

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO HCVSVG 2007/0064

BETWEEN:

DR. RALPH GONSALVES

Claimant

and

[1] MATTHEW THOMAS
[2] BDS LIMITED

Defendants

Appearances:

Mr. Grahame Bollers for the Claimant

2012: February 10

DECISION ON ASSESSMENT

Facts Leading to the Assessment:

- [1] **Master Taylor-Alexander:** On the 29th January 2007, during a broadcast of the 'stay awake' call-in programme the first defendant published false and malicious statements of and concerning the claimant and by way of his office as Prime Minister of Saint Vincent and the Grenadines over the airwaves of the second named defendant to persons in Saint Vincent and the Grenadines and Saint Lucia on Nice Radio 96.7 FM.
- [2] By claim form and statement of case filed on the 22nd February 2007, the claimant pleaded that the words in their natural and ordinary meaning were understood to mean that; (a) the claimant as Prime Minister of Saint Vincent and the Grenadines is in fear of and intends to resort to the assassination, or will conspire with others to assassinate or instruct the assassination of Junior Bacchus in order to, among other things silence him; (b) the claimant has used the office of Prime Minister to victimize public officers and has granted diplomatic passports to persons in order to facilitate the traffic of illegal drugs for his own personal gain; (c) the claimant in his capacity as Prime Minister has conspired with and/or assisted one Reuben Morgan to traffic in illegal drugs; (d)

the claimant wrongfully and with improper and corrupt motives used the power of his office as Prime Minister to secure the release of one Alex Lawrence, a person convicted of drug offences, from prison because of some alliance, subjugation or control of him and his office by drug traffickers including Lawrence; (e) the claimant is prepared to tarnish and has tarnished the reputation of the sovereign State of Saint Vincent and the Grenadines in the region by openly protecting "his drug man in St. Vincent"; (f) the claimant has in relation to the above, committed serious criminal offences relating to conspiracy and the trafficking of illegal drugs and the common law offence of misbehaviour in public office, all of which are punishable by imprisonment.

- [3] By his Amended Defence filed on the 6th July 2007, the first defendant pleaded that the claimant is a non-practising Barrister-at-Law and Solicitor. He denied that the words complained of could bear the meaning ascribed to them by the claimant. He contended that the words complained of constituted fair comment and expressions of opinion made in good faith without malice upon matters of public interest. Further, that the said words were published in the exercise of freedom of speech on the conduct of the claimant in his public capacity of Leader of the "Unity Labour Political Party" and as Prime Minister and Head of Cabinet of the government of Saint Vincent and the Grenadines.
- [4] The second defendant, in his Defence stated that the words complained of were not understood to bear or were not capable of bearing any of the defamatory meanings alleged by the claimant and that the statements were published on an occasion of qualified privilege.
- [5] By Notice of Application filed on the 8th August 2009, the claimant applied pursuant to Part 26.3 of the Civil Procedure Rules 2000 (CPR) for an Order that the defendants' defences as filed, do not establish reasonable defences to the action and should be struck out and judgment entered for the claimant for the payment of an amount to be decided by the court and costs.
- [6] On the 16th November 2009 the court found that the Defence of the first and second named defendant had no reasonable chance of success, was incurably bad, wholly unsustainable, without merit and was an abuse of the process of the court, and was struck out. Consequent on its findings,

the court ordered the defence struck out, upheld the claim and entered judgment for the claimant as follows:

- (a) Against the defendants jointly and severally for damages to be assessed;
- (b) An injunction preventing the defendants whether by themselves, their respective servants and /or agents or howsoever otherwise from further speaking or publishing the said or similar words defamatory of the claimant;
- (c) Prescribed costs to the claimant based on the quantum of damages awarded.

It remains now for me to assess damages pursuant to the order of the court.

Quantum of damages

[7] The claimant's pleadings summarises his claim for damages. In his statement of claim at paragraph 8 the claimant pleads that he:-

"has been gravely injured in his reputation as a Barrister at Law and Solicitor of the Eastern Caribbean Supreme Court as well as Prime Minister as aforesaid and has been brought into public scandal, contempt and ridicule and has suffered loss and damage"

[8] The claimant claims General, Aggravated and Exemplary damages.

[9] The purpose of an award of damages for slander has been established to be compensatory, to console the claimant for the distress he suffers from the publication of the statement; to repair the injury to his reputation; and as a vindication of his reputation.¹The following passage from the judgment of Sir Thomas Bingham in John v MGN [1996] 2All ER. 35, CA illustrates the common law position:-

"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused."

[10] Defamation having been conclusively established by the decision of Remy J, there is an automatic presumption upon which I can proceeded that damage will flow in the ordinary course of things

¹ Gatley On Libel And Slander, 9th ed., at 9.2

from the mere fact of the invasion of the claimant's absolute right to reputation which the court is required to compensate in monetary terms.²

[11] In determining an appropriate award to assuage the feelings of the claimant and for injury to his reputation I am guided by the principles for consideration in John v MGM (supra) and adopted by Rawlins JA in Bristol v St. Rose Civil Appeal No.16 of 2005 (unreported). In particular I have considered:-

The Gravity of the Slander

[12] I am satisfied that where the defamatory words touches the claimant's integrity, professional reputation, honour, loyalty, and the core attributes of his personality the more serious it is likely to be.³

[13] The evidence of the slander is pleaded and is also referred to in the witness statement of the claimant and is unchallenged. It is necessary in my view in determining the gravity of the slander to place into context the circumstances under which the statements were made.

[14] The claimant is and was at the time the Prime Minister and Minister for Finance of the state of Saint Vincent and the Grenadines, he is the political leader of the Unity Labour Party, a member of Parliament for the North Windward Constituency. He is also a Barrister at law and Solicitor of the Eastern Caribbean Supreme Court of 25 years standing and a member of the Bars of Antigua and Barbuda, Anguilla, The British Virgin Islands, Dominica and St. Christopher and Nevis.

[15] He complains that the second defendant has irresponsibility permitted its radio station to be used by the opposition New Democratic Party and other political opponents of the claimant to systemically attack his reputation with slanderous slurs and falsehoods and to paint him with the broad brush of criminality notwithstanding letters of warning and/or judgment.

² See paragraphs 30-32 of High Court Suit 64 of 2007 in the instant proceedings.

³ John v MGN [1996] 2All ER. 35, CA

[16] The natural and ordinary meaning of the statements made by the first defendant, the claimant pleads, is of corruption criminality and misconduct. The effect of the statements the claimant pleads, is that he is unfit to be a member of the Bars of the region; unfit to hold the high office of Prime Minister, or to be a member of Parliament; that he is prepared to tarnish and has tarnished the reputation of the sovereign state of Saint Vincent and the Grenadines; and that he has betrayed the trust of the people of Saint Vincent and the Grenadines.

[17] The statements were false and gravely injurious. In my view the statements made go to the core of the claimant's credibility and his reputation as Prime Minister and Minister for Finance, and were calculated to smear and undermine him in the eyes of the ordinary members of society.

The Extent of the Publication

[18] The allegations were published on live radio. The second defendant's radio broadcast extends throughout St. Vincent and the Grenadines, the southern regions of neighbouring Saint Lucia and can also be accessed by the rest of the world via the internet. The claimant pleaded that this allowed for publication to Vincentians in the diaspora.

The Effect of Publication

[19] While damages are presumed, there is little evidence before me on which I can conclude as to the effect of the publication. In fact I am satisfied that on reviewing the witness statements and in particular the one provided the General Secretary of the National Workers Union, that the makers were not prepared to accept the statements made without proof of their truth being provided. This to my mind is quite telling as it suggests that given the reputation of the claimant, statements tending to undermine his character are treated initially with suspicion and more as political rhetoric rather than statements of truth.

The Extent and Nature of the Claimants Reputation

[20] An award must ensure the vindication of the reputation and good name of the claimant. I am guided by the dicta of Cave J in **Scott v Sampson (1882) 8 QBD 491 at 503** " The damage.... which he sustained must depend almost entirely on the estimation in which he was previously held...." The attributes of the claimant have been earlier referred to. He is known regionally and respected.

The Conduct and Behaviour of the Defendants

[21] Important in the Court's assessment of damages is the determination of mitigating circumstances. See **Elwardo Lynch and BDS Limited V Ralph Gonsalves** HCVAP 2009/002 per Edwards JA. Relevant to this assessment is the fact that the Defence was struck out on the 16th November 2009. I am satisfied, having read the pleadings of the claimant, the witness statements, in particular the witness statements of Junior Bacchus, Matthew Thomas and Douglas DeFreitas, submitted earlier in the proceedings, that there were no steps taken to verify the statements, nor were there any steps taken to clarify the claimant's version of the events.

No apology has been proffered by the defendants to counter the natural and ordinary meaning given to the statements. Even under threat of suit there was no apology issued despite repeated requests by the claimant to do so. The Defendants maintain that the statements were fair comment on matters of public interest. The judgment of Remy J in this proceeding applying the Reynolds test⁴ has discounted the publication as complying with standards of responsible journalism. That on their defence of qualified privilege I am satisfied that the conclusions of the learned Remy J, that there was no duty beholden to the defendants that would allow them to plead qualified privilege as a justification for their pernicious statements.

Aggravated Damages

[22] It is the law that in defamation the damages may be aggravated by the defendants' conduct subsequent to the slanderous statements and where the defendants have pleaded and

⁴ Reynolds v Times Newspaper Ltd 2001 AC

unreasonably maintained a plea of justification.⁵ I am satisfied that despite opportunities to retract the statements and to issue an apology the defendants choose not to avail themselves of that opportunity, relying instead on the defence of qualified privilege which defence the court has discounted. I therefore find that there were aggravating circumstances.

Exemplary Damages

[23] Exemplary damages are awarded whenever the defendant's conduct is sufficiently outrageous to merit damages whose purpose extends beyond the usual compensatory function to punitive functions. The availability of exemplary damages for tort have been limited to three categories by Lord Devlin in the landmark case Rookes v. Barnard [1964] AC 1129. Those categories were: (a) where government officials act in an oppressive manner; (b) where a defendant's conduct is calculated to make a profit from his wrong; (profit not being limited to monetary reward) and (c) where a statute expressly so provides.

[24] While an award of exemplary damages may be considered under category (c) there is no evidence before me on which I could properly conclude that in publishing the words the defendants calculated to make a profit which would exceed the likely compensation against them.

Other Awards in Defamation Cases

[25] In seeking to determine the appropriate quantum of damages, I have been very helpfully referred to comparable cases of defamation from our courts and from other jurisdictions, namely; - Murio Ducille v Robert Hoffman and Others ANUHCV1998/0151; France and Bryant v Simmonds CA 2 of 1985; Vaughn Lewis V Kenny D Anthony CA No.2 of 2006; Keith Mitchell v Fassihi Worme, Grenada Today Limited and Express newspaper Ltd CA No. 22 of 2003; and Panday v Gordon [2005] UKPC 36. I have also reviewed T&T News Centre and John Raphael Civil Appeal No. 166 of 2006 from the Court of Appeal of Trinidad and Tobago and the recent decisions of the Court of Appeal of the Eastern Caribbean Supreme Court in Elwardo Lynch and BDS Limited v Ralph Gonsalves HCVAP 2009/002, a decision which to my mind is more closely

⁵ Praed V Graham 24QBD CA at 55.

comparable to the instant case. I am also guided by the statements of Edwards JA in Elwardo Lynch and BDS Limited v Ralph Gonsalves HCVAP2009/002 of and referring to the claimant in other proceedings. “Those who have high and distinguished profiles as Dr. Gonsalves should receive a higher award than a person similarly defamed with a lesser public profile”.

[26] In reviewing those decisions, I am aware that each case is distinguishable on its facts and that a precise, arithmetical formula is difficult to achieve.

[27] Having considered the submissions of the claimant, the pleadings, the law, authorities, and circumstances of aggravation, I award the claimant the sum of \$155,000.00 as an aggravated award. I also award the claimant prescribed costs of \$11,625.00. I further order that the defendants pay interest on the judgment debt at the statutory rate of 5% from the date of assessment until payment in full.

V. GEORGIS TAYLOR-ALEXANDER
High Court Master