

IN THE SUPREME COURT OF GRENADA AND THE WEST INDIES ASSOCIATED STATES  
IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 418 of 2000

BETWEEN

ALLAN BIERZYNSKI

Plaintiff

AND

LESLIE PIERRE  
SPICE ISLAND PRINTERS LIMITED

Defendants

**Appearances:**

Ms. L. Taylor for the Plaintiff

Mr. L. Pierre First Defendant in person and as a Representative of the Second Defendant

2001:March 08

2001: May 25

2002: March 11

2002: April 29

2002: July 18

**DECISION**

**JUSTICE CHARMAINE PEMBERTON**

[1] By Summons dated and filed on 23<sup>rd</sup> May, 2000, the Plaintiff applied for an Order that no Appearance having been filed by the Defendants herein that judgment be entered for the

Plaintiff and that damages be assessed, with costs of the action and the application to be awarded to the Plaintiff. The Plaintiff's prayers were granted by Order of this Court dated 25<sup>th</sup> May 2001. Pursuant to that Order, the Plaintiff filed two affidavits that were read and used at the hearing. On 9<sup>th</sup> July 2001, Counsel for the Plaintiff filed Written Submissions on the Law together with authorities. The matter was eventually heard on 29<sup>th</sup> April 2002, at which time Counsel for the Plaintiff made further submissions on behalf of her client and the First Defendant made submissions in person on behalf of both Defendants.

[2] In **VELMA HYLTON v ERROL MAITLAND AND YORK MARRYSHOW Civil Suit 166 of 1991** an earlier decision of this jurisdiction, the learned Justice Moore stated:

In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of personality, the more serious it is likely to be. The extent of the publication is also very relevant; a libel published to millions has a greater potential to cause damage than a libel to a handful of people....

[3] It may be useful to reproduce the offending words which appeared as part of a paid Advertisement in an edition of **The Grenadian Voice Newspaper** in its October, 2 1999 issue under the heading "Paid Advertisement – 'He Have he Belly'":

Some people in our society consider themselves privileged, as a matter of right. They succeed mainly by riding on the back of the small man. Our resources are at their disposal....

[4] Paragraphs 5, 6 and 9 of the Plaintiff's supplemental affidavit filed on 15<sup>th</sup> April, 2002 read in part:

5. After the date of the publication complained of ...and on diverse

dates ...,while traversing the general area of the Carenage Taxi Stand, being an area on the Carenage in St. George's where taxi operators plying various routes park their vehicles awaiting hire, several of the taxi drivers hailed me out and spoke words to me to the effect of "Boss you really have belly in truth" and also "I is a small man too and I hope you don't ride my back".

6. I understood all such commentaries to be references to the publication in question and the comments were generally delivered in a tone obviously meant to ridicule me. I was humiliated by these retorts on each such occasion particularly since they were made within the earshot of passersby and so far as I could determine, the words were uttered loud enough to be heard by the patrons of the Nutmeg Restaurant, which overlooks the said taxi stand. This restaurant involved is popularly frequented by a wide cross section of the business community from the area of the Carenage and beyond as well as by visitors to the island....

9. Prior to the date of the said publication and to date I have been in the habit of socializing with several professional colleagues who are themselves variously in managerial and ownership positions of several prominent businesses in Grenada. After the said publication, these colleagues have repeatedly made derogatory comments to me in relation to the contents of the said publication. I have found these experiences embarrassing and a source of ridicule. I have moreover been put in fear that my professional relationships with these colleagues and associates would be adversely affected...

This provides sufficient evidence to consider the above dicta favourably in the award of damages. The purpose for the award of damages in cases such as this was stated by the

Court of Appeal in **RANTZEN v MIRROR GROUP NEWSPAPERS (1986) LIMITED [1993] 4 All E.R. 975, 997** to be “at least in part as a vindication of the plaintiff to the public ... a sum which is necessary to award him and to provide adequate compensation and to re-establish his reputation...”.

[5] On another occasion, (See **ANSLEM CLOUDEN v LESLIE PIERRE AND SPICE ISLAND PRINTERS LIMITED Civil Suit 321 of 2000**), this Court agreed with the opinion that the words of an influential Defendant are likely to be of more weight and effect and therefore can be more debilitating on the Plaintiff than those of a person of humble status. The First Defendant and the publishers are persons of influence in this community and this Court is of the opinion that these words apply with full force in this case.

[6] The Plaintiff through his Counsel has asked the Court to award in addition to general damages, aggravated and exemplary damages.

[7] **EXEMPLARY DAMAGES**

Counsel based the claim for exemplary damages on the following evidence:

During a shareholders meeting of the Grenada Electricity Services Limited (GRENLEC) on a date after the privatisation of GRENLEC in or about the year 1995, I recall that the First Defendant orally informed me that he would not and could not support my nomination to serve as a Director of GRENLEC. This comment came immediately after I had been nominated from the floor of that said meeting to be appointed such Director. **I verily believe that the First Defendant may have been actuated by malice in publishing the advertisement at issue motivated by his own desire that I should be unsuccessful in my bid to be appointed a Director of GRENLEC as indicated in an advertisement which I caused to be published**

**in another newspaper by which advertisement I had indicated my willingness to serve as such Director.**

(Emphasis mine)

In support, Counsel relied on the following passage from *Duncan and Neill on Defamation* (2<sup>nd</sup> ed. 1983) quoted with approval in **JOHN v MGN LTD [1996] 2 All E.R. 35** by Sir Thomas Bingham MR:

(a) Exemplary damages can only be awarded if a plaintiff proves that the defendant when he made the publication was ...reckless and decided to publish because the prospects of material advantage outweighed the prospects of material loss...

[8] Counsel made a valiant attempt to convince this court that the Defendants were shown to be reckless but led no evidence to buttress the other aspect of the factor to be taken into account, that of the material advantage to be gained by the publication and how that would have outweighed the prospect of material loss. The other factors laid down in the passage of interest to this case are: "(b) the mere fact that a libel is committed in the course of a business carried on for profit, for example the business of a newspaper publisher, is not by itself sufficient to justify an award of exemplary damages. (c) ...It is only if the sum proposed by way of compensatory damages ... is insufficient that the court ...should add to it enough 'to bring it up to a sum sufficient as punishment'...". The Court is not of the view that a sufficient case has been made out for the grant of exemplary damages to the Plaintiff and makes no award under this head.

[9] **MITIGATION OR AGGRAVATION**

In assessing damages, the court looks to the conduct of the defendant from the time of the publication of the libel down to the time of the judgment/decision. The dicta of Lord Esher M.R. in **PRAED v GRAHAM 24 Q.B.D. 53** at page 55 was cited with approval by Byron J.A. as he then was in **SPICE ISLAND PRINTERS LIMITED, LESLIE PIERRE AND THE**

**ADVOCATE COMPANY LIMITED v ANDREW BIERZYNSKI Civil Appeal 5 of 1992**

**Grenada.** The dicta which this court adopts is:

I desire to say that in actions of libel there is another rule, which is this:- the jury in assessing damages are entitled to look at the whole conduct of the defendant from the time that the libel was published down to the time they give their verdict. They may consider what his conduct has been before action, after action, and in court during the trial.

It is necessary to examine the Defendants conduct to see whether they acted with or without malice, in order to decide whether to award aggravated damages or to reduce the amount of damages to be awarded.

[10] Counsel for the Plaintiff urged the Court to award aggravated damages to the Plaintiff on the ground of the Defendants' proffering of an apology was tardy and was not sufficient to assuage the Plaintiff's hurt feelings and to ameliorate the damage suffered by him. Counsel stated that the period of sixteen (16) months between the date of the publication and the attempt at an apology must be taken into account in deciding whether to award aggravated damages. Counsel relied on **KELLY v SHERLOCK (1866) L.R.1 Q.B. 686,695** where Mellor J. stated that the Defendant's persistence in defamation was not "sufficiently met by his tardy and meager apology". There was no evidence led by the Plaintiff of the Defendants' persistence in defamation.

[11] In **KELLY v SHERLOCK (op.cit)**, the court stated that one must look at the manner of the apology. With respect to this apology, the Plaintiff deposed as follows:

11. Prior to this action being filed in court, by letter dated October 20<sup>th</sup> 1999 written by my Attorneys-at- Law, the First Defendant was invited to publish a written apology to this deponent in the Grenadian Voice Newspaper, subject to that apology being approved by my said

Attorneys-at-Law prior to publication. The First Defendant gave no response to that letter, instead in the February 24<sup>th</sup> 2001 edition of the said newspaper, some 7 months after the first date of the publication complained of, the First Defendant purported to publish an apology which I verily believe was wholly inappropriate in that it did not address the gravity of the damage caused to this deponent by the said publication.

The Plaintiff further deposed that the First Defendant was invited by letter sent to him by Attorneys-at-Law to publish what was considered to be a suitable apology and a draft of same was provided to the First Defendant. That appeared to be ignored by the Defendants.

[12] At the hearing, the Court invited the First Defendant to give his account as to the circumstances under which the apology was proffered. The First Defendant reiterated the Plaintiff's account up to but not including his refusal to tender a suitable apology. In fact the First Defendant stated that he "deliberately placed the apology on the most important page as full as my limited ability is in this area". It appeared not to have satisfied the Plaintiff and the First Defendant said that he received a letter from Attorneys-at-Law for the Plaintiff demanding that he publish an apology in a preferred form, which was appended to the correspondence. The First Defendant stated that attached to the preferred apology was the condition that he pay costs in a certain amount plus VAT. He stated that he agreed to publish the preferred apology but was concerned about the costs aspect of the letter. He sought legal advice, received none and heard nothing further on the matter. The First Defendant urged the Court to take these events into consideration. The Court's only comment is that it seems that follow up on both sides was not done with alacrity.

[13] The text of the first apology was not produced so that a determination could be made of whether it was meager or not as alleged by the Plaintiff. The letter to which the second apology was appended was exhibited to the Plaintiff's first affidavit, and by the First Defendant's statement, the terms were not unreasonable. It is interesting to note that

Counsel for the Plaintiff did not rebut or make any submissions concerning the First Defendant's account. The issue for determination is what weight should be attached to these accounts when considering whether aggravated damages should be awarded in addition to compensatory damages and if so in what amount or if the damages to be awarded ought to be lessened.

- [14] The Plaintiff stated as well that the Defendants' newspaper enjoyed widespread publication locally as well as overseas. The only reference made to this was contained in paragraph 8 of the Supplemental affidavit where he stated:

I was at the material time of the said publication one of the Directors of the (NCB). The Board of Directors of the NCB comprised various professionals and high-ranking officials of the NCB in Grenada and its majority share-holder, the Republic Bank of Trinidad and Tobago. At the first meeting of the Board ... after the said publication, certain Directors of the said Board **based in Trinidad who attended that meeting held in Grenada ...**

The First Defendant categorically stated that there is no circulation of the newspaper in Trinidad and Tobago.

- [15] The Plaintiff has not proved malice on the part of the Defendants, there was no proof of persistence in the defamation nor was there satisfactory proof, or any proof at all that the Defendants refused to tender an apology. In fact those allegations have been totally refuted by the First Defendant. In addition, there was no evidence of proof of wide circulation of the publication, the only reference being that as quoted above. On a careful consideration of the evidence and submissions as presented, the Court is of the view that the Plaintiff's claim will be well met without the award of aggravated damages. The Court is not convinced that the award should be lowered by what appears to be the First Defendant's plea in mitigation.

[16] Counsel for the Plaintiff urged the Court to consider the following awards made in these cases:

**VELMA HYLTON v ERROL MAITLAND AND YORK MARRYSHOW** (*op. cit*) in which the award made in 1996 by the High Court in Grenada was \$35,000.00, no aggravated damages awarded.

**SPICE ISLAND PRINTERS LIMITED & ORS. v ANDREW BIERZYNSKI** (*op.cit*) where the award made in 1994 by the Court of Appeal was \$45,000.00 inclusive of aggravated damages.

[17] The Court considered the following additional authorities from the region:

**LEARIE CARASCO (aka) RICK WAYNE v NEVILLE CENAC Civil Appeal 6 of 1994 St. Lucia** where the Court of Appeal found no evidence of aggravation and in 1994, and awarded the Plaintiff/Appellant \$20,000.00.

**LESLIE PIERRE v RAYMOND MATTHEW Civil Suit 413 of 1997 Grenada** where Alleyne J. found evidence of aggravation and awarded the Plaintiff a round figure of \$40,000.00 as damages.

[18] The Court therefore finds that the Plaintiff should be compensated in the sum of \$30,000.00 representing general damages for the libel published by the Defendants which appeared as a paid Advertisement in an edition of the Grenadian Voice Newspaper in its October, 2 1999 issue.

[20] **IT IS THEREBY ORDERED AS FOLLOWS:**

- **The Defendants do pay to the Plaintiff the sum of \$30,000.00 EC being General Damages together with interest at the rate of 6% per annum from the date of the default judgment to the date of payment.**

- The Defendants do pay to the Plaintiff costs in the sum of \$6,500.00 EC.

The Court gratefully acknowledges the assistance of Counsel and the First Defendant.

**Charmaine Pemberton  
Master.**

*Libel – Assessment of Damages – Nature of the Libel to be examined - Aggravation of Damages – Factors to be taken in to account- Nature of the Apology tendered whether in aggravation or mitigation of damages.*