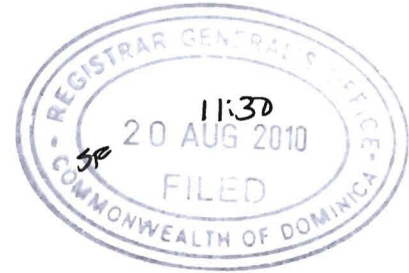


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



**COMMONWEALTH OF DOMINICA
DOMHCV2006/0009
BETWEEN:**

**CLAUDIA HENRY
and
ALBERT THOMAS**

**Claimant

Defendant**

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Heather Felix-Evans for Claimant
Dr. William Riviere for Defendant

JUDGMENT

[2010: June 1st, 10th]
[2010 August 20th]

- [1] **COTTLE J:** The claimant brought the present action against the defendant for damages for defamation. Claudia Henry and Albert Thomas were employees of the Roseau Co-Operative Credit Union. On 1st July 2004 at a management staff meeting, Albert Thomas spoke the following words;

"The reason for the significant reduction of overtime in the Loans Department in May 2004 was because before management of the

loans department was collaborating with staff to deliberately work overtime."

He went on to add

"Management should investigate the matter and take steps in ensuring that staff does not abuse the system."

Claudia Henry was the manager of the Loans department. She was absent from the meeting as she was on vacation leave at the time.

- [2] On her return, Claudia Henry complained of the words spoken as she considered that they were defamatory of her. Albert Thomas insisted that he stood by his words and would maintain that position until an investigation was carried out. The General Manager ordered an investigation into the allegations leveled by Albert Thomas. An internal auditor was appointed. A report was made by the auditor on his findings. His report did not support the position adopted by Albert Thomas.
- [3] The General Manager asked Albert Thomas to either substantiate his statement or withdraw it and apologize to Claudia Henry. Albert Thomas failed to substantiate his allegations. He refused to retract his statement. He did not apologize. At the trial of his claim the defendant denied that the words spoken were defamatory of Ms Henry. Alternatively he says that the words were spoken on an occasion of qualified privilege.

Are the words defamatory?

- [4] In deciding whether the words are defamatory I first look at the natural and ordinary meaning of the words in question. Without attempting any strained or over elaborate analysis I ask myself, what would these words have conveyed to the other managers of the Roseau Co-Operative Credit Union at that meeting? My conclusion is that the defendant, Mr. Thomas, was saying that Ms. Henry, the manager of the loans department, had collaborated with her staff to abuse the credit union's system and deliberately work overtime when such overtime work was not merited. This would have the effect of causing the credit union to incur expenses above and beyond those needed to carry out its functions. In effect Mr. Thomas is saying that Ms. Henry participated in a scheme with her staff to defraud the credit union.

- [5] In my opinion the words spoken could convey no other meaning than a defamatory one. There can be no question that the effect of the words would be to lower the claimant in the estimation of right thinking members of society. Indeed I put it higher than this- the words would also mean that the claimant was unfit to continue as manager of the loans department of the Roseau Co-Operative Credit Union. I completely reject the suggestion that the words merely connoted inefficiency on the part of claimant in the carrying of her managerial functions.

Qualified Privilege

- [6] A defendant to an action for defamation may avail himself of a defense of qualified privilege where two pre conditions are met. I can do no better than quote Rawlins J A (as he then was) in Bristol v St. Rose

“ The principle is that an occasion is privileged where the person who makes the impugned statements has an interest or a social moral or legal duty to make them to the person to whom they are made, while the person to whom they are made has a corresponding or reciprocal interest or duty to receive the communication.”

In the circumstances of this case I am prepared to hold that the management meeting of the Roseau Co-Operative Credit Union was an occasion of qualified privilege. But the matter does not end there. The defense of qualified privilege will not avail the defendant if he was actuated by malice when he spoke the offending words.

- [7] I remind myself that the burden remains on the claimant to show that the defendant was actuated by malice. Counsel for Mr. Thomas cited Harrocks v Lowe [1972] 3 ALL E.R.1098. In that case a defendant spoke words that would otherwise be defamatory of the claimant on an occasion of qualified privilege. He never expressed any regret for what he had said. Despite this the court found that he was not malicious because he honestly believed that his statement was true. Lord Denning M.R. put it strongly

“I would emphasize that a refusal to withdraw is not evidence of malice. Nor is a refusal to apologize. As the judge said, it may point to the honesty and sincerity of his belief, even though it be obstinate and irrational. Malice is usually found when there is

personal spite or ill will; or when the defendant does not honestly believe what he says to be true"

- [8] In the present case however, I find that Mr. Thomas was actuated by malice. I arrive at that conclusion because he proffered no evidential basis for his accusation of Ms. Henry. He asked for and got an investigation. The investigation showed him to have been wrong. Yet he would not retract his words. He could have had no honest belief as to the truth of his words. Even up to the time of the trial he would not retract them when he knew them to be baseless. He was adamant in his refusal to retract and apologize. When to this is added the strained personal relationship between the parties, which the evidence revealed pre-dated his statement, it is difficult to avoid the conclusion that spite and ill will towards Ms. Henry were at the root of his utterances at the management meeting.
- [9] There was some suggestion that his words might be considered fair comment. I reject this as not only were the words statements of fact but also because my finding of malice in the defendant will also defeat his plea of fair comment.

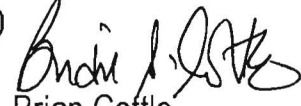
Damages

- [10] In arriving at an award to the claimant several factors stand to be noted in this case. The allegation was a serious one of dishonesty by the claimant as a manager of the Roseau Co-Operative Credit Union. The utterance was unsolicited. The General Manager of the Roseau Cooperative Credit Union asked the defendant to substantiate the allegation or withdraw it and apologize. The claimant refused to do either even after the results of the investigation were released. Even up to the trial the defendant led evidence aimed at justifying his words. That evidence I reject roundly.
- [11] It did nothing to support the allegations that the claimant connived with employees to defraud the Roseau Cooperative Credit Union. At all times up to trial the claimant has said that she would be content with an apology and retraction. The defendant remains adamant and will not retract his utterances or apologize .

Counsel for the claimant canvassed a number of regional cases where the awards were made for defamation. In Bristol v St. Rose St. Lucia Civil Appeal 16 of 2005 the award was \$40, 000.00. In Lewis v Anthony St. Lucia Civil

Appeal 2 of 2006 the award was \$45,000.00. In Nicholas v Augustus Civil Appeal 5 of 1994 from Dominica the award was in the sum of \$20,000.00. A similar award was made in Mansoor et al v Grenville Radio Ltd et al claim 2004/0408 from Antigua delivered in 2007.

- [12] Having considered the authorities I find that an award of \$20,000.00 to the claimant in the circumstances of this case is justified. Judgment is therefore entered for the claimant in the sum of \$20,000.00. I also award the claimant prescribed costs on this amount in the sum of \$6,000.00


Brian Cottle
High Court Judge

