

**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

COMMONWEALTH OF DOMINICA

DOMHCV 2011/0062

BETWEEN:

ROXANE LINTON

Claimant

and

[1] LOUISIANA DUBIQUE

[2] ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA

Defendants

Before:

Ms. Agnes Actie

Master [Ag.]

Appearances:

Mr. Kondwandi Williams of counsel for the Claimant

Ms. Tamika Hyacinth with Ms. Joanne Cuffy for the defendants

2013: April 15.

JUDGMENT

On Written Submissions

[1] **ACTIE MASTER [AG.]:** This assessment of damages relates to a claim for damages for libel.

[2] The claimant, a customs officer employed with the customs department, by claim form with statement of claim filed on 25th February 2011, claimed against the defendants damages including aggravated damages, exemplary damages, an injunction restraining the defendants from further publishing of defamatory words concerning the claimant; interests and costs.

[3] The claimant claims that the first defendant via email published a script which contained statements which are highly defamatory in her professional calling as a customs officer by branding her as a dishonest and corrupt person who facilitates, colludes, aids and abets persons to evade custom duties and tariffs in exchange for monetary bribes. The alleged defamatory statements are reproduced below:

“Jason Morancie also told me that it was the first time that Roxanne Linton had set him up: that he always tried to get the cargo directed to shed #1 so Ms. Linton could check it for him.

“I asked him which other importer did she, Roxane Linton, check out for him and he answered, Joan Cools-Lartigue. I also inquired if he'd paid Miss Linton any money on that occasion, he replied, yes. I then asked him, how much, and he answered \$400.00. I asked him, whether he has given her any money for the present shipment for **Sache Cosmetics**, he answered, no. I further inquired of him how much he intends to give her and he responded that he didn't know.

“Due to the reckless action of Ms. Linton, government has lost a significant amount of revenue, although through the distinguished efforts of the INVESTIGATION TEAM and supervisor D.W.H, we were able to retrieve \$3,843.11.

“In light of the above, I am satisfied that Ms. Linton has behaved irresponsibly. Her conduct has been inappropriate and reckless, unbecoming of that of a customs officer, and so I request that disciplinary action be instituted against her.”

[4] The Court by order dated 25th August 2011 granted judgment in default of acknowledgment of service against the defendants.

[5] The claimant filed an application for assessment of damages in the sum of \$200,000.00 for damages including aggravated damages and \$50,000.00 for exemplary damages.

The Claimant's Submissions

[6] The claimant avers that the words complained of are highly defamatory of her professional calling as a customs officer by branding her as a dishonest and corrupt person who facilitates, colludes, aids and abets persons to evade customs duties and tariffs of the government in exchange for monetary bribes.

[7] The claimant avers that the gravity of the allegations and the extent of the publication via the internet are important considerations for the court in this case. The claimant further avers that the defendants published the defamatory words via e-mail to over 120 recipients who were members of the Commonwealth of Dominica private sector who were capable of forwarding the defamatory publication to a potentially large pool of unknown persons via the internet without the knowledge of the claimant.

[8] The claimant through her solicitors requested an apology from the defendants. The claimant states that the 2nd defendant admitted that the 1st defendant published the alleged defamatory statements and the 2nd defendant assisted in the dissemination and publication of the defamatory words but failed to provide an apology.

[9] The claimant claims general damages, aggravated damages and exemplary damages. The claimant avers that the publication and dissemination via the internet was unfair, scandalous and outrageous. The claimant avers that the report of the defendants was unfounded as she was never consulted on her views. The claimant further states that the publication imputes corrupt and criminal conduct while she was in the public service employed as a customs officer.

[10] The claimant is seeking General Damages including Aggravated Damages in the sum of not less than \$200,000.00 and Exemplary Damages of not less than \$50,000.00.

[11] The claimant in support of her claim cited the followings authorities:

(1) **Dr. Edmund Mansoor v Eugene Silcott ANUHCv 2010/0209.**

(2) **Ralph Gonsalves v Edwardo Lynch & BDS Ltd (SVGCV 2002/0406).**

(3) **Gairy v Bullen & Andrew GHC No.97 of 1968.**

(4) **Morgan v Odham Press Ltd (1970) 1 WLR.**

- (5) **Edwardo Lynch v Ralph Gonsalves & BDS** (SVGHCVAP 2008/002) consolidated with 2009/004 decided June 21, 2011.
- (6) **Keith Mitchell v Steve Fassihi & Ors**(Grenada) Civil appeal No, 22 of 2003.
- (7) **Claudia Henry v Albert Thomas** (Dominica) DOMHCV 2006/0009.
- (8) **TnT News Center Ltd v John Raheal (Trinidad & Tobago) Civil Appeal 166 of 2006.**

The Defendants' Submissions

- [12] The defendants submit that the total sum of \$200,000.00 claimed by the claimant is not supported by the authorities or even the claimant's own admission and as such the claimant should not receive such an award.
- [13] The defendants contend that the authorities of **Edward Lynch and BDS v Ralph Gonsalves** and **Keith Mitchel v Steve Fassihi & Ors.** relied on by the claimant are distinguishable from the case at bar. In **Gosalves** where damages in the sum of \$140,000.00 inclusive of aggravated damages were awarded to the Hon. Ralph Gonsalves, the Prime Minister of St. Vincent & the Grenadines. Justice Edwards JA opined at paragraph 60:

"Those who have high and distinguished profiles as Mr. Gonsalves should receive a higher award than a person similarly defamed with a lessor public profile".
- [14] The defendants contend that both pleadings and evidence did not demonstrate that the claimant had a "high and distinguishable" profile as in the case of the Hon. Prime Minister in the **Gonsalves** and **Mitchel** matters (supra). The Defendants contend that these cases are distinguishable from the claimant's case and the award should be significantly less. The defendants submit that a sum of \$10,000.00 is an appropriate award for damages taking into account the authorities and all the circumstances.

- [15] The defendants relying on the authority of **Keith Mitchel v Steve Fassihi & Ors.** contend that there is no evidential basis for an award of exemplary damages as the claimant fails to satisfy that damages will not be an inadequate remedy.

Award of Damages

- [16] The purpose of an award of damages in a defamation action is threefold in nature:
- (1) to compensate the claimant for the distress and hurt feelings;
 - (2) to compensate the claimant for any injury to her reputation, which must be proved or may reasonably be inferred; and
 - (3) to serve as an outward and visible sign of vindication.

See TnT News Centre Ltd v John Raheal¹

- [17] In an action for libel the law presumes that some damages will flow when the defendant publishes to a third party in a permanent form, some wrong or imputation that is injurious or would tend to lower the plaintiff in the estimation of right-thinking members of the society generally.

- [18] **Gately on Libel and Slander²** explains:

"The purpose of general damages in cases of libel cases is to compensate the plaintiff for the effects of the defamatory statement, but compensation...is a more complex idea than it is in the case of injury to person or property by negligence. It has been said that general damages serve three functions: to act as a consolation to the claimant for the distress he suffers from the publication of the statement; to repair the harm to his reputation (including, where relevant, his business reputation); and as a vindication of his reputation"

- [19] There are several factors that are to be taken into consideration in any assessment of damages in a defamation action namely:³

¹ Per Kangaloo JA Trinidad & Tobago Civil Appeal No. 166 of 2006

² Gately on Libel and Slander 9th edition at pages 201-202

³ TnT News Centre Ltd v John Raheal (supra)

- (1) The extent of the publication;
- (2) The gravity of the allegation;
- (3) The extent and nature of the impact upon the claimant's feelings, reputation or career;
- (4) The conduct and behaviour of the defendant taking into consideration matters of aggravation or mitigation.

[20] The court is entitled to take into consideration the conduct of the plaintiff, the claimant position and standing, the nature of the libel, 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 libel was published down to the verdict.

The extent of the publication

[21] The claimant claims that the first defendant caused to be published and disseminated via e-mail various correspondence entitled "Asycuda Press Release" and compiled numerous letters in a single word file. The claimant contends that the email was sent and copied to more than 100 business houses and other persons known and unknown including the members of the private sector. The claimant contends that the defamatory words were published on the internet to numerous persons who had the ability of forwarding the email to numerous other recipients in the Commonwealth of Dominica and the world at large.

The Gravity of the Publication

[22] The claimant at the time of the publication was a customs officer employed by the Government of the Commonwealth of Dominica. The claimant avers that she had to resign from her position as it became so uncomfortable in her working environment at the customs department as she was expected to interact with members of the private and public sector. The claimant said that she was unable

to obtain employment in the private sector and had to work in a family run business after her resignation.

The extent and nature of the impact upon the claimant's feelings, reputation or career

- [23] The claimant in the affidavit in support deposed that she was deeply hurt and embarrassed by the numerous allegations of fraud and bribery made against her by the publication of the email correspondence through the medium of the internet to more than 100 known recipients and to a potential group of unknown recipients. The claimants further deposed that her reputation as a customs officer was gravely tarnished as she suffered considerable embarrassment, ridicule and distress as the email exposed her to public scandal and contempt.

The conduct and behaviour of the defendant taking into consideration matters of aggravation or mitigation

- [24] The claimant contends that to date she has not received an apology from the defendants which points to the malicious intent.
- [25] The defendants in response state that they did not persist in the allegations and by letter in response indicated that the emails had been hastily retracted after they were disseminated.

The Award of Damages

- [26] Counsel for the claimant cited several cases on libel as a guide in assessing the quantum of damages including;

Dr. Edmond Mansoor v Eugene Silcott⁴ where Michel J made an award of \$10,000.00 to compensate the claimant, a minister of government, for libel published in a calypso. The claimant in that case claimed that the defamatory words published in song meant that he was bribing other ministers of government.

⁴ ANUHCV 2010/0209 decided on 1st March 2012

TnT News Center Ltd v John Rahael (Trinidad and Tobago)⁵ where Kangaloo JA in an appeal against an award of \$400,000.00 in damages to the respondent, a government minister, in an action for libel relating to a defamatory headline and article published in a newspaper. The amount of damages was reduced to \$250,000.00 on appeal. The Court held that the award of damages by the learned judge in the court below was disproportionate to the damage shown to have been suffered by the respondent.

David Carol Bristol v Dr. Richardson St .Rose (St. Lucia)⁶ Rawlins JA allowed an appeal and awarded the sum of \$40,000.00 general damages for an action in libel in a letter.

Ralph Gonsalves v Edwardo Lynch & BDS Ltd (St. Vincent & the Grenadines)⁷ Master Mathurin awarded aggravated damages in the sum of \$160,000.00 to the appellant, the Prime Minister of St. Vincent in an action for defamation case which involved publication in the media.

Edwardo C.Lynch v Ralph Gonsalves;⁸ **BDS Limited v Ralph Gonsalves** (Saint Vincent & The Grenadines) Edwards JA allowed the appeal on assessment of damages and reduced damages to a sum of \$140,000.00 to the respondent (the Prime Minister of Saint Vincent & The Grenadines) for defamation and slander through publication in the radio broadcasts.

[27] Upon review of the evidence the court is of the view that the publication was defamatory of the claimant and as a result the claimant is entitled to general damages to compensate for the injury to her feelings, embarrassment and humiliation suffered both personally and professionally as a customs officer.

[28] In an assessing 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

⁵ Civil Appeal no.166 of 2006 delivered on 9th July 2009

⁶ Civil Appeal No. 16 of 2005 delivered February 2006

⁷ SVGHCV2002/0406 delivered 26 November 2008

⁸ Consolidated Appeals HCVAP2009/002 & CVAP2009/004 delivered on 21st June 2011

professional reputation, honour, courage, loyalty, and the core attributes of her 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 published to a handful of people. **See John v MGW**⁹.

[29] According to the evidence the defamatory statement was published to more than 100 persons via email. The publication in this case was not restricted only to the recipients of the email. The publication has the potential of being transmitted not only in the Commonwealth of Dominica but to millions on the World Wide Web. The publication on the World Wide Web is stored permanently in cyberspace and can at any time be accessed by anyone anywhere on the globe. The publication cannot be retracted or recalled. The defamation is available for viewing as long as the World Wide Web exists. **See Marina Marshall v Lenisha Augustine et al**¹⁰.

[30] The unfortunate impressions left by the email published on the web may last a lifetime. In such a case as in most libel cases the claimant would seldom have the opportunity of replying and correcting the record in a manner that will truly remedy the situation. The law therefore presumes damage arising from the publication and the plaintiff is entitled to look to an award of damages sufficient to vindicate her reputation according to the seriousness of the defamation and the range of its publication.

[31] The claimant states that as a result of the publication she was forced to resign from her position as a customs officer and has been unable to obtain employment in the commonwealth of Dominica. The extent of the publication in the case at bar is distinguishable from the case of **Elwardo C.Lynch v Ralph Gonsalves**;¹¹ **BDS Limited v Ralph Gonsalves** where the defamatory statements were made in a radio broadcast and had limited transmission broadcast on the radio station in St. Vincent & the Grenadines and was not broadcasted on the internet. The publication did not affect the earning capacity of the Prime Minister. The

⁹ (1966) 2 All E. R. 36 at page 47

¹⁰ DOMHCV 2001/0318 delivered on September 23,2009

¹¹ Consolidated Appeals HCVAP2009/002 & CVAP2009/004 delivered on 21st June 2011

publication of the libel in the case at bar was not in transient form as in the cases previously mentioned.(supra).

[32] In assessing damages in this matter, therefore, this court was guided by the principles enunciated above as well as the evidence before it. It was borne in mind that the assessment of damages in a libel action is a compensatory and not punitive exercise. It appears that the statement complained of was as a result of on-going investigations at the customs department. However there was no justification for the dissemination of the information to the recipients of the email in the manner it was sent. In this modern age of technology people are to be mindful of the adverse effects and the permanent nature of unsavoury emails affecting one's reputation. Based on the evidence, this court forms the view that the nature of publication was defamatory of the claimant and that she is entitled to general damages so as to compensate her for the injury to her feelings, reputation (both personal and professional) and the distress caused.

[33] In view of the foregoing and giving the circumstances surrounding the facts in this matter, the disrepute in addition to the injury to feelings, humiliation, distress, damage to the claimant's professional reputation and for vindication of reputation, a more substantial award should be granted in this instant case as the extent of the publication was far wider than the above cited cases. Also, the defendants never filed a defence to the claim neither was there ever any apology. The defendants merely stated in a letter addressed to counsel that the email was accidentally circulated by an officer in the performance of her duties.

[34] In **Elwardo C.Lynch v Ralph Gonsalves; BDS Limited v Ralph Gonsalves**).
Edwards JA at paragraph 58 states:

"Having reviewed this evidence along with the evidence of...I have concluded that there is some merit in the submissions of learned counsel Mr. John. The Master in fact accepted that the live broadcast on NICE Radio Station had limited transmission broadcast in St. Vincent and the Grenadines and she acknowledged that it was not published on the internet."

The Court in **Gonsalves** noted that the defamatory publication via the internet is not confined to persons in the immediate environs as in defamatory publications via radio or television broadcasts. It appears that the Court would have granted a more substantial award in **Gonsalves** had the libel been published over the internet.

[35] In **Victoria Alcide v Helen Television System Limited et al**¹² Wilkinson J made awards for general damages \$140,000.00, aggravated damages, \$50,000.00 and exemplary damages, \$50,000.00 severally against a television station and a radio station respectively for defamatory statements published via television and radio broadcasts and also over the internet. The claimant in that case was the Deputy Director at the Prisons.

[36] The Court takes into consideration the evidence, authorities, submissions, extent of the publication and the standing of the claimant in society. The Court notes that the claimant did hold a high and distinguishable profile as in **Gonsalves, Mitchell and Alcide** cases (supra). In the circumstances an award in general damages inclusive of aggravated damages in the sum of \$120,000.00 is made to the claimant.

[37] The court is not convinced that exemplary damages should be awarded for libel in this case. According to the learning in **Halsbury's Laws of England**:

“exemplary damages will only be awarded for libel or slander where the plaintiff pleads and proves that, at the time of publication, the defendant knew that the publication would be tortious, or was reckless as to whether or not it was, and nevertheless decided to publish the words complained of because the prospects of material advantage outweighed the prospects of material loss. The mere fact that the words were published in the ordinary course of a business run with a view to profit is not of itself sufficient to establish the required calculation of material advantage.”

[38] In the present matter, the claimant has not shown that the defendants got any material advantage from the libellous statements published. The defendants claimed that the email was sent in error. It appears from the evidence that the

¹² SLUHCV2011/0398 delivered on 26th October 2011

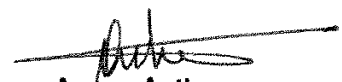
reports were all during an on-going investigation within the customs department. There is no evidence to indicate that the publication was actuated by malice or made with a view to a profit. This Court is of the opinion that the case at bar is not an appropriate one for an award of exemplary damages for libel.

[39] The claimant is seeking an injunction to restrain the defendants from further publishing the defamatory statements but has not provided any evidence or basis to grant the injunction and as such the relief is denied.

Order

[40] Having considered the evidence, submissions and authorities cited the following Order is made;

- (1) General damages inclusive of aggravated damages in the sum of \$120,000.00.
- (2) Interest at the rate of 5% from the date of this order until payment is granted to the claimant.
- (3) Costs on the basis of Prescribed Costs granted to the claimant.


Agnes Actie
Master [Ag.]