

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
ANGUILLA
(CIVIL)
A. D. 2015

Claim No. AXAHCV2010/0067

Between:

THOMAS EDWARD CARTY

*Claimant/Ancillary
Defendant*

And

JENNY LINDSAY

*1st Defendant/1st Ancillary
Claimant*

JENNY LINDSAY & ASSOCIATES

*2nd Defendant/2nd Ancillary
Claimant*

Before:

Master Fidela Corbin Lincoln (Ag.)

Appearances

Mr. Stephen Singh of Counsel for the Ancillary Claimants.

Ms. Yanique Steward of Counsel with Mrs. Josephine Gumbs-Connor of Counsel
for the Ancillary Defendant.

2015: January 28;
March 31.

Defamation – Slander – Assessment of Damages – Whether presumption of damages breaches Article 10 of European Convention on Human Rights – Defamation claim with no or minimal damage to reputation – Power of the court to strike out or impose costs sanctions.

JUDGMENT

- [1] **CORBIN LINCOLN M** (Ag): The application before the court is for damages to be assessed following the entry of a consent judgment against the claimant/ancillary defendant on the counterclaim filed by the defendants/ancillary claimants.

Background

- [2] The 1st defendant/1st ancillary claimant is an attorney-at-law carrying on business in the name of the 2nd defendant /2nd ancillary claimant. The defendants/ancillary claimants will hereinafter be referred to as “**the claimant**” and the claimant/ancillary defendant as “**the defendant**”.
- [3] The defendant, a retiree who is over 70 years old, commenced a claim against the claimant on 26th October 2010 for damages for breach of contract. The defendant alleged that the claimant collected funds for legal services and failed to provide same.
- [4] The claimant filed a counterclaim against the defendant seeking damages for slander. The counterclaim avers that the defendant, on dates prior to the commencement of his claim against the claimant for breach of contract, published the statements “*Jenny Lindsay is a thief*” , “*Jenny Lindsay has not done anything on my file*” and “*other lawyers are saying Jenny Lindsay is no good*” to the claimant’s clients and members of the public and that the defamatory words in their natural and ordinary meaning meant and were understood to mean that:
- (1) The claimant was in deliberate and cynical breach of the retainer agreement to carry out work in accordance with the terms of the agreement.
 - (2) The claimant stole client money or committed some other criminal act of theft or fraud.

- (3) The claimant did nothing on the defendant's file and is thereby in willful neglect of her duty to pursue a client's matter with due diligence.
- (4) The claimant is a dishonest and incompetent lawyer.
- [5] The claimant's counterclaim avers that defamatory words are "*untrue, scandalous, oppressive and/or vexatious*" and that as a consequence the claimant's reputation, both personal and professional, has been seriously damaged and the claimant has suffered considerable distress and embarrassment.
- [6] The matter was referred to mediation, which resulted in a settlement of both claims upon terms that included the discontinuance of the claim by the defendant and entry of judgment for the claimant on the counterclaim with damages to be assessed.
- [7] At the assessment of damages hearing the parties agreed that the affidavits and witness statements of all witnesses would stand as evidence in chief, that the witnesses would not be cross examined and that the parties would rely on their oral submissions made at the hearing and written submissions.

Principles for Assessing General Damages

- [8] The factors to be taken into consideration in assessing damages in cases of libel and slander include:¹
- (1) the conduct of the claimant, her position and standing;
 - (2) the nature of the libel;
 - (3) the mode and extent of publication;

¹ Gatley on Libel and Slander (10th ed., Sweet & Maxwell, 2004) at page 233; TnT New Center Ltd. V John Raheal Civil Appeal No. 166 (Trinidad & Tobago).

- (4) the absence or refusal of any retraction or apology;
- (5) the conduct of the defendant from the time when the libel was published down to the verdict; and
- (6) The impact upon the claimant's feelings, reputation and career.

The Claimant's Position and Standing

- [9] The claimant is an attorney-at-law doing business in the name of Jenny Lindsay & Associates. The claimant qualified and practiced as a solicitor in the United Kingdom from 1993. In 2002 the claimant was called to the Anguilla Bar and relocated to Anguilla. The claimant's evidence is that she has an unblemished professional record.
- [10] The claimant has therefore been a legal practitioner for over 20 years and has practiced in Anguilla for over 12 years. The defendant did not provide any evidence to refute the claimant's evidence of her unblemished professional record, good character and standing.

The Conduct of the Claimant

- [11] **Gatley on Libel and Slander** states:²

"The conduct of the claimant is relevant not only in respect of matters which go to 'partial justification' of the libel but also to his conduct in the course of the litigation, as where he engages in an elaborate and long-lasting attempt to pervert the course of justice involving making and procuring false testimony and making the most damaging allegations of corruption and lying against innocent third parties"

- [12] This factor is concerned with the relevance, if any, of wholly disreputable conduct which was established in the course of determining the issues in the litigation

² (10th edn., Sweet & Maxwell, 2004) 233

itself³ such as where the claimant may have provoked the libel or slander, libeled the defendant in reply or made damaging allegations of corruption and lying against innocent third parties.⁴

- [13] While I note that there were statements made by the claimant in her witness statement about solicitors for the defendant which were struck out as being scandalous, irrelevant and oppressive, there is no evidence of any conduct by the claimant that provoked the defamatory statements by the defendant.

Nature of the Libel

- [14] The statements published by the defendant were that “*Jenny Lindsay is a thief*” “*Jenny Lindsay has not done anything on my file*” and “*other lawyers are saying Jenny Lindsay is no good*”

- [15] The gravity of the libel is best described in **Gately on Libel and Slander** where it is stated that:⁵

“the most serious defamation are those that touch the “core attributes of the plaintiff’s personality”, matters such as integrity, honour, courage loyalty and achievement...”

The Mode and Extent of Publication

- [16] The claimant’s counterclaim avers that the defamatory statements were spoken to the claimant’s clients and members of the public on diverse dates.
- [17] The claimant’s evidence is that the defendant “*has spoken to other people such as Simeon Fleming, a JLA client. Others have spoken to me, though they are not currently willing to provide witness statements.*”⁶ The claimant does not state exactly what words the defendant spoke to other people such as Simeon Fleming

³ Newsgroup Newspaper Limited and another v Campbell [2002] EWCA Civ 1143

⁴ Broome v Cassell & Co [1972] AC 1027 at p 1071f-1072a; Gately on Libel and Slander (10th edn. Sweet & Maxwell 2004) 233.

⁵ (10th edn. Sweet & Maxwell 2004) 231

⁶ Paragraph 65 of witness statement of Jenny Lindsay filed on 24th August 2012

and, specifically, whether the words spoken to others were a further publication of the defamatory statements complained of.

[18] Mr. Simeon Fleming, a client of the claimant, gave evidence in this matter. Mr. Fleming does not state that the defendant published any of the defamatory statements complained of to him. I can therefore only conclude that the defendant did not publish the statements to Simeon Fleming.

[19] I note that Mr. Fleming purports to give evidence regarding his suspicion that the defendant may have published the defamatory words to third parties. His evidence in this regard contains hearsay, conjecture and speculation and the court is therefore unable to take those portions of his evidence into consideration. Mr. Fleming's evidence shows that he has no personal knowledge of the publication of the defamatory statements by the defendant to anyone.

[20] Mr. Lego Richardson states that he is a client of the claimant. Mr. Richardson states that the defendant published all the defamatory statements complained of to him and that he knows that "*Mr. Carty has spoken to other clients connected to Jenny Lindsay and Jenny Lindsay & Associates*"⁷. He does not specify exactly what words were spoken by Mr. Carty, the defendant, to other clients and, more particularly, whether these words included the defamatory statements complained of. Mr. Richardson also does not identify any of the other clients to whom he states the defendant spoke.

[21] The evidence of Mr. Randolph Babrow is that between 2009-2010 the defendant saw him on several occasions and told him that the claimants "*whom he paid US\$21,000.00 to represent him did nothing. He said this was very bad and that he wanted his money.*" Based on the evidence of Mr. Babrow, the defendant did not publish the statements, "*Jenny Lindsay is a thief*" or "*other lawyers are saying Jenny Lindsay is no good*" to Mr. Babrow.

[22] In summary, the evidence before the court is that the defendant published all of

⁷ paragraphs 3 and 4 of witness statement of Lego Richardson

the defamatory statements complained of to the Mr. Richardson and some to Mr. Babrow.

- [23] Counsel for the defendant submitted that this is a case of slander in a transient form with limited publication by the defendant. I agree.

The absence or refusal of any retraction or apology

- [24] The parties settled the claims following mediation on terms contained in a mediation agreement. The mediation agreement discloses that the defendant apologized to the claimant at mediation. In the signed mediation agreement he states: *“On reviewing the facts, I accept that I should not have brought a claim against Miss Lindsay and I apologise for the various statements I made.”*
- [25] In addition to the apology given to the claimant at mediation, the parties agreed to the wording of a *“Joint Statement To Be Read In court”* and a press release.
- [26] Counsel for the defendant acknowledged at the hearing that the defendant had not yet caused the “joint statement to be read in court” or issued the press release as agreed. Counsel for the defendant submitted that the failure to carry out this aspect of the agreement was due to the fact that the defendant’s legal representatives were unaware of the procedure for reading a statement in court. Counsel submitted that oral enquiries were made at the High Court and they were advised that given the novelty of the matter the procedure for same was unknown. Counsel submitted further that the press release was not issued because the wording of the agreed press release anticipates that the statement would be read into court prior to the press release being issued.
- [27] While I accept that the mediation agreement is not clear on certain matters such as how, when and by whom the joint statement should be read into court, I am unable to accept that the novelty of the matter is a good reason for failing to carry out this aspect of the agreement. If the defendant’s legal representatives were unsure of the procedure for giving effect to the terms of the agreement then an application for directions could have been made to court to ensure that the

defendant had taken all reasonable steps to fully carry out the terms of the agreement in a timely manner.

[28] Counsel for the defendant accepted that in hindsight this would have been the appropriate course of action but urges the court to attribute this error solely to counsel rather than to the defendant.

[29] In view of the circumstances, directions were given at the assessment of damages hearing for the reading of the 'joint statement' in court and the issue of the press release. I am aware that the joint statement has now been read in court and that the defendant has caused the press release to be published.

The conduct of the defendant from the time when the libel was published down to the verdict.

[30] The defendant published the defamatory statements sometime between 2009-2010 and on 26th October 2010 commenced a claim against the claimant for damages of US\$25,589.62 for breach of an agreement to provide legal services. The defendant's statement of claim averred that he entered into an oral contract with the defendants and that despite the defendant paying the defendants a total of US\$22,380.00 the defendants "*failed, refused or neglected to provide any legal services to the claimant or to refund any monies paid ...for the provision of the said legal services.*"

[31] The claimant filed a defence and a counterclaim against the defendant on 1st March 2012⁸ claiming damages for slander published by the defendant on dates prior to the filing of the defendant's claim.

[32] Following various contested interim applications, disclosure and the filing of witness statements the parties settled the claims on 26th June 2013 at mediation. The mediation agreement discloses that the defendant agreed to withdraw his

⁸ This was the date on which the claimant filed an Amended Defence and Counterclaim. The original defence and counterclaim is not contained in the hearing bundle and the date of filing of same is therefore unknown.

claim against the claimant and accepted that he published the defamatory words complained of and that the allegations are untrue.

- [33] The claim had therefore progressed significantly before the defendant accepted that he published the statements complained of and that they were untrue.

The Impact upon the claimant's feelings, reputation and career.

- [34] The claimant's evidence with respect to the impact of the defamatory statement is that:

"I am absolutely dismayed by the thorough evil that is being done here. My reputation, both personal and professional, as an attorney-at-law and JLA's reputation as a provider of legal services, respectively have been seriously damaged and I have suffered considerable distress and embarrassment. As a consequence, I find it very difficult to attend any social events with other lawyers...I have an unblemished professional record. Mr. Carty has sought to ruin me...I have noticed a drop off in work and I do not have as many people making contact with me seeking legal assistance as I did previously. I believe this is because of the untrue slanderous rumours that Mr. Carty has spread about me and JLA. I am now contemplating leaving the country, indeed the Eastern Caribbean entirely, because of what he has done. I believe I have to contemplate an alternative career. This is devastating. I am devastated by what he has done maliciously. It is entirely cruel and heinous"

- [35] While in my view it cannot be disputed that the publication of the defamatory statements would have hurt the claimant's feelings and caused embarrassment and distress, I am not persuaded that the publication of the defamatory words had the extent of the impact on the claimant as asserted for the following reasons:

- (1) The claimant has not provided evidence of the volume of work that she had prior to and after the publication of the defamatory statements to corroborate her evidence that there has been a 'drop off of work' and that this 'drop off of

work' was attributable to the publication of the defamatory statements. The relevance of this to proof of damages is addressed later in the judgment.

(2) While the claimant may have contemplated an alternative career, I note that the defamatory statements were published more than 4 years ago and it has not resulted in the claimant leaving the country or the Eastern Caribbean as the claimant is still practicing in the jurisdiction.

[36] Reputation is not what a person thinks of himself but what others think of him.⁹ Therefore, in considering the impact of the publication on the claimant's reputation I have had regard to the evidence of the claimant's witnesses.

[37] Mr. Lego Richardson states that the claimant is his attorney. He states that he has had dealings with the claimant for many years and was surprised by the defamatory statements made by the defendant. He states:

"I find her to be honest sincere hardworking. As long as she gets the right information she does what is right. Because of her honesty I have recommended her to many people even people in the Virgin Islands"

[38] In a further statement Mr. Richardson states:

"She's the only decent and honest lawyer on Anguilla".

[39] Ms. Ileen Richardson states she is a client of the claimant and has known the defendant for many years. Ms. Richardson does not state that the defendant published the defamatory statements to her but presumably she is aware of the nature and content of the proceedings as she states she is making her statement in connection with these proceedings. Ms. Richardson states that she has been engaged in a contentious estate matter for 7 years and the claimant was

⁹ Oxford Dictionary; Michel J in Dr. Edmond Mansoor v Eugene Silcott ANUHCv 2010/0209, page 18 para 35; Diplock J in McCarey v Associated Newspaper Ltd. [1964] 3 All E.R. 947 at page 959.

recommended to her by a friend. She states:

“... I have had several solicitors and lawyers and found them all to be incompetent...I made contact with Jenny Lindsay and formally retained her in or about 2008. I find Jenny Lindsay very honest and efficient. This is the first time since instructing her that I have confidence a lawyer is working for me objectively ...I really thank the person who recommended her to me....I feel she is hardworking. She has actually advised me. None of the other lawyers ever advised me and they always sought my direction...They all kept saying I could not get an injunction to prevent persons entering family land. However, Ms. Lindsay was able to succeed in obtaining the injunctive relief which has improved my life and for which I am eternally grateful”

[40] Mr. Simeon Fleming, another client of the claimant, states:

“ Ms. Lindsay has given us efficient service. We had used.....Law for over 11 years prior to retaining Ms. Lindsay and their service in comparison to JLA is like night and day; the JLA service is far superior and we have been very happy with the work that she has done for us”

[41] The Honourable Hubert Hughes, the Chief Minister of Anguilla states that he recommended the claimant to the defendant. There is no evidence that the defendant published the defamatory words to the Honourable Chief Minister and, even proceeding on the premise that he became aware of the publication he does not say that as a result of the publication of the defamatory words his view of the claimant has been affected or that he would no longer consider recommending anyone to the claimant.

[42] The evidence shows that the defendant published the defamatory statements complained of to two persons. None of the witnesses to whom the defendant published the defamatory statements state that the claimant fell in their estimation following the publication or that they would cease to instruct the claimant as a result of same. In fact, their glowing reviews of the claimant indicate that

notwithstanding knowledge of the publication of the defamatory statements they continue to have the highest regard for the claimant's character, competence and professionalism.

[43] In the circumstance I find that there is no evidence that the limited publication of the defamatory statements affected or had any impact on the claimant's reputation.

[44] While the limited publication may not have had any or any significant impact on the claimant's reputation in **Hough v London Express**¹⁰ Lord Goddard CJ noted:

"If words are used which impute discreditable conduct to my friend, he has been defamed to me, although I do not believe the imputation and may even know it is untrue"

[45] Further, even where a claimant has suffered no injury to his or her reputation, the claimant will be entitled to compensation for injury to his feeling.¹¹

Aggravated Damages

[46] The claimant's counterclaim also seeks aggravated damages. **Gatley on Libel and Slander** states:¹²

"The conduct of the Defendant, his conduct of the case, and his state of mind are all matters which the claimant may rely on as aggravating the damages. It is very well established that in cases where damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the Defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. Per Lord Devlin in Roakes v Bernard [1964] A.C 1129 at 1221.

¹⁰ [1940] 3 All ER 31 at p. 515

¹¹ Fielding v Variety Incorporated [1967] 2 Q.B 841

¹² page 244

The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for "aggravated" damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; persistence by way of a prolonged or hostile cross examination of the claimant...the general conduct either of the preliminaries of the trial itself in a manner calculated to attract wide publicity and persecution of the plaintiff by other means."

[47] After publishing the defamatory statements, the defendant commenced a claim against the claimant that in essence asserted that the claimant was paid but failed to do any work on the defendant's file. The evidence of the claimant indicates to me that the filing of the claim aggravated the injury to the claimant's feelings.

[48] While the claim did not proceed to trial, it progressed to the stage of filing of witness statements before it was settled at mediation. The defendant apologized to the claimant at mediation and agreed to a further apology by way of a joint statement being read in court and a press release in terms satisfactory to the claimant. Significantly, the defendant admitted in the mediation agreement that the statements he published were untrue and that he was motivated by malice.

[49] In all the circumstances I find that the defendant was, by his own admission, motivated by malice and his conduct aggravated the injury to the claimant. I therefore find that this is a suitable case for an award of aggravated damages. In determining the quantum of same however I will take into consideration that the matter did not proceed to trial and the defendant apologised to the claimant.

Is Slander actionable per se in all cases?

[50] Slander is not actionable at common law without proof of actual damage except in cases where the slander touches words calculated to disparage a person in any office, profession, calling, trade or business held or carried on by him at the time of the publication. The words used by the defendant clearly disparage the claimant in

her profession and the claimant is not therefore required to show proof of actual damage as damages are presumed to have flowed from the publication.

[51] There has been some judicial debate about whether this presumption of damages can be rebutted by a defendant. In **Dow Jones & Co Inc v Jameel**¹³ the defamatory statements were published to five persons and therefore, as in this case, had limited publication. The defendants argued that they were in a position to show that the very limited publication that had taken place had caused the claimant no damage and the principle of law which made them liable none the less was contrary to Article 10 of the European Convention on Human Rights (ECHR).¹⁴

[52] After reviewing several precedents the Court of Appeal held that prior to the introduction of the ECHR the presumption of damages was irrebuttable. The Court noted that the presumption of damages had long been a principle of English law of defamation and that *“it would not be right to abandon this principle in the absence of a convincing case that it is in conflict with art 10.* The Court held that in the circumstance it was *“not persuaded that the presumption of damage that forms part of the English law of libel is incompatible with Article 10 of the Convention and that it must, accordingly, be swept away.”*

[53] While the Court declined to abandon the long standing principle as a general proposition, Phillips MR LJ, who delivered the judgment of the Court stated:¹⁵

“Where, as will usually be the case, publication is significant, an inference that the claimant's reputation has been damaged will arise which it is impossible to rebut. The presumption has assumed significance in this case because it has proved possible to identify the five individuals who, on Dow Jones' evidence, are the only ones to whom the article was

¹³ [2005] EWCA Civ 75

¹⁴ The application of ECHR was extended to Anguilla as an United Kingdom Overseas Territory in 1986 and the First Protocol extended in 1988.

¹⁵ *ibid* paragraphs 38-40

published in this jurisdiction. The harm done to the claimant's reputation by the publication to these five individuals is minimal. When the claimant commenced this action he had reason to believe that the publication was very much more substantial. Had he known the limited nature of the publication we find it hard to believe that he would have started an action in this jurisdiction. As Mr. Price pointed out in argument, libel proceedings are extremely expensive and not lightly undertaken.

We believe that circumstances in which a claimant launches defamation proceedings in respect of a limited circulation which has caused his reputation no actual damage will be very rare... We accept that in the rare case where a claimant brings an action for defamation in circumstances where his reputation has suffered no or minimal actual damage, this may constitute an interference with freedom of expression that is not necessary for the protection of the claimant's reputation. In such circumstances the appropriate remedy for the defendant may well be to challenge the claimant's resort to English jurisdiction or to seek to strike out the action as an abuse of process... An alternative remedy may lie in the application of costs sanctions. (emphasis mine)

[54] In response to the submission that striking out a claim which involves no or minimal actual damage as an abuse of process would infringe Article 6 of the ECHR which gives a right to a fair hearing the Court stated:

“...the five publications that had taken place in this jurisdiction did not, individually or collectively, amount to a real and substantial tort.... It would be an abuse of process to continue to commit the resources of the English court, including substantial judge and possibly jury time, to an action where so little is now seen to be at stake. Normally where a small claim is brought, it will be dealt with by a proportionate small claims procedure. Such a course is not available in an action for defamation where, although

the claim is small, the issues are complex and subject to special procedure under the CPR.

Mr. Price submitted that to dismiss this claim as an abuse of process would infringe art 6 of the Convention. We do not consider that this Article requires the provision of a fair and public hearing in relation to an alleged infringement of rights when the alleged infringement is shown not to be real or substantial. “

- [55] The court therefore accepted that where an action for defamation is commenced and the damage to reputation is minimal this may constitute an infringement of Article 6 of the ECHR. In those cases a defendant may seek to strike out the claim as an abuse of process or alternatively, costs sanctions may be imposed.

Quantification of Damages

- [56] Based on the principles of law which still apply, there is a presumption of damages in cases of slander actionable per se without proof of actual damages.

- [57] The claimant's written submissions submit that appropriate damages would be as follows:

- (1) US\$246,000.00 /£150,000.00 as general damages for loss of reputation;
- (2) US\$73,800.00/£45,000.00 as aggravated damages ;
- (3) In excess of US\$50,000.00 costs.

- [58] The claimant's written submissions with respect to the quantum of damages which should be awarded appears to have been revised downwards since at the assessment of damages hearing counsel for the claimant submitted that US\$75,000.00 inclusive of aggravated damages would be reasonable compensation.

- [59] Counsel for the defendant submits that the claimant should be awarded minimal damages given the form and limited extent of the publication.
- [60] In **France and another v Simmonds**¹⁶ the Prime Minister of St. Christopher and Nevis was libeled through statements published in a newspaper accusing him of corruption. The Privy Council affirmed the award of \$75,000.00 for damages including aggravated general damages made by the trial judge and confirmed by the Court of Appeal.
- [61] In **Keith Mitchell v Steve Fassihi and others**¹⁷ the defendant libeled the then Prime Minister of Grenada twice in a newspaper article accusing the Prime Minister of, among other things, using his office to harbour and assist criminals, having his election campaign financed by criminals and using public monies to set up private family businesses. The respondents did not apologise or issue a retraction. The claimant appealed the Master's award of \$100,000, inclusive of aggravated damages. The Court of Appeal dismissed the appeal.
- [62] In 2006 the Court of Appeal awarded the sum of \$40,000.00 as general damages (including aggravated damages) to a medical practitioner in the case of **David Carol Bristol v Dr. Richardson St. Rose**¹⁸ in an action for libel published in a letter addressed to the President of the St. Lucia Medical and Dental Association and copied to the Minister of Health, the Permanent Secretary in the Ministry of Health, the Chief Medical Officer and the Administrator of the hospital at which both the claimant and the defendant were employed.
- [63] In **Vaughn Lewis v Kenny D. Anthony**¹⁹ the Court of appeal set aside the trial judge's award of \$100,000.00 to the respondent which included aggravated and

¹⁶ [1990] 38 WIR 172

¹⁷ GDAHCVAP2003/0022 (Unreported) referred to by Edwards J.A in *Lynch v Gonsalves*

¹⁸ SLUHCVP2005/0016

¹⁹ SLUHCVP2006/0002 (Unreported)

exemplary damages and awarded the global sum of \$45,000.00. In this case the appellant, then leader of the opposition, spoke slanderous words of the respondent, the Prime Minister, at a political meeting with a small crowd of about 100 people. The appellant issued an apology to the respondent.

[64] In 2011, Edwards J.A reduced the damages awarded by the Master to the respondent, the Prime Minister of Saint Vincent & The Grenadines, to \$140,000.00 for defamation and slander through publication in radio broadcasts in the case of **Elwardo C. Lynch v Ralph Gonsalves** and **BDS Limited v Ralph Gonsalves**.²⁰

[65] The claimant submits that like the respondent in **Lynch v Gonsalves**, she is an attorney at law albeit that the respondent was not a practicing attorney-at-law. The claimant submits, in effect, that her case is distinguishable from this case because *“The political arena is fickle and a politician can expect to be the recipient of public degradation, ridicule aspersions and condemnation from all levels of society. It is part of the territory and a politician must be thick skinned. Dr. Gonsalves has even faced accusations of criminal misdemeanors”* On the other hand, counsel submits, the claimant *“is called to the Bar in a number of countries and is a practicing attorney. Her profession is one that requires her to operate at the highest level of integrity and trust. One’s legal profession is longstanding and there is not the same exposure to the public and the nuances of the public arena”*.

[66] While I accept that the respondent in the **Lynch v Gonsalves** was not in active practice as an attorney-at-law, I am unable to agree with a distinction premised on the suggestion that integrity and trust, which are the hallmarks of the legal profession, are virtues which are idiosyncratic to persons in the legal profession. In my view, integrity and trust are or at least ought to be key characteristics of both politicians and attorney-at-law. I am therefore unable to agree with the suggestion that an award to an attorney-at-law for defamation which touches and concerns her profession and character should be higher than that awarded to a politician,

²⁰ Consolidated Appeals SLUHCVP2009/002 & SLUHCVP2009/004

and, specifically, higher than that awarded to the defendant in **Lynch v Gonsalves**. Another relevant distinguishing factor as it relates to the quantum of damages is that the claimant has a lesser public profile than the claimant in **Lynch v Gonsalves**.

[67] In my view all of the cases cited above are distinguishable from the facts of the present case based on the mode and extent of publication. In **France and another v Simmonds** and **Keith Mitchell v Steve Fassihi and others** the defamatory statements were published in newspapers to the public at large. In **David Carol Bristol v Dr. Richardson St. Rose** the defamatory statements were published in a permanent form to the Medical Association and four (4) other persons. In **Vaughn Lewis v Kenny D. Anthony** the defamatory statements were published to about 100 persons while in **Lynch v Gonsalves** the publication was made in a radio broadcast.

[68] Since a libel or slander published to millions has a greater potential to cause damage than a libel published to a handful of people ²¹ and the claimant in this case has a lower public profile than most of the claimants in the above cited cases, an award of damages to the claimant in my view should be lower than that awarded to the claimants in those cases.

[69] In **Dr. Edmond Mansoor v Eugene Silcott** the claimant, a medical doctor and minister of government, was awarded \$10,000.00 in 2012 for slander published in a calypso which was understood to mean that the claimant was bribing other ministers of government.²² The court did not take into consideration any damage to the claimant's reputation in making the award since the court found that there was no damage to reputation. The defamatory statements were published in a calypso at a calypso tent with hundreds of spectators, on diverse occasions and dates and on radio stations in Antigua. Again, the extent of the publication was

²¹ Sir Thomas Bingham MR in *John v MGN* [1996] 2 All ER 35 at page 48

²² *Dr. Edmond Mansoor v Eugene Silcott* ANUHCv 2010/0209

significantly greater than in this case but I note that the award did not include aggravated damages.

[70] The function of general damages in cases of defamation is to console the claimant for the distress she suffered from the publication of the statement, repair the harm to her reputation (including, where relevant, her business reputation) and vindicate her reputation.²³

[71] There is no evidence of damage to the claimant's reputation as a result of the defendant's limited publication of the defamatory statements and consequently the need for an award of damages to repair or vindicate the claimant's reputation does not arise.

[72] The claimant has clearly suffered distress and hurt feelings as a result of the defendant's publication of the statements. In **Cassell and Co Ltd. v Broome**²⁴ Lord Diplock stated:

"The harm caused to the plaintiff by the publication of a libel upon him often lies more in his own feelings, what he thinks other people are thinking of him, than in any actual change made manifest in their attitude towards him. A solatium for injured feelings, however innocent the publication by the defendant may have been, forms a large element in the damages ... even in cases in which there are no grounds for 'aggravated damages'..."

[73] Having considered all the circumstances, I award the sum of EC\$15,000.00, inclusive of aggravated damages, to the claimant.

[74] The evidence discloses that this is one of those *"rare cases where a claimant brings an action for defamation in circumstances where his reputation has suffered*

²³ Gatley on Libel and Slander (10th edn., Sweet & Maxwell, 2004) at page 230-231

²⁴ [1972] AC 1027 at page 1125

no or minimal actual damage".²⁵ While I note that in these types of cases the court may consider costs sanctions, in this case I will exercise my discretion in favour of awarding prescribed costs to the claimant.

Fidela Corbin-Lincoln
Master (Ag).

²⁵ Dow Jones and Co. Ltd v Jameel [2005] EWCA Civ 75