

EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: ANUHCV2014/0449

BETWEEN:

CHARLES HUNTE

Claimant

and

LORETTA PHILLIP

First Defendant

OBSERVER RADIO LIMITED

Second Defendant

DAVE JOSEPH

Third Defendant

Before:

Eddy Ventose

Master [AG.]

Appearances:

Mr. Cosbert Cumberbatch for the Claimant

Mr. John Fuller for the First Defendant

Mr. Dane Hamilton for the Second and Third Defendant

2016: November 23

2017: January 11

JUDGMENT

1. **VENTOSE, M. [AG.]:** The matter before the court is one for assessment of damages following the entry of judgment in default of acknowledgement of service on 15 January 2016. The Second and Third Defendants did not file Form 31 or submissions and authorities on the assessment of damages. The First Defendant filed Form 31 on 15 November 2016.

Background Facts

2. The background facts as outlined in the statement of case of the Claimant, Mr. Charles Hunte, are as follows. On 21 October 2014 the Claimant claimed against the First and Second Defendant damages for slander and libel, including aggravated damages and an injunction restraining the Defendants from further publication of words defamatory of the Claimant. The Third Defendant was subsequently added as a party.
3. The Claimant is the President of the Antigua and Barbuda Pensioners' Association (the "**Association**"), which is registered under the Friendly Society Act (CAP 184 of the Laws of Antigua and Barbuda) since March 2002. The Association emerged from a voluntary non-profit organisation that was established in 1987. The main objects of the Association are to protect the rights of older persons, to afford members a means of interacting with each other, to provide financial and other assistance to members and to improve the quality of life of members by among other things making representations to Government on issues that affect the standard of living of the elderly. The yearly membership fee is \$50.00. The Association also receives a subvention from the Government of Antigua and Barbuda of \$50,000.00 a year to assist with its day-to-day operations. The members of the Association at the Annual General Meeting (AGM) elect an Executive Committee, headed by the President.
4. The relationship between the President and members of the Executive, and other members, has not been cordial. The First Defendant was expelled by the Executive

but was subsequently reinstated by the Registrar of Friendly Societies but was again expelled.

5. During a radio programme, which was broadcasted by the Second Defendant on 26 February 2014 and hosted by the Third Defendant, the First Defendant made the following statements:

- (1) "... if you ask a question you are objecting to his order. You cannot ask a question. Our question is how does he intends to account for the money the Government gives us \$50,000.00 for the last seven years and in 2012 he reported that there were \$70,000 left on the account at ACB [Antigua Commercial Bank]. All have are asking justify in print give us the details. We do not have overhead expenses that cannot be accounted for."
- (2) "the election in 2012 was held and it was from the presentation of the account they went to Court. The accounts he submitted was not approved it was not approve by the body ... we have an auditor, Panell Kerrfoster ... They were audited but they were not clear because what he put to them was what he put to them but they were not the facts. The accounts are to be discussed in draft form by the Executive but he does not do that."
- (3) "He the Claimant amended the constitution by himself by adding how you become a member taken from normal rules of the constitution and he renamed the Association. He put it to say it is a club like Lion's Club or whatever."
- (4) "We met with the prime Minister who say he was amazed at Mr. Hunt's behaviour because when they consider giving us the money it was to assisted us having worked for low salaries and low pensions. But it doesn't go to the Association's benefit in anyway. He uses the Prime Minister and Mr. Lovell as his cushion people to get what he wants and at the same time he makes his way to get by."
- (5) "Mr. Sergeant will get the withdrawal slip bank and Mr. Hunte will fill in the figures and sign it and that Mr. Sergeant was not comfortable with that"

situation and that Mrs. Hill (Registrar Ag.) had ask Mr. Sergeant if he knows what he was doing is wrong.”

6. In addition, the First Defendant wrote on 19 December 2014 to Mr. Clovel Gardener of Panell Kerrforster as follows:

Mr. Hunte & Mr. Sergeant refused to present a Financial Report or give account to members about the financial state of the Association for at least 2009, 2010, 2011 & 2012.

They also refused to make available the books to members for inspection.

Mr. Hunte has been running the affairs of the association on his own - as a one-man show - without the involvement of the Executive Committee. When questioned about the Association's General Meeting, he either refuses to answer or try to deny the member(s) from asking any question.

The Registrar also ordered that ANY position that the above named held before the “WRONGFUL” expulsion be also be reinstated. Although the aforementioned members have ALL attended subsequent meetings and was given “a so called welcome” from the President, NONE of them has been reinstated to their former elected position.

Contrary to the association constitution, Mr. Hunte has now formed a “NEW EXECUTIVE” excluding the afore mentioned who were duly elected at the Annual General Meeting – 23 February 2012 – and who the Registrar ordered to be reinstated. Mr. Hunte has also produced against the constitution and in his own words “NEW BY-LAWS”.

All this is because Mr. Hunte, and by extension Mr. Sergeant does not want to or has any intention to give a full account of the financial state of the Association or to allow the members to examine the records.

The Claimant's Case

7. The Claimant avers that the above-mentioned statements contain allegations that he had stolen money given to the Association and has not accounted properly for the

expenditure of the Association's money and the subvention given to it by the Government of Antigua and Barbuda. The Claimant also avers that the implication of the statements was that the Claimant benefitted personally from the subvention and not the Association. The Claimant states that the statements made and published by the Defendants would cause right thinking members of the society and the public at large hearing the words to shun, ostracise and ridicule the Claimant and to hold him in contempt and public odium for such conduct. The Claimant avers that the words were published on the Voice of the People Programme on a leading radio station, the Observer Radio, and were such as to seriously injure the Claimant's character, credibility and reputation in a way that the Claimant is brought to odium, scandal and contempt among members of the public. The Claimant states the Defendants have refused to apologise or retract the statements made and published by them.

8. The Claimant avers that the statements made by the First Defendant in their ordinary and natural meaning were understood to mean that the Claimant as President of the Association had not presented any audited accounts of the financial position of the Association and had used the Association's monies for his personal benefit. This, the Claimant states, means that his reputation has been seriously damaged and that consequently he has suffered considerable distress and irreparable damage to his reputation. The Claimant avers that the general thrust of the statements made and published by the Defendants was that the Claimant was acting criminally and fraudulently and has misused or put to their personal use the funds of the Association and that the Claimant as President of the Association was in complete control of the Association's finances and did not account for the expenditure of the monies of the Association.

The meaning

9. The principles to be applied in deciding what meaning the words complained of were capable of bearing have been summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]:

(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...' ... (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.'

10. Counsel for the Claimant states that the statements made and published by the Defendants can reasonably bear the following meanings, namely, that: (1) the Claimant cannot account for the monies of the Association and that the accounts of the Association are false; (2) the subvention granted to the Association by the Government of Antigua and Barbuda does not benefit the Association directly; (3) the Claimant as President of the Association used the subvention to his own benefit and financial gain; (4) the Claimant did not present financial reports of the Association for 2009-2012; and (5) the Claimant does not want to or have any intention of giving a full account of the financial affairs of the Association or to allow members to examine the Association's records.

Examination and Cross-Examination

11. During examination, the Claimant stated that he has been the President of the Association since 2002 and was last elected President in March 2016. He also stated that the monies from the subscription of members and the subvention from the Government were used for the purposes of the Association that were, among other

things, to look after the welfare of retirees, deal with issues such as pension levels and to settle problems between pensioners and the Government. The Claimant stated that he was: (1) a Permanent Secretary in the Public Service from 1956-1972 and (2) the Collector of Customs in which position he was responsible for collecting Government revenue and general administration of the borders of Antigua and Barbuda.

12. The statements made by the Defendants, the Claimant stated, implied that he was promoting his own interests rather than those of the members of the Association. The Claimant explained that the statements were made as early as 2012 but he could not do anything then because the statements were not recorded. The Claimant also stated that he suffered embarrassment and humiliation as a result of the statements made and published by the Defendants and that he was subject to public ridicule in the streets. His wife and his three sons have also suffered embarrassment in the workplace. The Claimant noted that no apology has been received from the Defendants and that the statements made and published by the Defendants demeaned him as President of the Association.
13. In cross-examination, the Claimant admitted that similar statements were made by other members of the Association who were known as the "Concerned Group" and that those statements were circulated widely on newspapers, television and on radio. The Claimant also admitted that concerns about the Association were ventilated before two Registrars of Friendly Societies, Registrar Charlesworth Tabor in 2012 and Registrar Cecile Hill in 2015. In a letter dated 6 September 2012, Registrar Tabor ordered the Claimant to reinstate six (6) members of the Association, including the First Defendant, following their expulsion by the Claimant.
14. In her 10-page decision in 2015 in relation to complaints made in 2012, Registrar Cecile Hill made the following, among other, orders at [28] (in summary): (1) that a special meeting of the Association be convened to lay before the Trustees and membership of the Association the accounts for 2009-11 and 2013 and a report on

the status of the audited accounts for 2014 be discussed at the meeting; (2) the purported dismissal of the Public Relations Officer is declared null and void; (3) the purported dismissal of five members, including the First Defendant, is declared null and void; (4) the purported dismissal of the Trustees of the Association is null and void; (5) the purported amendment of the Constitution of the Association is null and void for non compliance with Article 18 of the Constitution; (6) the Association's building is to be made available for use of the members for meetings and socials in accordance with a policy to be agreed at the next AGM of the Association; and (7) that three (3) observers are to be appointed by the Registrar to monitor the conduct of Executive members at the next AGM.

15. Registrar Hill stated (at [26]) that it was apparent from the evidence that the Claimant's style, as President, is somewhat autocratic and that his refusal to hold a special meeting, when requested by the requisite number of members in accordance with Article 15 of the Constitution of the Association, is a clear indication of this. Registrar Hill also stated that the Claimant's tactics of inviting the police to remove members from meetings does not reflect well on him and his long-standing tenure, as President, should have given him the required expertise to manage recalcitrant members. Registrar Hill concluded (at [27]) as follows:

The Association is not the exclusive preserve of the President or the Executive and it is the duty of the Executive to ensure that policies are put in place for the benefit of all the members of the Association especially in relation to the use of the vehicle and premises. By the same token the behaviour of the members who have referred this dispute cannot be said to be exemplary and their concern in ensuring that the Association is run in a democratic way for the benefit of all is no excuse for bad behaviour. They also need to adopt a new approach in communicating their concerns while respecting the authority of the Executive.

16. It is clear that the relationship between some members of the Association and the Executive headed by the Claimant, as President, was not a cordial one. It is against

this background that the assessment of damages for libel must take place. For the purposes of this analysis the effect of judgment in default is that the Defendants are deemed to have admitted the truth of all the allegations made against them in the statement of claim (*Douglas v The Democrat Printing Company Limited* (SKBHCV 2012/0076 dated 8 October 2013) at [21]). The question is what amount of damages the Claimant should be awarded under the following heads: general damages and aggravated damages.

Damages for Libel

17. The material factors which may be relevant to the level of general damages were described by Sir Thomas Bingham MR in *John v MGN* [1997] QB 586 (at 607) as follows:

The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of 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. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion

that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way.

18. What is clear from this exposition is that many factors are to be taken into account including: (1) position and standing of a claimant and (2) the gravity of the allegation, especially insofar as it closely touches a claimant's personal integrity (*Hunt v Times Newspaper Ltd* [2013] EWHC 1868 (QB) (at [263]). In *Sealy v First Caribbean International Bank* (2010) 75 WIR 102, Chief Justice Sir David Simmons stated the following in relation to the quantum of damages to be paid for defamation (at [60]):

A court is entitled to have regard to the position and standing of the plaintiff in the nature, mode and extent of the publication; the presence or absence of an apology; the conduct of the defendant before, during and after commencement of the action; and the plaintiff's injured feelings, distress, embarrassment and humiliation.

19. It must be remembered that the main purpose of an award of damages for libel is to compensate the Claimant for the damage done to his/her reputation. The compensation paid must take into account the damage to the reputation and the other factors mentioned above in the judgment of Sir Thomas Bingham MR in *John v MGN*. According to the authors of *Gatley on Libel and Slander*, damages for defamation serve three purposes: (1) to act as a consolation to the claimant for the distress he suffered from the publication; (2) to repair harm to his reputation; and (3) as a vindication of his reputation (at para. 9.2)

General Damages

20. The evidence of the Claimant is that the libel was injurious to his reputation and that the first statements were made on a popular radio programme that was broadcast to the public at large. The extent of the publication of the defamatory statement is an important consideration in the computation of damages for defamation. The Claimant avers that he is now subject to public ridicule in the streets of Antigua and Barbuda

and that the false statements have humiliated his wife and sons. The Claimant also avers that he was humiliated and suffers public embarrassment as a result of the libel. Counsel for the Claimant states that the various statements made by the Defendants have the meaning attributed to them above at [10] above. Counsel for the Claimant also states that the Second Defendant operates a popular radio station in Antigua and Barbuda with a large listenership in Antigua and Barbuda and overseas and the defamatory material would have been heard widely as a result. Counsel states further that the Defendants have also shown total indifference to the damage done to the Claimant's reputation and have not apologised for doing so.

21. Counsel for the Claimant in submissions referred the court to *Douglas v The Democrat Printing Company Limited* (SKBHCV 2012/0076 dated 8 October 2013) where the Master dealt with an assessment of damages following the grant of judgment in default of defence. However, no attempt was made to explain how this decision is useful to the case at bar or how the various decisions that were helpfully cited by Counsel in that case to the Master were relevant or applicable to the case at bar. Counsel merely states that damages including aggravated damages would be in the range of \$75,000.00 to \$100,000.00 and referred the court to two cases which were discussed in *Douglas v The Democrat Printing Company Limited*, namely: (1) *Joseph v Derrick* (ANUHCV 2002/0383) where \$15,000.00 was awarded for general damages and \$10,000.00 in aggravated damages; and (2) *James v Joseph* (ANUHCV 2011/0007) where \$7,500.00 was awarded. It is important to remember that in defamation cases, the Claimant does not have to prove any special damage – the law presumes that the person defamed will suffer some damage to their reputation. The extent of damages will depend on the reputation the Claimant has and the extent to which it has been tarnished by the defamatory statement.
22. Counsel for the First Defendant submits that in 2012 the statements concerning the Claimant were first made by others and when in 2014 the First Defendant made them again the Claimant had no reputation to protect because the statements were already made by diverse persons. The Claimant in his evidence-in-chief gave evidence as to

his previous employment and his standing in the community as a former Collector of Customs and the immense responsibility that came with it. However, the clear evidence from the report of Registrar Cecile Hill in 2015 suggests that there were serious issues with the manner in which the Claimant conducted himself as President of the Association.

23. In supplemental submissions filed on 12 December 2016 Counsel for the Claimant simply drew the attention of the court to two (2) cases "on the matters that are to be taken into account in assessing the quantum of damages". The cases are: *Ramsahoye v Lall* (2015) 85 WIR 399 and *The Gleaner Co Ltd v Abrahams* [2004] 1 AC 628. In *Ramsahoye*, the Court of Appeal of Guyana stated as follows:

[6] In calculating the award of damages the court is obliged to take the following (among other) matters into account:

- The nature and gravity of the defamatory imputations,
- The objective of the defamatory publications,
- The conduct of the defendants,
- The manner in which the trial was conducted by the defendants,
- The distress and anguish caused by the defamatory publications,
- The aggravation attending the scale of the injury caused to the victim of the imputations,
- The calculation and deliberation preceding the defamatory publications,
- The use of the media as a weapon of character destruction and professional degradation,
- The need for compensation for libel to be an effective as well as a necessary deterrent.
- Awards in other defamation cases including awards in countries of the Commonwealth Caribbean of which Guyana is a part, and
- The effect upon an award of an obvious intention on the part of the defendants to frustrate the victim of the imputations by speculative and embarrassing allegations which they did not intend to prove.

24. The First Defendant in submissions filed on 16 December 2016 states that by the time the statement of claim was filed, the Claimant's bad reputation was well established and that the allegations on which the Claimant based his claim for damages were true. The former point may be relevant to the question of damages whereas the latter seeks impermissibly to reopen the issue of liability which has been established when judgment in default was entered against the Defendants including the First Defendant. Reference is also made to the two decisions of successive Registrars of Friendly Societies in relation to the manner in which the Claimant managed the Association. I do not agree that the words complained of by the Claimant are essentially the same as the allegations that were before Registrar Hill. The sting of the defamatory statements is that the Claimant had acted dishonestly or criminally. This went beyond what was necessary to make legitimate criticism of the manner in which the Claimant conducted the affairs of the Association as President.
25. In light of all the evidence I am of the view that the Claimant suffered damage to his reputation as a result of the defamatory statements made by the First Defendant and published by the Second and Third Defendants. The publication was done using a popular radio station, which has wide listenership in Antigua and Barbuda and perhaps elsewhere, and this has impacted on the extent of damage to reputation. The Defendants have not apologised for the statements made and published by them. The Claimant through his dealings with the members of the Association may have had a heavy hand but this does not justify the publication by the Defendants of false statements defamatory of the Claimant. Taking into account all the circumstances, the award of \$25,000.00 is justified to: (1) to act as a consolation to the Claimant for the distress he suffered from the publication; (2) to repair harm to his reputation; and (3) as a vindication of his reputation.

Aggravated Damages

26. In *Marshall v The Nation Publishing Co. Limited* (HCVBB 2010/0780 dated 24 May 2013), Worrell J stated (at [43]):

In some cases, general damages may be aggravated by evidence of the circumstances of the publication, of the motives and conduct of the defendant and of the effect which it has actually produced (Clerk & Lindsell on Torts, 19th Edition, paragraph 23-228). It should be stated at this time that aggravated damages are not punitive; they are compensatory. Aggravated damages simply uplift an award for compensation to take into account certain aggravating factors.

27. In *Bird v Spencer* (ANUHCV 2009/0185 dated 21 February 2012) Remy J stated as follows: the law is settled that general compensatory damages may be increased to take into account factors such as the motives and conduct of the defendant among others; such 'aggravated damages' are meant to compensate the plaintiffs for the additional injury, going beyond that which would have flowed from the words alone, caused by the presence of the aggravating factors. Although the defamatory statements were serious and the Defendants have failed to apologise to the Claimant, these factors alone do not justify the award for aggravated damages beyond what has already been awarded.

Conclusion

28. IT IS HEREBY ORDERED as follows:

(1) The Claimant is awarded general damages in the sum of \$25,000.00 for the libel published by the Defendants.

(2) The Claimant is entitled to prescribed costs based on the total award of damages of \$25,000.00.

29. The Claimant is entitled to interest at a rate of 5% on the sum of \$25,000.00 from the date of assessment until payment.

30. I wish to thank Counsel for the parties for their submissions and authorities.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Eddy Ventose
Master [AG.]