

EASTERN CARIBBEAN SUPREME COURT  
IN THE HIGH COURT OF JUSTICE  
IN THE COMMONWEALTH OF DOMINICA

[Civil]

CLAIM NO. DOMHCV2012/0267

BETWEEN:

[1] MAURIUS PELTIER Claimant

and

[1] POLICE CONSTABLE JEFFERSON DRIGO  
[2] POLICE CORPORAL CHAUCER JAMES  
[3] ATTORNEY GENERAL OF  
[4] THE COMMONWEALTH OF DOMINICA Defendants

**Appearances:**

Mrs. Dawn Yearwood-Stewart and Miss Saudia Cyrus  
of Dawn Yearwood Chambers for the Claimant

Miss Tamika Hyacinth of the Attorney General's Chambers for the Defendants

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2013: September 24<sup>th</sup>

2014: January 23<sup>rd</sup>  
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**JUDGMENT**

[1] **Thomas, J. [Ag.]:** In his Claim Form filed on 21<sup>st</sup> August 2012, the Claimant, Marius Peltier claims against the defendants: Police Constable Jefferson Drigo, Police Corporal Chaucer James of Police Headquarters, Roseau and the Attorney General of Government Headquarters, Roseau, Dominica, the following remedies: namely, damages, including aggravated, and exemplary damages for assault and battery, interest at such further and other relief as the court deems just.

[2] The claimant's case is that on or about 21<sup>st</sup> May, 2012 the first and second defendants and a number of other police officers wrongfully and intentionally assault and beat the claimant by punching and kicking the claimant on the upper part of his body and head causing him pain, suffering, grave distress and discomfort. It is the claimant's further case that on account of the assault and battery, as alleged, he has suffered loss and damage namely: small scalp hematoma, cervical muscle spasms, blunt trauma to the chest, soft tissue injuries to the elbow, lumbalgia and orchitis.

#### **Defence of first and second defendants**

[3] The defendants aver that on the day in issue, being 21<sup>st</sup> May 2012, the first and second defendants with other police officers went to the claimant's residence to execute a search warrant and gained entry to the said premises after being repeatedly ignored by the claimant who was at home at the time.

[4] The defendants further averments are: the claimant was not beaten by the first and second defendants or any other police officer, if at all the claimant suffered injuries they were not caused by the first and second defendants or any other police officer, after the claimant was arrested he was held by the waist of his pants and the second named defendant walked in with him, the claimant was lawfully arrested and dealt with in accordance with standard police procedure.

#### **Defence of the third defendant**

[5] The defence of the third defendant contains the same or similar averments to those of the first and second defendants. It is however averred that the third defendant is the Chief Legal Advisor to the Government of the Commonwealth of Dominica

#### **Reply**

[6] In reply the claimant joins issue with the defendants on their defences except in so far as the same consists of admissions. In particular, paragraph 8 of the defendants defence is questioned on the averment regarding the defendants hearing noises in the house, the refusal to open the door, and the defendants waiting until the said door was opened.

## **Evidence**

### **Marius Peltier**

- [7] In his witness statement, the claimant, Marius Peltier, speaks of the events of the morning of 21<sup>st</sup> May, 2012 when police officers Drigo, Benjamin, Cuffy and James were seen outside his door. According to Peltier, the following ensued: the police officers were asked for a search warrant by the claimant, the police officers burst the claimant's door, the police officers began to search the claimant's home, Officer James began beating the claimant, the claimant was taken to Police Headquarters where he was questioned concerning a number of robberies, the claimant, was charged with possession of marijuana with intent to supply and other charges and placed in a cell.
- [8] Under cross examination Peltier testified that the police officer did not identify themselves but he knew all of them. The claimant also denied pushing Officer James, behaving badly, cursing, interfering with the officers.
- [9] In further cross examination the witness testified as to the beating he received from the police. According to him, he was beaten all over his body including the neck, throat, back and private parts. He also testified that when he was taken to the hospital he was spitting up blood.

### **Hermina Delsol**

- [10] Hermina Delsol, the mother of the claimant also gave evidence as to the noise she heard from her home at 13B Virgin Lane, Roseau.
- It is the evidence of this witness that when she went to the claimant's house she saw one "Chaucer" beating up and roughing up her son. It is also her evidence that she could see her son's face swollen, his mouth was bleeding and blood was showing through his teeth.
- [11] In cross examination the witness repeated much of what she said in her evidence in chief.
- [12] In re-examination Hermina Delsol testified that when she reached her son's house, she heard her son screaming and she also heard lashes and slaps. In answer to a question from the court the witness said that it took her 5 -10 seconds to walk to her son's house.

## **Laverne Louis**

- [13] Laverne Louis in her evidence in chief said that she is the claimant's neighbor and went on to give further evidence of what she heard and saw on the morning of 21<sup>st</sup> May, 2012. Essentially, the evidence in this connection is that she saw the door to the claimant's house broken down and five police officers were there; and of certain verbal exchanges between the claimant and two of the officers.

## **Defendants' evidence**

- [14] The evidence on behalf of the defendants was given by Acting Corporal Jefferson Drigo, Corporal Chaucer James, Constable Gairy Benjamin and Inspector Cuffy.
- [15] The officers' evidence surrounds the investigation of a burglary which occurred at Universal Elegance in Roseau, the obtaining of a warrant to search the home of the claimant, the procedure followed in order to gain entrance to the claimant's house, the search carried out at the claimant's house, the discovery of what appeared to be cannabis, the denial of force being used against the claimant, and the claimant being charged.
- [16] In connection with the issue of force being used against the claimant, this is what Corporal Chaucer James said in his evidence in chief: "The only physical interaction I had with the claimant was at the house where I used reasonable force to subdue him when he refused to sit. I did not beat up the claimant, neither did I see any police officer beat up the claimant." Inspector Cuffy also gave evidence that: "necessary force was used to subdue the claimant."
- [17] Under cross examination various witnesses denied that the claimant was beaten up; but Acting Corporal Jefferson Drigo did testify that he saw PC James punch the claimant in his neck. And he added that: "It is not beating in my books."

## **Issues**

- [18] The following issues fall to be determined:-
1. Whether the assault and battery alleged by the claimant was caused by the defendants or any of them.

2. Whether the claimant is entitled to damages, included aggravated and exemplary damages.

### Issues No. 1

[19] Whether the assault and battery alleged by the claimant was caused by the defendants or any of them.

The claimant in his statement of claim, in the particulars of assault and battery pleads in part as follows:

- (e) At the Criminal Investigations Department the claimant was taken into a room where he was beaten all over his body by the first and second Defendants and other police officers who taunted him while doing so by telling him "you can talk now? Talk now"
- (f) Before being placed in the cells, forcibly patting, slapping and frisking areas of the claimant's body much to his distress.

[20] In evidence is a medical certificate issued by Dr.Irving McIntyre in respect of Marius Peltier – it states as follows:

*"The above was examined on 23<sup>rd</sup> May, 2012 in view of injuries sustained on the 21<sup>st</sup> May 2012.*

*On examination the patient was in moderate painful distress with stable vital signs.*

*Mr. Peltier was found to be suffering from:*

- *a scalp hematoma*
- *a cervical muscle spasms*
- *blunt force trauma to the chest*
- *soft tissue injuries to the elbow*
- *lumbalgia*
- *orchitis"*

## Submissions

[21] In submissions on behalf of the claimant Learned Counsel, Mrs. Dawn Yearwood-Stewart, in terms of the defendants' evidence seeks to show differences in "its material particular." Emphasis is placed on the alleged events at the Criminal Investigations Department after the claimant was taken from his home on the said 21<sup>st</sup> May, 2012.

[22] Learned Counsel examined the relevant aspects of the evidence to show that all the defendants, except Inspector Cuffy, claimed not to have gone to the Criminal Investigations Department where the claimant was allegedly beaten. The submissions continue thus:

" 17 It is interesting to note that all the defence witnesses except Officer Cuffy stated categorically that they did not go into the Scenes of Crime Section with the claimant. Officer Drigo says he did not go to the Criminal Investigations Department. When put to Officer James that he stated that he left the claimant with Officer Drigo he paused momentarily and then stated thus: 'for a short while Officer Drigo was in the yard. Drigo came to the Criminal Investigations Department while I was with the claimant. Drigo was in the office.' It is clear we submit that the defendants are not being truthful with regard to the claimant's allegation of battery upon his person at the Criminal Investigations Department while we are unable to deny that he was beaten at his home in Virgin Lane, as the claimant stated "Police for Police", none of them would implicate themselves or each other about their unlawful actions.

18. The claimant testified that Officer Theophile witnessed him being beaten. When under cross-examination he was asked why he did not call Officer Theophile to testify on his behalf the claimant had this to say: "he is a police officer and I know for myself police for police."

19. From the foregoing there is no dispute that the named Defendants and two other police officers went to the claimant's home to conduct a search. That they banged the door, that he opened it, that there was a scuffle between the claimant and Officer James and that Officer James beat the Claimant by punching him in his neck and that all the witnesses in the matter were present at the home of the claimant."

[23] Learned Counsel for the defendants, Ms. Tamika Hyacinth, submits that based on the evidence presented to the court, on the balance of probabilities, the defendants are not liable for assault or battery on the claimant.

[24] The submissions go on to substantiate the defendants' case by saying that: the claimant's evidence is unreliable; as well as that of the claimant's mother, and another of the claimant's witnesses, Laverne Louis, Detective Theophile not being a witness it cannot be said that he saw or

did not see; and as such this apex of the claimant's evidence cannot truly be tested and is of little or no evidential value.

- [25] In so far as the medical evidence is concerned, the submissions seek to cast doubt. In this regard also in a number of respects, including the absence of any indication of injury to the claimant's neck, and the inconsistency between the evidence of the claimant that he was beaten all over his body which cannot be gathered from the medical certificate.

### **The law of assault and battery**

- [26] The assault is an intentional or reckless act that causes someone to be put in fear of immediate physical harm. On the other hand, battery is the intentional or reckless application of force to someone without his consent<sup>1</sup>. Of immediate concern is the requirement of intention with respect to both torts. In this regard, this is a reasonable inference to be drawn from all the circumstances.

### **The circumstances**

- [27] In evidence is a search warrant given by the District Magistrate on 21<sup>st</sup> May 2012 based on evidence given on oath by PC Drigo "that there is a reasonable cause to believe that certain property, to wit, jewellery items, electronic items including DVD player, gameboys, playstations, lap top computers and cellular phones alleged to have been stolen/dishonestly obtained is on certain premises, to wit the premises of Marius Elijah Peltier of Virgin Lane."

- [28] It is accepted on all sides that the search warrant was executed on the premises of Marius Peltier on the said 21<sup>st</sup> May 2012 and ended with the claimant being charged in other respects.

- [29] Other aspects of the circumstances are:

- (1) PC Jefferson Drigo testified under cross examination that he was in charge of the investigation of the Muslim Store. The value of the goods was in excess of \$300, 000.00
- (2) At paragraph 12 of his witness statement the claimant gives this evidence:  
"12. Then Officer Drigo took me into another room and started talking to me about some gold story which I didn't know anything about. He told me he had proof of seeing me in a

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<sup>1</sup> See: Cleek and Lindse on Torts at paragraph 17:03

video outside Green's Wholesale Supermarket at 4 minutes past 1 a.m. when the Muslim Store was robbed.

13. Officer Drigo started to question me about another robbery in Goodwill. He tell me he putting me for that one too."

- (3) Four police officers were present when the search warrant was executed at claimant's premises.
- (4) Officer Drigo testified under cross examination that he saw PC James punch the claimant on his neck which in his books is not beating.

[30] Intention to commit assault or battery is a matter of inference to be drawn from all the circumstances. But while the court accepts the evidence that the claimant at the material time behaved in an unruly manner, the question becomes whether section 13 (1) of the **Criminal Procedure Act** can avail the defendants. It provides that:

"A person may use such force as is reasonable in the circumstances in the prevention of a crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

[31] In the full spectrum of the evidence the court accepts that there are discrepancies in the evidence on both sides; but it is the finding of the court that assault and battery were committed by the defendants on the claimant. It is also the further determination of the court that section 13 of the **Criminal Procedure Act** cannot avail the defendants for the reasons given below.

[32] In the context of the presence of four police officers executing a search warrant and the claimant being struck initially in the neck by Officer James it is reasonable to infer that the action by one of the defendants, such action was intentional and sufficient to put the claimant in fear for his safety.

[33] With respect to the question of battery, the submissions on behalf of the defendant seek to cast doubt on the evidence on a whole, including the medical certificate in evidence. In this connection the fact that the medical certificate did not reflect all the injuries, as alleged by the claimant, does not weaken its evidential value.

- [34] The court finds it necessary to highlight the attempts by the defendants, except Officer Cuffy, to say that they were not present at the CID when the claimant was being questioned. This the court cannot accept this especially since it included Officer Drigo who was in charge of the investigation. Another issue is the fact that the submissions cast doubt on the evidential value of the medical certificate, on the one hand, but on the other, seeks to rely on it in terms of the long term effect of the injuries claimed.
- [35] The facts accepted by the court in this regard are that the alleged events took place on 21<sup>st</sup> May 2012, on the same day the claimant was taken to CID where he was questioned and beaten, the claimant was later charged, taken before a Magistrate and was granted bail; and on 23<sup>rd</sup> May 2012 the claimant was examined by the doctor.
- [36] There is no evidence that the claimant was involved in any physical altercation with any other persons at the CID to give rise to the injuries identified by the doctor.
- [37] The claimant stated that he received injuries to his neck, chest, elbows and private part. The doctor in effect corroborated the claimant with respect to his scalp (head), chest and elbow. Added to this, PC Drigo corroborated the claimant's evidence that PC James struck the claimant on his neck. Lumbalgia and orchitis are technical findings of the doctor which are not articulated by the claimant in that manner.
- [38] In all the circumstances the extent of the force used on the claimant cannot be reasonable within the meaning of section 13 (1) of the **Criminal Procedure Act**. Further the court does not accept the defendants' submission that the actions were necessary to subdue the claimant to prevent him from obstructing the search and to allow the officers to make an arrest. This is because the submission only relates to action at the house and not those at the CID. In any event there were four officers as against a single claimant. The defendants are therefore liable for assault and battery and the claimant is entitled to damages.

[39] **Damages (assault and battery)**

**Submissions**

In placing reliance on **McGregor on Damages**<sup>2</sup>, Learned Counsel for the claimant submits that the claimant is liable to damages where assault and battery results in physical injury. Such damages are based on the same heads of damages such as pain and suffering and loss of amenities, loss of expectation of life and loss of earnings. The submissions on this point end thus “We submit that actuated by malice, spite and ill will towards the claimant, the police officers exacted cruelty upon his person by beating him most severely while he was in his custody. He should we submit receive that extra award of damages which is outside of compensatory award for the conscious and yet outrageous conduct of these two police officers.”

[40] The submissions on behalf of the defendants go directly to the matter of quantum. In this connection the cases of **Shayne Richards v. Attorney General of Anguilla**<sup>3</sup> and **Edread Stout v. Commissioner of Police**<sup>4</sup> are cited.

**Assessment**

[41] In accordance with the reminder provided by the Privy Council in **Tong v. L. I. Ping Sum**<sup>5</sup> awards of damages should be confined to the same or neighboring jurisdictions, the court looks at the following awards:

1. In **Mahadeo Sookhai v. Attorney General of Trinidad and Tobago**<sup>6</sup> an award of \$25,000 was made in 2007 for assault and battery. The medical evidence accepted by the court involved: 1. tender and swollen nose bridge; 2. Bilateral periorbital haematoma (i.e. bilateral black eyes), tenderness and swelling of both temples; 4. Tenderness and swelling of left anterior chest wall; 5. Abrasions anterior aspect of both knees.

2. In **Shayne Richardson v The Attorney General of Anguilla and Anor**<sup>7</sup>, EC\$6000.00 was awarded as damages for assault and unlawful search.

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<sup>2</sup> 16<sup>th</sup> Edition at paras. 18-84

<sup>3</sup> Claim No. AXAHCV2008/0012

<sup>4</sup> Claim No. BVIHCV2001/0119

<sup>5</sup> [1985] AC 445

<sup>6</sup> HCA No. S. 184A of 2003

<sup>7</sup> Loc. Cit.

3. In **Myster Peter Matthew v Attorney General**<sup>8</sup> the damages for assault and battery was \$10,000.00. this case involved a claimant being shackled with handcuffs and placed on a chair when the claimant attempted to leave the police station. This happened in the presence of the claimant's wife and three minor children,

4. In **Yohanna George v Vernon M. O'Brien and Attorney General of Dominica**<sup>9</sup> the claimant was awarded \$25,000.00 inclusive of an uplift for aggravated damages. This case involved the claimant being assaulted and beaten by the 1<sup>st</sup> defendant and suffered injuries.

5. Finally, in **Danny Severin v The Attorney General**<sup>10</sup> \$12,000.00 was awarded for pain and suffering and loss of amenities based on assault and battery by police officers.

[42] An award of damages for assault and battery are general damages which are determined by the sub-heads of general damages laid down by Wooding CJ in **Cornilliac v St. Louis**<sup>11</sup>. These are: 1. nature and extent of injuries suffered; 2. Nature and gravity of the resulting physical disability; 3. Pain and suffering endured; 4. Loss of amenities; 5. Extent to which the claimant's pecuniary prospects have been affected.

[43] In the case at bar the only sub-head that is applicable is nature and extent of injuries sustained. These have been outlined above.

[44] Having regard to the awards for assault and battery the court considers that the injuries sustained by the claimant are less than those sustained by the claimant in **Mahadeo Sookhai v Attorney General of Trinidad and Tobago**, but more than those in the **Shayne Richards** case and the **Myster Peter Matthew** case in which the awards were \$6000.00 and \$10, 000.00, respectively. At the same time the award in the **Yohanna George** case of \$25, 000.00 included an amount for exemplary damages.

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<sup>8</sup> Civil Suit No. 472 of 2000

<sup>9</sup> DOMHCV2010/0013

<sup>10</sup> Claim No. SLUHCV2008/0973

<sup>11</sup> [1964] 7 WIR 491

[45] In all the circumstances having regard to the awards and the dates of the award the court determines that the award for assault and battery is \$15,000.00.

#### **Aggravated damages and exemplary damages**

[46] With respect to aggravated and exemplary damages, Learned Counsel for the claimant places reliance on dicta in the cases of **Shayne Richardson v The Attorney General**, in the case of aggravated damages and the case of **Superintendent of Prisons v Attorney General of St. Vincent and the Grenadines**.

[47] In the case of aggravated damages the dictum enunciated by acting Justice Tana'ania Small Davis is to the effect that aggravated damages are awarded by the court by way of additional compensation for injury to a claimant's proper feelings of pride and dignity and the consequence of being humiliated. On the other hand, in the case of exemplary damages the dictum is to the effect that exemplary damages is exceptional which go beyond compensation of the injured party and is considered to be a measure of punishment for the defendants' action.

[48] The submissions on behalf of the claimant continue in this way:

"Exemplary damages should be awarded over and above compensatory damages where those damages are still inadequate to show disapproval and deter the defendant from repeating it: **Cassel & Co Ltd v Broome**<sup>12</sup> everything which aggravates or mitigates the defendant's conduct is relevant. If the conduct of the claimant provoked the assault, the provocation is relevant to the question whether to award exemplary damages." See paragraphs 32, 33, 34 and 35 of Judgment in **Shane's case**.

We submit that the taunting by police officer James when they told the claimant at the Criminal Investigations Department, "Yes, you doe have no mouth now, you can talk now, talk now," together with the slap behind his head suggests oppressive arbitrary or unconstitutional conduct by servants of the Government.

We submit that there is no evidence that what transpired at the claimant's home should cause him to suffer scalp haematoma, cervical muscle spasms, blunt trauma to the chest, soft tissue injuries

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<sup>12</sup> [1972] A.C. 1027

to the elbow, lumbalgia and orchitis are clearly indicated on his medical report. The defence says that the claimant who opened the door for them to enter behaved violently and aggressively and they were forced to put the claimant to sit. The injuries seen by the doctor could not have been as a result of putting him to sit. In any event the claimant denies the defence's version of events."

[49] In the case of the defendants the submissions reflect an award of aggravated damages but contends that an award of exemplary damages is sufficient to punish the defendants.

[50] The submissions go on to detail the circumstances in which an award of exemplary damages is made and the relevant considerations. The submissions go on to say that an award of exemplary damages is made to show that the court will not tolerate the conduct of the defendant, for this proposition the case of **Kuddos v Chief Constable of Leicestershire**<sup>13</sup>, and the amount should be that which the court considers reasonable and adequate to punish and deter the defendant and others and to teach wrongdoers that tort does not pay. The case of **Danny Ambo v Michael Laudat and the Attorney General of Dominica**<sup>14</sup> .

[51] A further submission on behalf of the defendants is that provocation is relevant to the award of exemplary damages. And further that the defendants' evidence is that the claimant behaved in an aggressive and violent manner in the house especially towards the 2<sup>nd</sup> defendant.

[52] Finally, it is submitted on behalf of the defendants that:

"The defendants therefore submit that the claimant may be entitled to exemplary damages if the court prefers the claimant's evidence of what happened at the CID. The defendants submit that based on the cases of **Danny Ambo v. Michael Laudat and the Attorney General**<sup>15</sup> an award of \$10,000.00 would be appropriate for exemplary damages. That would be sufficient to fulfill the purpose of exemplary damages."

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<sup>13</sup> [2002] A.C. 122

<sup>14</sup> Claim No. DOMHCV2010/0030

<sup>15</sup> Claim No. DOMHCV2010/0030

## Conclusion

[53] The submissions on both sides converge on the central purpose of an award of exemplary damages are to punish, deter and prevent. The purposes are explained further in this way:

“The defendant has committed a wrong in an unconscionable manner and for this he should be made to suffer punishment. At the same time this should both deter him from repeating his conduct, and deter others from acting in a similar way. Lastly, it is preventative in two senses: it should prevent the [claimant] from deriving of a tort, where the material benefit he procures exceeds the compensation payable to the [claimant].”

[54] Based on the authorities and the evidence accepted by the court, it is the determination of the court that an award of exemplary damages is appropriate in this case. As Learned Counsel for the claimant submits there is nothing in the evidence to justify what the claimant suffered at CID as revealed by the medical certificate necessitating the description of “analgesics and prophylactic antibiotics.”

[55] Having regard to the award for exemplary damages in cases **Mohaded Sookhai v The Attorney General of Trinidad and Tobago**<sup>16</sup> (unreported); **Myster Matthew v The Attorney General of Dominica**<sup>17</sup>, **Yohanna George v The Attorney General of Dominica et al**<sup>18</sup>, **Danny Ambo v Michael Laudat and the Attorney General of Dominica**<sup>19</sup>; in the Commonwealth Caribbean plus the time and the inflation factor the award of the court is \$7000.00.

[56] With respect to aggravated damages, the court does not consider such an award to be warranted. The events at the house took place in the house and when the claimant was taken from the said house he was under lawful arrest in relation to an item found therein. Therefore, the matters of pride and humiliation do not arise. Nor does the court accept that the claimant was bleeding from the mouth.

## Costs

[57] The claimant having succeeded on his claim is entitled to prescribed costs.

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<sup>16</sup> Claim No. HCV2006-00986

<sup>17</sup> Civil No. 472 of 2000

<sup>18</sup> Claim No. DOMHCV2010/0013

<sup>19</sup> Claim No. DOMHCV2010/0030

**ORDER**

[58] IT IS HEREBY ORDERED AND DECLARED as follows:

1. The extent of force used against the claimant cannot be reasonable within the meaning of section 13 (1) of the Criminal Procedure Act.
2. The court does not accept the submissions on behalf of the defendants that it was necessary to subdue the claimant to prevent him from obstructing the search and to permit an arrest to be made since those events only relate to the claimant's house at Virgin Lane.
3. The defendants are therefore liable for assault and battery in relation to the claimant.
4. The claimant is awarded damages in the sum of:
  - (a) \$15,000.00 for assault and battery; and
  - (b) \$7000.00 by way of exemplary damages.
5. An award of aggravated damages is not warranted in all the circumstances.
6. The claimant is entitled to prescribed costs.

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**Errol L. Thomas**  
**High Court Judge (Ag.)**