

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXA HCV 2011/0014

BETWEEN

EDISON BAIRD

Claimant

and

LYNDON DUNCAN

Defendant

Appearances:

Ms Tara Ruan with Ms Kristy Richardson for the Claimant
Mr Dane Hamilton, QC with Mrs Josephine Gumbs-Connor and Ms Yanique
Stewart for the Defendant

2012: June 18
June 29

JUDGMENT

- [1] **ROBERTS, J.** This is an action for defamation.
- [2] The Claimant is and was at all material times the Minister of Health and Social Development in the island of Anguilla. He was successful in the general elections in Anguilla in February 2010 as a member of the political party called Anguilla

United Movement ("AUM"). The Defendant is and was at the material time a Caterer and also a member of the same AUM.

[3] On March 3, 2011, the Claimant filed his Claim Form and Statement of Claim alleging that the Defendant, on or about January 8, 2011, at a public rally in Blowing Point, Anguilla, held by the Anguilla United Movement, spoke to a crowd of persons publicly over the microphone, which speech was also aired on local radio.

[4] The words complained of and alleged to have been spoken by the Defendant are detailed in Paragraph 3 of the Statement of Claim and paragraph 10 of the Claimant's Witness Statement. The words were as follows -

"I want to send the Honourable Minister, Mr. Edison Baird a strong message! You don't walk around like a chicken without a head out your body and get the people of Anguilla money, to do nothing. You think that you and the Governor can lie in bed and get away with it... when this Government went to office they decided to cut their salaries, you know what that Honourable Edison Baird said? "Don't cut my salary!" It's about money for him. It's not about this country and we had enough. You look at him, he walks around like he's in space. He's a disgrace to the people of Anguilla. He think it's all about getting elected. It is not! You don't use the people of Anguilla to get elected."

[5] The Claimant claims that in their natural and ordinary meaning, the Defendant's words were understood to mean that

i. That the Minister is lazy and is not functioning;

- ii. That the Minister and the Governor are part of the conspiracy
- iii. That the Minister does not have the country at heart and instead has used people to get elected for the money

[6] The Claimant claimed the following relief against the Defendant

- 1 Damages including exemplary damages
- 2 Interest
- 3 Costs
- 4 Court fees
- 5 Such further and other relief deemed just by the Honourable Court.

[7] By his Defence filed on April 11 2011, the Defendant admits that the extract is a full and accurate representation of the words spoken by him. He however denied that the words bore or were capable of bearing any of the meanings alleged in the Statement of Claim or any meaning defamatory of the Claimant.

[8] The Defendant contended that the words meant and could only have been understood to mean:

- a. The Claimant is not very business like in his approach as a Minister of Government
- b. That the Claimant and the governor appear to express similar views on certain issues on which the Anguilla United Movement Government had disagreement with the Governor;

- c. The Claimant refused to have his salary reduced in a time when the economic climate in Anguilla was fast deteriorating and issues of fiscal management and austerity measures were being given top priority by the government .

[9] The Defendant pleads that if and insofar as the words bear the meaning as set out in the Statement of Claim, they are fair comment on a matter of public interest, namely, the conduct of the Claimant as an elected member of the Anguilla House of Assembly and the Anguilla United Movement and as a Minister of Government.

ISSUES

[10] The issues that arise for the Court's determination are -

- (1) whether the words complained of are capable of being defamatory;
- (2) whether the words were defamatory in the circumstances;
- (3) whether the defences of fair comment and qualified privilege are available to the Defendant;
- (4) what damages, if any, should be awarded to the Claimant

EVIDENCE

[11] The Claimant gave evidence on his own behalf and called one witness. The Defendant gave evidence on his own behalf and called two witnesses. The evidence from the witnesses was by way of Witness Statements and cross-examination at the trial. A recording of the words was played in the Court and the CD of the recording was admitted into evidence in the case.

[12] In his witness statement the Claimant stated that he was a politician who successfully contested the general elections for the Constituency of Road North for the past seventeen (17) years. On 8th January 2011 the Defendant made a public speech at an AUM Public Rally in Blowing Point, Anguilla. The rally was broadcasted by live radio and he took a recording of the rally as it was broadcasted on 92.9 FM. The Claimant stated that he was quite alarmed when he heard the Defendant make the speech with the words complained of.

[13] The Claimant stated that by 9th January 2011, the political blog:www.axareality.com there were criticisms of his function with Government and relationships (sic) with the AUM Government. The Claimant denied that he ever made the comments stated by the Defendant in relation to reducing his salary. He recalled sometime in or about June 2010, there was a private meeting at the house of Minister Evan Gumbs and he expressed his view to the ministers that any reduction in salaries should be done properly with executive Council approval. He said that he supported a reduction but suggested that a reduction of Ministers' salary should be coordinated with the Civil Service reduction proposed for July 2010. He declared that he never opposed the reduction.

[14] In further examination in chief the Claimant stated that he never said that he refused to have his salary cut because he had a big medical bill. He agreed that he stopped going of party meetings if by Cabinet meeting Mr Hayden Hughes meant pre-Executive Council meetings. He said he stopped attending because he objected to the presence at those meetings of Ms Josephine Gumbs as there was a conflict of interest since as a lawyer it gave her an unfair advantage over other lawyers when they were discussing investments. In relation to paragraph 17 of Mr

Hughes' Witness Statement he indicated that the Executive Council set up a Committee on alternative cost effective managerial system for health but the Committee report was not consistent with its instructions. The Claimant acknowledged that the Chief Minister tried to remove him as stated in paragraph 19 of Hayden Hughes' Witness Statement but that the Governor did not accede. Lastly he denied ever suing Hayden Hughes. He indicated writing to Hughes asking him to withdraw certain remarks he made against him.

[15] Under rigorous cross-examination by Learned Queen Counsel, Mr Dane Hamilton, the Claimant testified that he is a member of the AUM and that he acceded and still accedes to the leadership of Hon Hubert Hughes. He admitted that he has not attended the pre Executive Council meetings (otherwise called Cabinet meetings). These meetings consisted of Ministers and other party members. He said that projects are put to these meetings. He further testified that he and his colleagues have had their differences which emerged after the party won the elections. He stopped going to party meetings as a result of differences in Executive Council but Ministers and he continued to hold meetings. He said the reason why the Chief Minister wanted to move him was because certain people think that Ministers are puppets. These people were not able to dictate to him. He agreed that members of the public had a right to look at his performance and he had a right to perform. He stated that given the financial constraints, he felt he was doing a reasonably good job. The Claimant also testified that two days before elections the party campaigned on the issue of high salaries paid to Ministers. A meeting was held within one week of the elections to discuss the economic situation of Government. The Claimant stated that he did not agree to a cut in Ministers' salary at that time.

In July 2010 Ministers and civil servants had a 7½ % cut in salary. The vast amount of ministers wanted to make a statement by taking a cut in salary. I did not agree but felt that the decision should be a rational one. He admitted that the Defendant was at the meeting where the cut in Ministers' salary was discussed. The Claimant claimed that he was quite alarmed that the Defendant spoke about him refusing to take a cut at the meeting of 8th January 2011 (the public rally). The comments were of a demeaning nature. The claimant said that the term "alarm" captured that the Defendant sought "to humiliate me and demean me and hurt me".

[16] The Claimant stated that he was aware that there were blogs that talked about his refusing to take a cut in his salary but he was not aware of any blog suggesting that he was missing in action. The Claimant admitted that the Defendant campaigned on his behalf. He said that at the time he was alleged to have said that he refused to have his salary cut because he had a medical bill, he had no such medical bill. His bill was paid. On further pressing the Claimant said that he believed that the bill was paid before but he was not 100% certain. He was asked about the committee that was set up to look at the health system. To the suggestion that the Committee's report was not implemented two years later, the Claimant stated that a Mr Roger England had reviewed the health system and that Mr England's report superseded the Committee's report. He indicated that there was no unanimity in Executive Council as to how to proceed.

[17] In his Witness Statement, Mr Rommel Hughes stated that he was an avid supporter of the Honourable Edison Baird and that he had been involved in his political support group for approximately 16 years. On January 8 2011 he listened

to the live radio broadcast of the Anguilla United Movement public rally in Blowing Point. He stated that he was shocked by the speech of the Defendant and in his view the words complained of were disparaging and untrue. He stated that from his contact with the Road North community he believed that the statement caused political embarrassment for the Claimant and further alienated him from his Government and supporters. He stated that the Claimant did care about his constituents which was evidenced by their overwhelming support in electing him in four general elections. He ended his Witness Statement by stating that the Claimant was lowered in the esteem of his constituents and other members of the public. In cross examination Mr Rommel Hughes testified that he did not attend the public rally at Blowing Point but heard the meeting on the radio. He also stated that he did not canvass the community.

[18] The Defendant's evidence in chief was by way of his Witness Statement. The Defendant's evidence as contained in the Witness Statement was that he is the Deputy Chairperson of the AUM. He stated that he supported the Claimant as his fellow party member throughout the 2010 general elections. He stated that two of the main issues for the campaign were the poor state of health care in the island and the exorbitant salaries paid to the Ministers of Government at a time when the country's economy could not sustain such high salaries. He stated that the Claimant campaigned that he intended to disband the Health Authority once elected. The Defendant stated that the promise that the AUM candidates made to reduce their salaries once elected was considered to be one that needed urgent execution "and from all accounts to the party membership the elected AUM members were prepared to do so with the exception of the Claimant who I

understood planned to renege on his promise to the people of Anguilla". He stated that at an urgent meeting at the residence of Honourable Mr Evans Gumbs at which he, the Claimant and other members of the AUM were present, the issue of reducing salaries was raised and the Claimant adamantly disagreed to the reduction of his salary stating that not a man was to touch his salary and he went on to state that he had a very big medical bill in St Thomas to pay and he therefore was not prepared to have his salary cut. The Defendant stated that he thought that the Claimant's position on the issue was unfortunate and rather selfish given the prevailing circumstances in Anguilla at the time. The Defendant also stated that he attended another party meeting in or about September 2010 where the Ministers discussed that nothing was being done in the Ministry of Health despite the many complaints from Anguillans as to the stagnant state of health care in Anguilla. He stated, "They said that the Claimant had instituted a committee of experts to produce a report on the way forward with respect to the Health Authority and that months after this report had been produced the Claimant had extended no efforts to act upon the recommendation made in the report". The Defendant stated that it was at that meeting that the Honourable Chief Minister made the decision to write to the Governor advising him to transfer the Ministry of Health from the Claimant to the Chief Minister's portfolio and it was made public when the Chief Minister decided to do so. The Defendant stated that he did not believe that the Chief Minister would have made the attempt to remove the Claimant if the Claimant conducted himself professionally in the circumstances or if he was performing his duties satisfactorily.

[19] The Defendant stated that in keeping with his promise to the Anguillan people during political campaigns of 2010 general elections to be forthright and transparent about issues of public import that were within his knowledge, he decided to ventilate some of the issues surrounding the Claimant which he said were matters of "significant public interest and which were already in the public domain", at the rally at Blowing Point on January 8th 2011. The Defendant said that he had worked with the Claimant as a fellow AUM Member and he was also privy to a lot of internal information about the party and the government as a member of the party. He had observed the Claimant over the months following the elections in 2010 and in his "honest opinion he has displayed a lack of professionalism in his capacity as a Minister of Government"

[20] The Defendant went on to state in his Witness Statement that when he made his presentation the rally on January 8th 2011, it was done in good faith with the sole intention of informing the public of the Claimant's conduct in the months following his election and to encourage him to change his course. He stated that none of the statements made on the night in question was made "maliciously or with malicious intent". The statements were also not made to hurt the Claimant politically because this would mean hurting his political party of which he was still a part. The Defendant went on to state that from the comments that were already circulating within the society, the Claimant was already drawing the ire of many persons for his lack of professionalism and team work within the Government.

[21] Defendant stated that there is no ill will between the Claimant and him and he gave as evidence of this that the Claimant accepted an invitation to his 50th birthday on November 2010.

[22] The Defendant stated that he wanted their supporters to know that 'over the months following the elections the Claimant had strayed like the biblical "Prodical Son' (sic) and my intention at the reprimand was to show him tough love in hopes that he would find his way back home". He said that though his statements were spirited they were simply commenting on the Claimants unprofessional conduct "in light of the facts [he] outlined before, that he was not cooperating with his fellow government Ministers and he tried to renege on important promises made during the general elections". He ended his Witness Statement by observing that he could not see how anybody would think that his "reprimand of the Claimant which was done out of love and in the interest of having the Claimant reflect on his conduct in the interest of Anguilla, was done with the intention of hurting him or his reputation. He stated that he is known to voice his opinion on everyone that disappoints him where he believed their actions may hurt Anguilla even if he continued to support then after his 'reprimand"

[23] Under a lengthy cross examination the Defendant testified that the two issues that he said were the main issues the AUM party campaigned on - the poor state of health and high salaries of ministers - were not in the manifesto but he insisted that those issues were "the pertinent issues". He accepted that revival of the economy, constitutional reform, the eradication of violence, reduction of the price of electricity and reduction of taxes were all part of the manifesto although he stated that he 'browsed" through the manifesto. At different points in his testimony he declared that he 'knew everything" and that he was aware of everything. The Defendant testified that he was aware that the instructions to the group commissioned to advise the Ministry of Health with respect to the dismantling of

the Health Authority and to recommend to Government a more cost effective system for health services in Anguilla and to report to Government. He testified that as far as he knew it was not in the report that health should remain under a statutory body. He admitted later that he did not read the report but learnt of its contents from the meeting at Evan Gumbs' where the report and the findings were discussed. He stated that "it was never discussed to remain a statutory body because we campaigned to dismantle the Health Authority". The Defendant stated that the findings of the report were to dismantle the Health Authority. The Defendant admitted that taxes were not reduced by the AUM Government as promised but said that "they could not have done it because when they got there it was a different ball game". He testified that he did not call for the dismissal of the Chief Minister because he had not reduced taxes because "there was no reason for me to say that". He agreed with counsel that although Mr Gumbs campaigned with respect to reducing the cost of electricity that electricity costs did not in fact go down. The Defendant testified that he did not call for Mr Gumbs to be fired because Mr Gumbs tried to get it down but he had obstacles in his way. He did not agree that the Claimant tried to follow through on campaign promises but also faced similar obstacles. He denied that he was upset with the Claimant because he was not united on all issues with the government. He never discussed with the Claimant the complaints he received about the economic situation and about Health. He never pulled him aside to discuss the complaints. He never tried to make an appointment to see the Claimant about the complaints. When it was put to the Defendant that the source of many of the complaints he received came from the blogs – things he read on the blogs, he testified that he did not read

the blogs. He happened to see what is on the blogs when he is home and his wife went on the blogs. He testified that "What was happening was a general something in Anguilla from a party structure and the people of Anguilla was aware of what was happening".

[24] Then there was this question and answer between Counsel for the Claimant and the Defendant -

Q. Okay. Did you investigate some of the complaints they were making?

Did you carry out your own investigations?

A. My Lord. There was no need to investigate because I'm part of the AUM Government.

Q.. That's a yes or no? You did not carry out –Mr Duncan.

. No. I didn't.

Q. Mr Duncan, you did carry out your own investigations with respect the complaints you heard on her talk shows at night; correct?

A. I did not.

[25] The Defendant confirmed that he was a private caterer. Of the words complained of the Defendant testified that what he said there is what he said because he was a part of a party and he knew what was happening in the party. He admitted that he meant that the Claimant does nothing and he gets a salary. He confirmed that when he said "You look at him, he walks around like he is in space" that he was talking of the Claimant, "Minister of my Government". He agreed with counsel that the words meant that the Claimant did not know what he was doing in his Ministry. He also agreed with counsel that the words meant that the Claimant was incompetent. The Defendant said that he stood by the words he spoke of the

Claimant that "He is a disgrace to the people of Anguilla". In relation to the words, "It is not. You don't use the people of Anguilla to get elected", the Defendant agreed with counsel that for him it is a fair characterization that he meant that the Claimant used people to get votes and then did nothing in office. The Defendant testified that he could have visited the Claimant and say those things to him on a one and one but he did not. He denied using the rally as an opportunity to publicly embarrass the Claimant.

[26] The Defendant recalled that the Claimant wrote to him seeking an apology for and a retraction of the statement he made on January 8th and that he refused to apologize or retract those statements.

[27] Mr Hayden Hughes gave evidence on behalf of the Defendant. In his Witness Statement, Mr Hughes stated that he was a nominated member of the House of Assembly employed by the Government of Anguilla as the Parliamentary Secretary with responsibility for Tourism. He stated that all AUM candidates promised the Anguillan electorate that if elected the candidates would promptly reduce the Minister's salaries which they considered too high particularly when the country was experiencing severe financial difficulty. Mr Hughes stated that in or about February 2010 the Government held an urgent meeting at the Chief Ministers office and that he was in attendance as well as the Claimant and the Defendant as well as the other Ministers of Government where he proposed that the Ministers and he needed to reduce their salaries. Mr Hughes stated that all present were in agreement except the Claimant who stated that he was not prepared to have his salary cut because he had a very big bill in St Thomas in the sum of US\$50,000.00. The Claimant's fellow Ministers and Mr Hughes were

prepared to take an immediate salary cut but the Claimant said he did not want to reduce his salary at the present time and still have to reduce it again when the entire Civil Service would receive their cuts. Mr Hughes stated that the Claimant made the same statements at a meeting of the party at the residence of Mr Evan Gumbs shortly following the meeting at the Chief Minister's office. He said that after that meeting he noticed that the Claimant stopped coming to party meetings and even cabinet meetings and the Claimant has never attended a cabinet meeting since August 2010.

[28] Mr Hughes stated that the Claimant set up a committee of very qualified persons in the medical field to produce a report outlining the areas where the Health Authority could be improved and the means of achieving these goals as identified. The committee produced such a report but the Claimant failed to take any action as outlined by the committee.

[29] Mr Hughes further stated that subsequently the party met in absence of the Claimant to discuss "the Claimant's nonchalant attitude towards addressing critical issues facing health care in Anguilla" and that at that meeting the Chief Minister made his decision to write the Governor advising him to transfer the Ministry of Health from the Claimant to Mr Jerome Roberts.

[30] Mr Hughes stated that he attended and spoke at the rally in Blowing Point on January 8 2011. He stated that the Claimant had also sued him for expressing views about him as a politician even though he subsequently withdrew the suit.

[31] Under cross examination Mr Hughes testified that constitutional reform, reduction of cost of electricity and taxes were part of the manifesto but not ministerial salary reduction. He stated that taxes were increased but the increase was forced by HM

Government in UK; electricity surcharge increased. He did not call for the removal of Gumbs because Gumbs worked hard to reduce electricity. He testified that at the Cabinet meetings there would be the four ministers, the advisors and Josephine Gomes-Connor who would chair the meetings. At those meetings government business including projects would be discussed. Mr Hughes stated that he did not believe that the Claimant did nothing as a Minister. He recalled a commission being set up to look at the health Authority with a view to dismantling it. A report was produced though he could not be sure of the date of the report. He did not read the document but the report was discussed. He did not agree with counsel that the source of his information was the blogs. He asserted that blogs are not to be trusted. He did not read Mr Roger England's report. He confirmed that he was present at the rally. He thought that the words complained of meant that the Claimant was a disgrace to the people of Anguilla and that he used people to get into office. He admitted that he was not sued by the Claimant but had received a letter from the Claimant's lawyers which was never followed up.

[32] Mr Samuel Webster gave evidence on behalf of the Defendant. In his Witness Statement, Mr Webster stated that he was employed by the Government of Anguilla as the Special Advisor to the Minister of Infrastructure and also to the Minister of Fisheries and Agriculture. He stated that the two issues that formed a major part of the AUM campaign was firstly, the state of Health in Anguilla and secondly the ridiculously high salaries that Ministers in government had given themselves. He stated that all AUM candidates promised the Anguillan electorate that if elected the candidates would promptly reduce the Minister's salaries and the Claimant in particular promised that once elected he would make immediate

changes to the health care system in Anguilla by disbanding the Health Authority. Mr Webster stated that in or about February 2010 he attended a meeting that was held at the Chief Ministers office where it was proposed that a reduction in Ministers' salaries would have an immediate and positive impact on the islands fiscal position as well as show the public good faith on the part of Government. The Claimant was at this meeting. Mr Webster stated that all attendees were in agreement except the Claimant who stated that he was not prepared to have his salary cut because he had a very big medical bill in St Thomas in the sum of US\$50,000.00. The Claimant's fellow Ministers were prepared to take an immediate salary cut but the Claimant said he did not want to reduce his salary at the present time and still have to reduce it again when the entire Civil Service would receive their cuts. Mr Webster stated that the Claimant made the same statements at a meeting of the party at the residence of Mr Evan Gumbs shortly following the meeting at the Chief Minister's office. He stated that the Claimant set up a special committee comprising local medical practitioners to produce a report outlining the areas where the Health Authority could be improved and the means of achieving these goals as identified. The committee produced such a report but the Claimant failed to take any action as outlined by the committee. Mr Webster further stated that subsequently the party met in absence of the Claimant to discuss "the Claimant's nonchalant attitude towards addressing critical issues facing health care in Anguilla and that at this meeting the Chief Minister decided to write the governor advising him to transfer the Ministry of Health from the Claimant to Mr Jerome Roberts. Mr Webster stated that he attended the rally in Blowing Point on January 8, 2011. He stated that he did not feel that the Claimant's

reputation had been damaged because “the issues that were discussed that night were already made public through a number of forums prior to the rally and were already circulating in the community”.

- [33] Under cross examination Mr Webster testified that he did not know if the cost of electricity has reduced under Evans Gumbs; The party campaigned to reduce taxes but under the Chief Minister, taxes increased. The party had campaigned to dismantle the health authority but this was not done after the election. He had read some of the report of the special committee on health. He was not sure that the Committee report said to leave health under a statutory board. He had not read the Roger England report. He had heard the name, Roger England, but was not sure what he came to Anguilla to do. He had not carried out any investigation with regard to the health sector. He did not know whether health improved or not. He testified that he said that the Claimant had not pulled his weight because of the number of complaints against health. He said he also heard the cries for jobs, a dismal economy and increased price of electricity, but he could not say that other ministers were not pulling their weight. He did testify that he thought that the Claimant had done things in his office since February 2010.

SUBMISSIONS

- [34] Counsel for the Claimant and Counsel for the Defendant filed submissions within the time stipulated by the Court at the close of trial.

THE LAW

- [35] According to **Gatley on Libel and Slander**¹, “there is no actionable tort... unless the words are published to at least one person other than the person defamed.” Again “no civil action can be maintained for libel or slander unless the words complained of are published..”² As to what is meant by “published”, Professor Kodilinye in his text *Commonwealth Caribbean Tort Law*³, states that by ‘published’ is meant ‘communicated by the defendant to at least one person other than the plaintiff himself’. The learned writer goes on to say that ‘to succeed in an action of defamation, the Claimant must not only prove that the Defendant published the words and that they are defamatory; he must also identify himself as the person defamed... The words complained of must be published ‘of the Claimant’
- [36] In this case there is no dispute that the words complained of were spoken at a public rally. In addition the speech was aired live on radio. Further the Defendant does not deny that the words complained of were uttered by him.
- [37] Where trial is by Judge alone – as in our jurisdiction- the judge must perform the functions of judge and jury. He must decide (a) whether the words are capable of being defamatory and (b) if the answer is in the affirmative, whether the words are defamatory in the circumstances of the particular case.
- [38] The classic learning on determining whether the words referred to are defamatory words is to be found in *Halsbury’s Laws of England*⁴, where it is stated:

¹ 11th Edition, paragraph 1.7

² 11th Edition. Page 163 paragraph 6.1

³ 3rd Edition, page 251

⁴ 4th Edition, page 22 paragraph 4.3

“In deciding whether or not a statement is defamatory, the Court must first consider what meaning the words would convey to the ordinary person. Having determined the meaning, the test is whether, under the circumstances in which the words were published, the reasonable person would be likely to understand them in a defamatory sense.”

[39] It is settled law that in order to understand the meaning and significance of words complained of, one must look at the context in which the words were used; further that the text is objective. In the case of *Jones v Skelton*,⁵ Lord Morris explained the concept of the ordinary and natural meaning of words as follows-

“the ordinary and natural meaning of words may be either the literal meaning or it may be an implied meaning or an inferred or indirect meaning; any meaning that does not require the support of extrinsic facts beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary meaning of words... the ordinary and natural meaning may therefore include any implication or reference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict rules of construction, would draw from the words.”

[40] The Claimant alleged that in their natural and ordinary meaning, the Defendant's words complained of were understood to mean that:

⁵ [1963]3 All ER 952

- (1) The Minister was lazy and is not functioning;
- (2) The Minister and the Governor are part of a conspiracy;
- (3) The Minister does not have the country at heart and instead has used people to get elected for the money.

[41] By Order dated July 12 2011 Master Mathurin ruled, pursuant to an application made under rule 69.4 of the Civil procedure Rules (CPR) 2000, that the words contained in paragraph 3 of the Statement of Claim are capable of the natural and ordinary meanings specified in paragraph 4.i. and 4.iii of the Statement of Claim. There was no appeal against the ruling of the learned Master.

[42] Master Mathurin having held the words to be capable of bearing the meanings ascribed to them by the Claimant, the next question to be considered by the Court is whether the words did in fact bear the alleged or any meaning defamatory of the Claimant.

[43] Learned Counsel for the Defendant submitted that the Court ought to give the words complained of the natural and ordinary meaning which they would have conveyed to the ordinary listener devoid of over elaborate legalistic analysis without being too literal in approach. I agree with this formulation. Applying the test urged by the Defendant, in my view the words uttered by the Defendant are words that a reasonable person could properly conclude defamed the Claimant.

[44] I also agree with the submission of Learned Counsel for the Defendant that the context of the words is important. The issue of context was referred to in the case

of **Lester Bryant Bird v Winston Baldwin Spencer et al**⁶ where it was stated that in order to determine whether the words complained of are words that a reasonable person could properly conclude defamed someone, that **“the question for the Court is therefore, whether the words complained of would convey to this ordinary, average citizen..., a meaning defamatory of the Claimant [and] in answering this question, the words complained of must be put in context”**.

[45] In the case before the Court I now put the words in context. It is undisputed that the words complained of were uttered at a political party rally. Anguilla is a very small society where the words complained of would have greater reach and impact than in a larger society. There is no doubt that the ordinary resident in Anguilla and the ordinary listener, whether present at the rally or listening to the radio carrying it live, would understand the words uttered to be defamatory in the circumstances. There is no doubt that the ordinary, reasonable resident of Anguilla would have understood the words complained of to mean that the Claimant was in fact lazy, disgraceful, ineffective and not concerned about the interests of the people of Anguilla but rather using the people of Anguilla to get elected and get money.

[46] In the circumstances, I find that the words complained of would injure the Claimant in his public office and/or would tend to lower him in the estimation of right-thinking members of the Anguillan society.

⁶ ANUHCV0185/2009, paragraph 30

[47] In coming to my findings whether the words are defamatory in the circumstances, I am mindful of the point raised in *Gatley*⁷ that “*politicians must display a greater degree of tolerance of criticism of their conduct than is required of private persons.*” However, *Gatley* further points out that “*it has been held defamatory to impute lack of commitment or political irresponsibility or involvement with a hostile regime or disloyalty to a politician.*”⁸

[48] *Gatley* further sets out⁹ that “*to be defamatory an imputation need have no actual effect on a person’s reputation; the law looks only to its tendency, so there is a cause of action even if the words were not believed by the audience.*”

Examples of words that have been held to be defamatory include: words causing others to shun or avoid have been found to be defamatory; to say a person is holding an office that he is incompetent at it, may not lower him in estimation of others in the sense that they will think less of his general character, but the words will be defamatory because of injury to his reputation in his office; It is defamatory to impute to a person in any office... inefficiency in it or want of ability to discharge his duties.

[49] With respect to whether the words complained of were published of the Claimant, it is unquestionable that the words were published of the Claimant. The Claimant was referred to by name and the Defendant admitted that he was speaking of him.

⁷ at paragraph 2.33

⁸ at paragraph 2.33

⁹ at page 3

[50] In the circumstances, I find that it is beyond argument that the words complained of are defamatory, that they were capable of referring to the Claimant and did in fact clearly refer to the Claimant.

DEFENCES

FAIR COMMENT

[51] In paragraph 4 of his Defence the Defendant states as follows –

In and so far as they bear the meaning as set out in paragraph 4 of the Statement of Claim, the said words are Fair Comment on a matter of Public Interest, namely the conduct of the Claimant as an elected member of the Anguillan House of Assembly and the Anguilla United Movement and as a Minister of Government .

[52] The elements of a defence of fair comment is given in *Gatley on Libel and Slander*¹⁰ as follows:

“To succeed in the defence the defendant must show that the words are comment and not a statement of fact. However an inference of fact from other facts referred to may amount to a comment. He must also show that there is a basis for the comment, contained or referred to in the matter complained of, at least to the extent of indicating that what is being stated is comment. Finally, he must show that the comment is on a matter of public interest, one which has been expressly or implicitly put before the public for judgment or

¹⁰ at paragraph 12.2

is otherwise a matter with which the public has a legitimate concern.”

[53] Further, the case of **Lester Bryant Bird**, Remy, J explains¹¹ that:

“Matters of public interest include inter alia, (a) the affairs of government, both national and local; (b) the public conduct of those who hold or seek public office or positions of public trust... It therefore follows that the First Defendant, like other members of the public, was entirely free to comment on such matters of public interest, provided that the comments were without malice and were made upon facts that truly exist...”Where a Defendant alleges that the words complained of are fair comment on a matter of public interest, he must specify the defamatory meaning which he seeks to defend as fair commentThe defendant should specify, usually at the start of his pleading of the defence of fair comment, the comment in the words complained of, which he will contend falls within this defence.”¹²

[54] Reference is also made to the judgment in **Reynolds v Times Newspaper Ltd**, as cited in **Bird v Spencer**, where it states that: “It is important to keep in mind that this defence is concerned with the protection of comment, not imputations of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere.”

¹¹ at paragraph 38

¹² *Lester Bird v Winston Spencer et al* ANU HCV 0185/2009

[55] Part 69.3 of the Civil Procedure Rules (CPR) 2000 provides

“69.3 A defendant (or in the case of counterclaim, the claimant) who alleges that

- (a) In so far as the words complained of consist of statements of facts, they are true in substance and in fact; and
- (b) In so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or
- (c) Plead to like effect

must give particulars stating

- (i) which **of the words complained of** [emphasis added] are alleged to be statements of fact; and
- (ii) The facts and matters relied on in support of the allegation that the words are true.

The particulars pleaded by the Defendant are headed “Particulars of Fact on which comments are based” and are set out as follows.

Particulars of Fact on which comments are based.

- i) The Claimant by virtue of the discretion of the Honourable Humber Hughes, Leader of Anguilla United Movement and Chief Minister of the Government of Anguilla was appointed as a minister of Health, Education and Social Development for the Government of Anguilla. The Claimant and the Defendant were both present at a private caucus meeting held since or about late February 2010 after the General Elections in Anguilla

with the members of the Anguilla United Movement party. At the meeting the issue of salary reduction for Government ministers was discussed and the Claimant asserted "Not a man touch my salary". He stated that he would not agree to any reduction in his salary. The large salaries of the former Government and a need for reduction were matters on which the Anguilla United Movement had campaigned on and which members of the Party had expected would have been immediately addressed.

- ii) On the issue of the similarity in views of the Minister and the Governor the facts are that sometime (sic) in September 2010, the Chief Minister first requested the Claimant as Minister of , inter alia, health to relieve himself of that aspect of his portfolio. The Minister refused to do so. The Chief Minister then advised the Governor to have the portfolio of Ministry of Health transferred from the Claimant's to another elected Member of the government. When the same was sent to the Governor for his approval, it was declined. These matters were all raised in the public.

This was a matter that was the subject of active discussions in public.

The Defendant has not complied with the above requirement in that he has not pleaded which of the words complained of are alleged to be statements of fact.

[56] Learned Counsel for the Claimant submitted that the Defendant has failed to show that the words spoken by him are actual comments. Instead, it was submitted that the way in which the words were spoken formed words of a factual basis and not comment. The words spoken by the Defendant were directed to the Claimant and do not fall within the realm of comment. Counsel for the Defendant contended that on the pleadings and the evidence the Defendant has made out his defence of Fair Comment.

[57] It is settled law that *the defence applies only to words recognizable as 'comment' in the sense of an expression of opinion and not mere assertions of fact.*" In this case I am unable to extract any expression of opinion from the words complained of.

[58] I agree with the submission of Learned Counsel for the Claimant. The words complained of do not fall within the realm of what can reasonably be considered as comment. I find that there are no expressions of opinion within the words complained of in the case at bar and therefore the Defendant fails on the defence of fair comment.

[59] If I am incorrect in my finding that the words complained of could not be regarded as comment, the law is settled that if the facts upon which the comment purports to be made do not exist, the defence of fair comment must fail. "The comment must not misstate facts, because a comment cannot be fair which is built upon facts which are not truly stated – per Kennedy J in **Joynt v Cycle Trade Co**¹³.,

[60] I am of the view that in relation to the words, "Don't cut my salary", which the Defendant attributed to the Claimant, I find that there was no outright refusal on the part of the Claimant to have his salary cut. I find that the Claimant indicated that he did think that ministers' salary should be cut on just emotion but on a study of the financial situation and also at a time when the civil servants were to be cut. He was addressing the timing of the cut rather than whether ministers' salary should be cut at all. It went uncontradicted that the Chief Minister concurred with his view also at one time. It cannot be fair to take what the Claimant may have

¹³ [1904] 2 KB 292 at 294

said in the cut and trust of discussion among Ministers to arrive at a decision and present that as a fact that he refused a cut in his salary.

[61] In respect of the statement, "You don't walk around like a chicken without a head out your body and get the people of Anguilla money to do nothing". None of the two witnesses for the Defendant agreed that the Claimant was getting "the people of Anguilla money, to do nothing". Both Mr Hughes and Mr Webster agreed that the Claimant had done work in his Ministry.

[62] One other area that the Defendant urged justify his words was the fact that the Claimant as minister had failed to dismantle the Health Authority on which the party had campaigned. However even here the Defendant and his witnesses got their facts wrong in that I believe the Claimant when he testified that the Committee set up to advise on dismantling the Health Authority came back with a report that recommended keeping health under a statutory body and he therefore felt that the committee had acted outside its mandate. It is ironic that the Defendant who was placing so much, store on the non implementation of the recommendations of the health committee report, had not taken the time to read the report.

[63] For the defence of fair comment to succeed, the Defendants must prove the factual basis of the comment to be true. The Defendant in this case has failed to do so. I am not satisfied that the Defendant honestly believed that the defamatory statements were true. In my view therefore the defence of fair comment does not avail the Defendant. That defence therefore fails.

QUALIFIED PRIVILEGE

[64] The Defendant pleads in paragraph 5 of his Defence that –

“5. Furthermore, and in the alternative, if and so far as the words complained of bear the meaning as set out in paragraph 4, of the statement of Claim, the said words were published on an occasion of qualified privilege.

Particulars

- i The Claimant is a government minister and a member of the AUM party. The Defendant is a member of the AUM.
- ii. Both parties were present at the caucuses meeting and at the at material time the Defendant was at the meeting as a representative of Constituency #2, Sandy Hill, East End
- iii In the premises the Defendant had a moral and social duty to publish the said words to the members of his constituency, who were also present at the general rally meeting in Blowing Point on 8th January 2010 and other constituents of the AUM party; and the constituents likewise had an interest and or duty to receive the said information.

[65] Learned Counsel for the Defendant submitted that the Defendant clearly had an interest or duty (moral) to communicate with constituents the divisive issue which had arisen between the Claimant and the party and/or government which by then was in the public's domain and the people of Blowing Point had a corresponding interest in receiving that communication. Counsel for the Claimant on the other hand submitted that there was no legal, social or moral duty on the Defendant to make any communication in the way that he did and there was no interest to anyone who heard it.

[66] **Gatley on Libel and Slander**, states¹⁴ as follows:

“A privilege occasion arises if the communication is of such a nature that it could be fairly said that those who made it had an interest in making such a communication, and those to whom it was made had a corresponding interest in having it made to them. When those two things co-exist the occasion is a privileged one.”

It is settled law that where privilege is claimed on the ground that there was a duty on the defendant to make the communication and an interest in the party to whom it was made to receive it, such duty and such interest must have existed in fact. It is not sufficient that the defendant honestly believed he was under a duty to make the communication and that the person to whom he made it had an interest in the subject matter. In the case of *Adam v Ward*¹⁵ (cited in *Dr. Ralph Gonsalves v Matthew Thomas; BDS Limited*¹⁶) it is also stated that *“the person who makes the communication has an interest, or a duty, legal, social or moral to make it to the person to whom it is made and the person to whom it is made has a corresponding interest or duty to receive it. This reciprocity is essential.”*

[67] I am hard-pressed to see what duty, legal, social or moral the Defendant had to make the statements. He was not an elected member and he declared at two occasions¹⁷ during cross examination he volunteered that he was not a politician. He also stated in his Witness Statement that his presentation at the rally on

¹⁴ paragraph 14.12

¹⁵ 1917) A.C. 309

¹⁶SVG HCV 2007/64, at paragraph 46

¹⁷ Transcript of Defendant’s testimony, pp3 and 41

January 8th, 2011 was to exercise in “tough love” and that he was delivering a reprimand on the Claimant. In the language of the Defendant he set about to discipline the Claimant. It was tantamount to a public flogging of the Claimant by the Defendant. The Defendant does not satisfy the test as set out in *Reynolds*; hence, the defence of qualified privilege fails.

DAMAGES

[68] The law is settled that in actions for defamation, damages are awarded to compensate the claimant for the injury to his reputation and the hurt to his feelings. Such damages are compensatory and are at large. According to Gattley¹⁸ “damages are at large in the sense that they cannot be assessed by reference to any mechanical, arithmetical or objective formula”. That means that the Judge is free to make his own estimate of the damage, taking all circumstances into account

[69] The Claimant in his witness statement stated that he was alarmed when he heard the Defendant make the speech with the offending words; he lost public support and that he has been lowered in his constituents’ public esteem, since the Defendants speech.

[70] In assessing the quantum of damages, I am entitled to take into consideration the conduct of the Claimant, his position and standing, the nature of the slander, the mode and extent of publication, the absence or refusal of any retraction or apology and the conduct of the Defendant from the time when the slander was uttered down to the judgment. In the case at bar I am entitled to take in to account the fact that the Defendant failed to

¹⁸ Page 269, paragraph 9.2

apologise or retract his statements . Even at the trial the Defendant told the Court that he stood by the words complained of.

[71] I have looked at the cases mentioned in the **Lester Bryant Bird** case (**Keith Mitchell v Steve Fassihi** - \$100,000, **France and Bryant v Simmonds** – 75,000.00; **Vaughn Lewis v Kenny D Anthony** – 45,000.00; **Lester Bryant Bird v Winston Baldwin Spencer** – 75,000; **Abraham Mansoor v Grenville Radio Limited et al** - \$60,000 (total). Counsel for the Claimant submitted the case of **Bird v Spencer** which is similar to the case at bar, the learned Judge awarded damages to the Claimant in the sum of \$75,000.00. I however do not agree. In the **Lester Bird** case the allegations were far more serious imputing as they did criminal offences

[72] Looking at the totality of all the above factors, I am of the view that an award of EC\$40,000.00 is appropriate , based on all the circumstances of the case.

EXEMPLARY DAMAGES

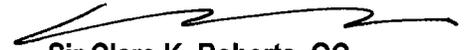
[73] The Claimant prayed for exemplary damages but did not pursue this claim in the case. In any event I am of the view that it would not have been appropriate to have ordered exemplary damages in this case.

CONCLUSION

[74] My Order is as follows -

- (1) Judgment is granted to the Claimant against the Defendant.
- (2) The Defendant do pay the Claimant damages in the sum of EC\$40,000.00.
- (3) Prescribed costs are awarded in accordance with Part 65 of the Civil Procedure Rules (CPR) 2000.

(4) The Defendant to pay interest on the judgment debt at the statutory rate of 5% from the date of judgment until full and final payment.



Sir Clare K. Roberts, QC
High Court Judge (Ag)