

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

CLAIM NO. GDAHCV2005/0060

BETWEEN:

DORSET MITCHELL

Claimant

and

KEITH GURLEY

Defendant

Appearances:

Mrs. C. Edwards, Q.C with Ms. Y. Phillip for Claimant and
Mr. R. Ferguson with Ms. D. Mitchell for Defendant
(on 28th October 2010)

Mrs. C. Edwards, Q.C with Ms. S. Khan-Ramdhani for Claimant and
Mr. R. Ferguson for Defendant
(on 16th December 2010)

2010: October 28, December 16
2011: February 8

JUDGMENT

[1] **PRICE FINDLAY, J.:** The Claimant in this matter claims the following relief:

- (i) Damages for slander
- (ii) Costs.

[2] The parties to this action were once friends who enjoyed a good relationship with each other. In fact, it is the Defendant who gave the Claimant the information which led the Claimant to purchase the property which he now owns. They have known each other for over 25 years. They used to drink together and lime together. Alas, they have fallen out and are no longer on friendly terms.

- [3] They live next to each other, according to the Claimant, they live "boundary to boundary". In cross-examination the Claimant stated that this has been so since 2002-2003, even though in his witness statement he said that he purchased the property to build his home in 2000.
- [4] He testified that in or about 2002 he wanted to put a fence on his boundary but the Defendant objected to him doing so and that from that time their relationship broke down.
- [5] In 2004 the Claimant decided to survey the lot to make sure what his boundaries were so as to be able to fence his property. He commissioned the services of Guy Alexander, a licensed land surveyor, to do the survey. He claims that the Defendant at around the same time came and requested that the Claimant sell him a portion of land that the Defendant had encroached upon. He further testified that no price had been agreed, but the Defendant started alleging that the disputed land fell within his boundary.
- [6] Guy Alexander returned to the property in or around March 2004 with the vendors who were to assist Mr. Alexander in identifying the boundaries. The Claimant, who was a former police officer, had requested that an officer attend at the survey. Officer Andy Felix of the Gouyave Police Station was in attendance at the survey.
- [7] By all accounts the survey started with Lillian Hall, Florence Mason, Ronsford Hall, Andy Felix, the Claimant, the Defendant and the surveyor Mr. Alexander all in attendance. The Defendant admits that he had received a notice from the surveyor that he intended to survey the lands. The Defendant had two persons present on his behalf: Mr. Elvis Glean, a bailiff, and Chloe Ferguson.
- [8] It is not disputed that the Defendant did not agree with the survey plan which Mr. Alexander was using to conduct the survey. As a result, the words complained of by the Claimant were used by the Defendant. Due to the problem with the plan, the survey was not completed that day.

- [9] The Claimant complains that the Defendant said about him, "You we, you lie. You tief the judge things, all the pot you have, you tief it in the police station. I go deal with you."
- [10] The Claimant alleges that these words were said in the presence of Mr. Alexander, Ms. Mason, Mr. and Mrs. Hall and the officer, Andy Felix. He said that those words referred to him. He said that he felt ashamed and embarrassed when the Defendant uttered these words. He was upset. He felt ridiculed and small. He said he had been an upstanding police officer of 21 years service and had retired as a Corporal. He had been the driver assigned to one of the resident judges.
- [11] Officer Andy Felix said that on the day in question he was present at Clozier at the conduct of a survey. It was the Claimant who had requested his attendance at the survey. When he arrived at the scene of the survey he saw the surveyor and several other persons present.
- [12] The survey started but the defendant complained about the placement of one of the boundary markers. There was a heated discussion between the Claimant and the Defendant; the Defendant was doing most of the talking.
- [13] He said he did not pay attention to all the talk but he heard the Defendant say to the Claimant words to the effect, "You tief things from the judge and all the pots and pans in your place come from the station. I go deal with you." These are basically the same words the Claimant used in his evidence. He said the Defendant was verbally abusive to the Claimant.
- [14] He said he attempted to speak to the Defendant but the Defendant ignored him and continued to abuse and threaten the Claimant. In cross-examination he said that whatever the form of the words used by the Defendant, "this was the effect of the words". He then said that he could recall clearly compared to the other words used by the Defendant on that day. He further testified that when he said words to that effect he means the words that he quoted in his witness statement. He was adamant that the words in his witness statement were the words the Defendant

used. He also testified that they were repeated more than once. I did not find the Officer to be the most convincing witness in this matter, but he did support the evidence of the Claimant in a material particular, that is, the words spoken by the Defendant that morning.

[15] The Defendant gave evidence on his own behalf. He agreed that the backdrop to this incident was the aborted survey of the boundary between his property and the Claimant's property. He stated that there was a discussion about the point where the survey should begin. This was based on which plan should be used for the survey. The Defendant was of the view that the original plan ought to be used, not the one the surveyor was using. The surveyor disagreed.

[16] The Defendant testified that he said to Mr. Alexander the following words: "No, that looking like tief", to which Mr. Alexander responded, "Man, I know you too long, nobody won't tief you." The Defendant testified that he responded, "Man does tief, the judge and all. Who is me?" He further testified that he said to Chloe Ferguson, "Let's go, because I don't have no police pot inside my house." He did not mention the Claimant's name nor did he say that anyone was a thief.

[17] His witness Elvis Glean repeats verbatim the words the Defendant said he used with the exception of those words the Defendant said he addressed to Chloe Ferguson.

[18] The Defence in the matter pleaded that the Defendant denied speaking or publishing any of the words set out in the Claim or at all. In other words, he denied using either the words alleged or words to that effect.

[19] In cross-examination, the Defendant testified that at the site he said, "Man tief from the judge", and further he said the words in his witness statement. He said he never accused the Claimant of stealing pots from the police station. He could not recall the Police Officer Andy Felix speaking to him.

[20] Mr. Glean said that the words he used in his witness statement were the words he had used that morning. He said the words were directed at the surveyor, not the

Claimant. He was of the view that the Defendant was accusing the surveyor of trying to steal in relation to the land, and the placement of the boundary marker. He did not hear the Defendant say, as alleged by the Claimant, that the Claimant tied the judge's things. He did not hear the Defendant speak about pots.

[21] "Slander consists of a defamatory imputation in some non permanent form by spoken words or other sounds, or by gestures" – per Clerk & Lindsell on Torts 18th Edition.

[22] "But where a defamatory sense is communicated by spoken words or in some other transitory form whether audible or visible, such as significant sounds, looks, signs or gestures, there is publication of a slander" – per Gatley on Libel and Slander 7th Edition.

[23] There are certain cases where slander will lie without proof of special damage. There are four heads:

- (1) Where the words impute a crime for which the Claimant can be made to suffer physically by way of punishment.
- (2) Where the words impute to the Claimant a contagious or infectious disease.
- (3) Where the words are calculated to disparage the Claimant in any office, profession, calling, trade or business held or carried on by him at the time of the publication.
- (4) By the Slander of Women Act 1891, where the words impute adultery or unchastity to a woman or girl.

[24] In these instances mentioned above the Claimant need not prove that he has suffered any resulting damage for such damage is presumed.

[25] "Oral slander as alleged here consists of words actionable in themselves, and the mere use of these words constitutes the infringement of the rights of the Claimant. The very speaking of the words apart from all damage constitutes a wrong and

gives rise to a cause of action. The law presumes and in theory allows proof of general damage.” – Gatley on Libel and Slander.

- [26] Words which suggest that or impute to the Claimant the commission of a crime for which he can be made to suffer “corporally” by way of punishment are actionable without proof of special damage.
- [27] It is alleged in this matter that the Defendant called the Claimant a thief. He implied by the words allegedly used that the Claimant, a former police officer, had stolen items from the judge and had stolen pots from the police station.
- [28] The Defendant would like the Court to believe that he was speaking to the surveyor in reference to the thievery, and to Chloe Ferguson with respect to the pots at the police station.
- [29] The Court does not believe the Defendant. It is too much of a coincidence that the references used coincide with the fact that the Claimant, a former police officer, was once the driver for one of the judges in Grenada, Justice Patterson, and he had access to a police station and its contents given his former profession.
- [30] I do not find that his explanation of what transpired that morning convincing. He had no argument with the surveyor, his trouble was with the Claimant, and the Court believes that his anger boiled over and he said to and about the Claimant the words complained of.
- [31] I believe the Claimant when he testified that he felt ridiculed and small. No doubt he was embarrassed and humiliated by what the Defendant had said, even though the audience was a small one.
- [32] In **Cuddington v Wilkins** [1616] Hobart 67 it was held to be actionable to call a man a thief, even though he had been convicted of larceny, if after his conviction he had been pardoned. In the case of **Gray v Jones** [1939] 55 TLR 437 Atkinson J after a review of the relevant authorities decided that words imputing a criminal offence are actionable on the ground that they are likely to cause other persons to

shun the person defamed and to exclude him from society rather than on the ground that they put him in jeopardy of criminal prosecution.

[33] The exact offence need not be specified, but here in these circumstances the Defendant has left no doubt as to what offence he imputed to the Claimant. Words involving a general charge of criminality will be sufficient, provided that they impute some offence for which the Claimant can be made to suffer corporally by way of punishment.

[34] I find that on a balance of probabilities the words complained of by the Claimant were uttered by the Defendant and are capable of being construed as conduct which amounts to a crime punishable by imprisonment.

[35] A reasonable person hearing the words spoken by the Defendant could come to no other conclusion other than that the Defendant was accusing the Claimant of stealing from the judge and from the police station, that is, of theft. Theft is a crime punishable by imprisonment in Grenada.

[36] In the circumstances, I find for the Claimant and award the sum of \$5,000.00 as damages, with costs of \$1,500.00.

[37] I was referred to the following authorities:

1. **Gatley on Libel and Slander** 9th Edition
2. **Caribbean Commonwealth Tort Law** 3rd Edition by Gilbert Kodilinye
3. **Defamation Law and Practice** 3rd Edition
4. **Clarke & Lindsell on Torts** 18th Edition
5. **Bacchus v Bacchus** [1973] IRBG 115

[38] I would like to express my gratitude to counsel for their assistance in this matter.


Margaret Price Findlay
High Court Judge