statement caused a series of written and verbal attacks against her.

[56] In **Civil Appeal 252/2014 Faaig Mohammed v. Jack Austin Warner** Jamadar JA said:

“Applicable Principles

[52] Awards for general damages in defamation must achieve the objective of fair and just compensation, sufficient to fully vindicate the damaged reputation to the public at large, to provide consolation for injury to feelings suffered by reason of the wrong done, and to do so effectively and for all times in the context of the local environment.

[53] Kangaloo JA, in **Rahael**, succinctly summarised the purpose of damages in defamation:

‘The purpose of an award of damages... is threefold in nature: first, to compensate the claimant for the distress and hurt feelings, second, to compensate the claimant for any actual injury to reputation which has been proved or may be reasonably inferred, and third, to serve as an outward and visible sign of vindication.’

[54] In **Gordon and Chokolingo**, Lord Ackner helpfully pointed out (citing with approval Windeyer J in **Uren v. John Fairfax**): “It seems to me that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation that is simply because he was publicly defamed.”

[55] In **Glen Lall v. Ramsohye** the CCJ, summarised the public oriented purpose of damages for defamation, as follows:

“Damages for defamation are intended to demonstrate to the public that the defamed person’s reputation has been vindicated; and if there is no apology or withdrawal of the defamatory publication the award should amount to a public proclamation that the defamation has inflicted a serious injury.”

[56] The vindicatory aspect of general damages for defamation, is therefore also intended to justify the injured person’s reputation, not just once, or only at the time of judgment but for all times. Lord Hailsham made this clear in **Broome v. Cassell & Co. Ltd.** when he explained that the purpose of damages, included compensation for the eventuality that “...

in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded ... sufficient to convince a bystander of the baselessness of the charge.”

[57] Injury to reputation is thus not just viewed as personal damage to an individual per se, but also as damage to the individual’s public and social persona as a continuing and participating member of the community at large. Indeed, this is how ‘reputation’ functions in society. Reputation constitutes both personal and social identity, and facilitates social relations and status accordingly. Yet another reason why comparisons with personal injury awards are inappropriate.

[58] It is within these overarching purposes of general damages, that the well-known ‘factors’ that a court relies on to assess quantum, including aggravating and mitigating factors, must be understood. “Thus in the assessment of damages several important factors fall to be considered. ... regard must be had to the extent of the publication and the gravity of the allegation.” These two factors are often considered highly relevant and important, the latter the most important. In relation to the gravity of the allegation, the Court of Appeal in Trinidad and Tobago has expressly approved and adopted the statement of Sir Thomas Bingham that, “the more closely it touches the plaintiffs personal integrity, professional reputation, honour ... and the core attributes of his personality, the more serious it is likely to be.” This aspect of ‘seriousness’ is a vital assessment in determining the gravity of the allegation.

[59] Additional factors include, the extent to which the statements were or would likely be believed, the impact on the aggrieved person’s feelings, reputation or career, and any role the aggrieved person’s own conduct may have had to play in the context of the defamatory statement(s). Further, as Lord Ackner pointed out in **Gordon v. Chokolingo**, approving passages of Lord Hailsham and Reid in **Broome v. Cassell**, the relevant factors include “the anxiety and uncertainty undergone in litigation, the absence of an apology, or the reaffirmation of truth of the matters complained of, or the malice of the defendant” as well as “the conduct of the defendant. He may have behaved in a high handed, malicious, insulting or oppressive manner in committing the tort...” If this was the case, for Lord Reid: “This would justify ... awarding as damages the largest sum that could fairly be regarded as compensation.” (My emphasis)

[57] On the assessment of damages, the Court starts with the manner of publication. It is a fact that the social media forum Facebook is a forum with immense and limitless reach across societies near and far. In addition, persons without a Facebook page can receive copies of matters posted on Facebook through other social media forums or by the old fashion way of a photocopier. It can be concluded that Mr. Williams’s publication, was to the whole world. And it is a fact that Mr. Williams’ post “... was running a sex trade...” immediately generated much discussion on Facebook and in the press.

- [58] Then there was Mr. Williams' posture - he has been defiant. He made his position abundantly clear with his post: "Me nah pet nor power nor tek back no chat! Tek it and digest it, it will hit the spot." Mr. Williams's position of defiance was reiterated and confirmed as when served Ms. John's Counsel's letter seeking an apology, he did not respond. At this juncture the Court also recalls that the intention of Mr. Williams is not relevant – see para. 9 **Bonnick v. Morris & Ors.** There are therefore no mitigating factors for the Court's assessment on Mr. Williams' behalf.
- [59] The Court has to look at the gravity of the statement "was running a sex trade". The Court has assessed prior its view on the statement. It is a very serious statement and which alleges a crime at Antigua and Barbuda. Perhaps one could not get more grievous than to allege criminal conduct. There was no truth to the statement. That was an attack on Ms. John's reputation.
- [60] The Court notes that Ms. John's statement was in relation to Jamaican artistes being brought in for the Carnival and so it cannot be said that she in any way triggered Mr. Williams' statement by her own statement.
- [61] Ms. John has sought both general damages and aggravated damages. The Court believes that it ought to make an award in both categories. The aggravating factors would be the nature of the post – Facebook and so posting was to the whole world, and which further enabled Ms. John and the Court, not to have to guess at reactions but to see them as they unfolded, secondly, there was Mr. Williams' defiance, he was not going to be silent about it - "Me nah pet nor power nor tek back no chat! Tek it and digest it, it will hit the spot."
- [62] Bearing in mind the Court assessment of the factors leading to determination of quantum, the Court has considered **HCVAP2005/16 David Bristol v. Dr. Richardson St. Rose**, **HCVAP2009/002 Edwardo Lynch v. Ralph Gonsalves** and **HCVAP2003/022 Keith Mitchell v. Steve Fassihi** et al and borne in mind the age of some of these authorities so as to bring Ms. John's award in line with today's valued.
- [63] The Court relying on the authorities cited is of the view that it ought to in all the circumstances to award Ms. John \$100,000.00 in general damages and \$40,000.00 in aggravated damages.
- [64] Court's order:-
1. Mr. Williams is ordered to remove the publication and all comments which followed in a thread/personal time line from his Facebook page and wherever the publication may appear that is under his control within 48 hours of this judgment.
 2. An injunction is hereby granted restraining Mr. Williams whether by himself, his servants or agents from publishing or causing to be published any further defamatory material about Ms. John.

3. Ms. John is awarded \$100,000.00 in general damages and \$40,000.00 in aggravated damages.
4. Costs is awarded at the prescribed rate.

Rosalyn E. Wilkinson
High Court Judge

By the Court

Registrar

