

**THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2013/0503

BETWEEN:

GEORGE WEHNER

AND

BYRON ANDREW

Appearances:

Mr. John Fuller for the Claimant

Mr. D. Raimon Hamilton of Dane Hamilton & Associates for the Defendant

2017: January 31

JUDGEMENT

- [1] **HENRY, J.:** The claimant seeks damages, including aggravated and exemplary damages, for slander.
- [2] The Statement of Claim alleges that on Wednesday 14th November 2012 in the presence and hearing of Lieutenant Colonel Walker, a pastor of the Eastern Caribbean Baptist Mission and Chairman of the Board, the defendant falsely stated that the claimant had threatened the defendant's life and the lives of his family members. At a further meeting on Wednesday 21st November, this time in the presence of Dr. Hensworth Jonas, Mrs. Vandah Jonas and Lieutenant Colonel Walker, the defendant made the same false statement. Additionally, on or about 2nd January 2013, at St. Johns Police Station, the defendant reported to No. 22 Corporal Simon that the claimant had threatened the life of the defendant and the lives of his family members. The claimant further alleges that the statements are defamatory in that they are accusations that the claimant has committed a criminal offence, namely, threatening language contrary to law. The claimant also alleges that in their plain and

ordinary meaning, the words were meant and were understood to mean that the claimant had committed a criminal offence. The claimant also plead that the defendant's words were actuated by malice.

- [3] In his defence the defendant disputes the claim. He admits that he did report to the Pastors of the Central Baptist Church and the Royal Police Force of Antigua and Barbuda that the claimant had issued threats as set out above, but denies that he spoke the said words of the claimant in any manner defamatory of him or that the words meant or were understood to bear the meaning set out in the Statement of claim. Further, he alleges that the occasions of publication on the 14th and 21st November 2012 were occasions of qualified privilege. In regard to the publication on 2nd January 2013 at the St. Johns Police Station, this was also an occasion of absolute or qualified privilege.

The Evidence

- [4] Both parties are members of the Central Baptist Church. Their relationship has been described as "strained at best". The evidence is that the parties have a history of incidents between them, for which they have been counselled by Dr. Jonas the presiding Elder of the church. The latest incident prior to those complained of, was sometime in August 2012.
- [5] The claimant's evidence is that when there were occasions in the past when he felt aggrieved, he felt justified in taking the matter to the Elders. He felt on those occasions that he was taking the appropriate action in accordance with the Baptist Church. His evidence is that he first became aware of the alleged remarks made by the defendant when he was called to a meeting by the Elders. When he was told of the statements made by the defendant, he describes himself as being completely distraught. According to him, he listened to the Elders and "established" to the Elders that he never made the alleged statements.
- [6] The defendant's evidence is that sometime in September 2012, his brother Carl Andrew told him that someone told him that at a recent leadership meeting, the claimant had made threatening statements that seemed to be directed at him and his family. It was alleged that the claimant said:
- "... last church year I was nice, this church year I will not be so nice. Anyone who prohibits me from doing my work I will take them out. Anyone who puts their hands in my face or points I will take them out and furthermore, they have children in the same class as mine and if their children do my children anything I will slap the children and when the parents come I will deal with them too ..."
- [7] According to the defendant, although his name was not called he felt that the statement referred to him because:
- (a) The reference to prohibiting him from doing his work seemed to refer to the first incident between them when the defendant intervened in a situation between the claimant and defendant's brother;

- (b) The pointing at the claimant seemed to refer to the incident in August 2012, when the defendant admittedly pointed his finger at the claimant;
 - (c) At the time the claimant's children and defendant's children were in the same grade at the Baptiste Academy
- [8] The defendant decided to inquire as to whether or not the statement was actually made. He spoke to Deacon Blair. Defendant's evidence is that Deacon Blair was not comfortable telling him the details of what happened in the meeting, all he said to the defendant was that it was not nice. The defendant took this to mean that something inappropriate was said at the meeting, and decided to speak with Chief Deacon Mr. Jarvis, who defendant says confirmed what was said, but "seemed reluctant to tell anything."
- [9] Thereafter, the defendant and his wife took the decision not to attend church that Sunday. Defendant's evidence is that he received a text from Dr. Jonas the following Monday inquiring if everything was okay. The defendant responded in the negative. Subsequently, Dr. Jonas called a meeting to discuss what was bothering him. The meeting took place on 14th November 2012 at the church office. In addition to the defendant and his wife, present were Dr. Jonas and Colonel Walker. The defendant's evidence is that he was asked why he had not attended church the last two Sundays. He explained what he had heard and added that he considered it to be a threat toward himself and his family. He was asked who made the statement and he replied that he understood it was the claimant.
- [10] The defendant admits that Dr. Jonas, who had been present at the leadership meeting, immediately denied in the strongest terms that the statements were ever made. Defendant's evidence is that Dr. Jonas said that whoever made these allegations was a demon and a traitor to the church and demanded to know who had spoken to the defendant. The defendant refused to reveal his source and the meeting ended not long after.
- [11] The defendant again spoke with his brother and Deacon Jarvis. According to him they confirmed what he was told earlier. Defendant says he was later invited to another meeting, this time at Dr. Jonas' home on 21st November 2012. Present were Dr. Jonas and his wife, Colonel Walker in addition to the defendant and his wife. The defendant was again asked who had spoken to him about the leadership meeting. The defendant again refused to reveal his source. According to the defendant, Dr. Jonas launched into an attack against him and accused him of gossiping. Whereupon the defendant expressed that Dr. Jonas was more interested in finding who had spoken out of turn than counselling and seeking to put the defendant's concerns to rest. The defendant left the meeting.
- [12] According to the defendant, he was dissatisfied with how the matter was handled. He believed someone was lying and covering something up. He and his wife took the decision to leave the church and withdrew his children from the Baptist Academy. The defendant sums up the matter in these terms:

"At all times I honestly believed that something was indeed said at the leadership meeting, what I was told seemed to be very specific to me and my family. I went to Dr. Jonas because he was present at the meeting and because the claimant and I had already brought our conflict to him as an Elder in the Church. I expected him to either confirm or refute the allegations, perhaps call the claimant into a meeting with me, as was done on other occasions, not launch into a personal attack against me."

- [13] Thereafter, the defendant decided to seek legal advice on the matter. He was advised to make a formal report to the Police concerning the threats made and allow the police to investigate. He decided to make the report to the police and decided to accept whatever came out of the police investigation.
- [14] The defendant was later subject to disciplinary action by the church and excommunicated. According to him, he had already left the church when this action was taken.
- [15] The defendant states emphatically that he had no malice or ill will towards the claimant. A matter was reported to him that concerned himself and his family. He decided to speak to Dr. Jonas about it. Dr. Jonas choose who attended the meetings with him and subsequently revealed the matter to the membership of the church.
- [16] The defendant contends that:
- (a) as a member of the Baptist Mission, and in the circumstances where Dr. Jonas, the presiding Elder of the Church, was counselling the parties concerning confrontations between them, that he had a moral and social duty to communicate with Dr. Jonas and Colonel Walker, and they had a corresponding moral and social duty to hear the said communication;
 - (b) that in the circumstance, the defendant, Dr. Hensworth Jonas and Lt. Colonel Walker had a legitimate and corresponding interest in the communication of the alleged statements;
 - (c) that Ms Vandah Jonas being invited to the second meeting by Dr. Jonas, the communication to her is protected by the privilege that attaches to the occasion;
 - (d) the publication of the alleged threats by the claimant to the police for investigation attracts either absolute or qualified privilege.
- [17] The defendant having admitted publication of the statements on the three occasions alleged, the court agrees that the issues for the court's determination are:
1. Were any or all of the occasions when the statements complained of were published occasions of qualified privilege?
 2. Was the defendant actuated by malice when the statements were published?
 3. If the statements were not published on occasions of qualified privilege, what damages would the claimant be entitled to?

- [18] The Claimant refers the Court to the case of *Reynolds v. Times Newspaper Ltd* as to matters that ought to be considered in determining whether a plea of qualified privilege is available.

Qualified Privilege

- [19] Historically, at common law, the malicious publication of statements which are false in fact and injurious to the character of another are actionable. The law considers such publication as malicious unless it is fairly made by a person in the discharge of some public or private duty, whether legal or moral, or in the conduct of his own affairs, in matters where his interest is concerned. In such cases the occasion prevents the inference of malice which the law draws from unauthorised communications and affords a qualified defence depending upon the absence of actual malice¹.

- [20] Lord Atkinson in *Adam v Ward*² provided more clarity in stating:

"A privileged occasion is, in reference to qualified privilege, an occasion where the person who makes the communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made and the person to whom it is so made has a corresponding interest or duty to receive. This reciprocity is essential."

- [21] In *Reynolds v Times Newspapers Ltd*³ Lord Nicholls explained the nature of the defence in these terms:

Over the years the courts have held that many common form situations are privileged. Classic instances are employment references, and complaints made or information given to the police or appropriate authorities regarding suspected crimes. . . The underlying principle is conventionally stated in words to the effect that there must exist between the maker of the statement and the recipient some duty or interest in the making of the communication. The requirement that both the maker of the statement and the recipient must have an interest or duty draws attention to the need to have regard to the position of both parties when deciding whether an occasion is privileged. But this should not be allowed to obscure the rationale of the underlying public interest on which privilege is founded. The essence of this defence lies in the law's recognition of the need, in the public interest, for a particular recipient to receive frank and uninhibited communication of particular information from a particular source. That is the end the law is concerned to attain. The protection afforded to the maker of the statement is the means by which the law seeks to achieve that end. Thus the court has to assess whether, in the public interest, the publication should be protected in the absence of malice.

In determining whether an occasion is regarded as privileged the court has regard to all the circumstances

¹ *Toogood v Spyring* (1834) CrM&R 181 at 193

² [1917] A.C. 309

³ [2001] 2 AC 127

[22] The evidence before the court is that the parties are members of the Central Baptist Church of Antigua and Barbuda. Article V, paragraph G 1 of the church's Constitution states that "All the members of this church are required to attend all the stated meetings of the church unless providentially hindered by illness, unusual working conditions that do not violate the Lord's Day and other such circumstances". Further, Article VI paragraph B. 1 provides that all the members of the church are obliged to submit to and enforce as appropriate the decision of the church, acting through its duly appointed elders, in acts of corrective discipline. The practice of the church provides for resolutions of disputes between its members by the Elders and other officials of the church. It is uncontested that on past occasions, confrontations had arisen between the parties. They were taken to the Elders and counselling received by both parties without protest.

[23] With regard to the event giving rise to the publication of the matters complained of, the court accepts the evidence that on the 14th and 21st November they were made to Dr. Hensworth Jonas, an Elder and Lt. Colonel Walker. The court also accepts that on the 14th November, the publication was made in response to an inquiry by Dr. Jonas as to the reason for the defendant's failure to attend church. The publication on the 21st November was made at a follow up meeting called by Dr. Jonas regarding the allegations made by the defendant at the 14th November meeting. In addition to the previously mentioned church official, Dr. Jonas' wife was present.

Did the defendant have a duty or interest to make the communication and did the receiver have a corresponding interest to receive the communication?

[24] The test for the existence of the respective duty or interest is objective. Would right thinking persons in the place of the defendant and Dr. Jonas consider it their duty to make and receive the communication? Given the relationship that existed between Dr. Jonas and the defendant and the circumstances under which the communication was made. The court would answer in the affirmative and hold that a qualified privilege attached to both occasions. The court is of the view that, given his position, Dr. Jonas on the 14th November had an interest in inquiring of the defendant the reason for his absence from church and the defendant had an interest in responding to the best of his knowledge. The meeting was set up by Dr. Jonas and included a pastor of the church. The defendant's evidence, which has not been challenged, is that he absented himself from church because of what he had been told by his brother. Therefore the defendant had an interest in making the alleged statement and the Dr. Jonas and the other church officials present had an interest in receiving it. With regard to the meeting on the 21st November, again the meeting was called by Dr. Jonas and in addition included Dr. Jonas' wife. Her attendance is not something over which the defendant had control and given the purpose of the meeting the same interests apply.

[25] The courts have held that instances where information has been given to the police and other authorities regarding suspected criminal activities are privileged. The report to police of an alleged threat made against a person would attract a privilege, unless actuated by malice.

Malice

The test for malice is found in the dicta of Lord Diplock in **Horrocks v. Lowe**⁴:

"... what is required on the part of the defamer to entitle him to the protection of the privilege is positive belief in the truth of what he published or, as it is generally though tautologously termed, "honest belief." If he publishes untrue defamatory matter recklessly, without considering or caring whether it be true or not, he is in this, as in other branches of the law, treated as if he knew it to be false. But indifference to the truth of what he publishes is not to be equated with carelessness, impulsiveness or irrationality in arriving at a positive belief that it is true. The freedom of speech protected by the law of qualified privilege may be availed of by all sorts and conditions of men. In affording to them immunity from suit if they have acted in good faith in compliance with a legal or moral duty or in protection of a legitimate interest the law must take them as it finds them. In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach. But despite the imperfection of the mental process by which the belief is arrived at it may still be "honest," that is, a positive belief that the conclusions they have reached are true. The law demands no more."

[26] The claimant pleads that the defendant was actuated by malice. The particulars pleaded are that

"The defendant has repeated the said allegations after an internal investigation by the Board of Elders of the Eastern Caribbean Baptist Mission which resulted in the allegations being dismissed and the defendant being excommunicated from the church."

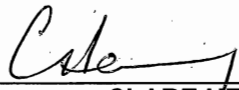
[27] Further, the claimant asserts that the publication of the allegations by the defendant was intended to harm the claimant and his reputation in circumstances where the defendant made no effort whatsoever to verify the truth of the allegations. No comments were sought from the claimant or from anyone else and therefore the claimant's side of the story was omitted.

[28] The evidence of the defendant is that on hearing the information from his brother, he concluded that the statements referred to him and that they amounted to a threat against him and his family. He made certain inquiries and that he believed confirmed that the statements were made. The court accepts the evidence of Lt. Colonel Walker that at the meetings on 14th and 21st November, Dr. Jonas as well as Colonel Walker himself informed the defendant that no such threat was made. Notwithstanding, the defendant left those meetings believing that something had indeed transpired at the leadership meeting and that there had been no proper investigation of the alleged statements made by the claimant by the church officials. He was dissatisfied with the manner in which the meetings were conducted. He continued to believe his brother and Deacon Jarvis. The court accepts

⁴ [1975] A.C. 135

that it was the honest belief that there was a "cover up" and that the threat had been made that prompted his decision to leave the church he had attended for many years. He sought legal advice which led him to make the complaint to the police.

- [29] Having regard to all the circumstances, the court is of the view that the claimant has failed to prove malice on the part of the defendant. The court finds that although the claimant did not form his belief after the most rigorous investigation of all the evidence available, and that his conclusion may seem irrational, it was his honest belief at the time that the claimant had made threats against him and his family. Accordingly, malice has not been proven and the claim must fail.
- [30] Judgement is granted in favour of the defendant dismissing the claim with cost to be agreed.


CLARE HENRY
High Court Judge
Antigua & Barbuda