

EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS

IN THE HIGH COURT OF JUSTICE

CLAIM NO.: BVIHCV2013/0376

BETWEEN:

DAVID PENN

Claimant

and

PLATINUM INVESTORS LIMITED

Defendant

Before:

Eddy Ventose

Master [AG.]

Appearances:

Ms. Charmaine Rosan-Bunbury for the Claimant

Dr. Alicia Johns for the Defendant

2016: November 28

2017: January 12

JUDGMENT

1. **VENTOSE, M. [AG.]:** The Claimant seeks damages for libel against the Defendant. However, the matter before the court is one for assessment of damages following the striking out of the defence of the Defendant by the court on 6 July 2016 for not disclosing a reasonable ground for defending the claim. The Defendant did not file Form 31 or submissions and authorities on the assessment of damages as ordered

by the court on 6 July 2016. The Claimant filed his submissions and authorities on the assessment of damages on 5 August 2016.

Background Facts

2. The background facts as outlined in the statement of case of the Claimant, Mr. David Penn, are as follows. On 17 December 2013 the Claimant claimed against the Defendant damages for libel. The Claimant is an Attorney-at-Law practising in the British Virgin Islands and was employed by the Government of the British Virgin Islands as a Crown Counsel in the Attorney General's Chambers. The Defendant is the publisher and proprietor of the Virgin Islands News Online, an online daily newspaper published in the British Virgin Islands.
3. On 30 April 2013, the Defendant published the following on its online newspaper, the "BVI Platinum News" an article entitled "Court Turns Down case Against Cellular Towers Radiation Emissions". In the "blog section" of the article the following statements were made:
 - (1) "David Penn made the Govt. spend so much money on an office and now he does not work in it. Does he really want to work or just want to scam the Government and receive money for not working. There are many people who need a job or the money that he is getting for not working all these years. One day Mr. Penn will wake up to the reality of the illness that he will manifest in his life through his prophelying and say "had I known." Be careful, brother, with your words and your thoughts; they are birthed in the tomorrow".
 - (2) "This guy sounds like he's a dictator".
 - (3) "Schupps, The guy don't want to work for a living. It's as simple as that. The court did the right thing. This guy is looking for an easy way out. He would rather stay at home, do nothing, and get a government salary".
 - (4) "I really don't like criticising but this boy is a complete nuisance. Nuisance!!! Nuisance!!! Nuisance!!! And I have proof of that!"

- (5) "David Penn needs to go and live in Somalia. Then there will be no complaints. The guy is sownright lazy".
- (6) "This is so sad, for years Mr. Penn has been allowed to sit at home twidling his tumbs and collecting taxpayers dollars. How long will this be allowed to go on."

The Claimant's Case

- 4. The Claimant avers that he is an Attorney-at-Law by profession and was employed by the Government of the British Virgin Islands for 19 years in various capacities including Private Secretary to the Chief Minister, Assistant Secretary in the Chief Minister's Office, and upon completing legal studies he was appointed as a Crown Counsel in the Attorney General Chambers. The Claimant also avers that he contested the 1999 General Elections in the British Virgin Islands as a candidate for the Eighth Electoral District.
- 5. The Claimant avers that the Defendant publishes an online news site in the British Virgin Islands, which has a very wide circulation nationally and internationally on the World Wide Web with daily views from the British Virgin Islands, the Caribbean and the world, including the United States of America and the United Kingdom.
- 6. The Claimant avers that he: (1) is married with two children, a son who is 16 years old and a daughter who is 5 years old; (2) graduated from the University of the British Virgin Islands with a Bachelor of Arts degree in Business Administration (Finance) and an Associate Degree in Business Management; and (3) obtained a Bachelor of Laws degree from the University of the West Indies in 2006 and a Legal Education Certificate from the Council of Legal Education in 2008. The Claimant also avers that he was called to the Bar of the Eastern Caribbean Supreme Court in the British Virgin Islands in November 2008.
- 7. The Claimant avers that the statements made at [3] above in their natural and ordinary meaning were understood to mean that the Claimant is: (1) dishonest; (2) a

nuisance; (3) lazy; (4) an unsuitable and unfit person to hold public office; (5) lacking in virtue and not an honourable person; (6) is abusing his public office; and (7) a person with dictatorial tendencies. The Claimant avers further that in consequence his reputation has been seriously damaged and he has suffered injury to his good name and reputation and has endured odium and contempt as a result of the publication of the defamatory statements.

8. The Claimant avers that the legal profession requires that he should have a high level of personal and professional integrity, honesty and a reputation for unwavering ethical responsibility and trust. The Claimant also avers that the words published by the Defendant hurt his personal and professional reputation as the words as published communicated to the persons in the British Virgin Islands and to the world that he lacks integrity and honour. The Claimant states that the publication was widespread and was in permanent form. The Claimant also states that as a result of the publication the opportunities for his future employment and possible work for his firm have decreased. The Claimant avers that his appointment as Crown Counsel ended shortly after the publication. The Claimant also avers that he felt hurt, embarrassed and ashamed as a result of the publication of the defamatory statements. The Claimant also states that many persons have approached him about the statements and that he could see that they were shaken in the confidence they once held in him. The Claimant avers that he has not received an apology from the Defendant nor has the Defendant published an apology.

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 averse to 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 published by the Defendants can reasonably bear the following meanings, namely, that the Claimant is: (1) dishonest; (2) a nuisance; (3) lazy; (4) an unsuitable and unfit person to hold public office; (5) lacking in virtue and not an honourable person; (6) is abusing his public office; and (7) a person with dictatorial tendencies.
11. In the case at bar, the defence was struck out for not disclosing a reasonable ground for defending the claim. Consequently, the Defendant is 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 court must now determine the amount of damages to be awarded to the Claimant for the defamatory statements made by the Defendant.

Damages

12. 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.

13. Various considerations are relevant to the amount of damages to be awarded to the Claimant 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.

14. 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). The evidence of the Claimant is that because of the Defendant's publication of the defamatory statements his reputation was seriously damaged and he has suffered injury to his good name and reputation and has suffered odium and contempt.
15. Counsel for the Claimant in submissions referred the court to *Lynch v Gonsalves* (SVGHCVP 2009/0004 dated 21 June 2011) where the Court of Appeal awarded damages in the sum of \$140,000.00 payable by the Appellant to the Respondent for the publication of certain defamatory words about the Respondent who was then and still is the Prime Minister and Minister of Finance of St. Vincent and the Grenadines. In *Linton v Dubique* (DOMHCV 2011/0062 dated April 15 2013) the Master awarded \$120,000.00 general damages inclusive of aggravated damages to the Claimant for statements made by the Defendant which were defamatory of her 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.
16. Counsel for the Claimant cites the decision of *Linton v Dubique* for the view that the purpose of an award of damages in a defamation action is threefold in nature: first, to compensate the claimant for the distress and hurt feelings, second, to compensate

the claimant for any actual injury to reputation which has been proved or which may reasonably be inferred and third, to serve as an outward and visible sign of vindication. Counsel for the Claimant states that the Claimant is an Attorney-at-Law and was employed at the Attorney General's Chambers in the British Virgin Islands when the statements were made and that the Claimant by his profession is held to a very high standard and is expected to operate with the highest level of integrity. Counsel also states that the words published by the Defendant hurt the Claimant's feelings and injured his reputation.

17. Counsel for the Claimant states that the words published by the Defendant would portray negatively the Claimant to any prospective employers or potential clients thus affecting the Claimant's ability to flourish in his profession. Counsel continues that the publication was communicated on the Internet not only to persons in the British Virgin Islands but to millions of others on the World Wide Web. The publication can therefore be accessed by anyone and cannot be retracted or recalled. Counsel explains that the words published about the Claimant go to the personal integrity, professional reputation, honour and other core attributes of the Claimant's personality and that an award should reflect this.
18. When a person has been libelled, the law presumes damage to the person's reputation and feelings in the ordinary course of things. This is known as general damage. A Claimant is not therefore required to prove his reputation or to prove that he has suffered any actual loss or damage. Notwithstanding this, a Claimant is permitted to call evidence of damage to reputation; otherwise the court may make a small award of damages. The Claimant who wishes the court to grant substantial damages must provide evidence of injury to feelings and distress consequent on the defamatory statements.
19. Taking into account all the circumstances of this case, including the impact of the defamatory statements made on the reputation of the Claimant, his hurt feelings, lack

of apology by the Defendant and the impact on his standing as an Attorney-at-Law, an award of \$15,000.00 is justified.

Conclusion

20. IT IS HEREBY ORDERED as follows:

- (1) The Claimant is awarded general damages in the sum of \$15,000 for the libel published by the Defendants.
- (2) The Claimant is entitled to prescribed costs based on the total award of damages.

21. The Claimant is entitled to interest at a rate of 5% on the sum of \$15,000.00 from the date of assessment until payment.

22. I wish to thank Counsel for the Claimant for her submissions and authorities.

A handwritten signature in black ink, appearing to be 'Eddy Ventose', with a stylized flourish at the end.

Eddy Ventose
Master [AG.]