COMMONWEALTH OF DOMINICA

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
Civil Division

Claim No. DOMHCV2015/0041

CARLISLE JNO. BAPTISTE Claimant

- and -

CHRONICLE MEDIA GROUP INC. First Defendant
PARAMOUNT PRINTERS LTD. Second Defendant

Appearances:
Cara Shillingford-Marsh with Kayla Jean Jacques, Counsel for the Claimant
Noelize Didier-Knights, Counsel for the Defendants

2022: December 12, 13
2023: January 18 (Written Submissions)
2024: February 7

JUDGMENT
Defamation, Libel, Innuendo, Fair Comment, Damages

INTRODUCTION

[1] **JOSIAH-GRAHAM, J:** This is a claim for defamation brought by Carlisle Jno. Baptiste, the Claimant, against the Defendants, Chronicle Media Group Inc, publishers of The Chronicle Newspaper and its printers, Paramount Printers Ltd., over an article entitled 'A Moder's Love'. The article appeared under the "Nabes and I" column on page 7 of the newspaper's print edition dated Friday, 27th June 2014. The column at the material time carried a weekly publication written in Dominican creole widely circulated and read throughout Dominica.

[2] The Claimant initiated legal proceedings by claim form filed on 25th February 2015 alleging that the First Defendant published and the Second Defendant printed maliciously and with the intention of making a profit, several statements which referred to him by reference to a "Canlie Jellsanti" and that the statements published were false and malicious and were libelous of him. He claims damages, including aggravated and exemplary damages, an injunction restraining the Defendants from further publishing the offending words, interest, costs and other reliefs. The claim is supported by seventeen paragraphs and 19 sub-paragraphs of particulars.

[3] The Claimant particularized six (6) statements of the published article in paragraph 8 of his Amended Statement of Claim dated 30th March 2015, which he pleaded were references to him. He also particularizes at paragraph 9 of his Amended Statement of Claim, statements he alleges were published by innuendo and or directly and provides certain defamatory meanings of what each of the statements/words meant and were intended to be understood to mean. Additional particulars pleaded in his Amended Statement of Claim were Particulars of Malice.

[4] The Claimant avers *inter alia* that he is a senior journalist in Dominica, and as a result of his actual and/or perceived political opinions, by reason of this publication calculated to cause and did cause him to suffer embarrassment and humiliation, the publication constitutes a vicious and deliberate attack on his reputation which caused injury to his character and reputation and made him subject to ridicule, odium and contempt. He also alleges the publication occasioned him hurt feelings and humiliation, and his reputation has been lowered in the estimation of right-thinking members of society generally.

[5] The First Defendant is a national newspaper of Dominica which is published weekly. The Second Defendant is a publishing company. Both Defendants are incorporated under the laws of the Commonwealth of Dominica. In a defence filed on 29th April 2015, the First Defendant admitted having published the Column, that the Claimant is well known in Dominica, is a person known as a newspaper reporter and commentator on current events, but denies that the words complained of by the Claimant bore or were capable of bearing any of the meanings alleged by the Claimant to be defamatory as they have no defamatory sense. The Defendants also deny that the words were written and published falsely and maliciously or were libellous of and concerning the Claimant and in the way as averred in the statement of claim.

[6] The Second Defendant does not admit publication of the column. It admits to printing the edition of the 27th of June 2014 newspaper but claims it had no knowledge of the content of the newspaper item at the time of printing.

[7] It is the defence of the Defendants that the "Nabes and I" article is a satirical and comical 'story-telling' literary piece published weekly for quite some time in the newspaper, including the said issue and of all issues of The Chronicle in which it is published, meant to comment on current events and topics in an amusing and entertaining way. Further, this is how the piece is read, understood and accepted by right-thinking readers and members of society.

[8] The Defendants set out in their pleading the particulars of the content and nature of the entire article they rely on in asserting that the article was not defamatory of the Claimant, that the character "Canlie Jellsanti" does not, was not capable of, and was not intended to, refer to the Claimant or to any real person at all and that the character "Canlie Jellsanti" is a fictional character, just like all of the other characters in the said article, and in the "Nabes and I" column altogether.

[9] The Defendants deny that the Claimant is entitled to general, aggravated or exemplary damages and say, inter alia, that (1) The newspaper containing the article complained of has not and will not be re-published; (2) That at all times, any of the particular statements could not amount to defamation, neither could any such meaning ascribed to the statements by the Claimant be derived from the words published by the defendants.

[10] Prior to filing the claim, the Claimant's attorney sent a letter to the First Defendant, informing them of the references made in the "Nabes and I" column, which had caused distress and embarrassment to the Claimant. The attorney requested a public apology and retraction to be published in the newspaper, and an offer of amends to be made by 1st December, 2014.

[11] The First Defendant's then managing director, Michael Jones, now deceased, replied to the letter on 21st November 2014 and pointed to the disclaimer printed below the publication information and indicating that any statements contained in the "Nabes and I" column "represent mere satire and the opinion of the anonymous author(s) of a satirical column and are not a statement of fact, and therefore cannot be considered defamation". Mr. Jones' letter pointed out that printing an apology would require publishing the Claimant's name which the company observed would link him to the column and the specific allegation of his own volition, thus causing "more harm than benefit to the Claimant". The Claimant's attorney replied to Mr. Jones' letter on 24th November 2014, acknowledging his response and noting that the company had refused to make an offer of amends to settle the matter amicably.

[12] The First Defendant's Counsel later on 9th December 2014 also responded to the Claimant's attorney in terms that it is "unreasonable" for the Claimant "to ascribe to himself the characteristics of the fictional character, and no reasonable person would or ought to make such a match", and that any likeness to him, "could only be co-incidental". The letter agreed with the First Defendant that there was no basis to make any amends, but nevertheless reaffirmed the earlier offer to issue an apology to the Claimant remains open "if he maintains that the character refers to him". The Claimant did not respond to this letter from the Defendants' Counsel. The Defendants have sometime later discontinued the column.

THE OFFENDING STATEMENTS

[13] The offending statements complained of by the Claimant as pleaded in his Amended Statement of Claim paragraph 8 extracted from the published column he found falsely and maliciously published and defamatory of him while referring to him as Canlie Jellsanti are as follows –

a. "NexNabes say talking about newspaper we did have to give Canlie Jellsanti a piece because he too like to lie, manufacture lies and say wat he want, and we did find out about him from de Pointe Michel correspondent."

b. "De Pointe Michel correspondent tell us that the Canlie Jellsanti is a big man one year short of 50 but he behaving like a famn lawie, always in a bef and controversy."

c. "…when he have nothing to say he manufacturing lies and talking on himself. He talking so cause he want de scent to go out. De more talk de more the bad breath will go."

d. "He always in court learning how have to do to get away because he know he have vyé pat. De correspondent did give us de vibes on how he did girl indiscipline de inhouse girl but he made a wanjman and get away but is his habit; next time he go see. As my grandmudder use to say, nine days for the vole and one day for de police. De correspondent tell us again, he like to make break on woman dat have little girl child and he did renting a house and he didn't pay de rent for 2 years straight and dey give him notice."

e. "Maybel say, so dat is de same Canlie Jellsanti dat did come and lie about a poll and always trying to write a negative story on good Labourites."

f. "Nabes say after a moda raise a child, dat child grow up to be a big man almost 50 and instead he help his moder; he still dere eating and drinking all wat de moder have boy dem man dere wicked."

[14] The Claimant's pleaded defamatory meaning of the words particularized at paragraph 9 of his Amended Statement of Claim that these said words and their natural and ordinary meaning published by innuendo and or directly he understood meant and were intended to be understood to mean he -

I. has bad breadth and is unsanitary (paragraph 13(c) above);

II. is a dishonest person who enjoys telling lies and that the Claimant is an unethical and incompetent journalist who creates false stories and who is unfit in the journalism profession (paragraphs 13 (a), (b) and (c) above);

III. spreads and participates in the spreading of gossip and false rumours – the creole "famn lawi" is translated as "street woman" and "bef" as "rumour" in English (paragraph 13(b) above);

IV. has "bad ways" and is a criminal - the creole "vye pat" is translated as "bad ways" (paragraph 13 (d) above);

V. is a child molester who had sexual intercourse with a child under sixteen years and that he therefore committed a criminal offence contrary to section 4 of the Sexual Offences Act 1998 and punishable by imprisonment and therefore the Claimant is an immoral, sick and depraved individual and that he has committed a carnal sin and a criminal offence; one which society generally regards as despicable and the worst of the worse (paragraph 13 (d) above);

VI. has made an unlawful out of court arrangement to avoid prosecution for a criminal offence, perverting the course of justice and committing an offence contrary to section 7 of the Criminal Law Procedure Amendment Act 2013 punishable by 14 years imprisonment – the creole "wanjman" is translated as "arrangement" and "vole" as "thief" in English (paragraph 13 (d) above);

VII. solicits relationships with women who have female children under the age of 16 so as to have unlawful sexual intercourse with these underage children – the phrase "make break on" is a Dominican slang translated to mean "seduce" (paragraph 13(d) above);

VIII. is a dishonest individual who does not pay his debts (paragraph 13(d) above);

IX. lied about a poll and that he writes negative stories about persons who are supporters of the Dominica Labour Party (paragraph 13(e) above); and

X. is a wicked individual who does not assist his mother, but behaves like a parasite eating and drinking whatever she has (paragraph 13(f) above.

[15] The Claimant also pleaded in his Amended Statement of Claim, at paragraph 13, the following particulars he identified are in reference to him -

a. His initials are CJ which is the same as Canlie Jellsanti;

b. His name Carlisle Jno Baptiste rhymes with the name "Canlie Jellsanti"

c. Canlie Jellsanti was described in the article as being from de Point Michel. He resides in the community of Point Michel in the Commonwealth of Dominica;

d. Canlie Jellsanti was described as "still living by his moder". He resides in the same house as his mother.

e. Canlie Jellsanti was described as someone "dat always on de Fire Chair shouting Mat". The Claimant is called by Mr. Matt Peltier, the host of the 'Hot Seat" (a popular radio talk show in Dominica) on a daily basis in order to report news items.

f. Canlie Jellsanti was described as someone who "always reporting on people matters and putting his own blue mealy bug spin on it" and who is "always in court learning". The Claimant is a Senior Court Correspondent for the Sun Newspaper, DNO and Q95 and as such he is frequently present in court;

g. Canlie Jellsanti was described as someone who "did come and lie about a poll and always trying to write a negative story on good Labourites"'. The week prior to the publication of the said article the Claimant discussed an election poll on the Hot Seat;

h. Canlie Jellsanti was described as someone who "was in de football". The Claimant is a retired FIFA referee.

[16] From these pleadings, it is asserted by the Claimant in the various natural and ordinary meanings and innuendo pleaded in paragraphs 8, 9 and 13 of his particulars of claim that the statements in the article as a whole bear the meaning that, as a result of him writing negative articles on the ruling political party he was dishonest and a criminal that has used his knowledge as a court reporter to pervert the course of justice and was habitually guilty of criminal activity the offences being punishable by imprisonment. He contends further that the publication was calculated to cause and did cause him serious public embarrassment, humiliation, ridicule, and injury to his reputation nationally and internationally, personally and in his professional capacity.

[17] Before moving on, note is made of the several unfortunate events, including COVID-19, leading to this trial. This matter was given directions for trial by Master Agnes Actie, as she then was, on 28th September 2015, with a pre-trial review scheduled for July 2016 and a trial date to be listed by the court during the trial window in September 2016. Since those directions of the eight (8) witness statements filed three witnesses have died. Expert Witness for the Claimant, Felix Henderson died on 10th November 2020. Defence witnesses Michael Jones died in June 2016 and Parry Bellot in January 2022. An application to have Lucy Jones, who worked at the First Defendant company with her husband, Michael Jones, filed on 23rd June 2020 was granted, and her witness statement was filed on 17th July 2020. An application to admit the witness summary for Parry Bellot was withdrawn.

[18] The trial was scheduled to commence on 2nd December 2020 specifically for the evidence of Felix Henderson, who was ill at the time, and to continue on the 26th, 27th and 28th January 2021. That trial was vacated due to a national pause of economic activity resulting from the onset of the COVID-19 pandemic, which had an attendant impact for nearly two years and directly affected the trial of this matter at that time.

THE EVIDENCE

[19] Six witnesses testified - the Claimant and two of his witnesses on his behalf, and the other three witnesses for the Defendants.

Claimant's witnesses:

Carlisle Jno. Baptiste

[20] The witness, who goes by the name of Carlisle Jno. Baptiste, testified that he is a journalist. He has worked for the Sun Newspaper and other news outlets in Dominica. He covered court matters and was a public figure, writing an article based on a poll and also appearing on the Hot Seat program to discuss it. He has been a freelance journalist for over 20 years and was Dominica's Associated Press correspondent and a news reporter for Q95FM Radio. He also served as a FIFA referee from 2003 to 2013 and claimed to be a law-abiding citizen with a good character reference from the Police Force dated 2nd December 2015. He lives in Point Michel in the Parish of St. Luke with his mother.

[21] The Claimant, during the trial, testified that he was hurt by the suggestions made in the column and that his children were also affected. He also admitted that he worked at The Chronicle Newspaper as an acting editor, preparing the newspaper layout and sending it to the typesetting room, where a plate for printing

was developed in a darkroom. He outlined the process used then, including cutting the film and the plate for printing. During cross-examination, he couldn't remember the years he worked at The Chronicle but stated that it was before 2014 and that he didn't know whether the process changed after he left. He also admitted that he didn't lose his job or any work opportunities following the newspaper column. In fact, he continued working with the Sun Newspaper until 2017, three years after the impugned publication, when he left the company of his own volition.

[22] The Claimant agreed that he is aware of the “Nabes and I” column from his time working at The Chronicle. The column comments on political matters and he stated that he believes the column is politically biased towards the government. Sometimes he makes comments and "gets jabs" from the other side. When questioned by Counsel for the Defendants in relation to the degree of bias, he agreed that it was about 80% bias, reflecting articles on both sides of the political spectrum. He believed the article was a response to a program on the Hot Seat which he appeared on about a week before publication of the column.

Matthias Peltier Jr.

[23] Matthias Peltier Jr. is a senior journalist and talk show host at Q95FM, a popular radio station in Dominica. He hosts a program called "Hot Seat". During the trial, Peltier admitted that he was shocked when he read an article about a man named Canlie Jellsantie and allegations of "girl indiscipline". However, Peltier did not believe the allegations and considered it an opinion piece rather than a news article.

[24] Peltier explained that "in house girl" and "he likes to make a break on woman dat have little girl child" may not have special meaning in Dominican parlance, but it refers to a girl child. When asked if the narrator's reference to "in house girl" could mean an adult girl and not a child, Peltier initially said it could not be an adult girl. Later, he admitted that it was a possible interpretation that the statement is in reference to an adult.

[25] Peltier also agreed during the cross-examination that the article was in the form of hearsay upon hearsay from De Correspondent, similar to the other articles earlier published weekly in the “Nabes and I” column of the newspaper. He admitted that the information published would require further investigation and that one cannot look to the article in “Nabes and I” column for facts.

[26] Peltier testified that he and the Claimant are still friends and that he holds him in high regard. He informed the court that he continues to invite him on his morning radio talk-show program, and he did not shut him out because he has known him for many years and never known him to have that reputation. Peltier clarified that "girl indiscipline" means someone has misbehaved in Dominica. He also restated that the “Nabes and I” column is based on current news affairs.

Keith Boyce Brian Cuffy

[27] Keith Boyce Brian Cuffy testified that the article was news and that he understood the statement on “girl indiscipline” to connote sex with an underage girl. He testified that he was a friend of the Claimant from childhood and claimed to have been an ardent reader of the “Nabes and I” column while it was in circulation. He agreed that were the Claimant to be accused of sexual assault that that would make headline news. He admitted that he does not believe everything he hears, but he believed the statements

made in the column; he said, “I am Carlisle’s friend whom I believed to have assaulted an underage girl” but that they have remained friends to this day even after reading the article.

Defendant’s witnesses

Dr. Schuyler Esprit

[28] Dr. Esprit appeared as an expert witness. She testified that she was the editor at the time when the article was published, which was included in her witness statement. Dr. Esprit admitted that she edited the ‘A Moder’s Love’ article “for content, grammatical errors and placed it in the paper”. She admitted that she did not interview Matthias Peltier Jr or Keith Boyce Brian Cuffy in her research conducted for her expert report. She disagreed with the suggestion from Counsel for the Claimant that it is wrong for her to say how satire is always understood.

Lucy Jones

[29] Mrs. Jones, who was not the managing editor of The Chronicle at the time when the article was published, admitted under cross examination that she sent the newspaper to print. She explained the process to be that she would send it to Paramount Printers via email. After the newspaper is printed, one of her employees collects it from the Printers, which is located at Loubiere. Mrs. Jones admitted that it was not her intention to defame anyone, that all “Nabes and I” columns are comical and not to be taken seriously, “they are fictional and not about anyone”. Mrs. Jones said under re-examination that the Company had discontinued the “Nabes and I” column as a result of another pending case regarding the column.

Dave Baron

[30] He testified on behalf of the Second Defendant. He informed the Court that his father had sold the newspaper in question, but he couldn't remember the exact date of the sale. He also explained that when his father owned both The Chronicle Newspaper and Paramount Printers, the two companies were located in the same building. The witness stated that the newspaper staff could send the paper directly to print, and he was responsible for overseeing the printing process. However, he clarified that he had no involvement in the production of the newspaper.

[31] During the cross-examination, the witness admitted that the printing company, Paramount Printers, was paid by The Chronicle Group to print the newspaper. He also revealed that there were two separate companies with different staff operating the newspaper and the printing company. Furthermore, he admitted that the printing staff could decide whether or not to print the newspaper and that reading the newspaper during the printing process was possible but not a requirement.

[32] It is worth noting that the article references the fictional name, Canlie Jellsanti and not the true name of the Claimant. The Claimant’s real name and surname were not disclosed or mentioned in the article. Nonetheless, at the trial Counsel representing the Claimant used the Claimant's true name, Carlisle, and the fictional name, Canlie, interchangeably, despite being reminded not to do so. This practice is strongly discouraged; Counsel should refrain from such practice during trials in cases that are potentially defamatory.

Claimant’s Submission

[33] Learned Counsel for the Claimant submits that the words and statements as pleaded have a number of striking features which the Claimant identified links him as the person to whom the character references. She contends that it is not necessary for the words to refer to the Claimant by name. The statement may refer to the Claimant using a different or similar name such as "Man sure" instead of "Mansoor" or make reference to "Anson" instead of J'anson". Counsel argues that the question is "whether the words might be understood by reasonable people to refer to the claimant" and whether persons who have special knowledge about facts concerning the claimant, might reasonably understand that the words refer to him.

[34] Relying on the evidence contained in the witness statements of the Claimant and his witnesses, Mathias Peltier and Keith Boyce Brian Cuffy, Learned Counsel for the Claimant submitted it was established that based on the numerous similarities between Canlie Jellsanti and the Claimant's name, Carlisle Jno. Baptiste, that a reasonable reader having knowledge of the similarities pleaded concerning the Claimant would conclude that the Claimant was, in fact, being referred to as Canlie Jellsanti in the Article. Further, that in light of the numerous similarities, it is obvious that a reasonable reader might understand what was said about Canlie Jellsanti was true about the Claimant. Counsel submits further that several persons including Matt Peltier and Keith Brian Cuffy the two witnesses who testified at the trial, have read the articles and believe that the said article referred to the Claimant.

[35] Counsel also contended that the words complained of were published to the world at large including to several persons who had special knowledge about the Claimant. It is the Claimant's assertion in his particulars that the article published by the Defendants was available for purchase island-wide throughout Dominica, that it was made available internationally through the post and via the internet on dominicachronicle.net at all material times, and that it was printed, published and sold by the Defendants to make a profit. It was further asserted that copies of all newspapers published in Dominica are archived in the library and at the documentation centre and are available to the public.

[36] The Claimant in submissions relied on the authorities of **Gatley on Libel and Slander[1], Gairy v Bullen[2], Dr Edmond Mansoor v Eugene Silcott[3], Hulton v Jones[4], J'Anson v Stuart[5], Winefield and Jolowicz[6], Morgan v Odham Press Ltd[7] and Geisler v Petrocelli** in support of their claim for defamation and to show publications which appear to be fictional or which form part of an art form are capable of being held defamatory.

[37] The Claimant also argued that notwithstanding a letter demanding *inter alia* an apology and an offer to amend, a response from the then Managing Director of the First Defendant and a response from Counsel for the Defendants were both inadequate and cannot be considered as containing or offering a sufficient apology or admission of wrongdoing. Learned Counsel submitted that the Defendants refused to accept that the meanings ascribed to the words complained of by the Claimant were injurious to his reputation and that the statements have any defamatory sense.

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[1] Gatley on Libel and Slander 10th Edition at page 183 paragraph 7.2
[2] (No. 1) (1972) 2 OECSLR 93 (High Court, Grenada)
[3] Claim No. ANUHCV 2010/0209
[4] [1901] AC 20
[5] (1787) I T.R 748
[6] 17th Edition page 534
[7] [1971) 1 WLR at 1243

Defendants Submission

[38] Learned Counsel for the Defendants admit that the Claimant is a well-known person in Dominica, who is known as a newspaper and radio reporter and commentator on current events. While the First defendant has accepted that the statements/words were published as mentioned by the Claimant in the "Nabes and I" column, they deny that any of the statements in the column were about the Claimant. The Defendants argue that a reasonably fair-minded person reading the column would not infer that it refers to the Claimant. They contend that the column contains no statements about the Claimant and deny that any of the statements made therein were defamatory.

[39] Learned Counsel for the Defendants also contends that the character in the article was not capable of referring to any real person, including the Claimant, and was merely a fictional character. She asserts that the published statement is not defamatory to an ordinary and reasonable reader and is not capable of bearing the meanings alleged by way of innuendo. The Defendants submitted that the column is a satirical, comical “story-telling” literary piece, which commented on current events and topics in an amusing and entertaining way. Accordingly, they submit that this was how the article would be understood by right-thinking members of society, and not in a literal or serious way.

[40] The Defendants contend that the words and statements alleged by the claimant to be defamatory were not so because the article bears no serious allegations of fact. They argue that the Claimant's interpretation of the statements contained in the article is far-fetched. The Defendants maintain that the statements were not defamatory, and the column was not capable of lowering the claimant's reputation in the estimation of right-thinking members of society.

[41] The Defendants also assert that there are as many differences between the fictional character, "Canlie Jellsanti", and the Claimant, as the similarities claimed. They submitted that the print newspaper is made available internationally through the post only to persons who request it and that the entire article is not available on the internet. Further that the “Nabes and I” column is one item not available on the website of the newspaper. They admit that persons who request the paper by post are generally regular customers of the First Defendant.

[42] The Second Defendant admits to printing the newspaper containing the column, but argues that it uses modern computer-to-plate (CTP) imaging technology during its printing process. This technology creates the image on a computer and outputs it directly to a printing plate for many types of publications, not only the Chronicle. The Second Defendant maintains that with this technology, no reading or vetting of the newspaper was done or is required to be done. They argue that once the image is created, the newspaper is printed and delivered to an employee of the First Defendant. They also state that they are not in the business of publishing any literature and do not publish or distribute The Chronicle. The Second Defendant claims that once they receive a printing job, they complete the job and deliver the product to the person who commissioned it. This is what was done in relation to The Chronicle newspaper.

[43] Both Defendants deny that the Claimant’s reputation was damaged either regionally or internationally as a result of the published words, the Claimant has not lost his job or any of the positions he had been appointed to since the publication of the Column. Alternatively, the Defendants deny the meaning the

Claimant ascribed to the words and argue that the publication is in the vein of fair comment made in good faith and without malice.

[44] For the Defendants, the statements complained of by the Claimant, therefore, and the entire content of the article, were not intended to be, were not capable of being, and were not, in fact, defamatory. The statements made in the context that they were, could not and did not tend to lower or did they lower the Claimant in the minds of readers and members of society. Their contention in relation to the meaning of the particular words they seek to defend is as follows-

i. 'Jellsanti' is a made-up word and not a creole phrase, as pleaded by the Claimant. Bad breath, to any right-thinking person, cannot and does not automatically connote that one is unsanitary, as pleaded by the Claimant.

ii. The statements concerning the character 'Canlie Jellsanti'' lying, were statements made in contextual connection to the statements in the article concerning the "poll" and "trying to write a negative story on good Labourites". Same were all made as an analogy to, and fair comment on, the current real-life happenings in the then pending general elections atmosphere of the country. There were in fact several reports in the media of polls being conducted by different persons, and which produced various contrasting results, as there were many articles being written which made references to persons who were members of or known supporters of the governing labour party.

iii. In the alternative, and without prejudice to the Defendants' assertion that the article does not refer to the Claimant, the Defendants state that if at all the article is taken to refer to the Claimant, that it is true that the Claimant has told untruths.

iv. The Defendants deny jointly and severally that the words stating that the character lies, were capable of the meanings ascribed to them by the Claimant in relation to his profession, since in the article they were not said in relation to the character's profession.

v. The word, 'bef', translates to 'gossip', but not to false rumours or false gossip. The words, "always in a bef and a controversy" do not and were not capable of bearing the meanings ascribed to it by the Claimant or any defamatory meaning.

vi. The Defendants admit that the words 'vye pat' mean bad ways', but deny that these words, whether literally or by innuendo, could be ascribed the meaning of or were understood to specifically mean 'criminal, as claimed by the Claimant.

vii. The Defendants deny that the words complained of in paragraph 8d of the Amended Statement of Claim bore, were understood to bear, or were capable of bearing the meanings which the Claimant ascribes to them in paragraphs 9.e to 9.i of the Amended Statement of Claim. The Defendants state that the Claimant's interpretation is far-fetched and without any basis whatsoever.

[45] The First Defendant acknowledges that the Claimant had sent a letter through his attorney-at-law and that its then Managing Director responded to it. However, the First Defendant denies that the Managing Director's response was insufficient. The First Defendant also claims that it had offered to publish an apology back then. The First Defendant denies that it ridiculed the Claimant through a letter from its lawyer. Instead, the letter offered to publish an apology to the Claimant, which was made without affecting the First Defendant's position that there was no wrongdoing. Nevertheless, the Claimant never accepted the offer of an apology. The Defendants still rely on their offers to publish an apology as a way to mitigate any damage. The Defendants continue to rely on the offers to publish an apology in mitigation of damage.

[46] The Defendants' authorities include **Browne v Newton[8], Jones v Skeleton[9], Lewis v Daily Telegraph[10], Bonnick v Morris & Ors[11], Gatley on Libel and Slander**. The Defendants also cited **Sir Elton John v Guardian News & Media Limited**[12] as persuasive authority in support of their argument that the column is a satirical, comical "story-telling" literary piece not capable of being defamatory.

ISSUES FOR DETERMINATION

[47] There being no dispute that the column was published by the First Defendant and that it was printed by the Second Defendant, from the issues identified and the arguments of Counsel as set out in their respective submissions, the Court finds the issues for consideration are -

I. Whether the word/statements complained of in the Chronicle's "Nabes and I" Column published on 27th June, 2014 were capable of having the defamatory meaning whether by direct meanings and or innuendo attributed to them by the Claimant?
II. Whether the words and or statements referenced to "Canlie Jellsanti" refer to the Claimant and were defamatory of him?
III. Whether the words constitute fair comment on matters of public interest?
IV. If the Defendants are found liable, what is the extent of damages to which the Claimant is entitled?
V. What is the effect of the Defendant's offer of an apology?
VI. Whether the second Defendant published the defamatory statement?
VII. Cost?

THE LEGAL PRINCIPLES

[48] A defamatory statement is one that tends to lower the claimant in the estimation of right-thinking members of the society; or to expose him to hatred, contempt or ridicule; or to cause other persons to shun or avoid him; or to discredit him in his office, trade or profession; or to injure his financial credit. This definition has been given judicial credence in a plethora of well-established cases. These include the Eastern Caribbean Court of Appeal cases of **Gaston Browne v Isaac v Newton[13]; Vaughn Lewis v Kenny Anthony[14]; Lennox Linton and Others v Kieron Pinard-Byrne[15]**.

[49] It is an essential ingredient of any defamation claim that the statement complained of is defamatory of the claimant. At common law, a statement is defamatory of a person if it substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do: **Thornton v Telegraph Media Group Ltd**[16], (Tugendhat J). Whether that is so normally depends on the natural and ordinary meaning of the words.

[50] In the Eastern Caribbean Court of Appeal, Ward, JA (ag) in **Gaston Browne v Isaac v Newton[17]** stated the test, as cited by the Defendants, thus –

[8] ANUHCVAP2020/0028
[9] [1963] 1 WLR 1362 at 1370-1371
[10] [1964] AC at p271
[11] [2002] UKPC31
[12] [2008] EWHC 2066 (QB)
[13] ANUHCVAP2020/0028
[14] SLUHCVAP2006/02
[15] DOMHCVAP2011/0017
[16] [2010] EWHC 1414 (QB), [2011] 1 WLR 1985 [96]
[17] ANUHCVAP2020/0028

> "At common law, defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society. To succeed in an action for defamation, a claimant must prove the making of a statement by a defendant tending to lower the claimant in the estimation of right thinking-members of the society and the publication of that statement to a third party or parties. The words must be construed in their natural and ordinary meaning which is the meaning that would occur to the ordinary reasonable person.
>
> In deciding whether words are capable of conveying defamatory meaning, the court will reject the meaning which can only emerge as the product of some strained or forced or utterly unreasonable interpretation (per Lord Morris in Jones v Skelton (1963) 1 NLR 1370. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words."

[51] In the text by Kodilinye **Commonwealth Caribbean Tort Law**[18] the author states that in an action for libel, a Claimant is required to establish the defamatory nature of the statement(s) in question. He opined that the Claimant must do more than prove that as a result of the statement's publication his reputation is likely to be lowered in the eyes of the members of the particular social group to which he belongs. He also must show that the norms and opinions of that particular group are not rejected by society generally. These (3) things must be established in order to succeed in a libel matter, namely:-

(a) that the words used were defamatory
(b) that the statements referred to the claimant; and
(c) that they were published to at least one other person other than the claimant himself.

[52] There is no dispute between the parties as to the principles to be applied. Each party has reminded me of them in their written submissions, citing very well-known authors and cases including **Gatley on Libel and Slander**, **Winfield and Jolowiz on Tort**, **Kodilyne in Commonwealth Caribbean Tort Law**, **Gary v Bullen**[19] and **Gaston Browne v Isaac v Newton**[20], **Skuse v Granada**[21], when determining whether the words complained of were capable of bearing the meanings ascribed to them and the approach Court has to take. These principles by which the court identifies that single meaning are well-settled: See Sir Anthony Clarke MR in **Jeynes v News Magazines Limited**[22] **and Gatley on Libel and Slander**[23]**.**

[53] In **Skuse v Granada Television Limited (1996) EMLR 278** at 285 a case in which the English Court of Appeal was given what it viewed as "the unusual task" to decide on the meaning to be actually attributed to alleged defamatory words contained in a television programme the court reviewed several authorities affirmed and applied some useful principles to determine whether the actual meaning of the words alleged by the claimant is defamatory on which approach, was applied by Alleyne J in **Gonsalves v Gibson & Ors, SVGHCV2006/0405 and 0406** as the recommended approach for the court to consider in answering the legal question -

1. The court should give to the material complained of the natural and ordinary meaning which it would have conveyed to the ordinary reasonable viewer.
2. The hypothetical reasonable reader [or viewer] is not naive 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

[18] 3rd Edition, Page 238
[19] (No 1)(1972) OECSLR 93 (HC Grenada)
[20] ANUHCVAP2020/0028
[21] [1966] EMLR 278 at 285
[22] [2008] EWCA Civ 130 at [14] Jeynes v News Magazines Limited
[23] Gatley on Libel and Slander 11th Ed. [3.13]; Panagiotis Koutsogiannis v The Random House Group Ltd [2019] EWHC 48 (QB) [12]

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. While limiting its attention to what the defendant has actually said or written, the court should be cautious of an over-elaborate analysis of the material in issue.
4. The court should not be too literal in its approach.
5. A statement should be taken to be defamatory if it would tend to lower the plaintiff in the estimation of right-thinking members of society generally.
6. In determining the meaning of the material complained of the court is not limited by the meanings which either the plaintiff or the defendant seeks to place upon the words.
7. The defamatory meaning pleaded by a plaintiff is to be treated as the most injurious meaning the words are capable of bearing and the questions a judge sitting alone has to ask himself are, first, is the natural and ordinary meaning of the words that which is alleged in the statement of claim and, secondly, if not, what (if any) less injurious defamatory meaning do they bear?
8. The court is not at this stage concerned with the merits or demerits of any possible defence. In terms of libel, it is a publication of words or matter in permanent form to a third person containing an untrue imputation against the reputation of the claimant. A libel is actionable per se, which means no proof of damage is required as the law presumes damage, whether general compensatory, aggravated and/or exemplary, will flow from a libel to a successful claimant.

[54] The Court's task is therefore to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. Here, the test, according to Lord Selborne, is, "whether under the circumstances in which the writing was published, reasonable men to whom the publication was made would be likely to understand them in a libellous sense": **Capital & Counties Bank v Henty & Son** [24]. The test is not what a man avid of scandal or a jester or an opponent of the man allegedly defamed would read into the words. The ordinary and natural meaning may include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words.

[55] In **Lewis v Daily Telegraph**[25] Lord Reid's useful guidance in assessing the standard of the average reasonable member of the public is that the court will:

> "... rule out on the one hand persons who are so lax or so cynical that they would think none the worse of a man whatever was imputed to him, and on the other hand those who are censorious as to regard even trivial accusations (if they were true) as lowering another's reputation, or who are so hasty as to infer the worst meaning from any ambiguous statement... The ordinary citizen .... is neither suspicious nor unusually naive, and he does not always interpret the meaning words as would a lawyer, for he is not inhibited by knowledge of the rules of construction."[26]

[56] It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: **Slim v Daily Telegraph Ltd**.[27] It is considered particularly important, therefore,

[24] (1882) 7 App Cas 741
[25] [1964] AC 234, 258 (HL)
[26] Winfield and Jolowicz, fn 19, p 398; Lewis v Daily Telegraph Ltd [1964] AC 234, p 258 per Lord Reid
[27] [1968] 2 QB 157, 173 D–E, *per* Lord Diplock

that when sitting alone in matters such as this, the judge has to resist the urge to use the "judicial mode and manner"[28] in determining the meaning of the words used. The function of the judge is to determine whether the words are capable of bearing a particular meaning or meanings alleged in the statement of claim. Following this determination, determination of the actual meaning of the words within the permissible range is carried out. In **Vaughn Lewis v Kenny Anthony[29]** Barrow JA said this**:**

> "When the trial is by a judge sitting without a jury the judge is still required to first decide the question what, if any, defamatory meanings the words were capable of bearing…
>
> It is only if the judge is so satisfied (whether she makes the ruling in chambers or at the trial) that she can then go on to consider the second question, whether in fact the words bore the alleged or any defamatory meanings…."

[57] In carrying out that determination where libel is pleaded, the Claimant must, of necessity, rely on the precise words alleged to be a libel, for those are the words that the court must subject to the examination stated by Barrow JA as he then was. The words complained of are therefore essential for the prosecution of the Claimant's case and are material facts that must be pleaded: paragraph 28-29 page 512 of **Bullen and Leake 14th edition** where the learned authors state:-

> "Libel: The words must be set out verbatim in the particulars of claim. It is not enough to set out their substance or effect (**Harris v Harre** (1879) 4 C.P.O. 125 at 127; **Collins v Jones** (1955) 1 Q.B. 564. Where the defamatory words form only part of a longer article or programme, the claimant must set out in his particulars of claim only the particular passages of which he complains as being defamatory of him. **DDSA Pharmaceuticals Ltd. v Times Newspapers Ltd.** (1973) 1 Q.B. 21 C.A. Question & Answer must be set out if the libel is contained in both together ((1825) 4 BLC 247).
>
> In considering whether an article, or any extract from it, is defamatory, the contents of the entire article must be considered (**Charleston v News Group Newspapers Ltd.** (1995) 2 A.C. 65). In cases in which the material complained of is so long that it cannot reasonably be pleaded in the body of the particulars of claim, the material may be included as a schedule to the particulars of claim."

[58] The onus is, therefore, on the Claimant in an action for libel to prove that the Defendant published in permanent form a statement and that the words complained of conveyed to the mind of reasonable persons, the imputation pleaded: **Sim v Stretch[30]**.

[59] In relation to innuendo, where no legal innuendo is pleaded the natural and ordinary meaning is the meaning, including any inferential meaning, which the words would convey to the mind of the ordinary, reasonable, fair-minded reader.[31] It is important to note that the meaning intended to be conveyed by the publisher of the words is irrelevant.[32] Here, again, the onus is on the claimant to lead evidence to prove the innuendo, which makes the statement defamatory: **Lewis v Daily Telegraph[33]**. Even then, it is still for the fact-finder to make their own determination. Further, not only must the innuendo be pleaded but the claimant must prove by extrinsic evidence special facts which would lead an ordinary reader to attach that

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[28] per P. Williams J., in the Jamaican case of Percival Patterson v Cliff Hughes and Nationwide News Network Ltd., [2014] JMSC Civ 167, (unreported October 30, 2014) at para [34], "It is considered particularly important therefore that when sitting alone in matters such as this, the judge has to resist the urge of using the 'judicial mode and manner' in determining the meaning of the words used".
[29] SLUHCVAP2006/02
[30] [1936] 2 All ER 1237
[31] Charleston and Another v News Group Newspapers Ltd. and Another [1995] 2 All ER 313
[32] Diplock J in Slim & Others v Daily Telegraph and Another [1968] 1 All ER 497
[33] [1964] AC 234

special meaning[34]. Also, the Claimant's own interpretation is inadmissible and, in any event, irrelevant: paragraph 1318 of **Gatley**.

[60] I have taken note of the Claimant's Amended Statement of Claim, which specifies certain statements in the column that are alleged to be defamatory. It is clear from the Amended Statement of Claim that the statements in question are contained in the column published by the First Defendant on the date mentioned in the Claimant's statement. The First Defendant has also admitted publication of the column.

[61] To determine whether the words complained of are capable of conveying the alleged defamatory meanings, the court must, therefore, consider the words as a whole, in the context in which they were published, and in how they would have been understood at the time of publication as they would have struck a hypothetical ordinary reasonable reader. The court must also reject those meanings that require a strained, forced, or unreasonable interpretation. The decision of whether a statement is defamatory depends on the Dominica community. Context is particularly important when the words complained of are based on meaning attributed to the ordinary reasonable reader who would have read the column as a whole.

DISCUSSION AND CONCLUSIONS

Issue 1: Whether the words/statements complained of in the Chronicle's "Nabes and I" Column published on 27th June 2014 capable of having a defamatory meaning, whether by direct meanings and or innuendo attributed to them by the Claimant?

[62] The law prescribes that the Court look at the column as a whole, the nature of the column, the full context of the words and all the circumstances under which it was published in making the defamatory determination.

[63] In support of their claim that the words were not intended to bear a defamatory meaning, the Defendants cited **Sir Elton John v Guardian**[35], where the use of the literary device satire, the nature of the article in question and its placement in the newspaper were factors that led the UK court to its determination. In that case[36] the court struck out a claim submitted by Elton John, founder and chairman of the Elton John AIDS Foundation, against a satirical article published by *The Guardian*. The article was a parody of Elton John's diary written by the journalist Marina Hyde. It implied that John only gave a portion of the proceeds from a recent fundraising event to his AIDS charity. John sued *The Guardian* for libel. According to the claimant, the natural meaning of the words complained of meant that John's commitment to EJAF was so insincere that he hosted the ball only to give a small proportion of the funds collected to the foundation, once all the event's expenses were covered, and that he used the event for self-promotion and meeting celebrities. The claimant also argued that, by way of innuendo, the words complained of meant that John falsely and dishonestly claimed "that all the money raised by the White Tie & Tiara Ball goes to Elton John AIDS Foundation". The Court considered that the context of the article - being published in the "Weekend" section, with a humorous tone and using irony, allowed reasonable readers to understand that the article

[34] Gatley on Libel and Slander paragraphs 1315 to 1317
[35] [2008] EWHC 2066 (QB)
[36] [2008] EWHC 2066 (QB)

did not contain serious allegations.

[64] The UK court stated that the meaning of words depends on their context. The context included that the edition of the newspaper be taken as a whole and the particular section of the newspaper in which the "diary" appeared. The Court noted it appeared in a pull-out section of *The* Guardian, called "Weekend" published on a Saturday. This section is divided further into other sections such as Starters, Fashion, Food & Drink, Features, etc. For that Court, "the designation of the section assists in understanding the extent to which particular speech is to be understood as factual or not". In taking this into consideration, Tugendhat J concluded that the "Weekend" section is not the news section of the paper. Subsequently, the Court held that although the words were presented under the heading "A peek at the Diary of Sir Elton John," as if they were an extract of the diary of the claimant, "it is common ground that no reasonable reader could understand them as being written by [him]." The Court explained, that the author used the literary device of irony. As defined by the Court, "Irony is a figure of speech in which the intended meaning is the opposite of that expressed by the words used". Thus, since the Court considered that the attribution was literally false, "no reasonable reader could be misled by it"

[65] That case is different from the extant case. Unlike in the ***Elton John*** case, where the authorship of the publication was attributed to Elton John himself but was, therefore, clearly false and unlikely to be believed, the publication in this case involved another party writing statements that the Claimant alleges are intended to be about him. The element that so clearly made the article in that case unbelievable is therefore absent from this case.

[66] Further, while the Claimant rejected the view that the publication in the case at bar falls within the literary group called 'satire', Counsel also submitted that it is immaterial whether the publication is in the form of satire, calypso, allegory or fictional prose. Counsel contends that the form that defamatory material takes does not affect it being defamatory. Counsel for the Claimant argues that there are several cases where calypso (which is a form of satire), caricatures, effigies, etc, have been found to be defamatory, and the fact that a publication appears to be part of a fictional literary art form, cannot constitute a defence.

[67] Since the Defendants have pleaded a literary device, that of satirical comedy, to assert that the words were not capable of having and did not have a defamatory meaning the Court took into account the evidence of the expert witnesses, Mr. Gabriel Cesar for the Claimants and Dr. Schuyler Esprit for the Defendants in the context of Dominica to determine whether the words were defamatory or not. Here the Court finds the assistance on the special meanings of the words complained of by the Claimant and the rendering of an expert literary opinion on the nature of the column helpful.

[68] In the case of Mr. Gabriel Cesar, he provided evidence on the translation of the words in issue being - Janmen (never, ever); Bef (cow, rumour); manye (manner, ways); Sal (dirty); Pat (ways); Vye (old); Vole (thief); Jell (mouth) Santi (to smell or feel); lawi (street, road; fanm (woman); Pasa jarnen weh douvan'y (can never see his way or never see good). The interpretation of these colloquial words I find helpful in the context of the Dominica community.

[69] The Defendant's expert, Dr. Esprit states at paragraph 8 of her expert report dated 22nd March, 2016, "The "Nabes and I" column in The Chronicle newspaper belongs to a centuries-old literary tradition known as

satire, in the form that "Nabes and I" is written, is a genre modernly defined as 'the use of humour, irony, exaggeration or ridicule to expose and criticize people's stupidity or vices, particularly in the context of contemporary politics or other topical issues' (taken from the Oxford dictionary (online source: www.oxforddictionaries.com)). The humour is usually excessive and can take the form of caricature, which means that the jokes are always understood to be too ridiculous to be taken seriously even though the lessons or morals they offer should prompt improvement within a society". Dr. Esprit, states further, at paragraph 23, of the said report, her experience in vetting the content presented in the article according to internationally accepted standards and guidelines for satirical writings and suggested as an example for the column in question that the term "girl indiscipline" had been used in the "Nabes and I" column in earlier articles "to mean all sorts of activity that the narrator finds problematic, unacceptable or in opposition to the opinion".

[70] In the final paragraph of her expert report, Dr. Esprit also states, "In addition to the critical elements of 'poking fun at power' and 'mocking the publicly ridiculous', "Nabes and I" fits the classic idea of satire presented in print literature, with its column logo taking the form of caricature, it's humorous and self-conscious self-reference jokes, and with its use of colloquial language and popular proverbs. Another important characteristic that positions the column within the tradition of satire is its 'hearsay upon hearsay' writing style".

[71] The description of satire accords with the European Court of Human Rights, **Vereinigung Bildender Künstler v Austria**, 30 June 2005, which has defined satire as "a form of artistic expression and social commentary and, by its inherent features of exaggeration and distortion of reality, naturally aims to provoke and agitate."[37] Accordingly, the Court accepts the evidence of the expert witnesses' testimony, both of whose qualifications are of distinction in their respective fields of literature. The definitions taken together present a reasonable description of most contemporary views on satire.

[72] In the local context of the Dominican society, the Guyanese case of **Bacchus v Bacchus** [38] is instructive. There Massiah, J as he then was put the test in the local context as follows -

> "In determining whether or not the words are defamatory, one must endeavour to find out whether or not the ordinary, reasonable Guyanese citizen would have so considered them. Would the words, one has to ask oneself, tend to lower the plaintiff in that citizen's estimation or cause him to shun or avoid her? For it is what the average, ordinary, intelligent citizen of Guyana thinks about the matter that is important, not how it is viewed by a Guyana scholar or a professor at the University of Guyana, or by a censorious person, or, on the other hand, by the cynic who would treat with a sneer and with contempt the worst that may be said of him or anyone else, but would go no further. "

[73] I adopt this test in the context of Dominica's society and in exercising my jury function I hold that, of the six statements pleaded by the Claimant as being defamatory, only the allegation pleaded in paragraph 8(d) of the Amended Statement of Claim is defamatory, where it says that –

> "He always in court learning how have to do to get away because he know he have vyé pat. De correspondent did give us de vibes on how he did girl indiscipline de inhouse girl but he made a wanjman and get away but is his habit; next time he go see. As my grandmudder use to say, nine

[37] European Court of Human Rights, Vereinigung Bildender Künstler against Austria, 30 June 2005
[38] 1973] LRG 115 (High Court, Guyana).

> days for the vole and one day for de police. De correspondent tell us again, he like to make break on woman dat have little girl child and he did renting a house and he didn't pay de rent for 2 years straight and dey give him notice".

[74] I believe that authors and artists have the freedom to use exaggeration or provocation in their work, even in fiction. However, in this particular case, the author has gone too far by portraying the character as a habitual criminal who intentionally subverts justice and covers up their crimes. This negatively affects the character's reputation and rights, as it introduces false information that interferes with their integrity. While the publishers may have intended it to be comical, it goes beyond what most reasonable people would consider comical. I do not think that an ordinary, reasonable reader would have understood the allegations made against the character to imply that they were not in breach of some criminal standard.

[75] I consider the other five statements (a, b, c, e, and f) mentioned in paragraph 13 to be inflammatory, but they do not meet the threshold for defamation. However, the statement in paragraph 8(d) of the Amended Statement of Claim goes beyond being inflammatory or suspicious. It accuses the defendant of committing a criminal offense and suggests habitual criminal behaviour that cannot be attributed to factual statements.

[76] The fact that the column is from the perspective of two leading political parties does not change the defamatory nature of the accusations made against the character. At minimum one meaning which is not strained is that the character is a criminal who has avoided the law perverting the course of justice and continues to do so. This forms part of the context in which the words were published and which were conveyed to the ordinary reader of the column published in the newspaper's print edition dated Friday, 27th June 2014.

[77] Using the reasonableness tests that an ordinary, reasonable, and fair-minded person would understand, I find that the statement in question is not only capable of bearing a defamatory meaning but that it did bear such a defamatory meaning and is therefore libelous. The question now is whether those words referred to the Claimant clearly.

Issue 2: Whether the words and or statements referenced to "Canlie Jellsanti" refer to the Claimant and were defamatory of him?

[78] Having found the words in the Column to be defamatory, the court must examine the Claimant's contention of the words being in reference to him. Such findings must necessarily depend on the circumstances of the case because of some feature or features of the words themselves. They may, for instance, contain a description sufficient to lead reasonable people who know the *claimant* to identify him or her as the person referred to, or it may be that there are extrinsic facts and matters known to some readers which would lead a reasonable person to identify the claimant as the person referred to: see, e.g., **Morgan v Odhams Press Ltd**[39]. In addition, the test is an objective one, which does not depend in any way on what the defendant knows or intends will happen: see **Morgan v Odhams Press** (supra) **and Baturina v Times Newspapers Ltd**[40], where Morgan and other well-known earlier authorities are reviewed. There is no requirement for the claimant to prove that there were people who did in fact understand the words to refer

[39] [1971] 1 WLR 1239
[40] [2011] EWCA Civ 308, [2011] 1 WLR 1526

to him: see **Lachaux v Independent Print Ltd[41] and Undre v Harrow[42]**.

[79] In the case at bar, the Claimant pleaded in his Amended Statement of Claim at paragraph 13 set out above particulars of reference and similarities between himself and a character named "Canlie Jellsanti". These similarities include his initials, the rhyming of his name, his job as a Senior Correspondent reporter, his address in the same community, and the fact that he was a FIFA referee. These similarities, according to the Claimant, are in reference to him.

[80] The Claimant also admits he is a public figure. He states further that his actions in that week regarding a political interview precipitated the comments he regards as defamatory. During the trial the attributes in reference to the Claimant were not challenged.

[81] For the Defendants, Counsel submits that the statements made in the column were not intended to harm the Claimant's reputation with readers or society. They argue that the details mentioned about the Claimant were not related to the character "Canlie Jellsanti" or any real person at all. The Defendants Counsel further submits that the Claimant's interpretation of the column is a strained and forced one, going beyond what could be reasonably considered natural and ordinary meaning. The Defendants Counsel also contended that whilst it can be said that the column would have been read seriously by people who are politically aware, it goes beyond the realm of natural and ordinary meaning to start ascribing to the readers any imputation to the matters claimed by the Claimant. In relation to the words, their ordinary meaning to show that the Claimant's construction is strained, the Defendants contend as follows -

> Para. 9a. of the Statement of Claim: The Claimant asserts that "jellsanti" was meant and was intended and understood to mean that the claimant had bad breath and is unsanitary. Jellsanti, the evidence showed, translates to 'smelling mouth', or indeed, bad breath. There is no evidence led by the claimant to show that bad breath automatically means that one is unsanitary.
>
> Para. 9c.: The Claimant asserts that referring to Canlie Jellsanti as behaving like a "famn lawi, always in a bef and a controversy" meant that the Claimant spreads or participates in the spreading of gossip and false rumours. However, given the definition of 'bef' being rumours, to include the statement to mean allegations of spreading false rumours is does not equate to being defamatory. All people do so from time to time.
>
> Para. 9d: The claimant asserts that by saying the character has "vye pat", and "always in court learning how he have to do to get away", that this means that the claimant has bad ways and is a criminal would be a stretch and a forced interpretation to arrive at this conclusion.
>
> Para 9i: the claimant asserts that the words "he did renting a house and he didn't pay de rent for two years straight and dey give him notice" meant that the claimant is a dishonest individual who does not pay his debts. Any reasonable reader is hardly likely to jump to such a conclusion. There could be any number of reasons why one would not pay their rent especially for such a long time. A reasonable reader would acknowledge this and would not jump to the conclusion that it is simply that the person is dishonest.

[82] I, therefore, understand counsel to be submitting that: (a) the words or statements and acts attributed to JellSantie were not of or pertaining to the Claimant; and/or (2) the word "JellSantie" would not be

[41] [2015] EWHC 2242 (QB), [2016] QB 402 [15]
[42] LBC [2016] EWHC 931 (QB) [24-26], [31]

understood by a reasonable person as referring to the Claimant.

[83] Having borne all of those matters in mind and having reflected on the submissions and examined the evidence pleaded and words of the column, the Court agrees that the extrinsic evidence of the similarities pleaded by the Claimant between himself and the character, Canlie Jellsanti, satisfies the requirement that a reasonable reader would identify this character as the Claimant. It is the Court's view that whilst the "Nabes & I" article would be expected to contain facts (and the column does so), some of those expressions reflect the contentions of the Claimant on the particulars of reference to him in dispute are defamatory.

[84] The imputation has tendency substantially to affect, in an adverse manner, the attitude of other people towards him; the innuendo meaning pleaded libelous of the Claimant with the effect of lowering him in the eyes of the reasonable right thinking persons. At common law, protecting the expressions of satire and balancing the rights of free speech require adherence to reasonable standards so that the line between reality and fiction is not blurred.

[85] The Court, therefore, finds that the words referred to the Claimant and defamed him. I am satisfied that a reasonable reader would understand and ascribe the meaning of the statement to be the meanings as pleaded by the Claimant. As it stands, there are words capable of a defamatory meaning in this case.

[86] During cross-examination, the Claimant pointed out several extrinsic facts that drew similarities between himself and the character "Canlie Jellsanti". He went so far as to agree that not only is he a public figure, but his actions regarding a political interview the week before precipitated the comments that were regarded as defamatory. He also admitted that he was the person referred to in the column "From Every Angle", which essentially means that he admitted the truth of the publication. However, Counsel for the Defendants submitted that it was a slip of the tongue, particularly since the Counsel for the Claimant kept repeating the fictional character Canlie with the Claimant's name continually and interchangeably, even after the witnesses pointed it out and the Court corrected her to avoid mistakenly saying Carlisle (Claimant's name) instead of Canlie (fictional name in the article).

[87] The article discusses a journalist well-known to the public and involved in football from Point Mitchel, still living at his mother who has committed a crime and has not only knowledge of how to hide his crime, but also made a deal with the justice system and got away with it. While the law recognizes that public figures should be more tolerant of criticism, as they have put themselves in a position of inviting commentary and scrutiny, the column goes beyond the natural and ordinary meanings to insinuate matters that were not established. There is the imputing of criminal activity and conduct likely to harm the reputation and character of the Claimant, which is defamatory.

[88] While one may question why such an imputation is drawn when the story had not made its way to the actual newspaper articles, statements which were held to be defamatory include a statement which implied that the claimant had committed an offence **Lord McAlpine v Bercow** [2013] EWHC 1342 (QB)**.** According to **Gatley on Libel and Slander** at paragraph 2.19 it is defamatory to state that a person is dishonest: **Austin v Culpepper** (1684) 2 Shaw 313. It is also defamatory to make a direct imputation a

person has committed a crime.

[89] In this community, the nature of the words spoken about the Claimant, though in jest, interferes with his reputation and character. The provocative nature of the text, which drew express parallels between the Claimant and the character where the words complained of, could be understood by a reasonable reader of The Chronicle to be in reference to the Claimant conveying to the ordinary reasonable reader the meanings the Claimant allege about himself. To say he is dishonest and the imputation of committing a crime and colluding with the authorities to pervert the course of justice to avoid consequences of crimes alleged to have been committed would be sufficient to lower him in the esteem of a right-thinking man. It is my view that the article would convey to an ordinary reasonable reader the meanings he alleges in his Particulars of Claim.

[90] In relation to the allegations of criminal imputations, I have considered the three types of defamatory allegation identified broadly in the decision of Brooke LJ in **Chase v News Group Newspapers Ltd [2003] EMLR 11** [45] in which he sets out, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand. In **Charman v Orion Publishing Group Ltd**, for example, Gray J found a meaning of "*cogent grounds to suspect*" [58].

[91] Consequently, with respect to the six allegations, I find, except for statement (d), bear the meaning ascribed by the Claimant as someone involved or suspected to be involved with criminal conduct. It is an innuendo within the spectrum of interpretation that the words are capable of imputing actual guilt, as contrasted with suspicion which falls within the threshold required for the words complained of to be capable of being defamatory of the Claimant.

[92] In the circumstances, the Court therefore holds using the reasonableness tests that the ordinary, reasonable, fair-minded person would understand the words complained of in statement (d) to be, in their meaning, natural and ordinary and by innuendo, libellous with the effect of lowering the Claimant in the estimation of right-thinking persons in society. It is an imputation that has at least a tendency substantially to affect, in an adverse manner, the attitude of other people towards him. Even a reader of The Chronicle "not avid for scandal" could, in my view, reasonably have read the article in this way.

Issue 3: Whether the words constitute fair comment on matters of public interest?

[93] It is a defence to a claim of defamation that the words complained of are fair comment on a matter of public interest. The basis of this defence is stated by the authors of **Gatley on Libel and Slander** to be that "[t]here are matters on which the public has a legitimate interest or with which it is legitimately concerned and on such matters, it is desirable that all should be able to comment freely, and even harshly, so long as they do so honestly and without malice".

[94] In **Albert Cheng v Tse Wai Chun Paul**[43] Lord Nicholls of Birkenhead NPJ set out the key five ingredients of the defence of fair comment. He said:

> "16. …First, the comment must be on a matter of public interest. Public interest is not to be confined within narrow limits today: see Lord Denning in **London Artists Ltd v Littler** [1969] 2 QB 375, 391.
>
> 17. Second, the comment must be recognisable as comment as distinct from an imputation of fact. If the imputation is one of fact, a ground of defence must be sought elsewhere, for example, justification or privilege. Much learning has grown up around the distinction between fact and comment. For present purposes, it is sufficient to note that a statement may be one or the other, depending on the context. Ferguson J gave a simple example in the **New South Wales case of Myerson v Smith's Weekly** (1923) 24 SR (NSW) 20, 26:
>
> > "To say that a man's conduct was dishonourable is not a comment; it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment".
>
> 18. Third, the comment must be based on facts which are true or protected by privilege: see, for instance, **London Artists Ltd v Littler** [1969] 2 QB 375, 395. If the facts on which the comment purports to be founded are not proved to be true or published on a privilege occasion, the defence of fair comment is not available.
>
> 19. Next, the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded.
>
> 20. Finally, the comment must be one which could have been made by an honest person, however prejudiced he might be, and however exaggerated or obstinate his views: see Lord Porter in **Turner v Metro-Goldwyn-Mayer Pictures Ltd** [1950] 1 AER 449, commenting on an observation of Lord Esher MR in **Merivale v Carson** (1888) 20 QBD 275, 281. It must be germane to the subject matter criticised. Dislike of an artist's style would not justify an attack upon his morals or manners. But a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of **legitimate** criticism: see Jordan CJ in **Gardiner v Fairfax** (1942) 42 SR (NSW) 171, 174.
>
> 21. These are the outer limits of the defence. The burden of establishing that a comment falls within these limits, and hence within the scope of the defence, lies upon the defendant who wishes to rely upon the defence.

[95] Fair comment is a defence that protects defamatory criticism or expressions of opinion; it does not protect defamatory statements of fact: See **Jamaica Observer Limited v Joseph Matalon**[44] where Morrison P observed: -

> "… fair comment in the law of libel must not only be on a matter of public interest, but it must represent the honest opinion of the author, "based upon true facts". In other words, as Kennedy J explained in **Joynt v Cycle Trade Publishing Co**, "[t]he comment must ... not misstate facts, because a comment cannot be fair which is built upon facts which are not truly stated ..."

[96] In the case of **Lyndon Duncan v Edison Baird**[45]**,** Michel, J as he then was, stated at para [26] -

> "The defence of fair comment is defeated if it is shown that the comment was actuated by malice. But the onus is on the person seeking to defeat the defence of fair comment to establish malice. In the present case, the respondent did not plead malice, either in his statement of claim or in a reply

[43] [2000] HKCFA 35
[44] [2019] JMCA Civ 38
[45] AXAHCVAP2012/0008

> to the appellant's plea of fair comment. In fact, the respondent did not even file a reply to the appellant's defence, and although there is an implied joinder of issue on the averments in a defence even if no reply is filed, where there is a specific plea in a defence which must be controverted in order to defeat the defence, the absence of any averment negativing that plea renders the plea unassailable. The requirement of a specific reply alleging malice when fair comment is pleaded in a defamation action is laid down by a practice direction under the English Civil Procedure Rules, but although not specifically set out in a practice direction under our Rules, it is both good sense and good law that a specific averment of malice would be required, either in the statement of claim or in a reply, in order to defeat a defence of fair comment which is otherwise made out."

[97] As to the public interest element, these, according to **Gatley**, "are matters on which the public has a legitimate interest or with which it is legitimately concerned". To ascertain whether the defence of fair comment is made out in this case, therefore, one has to determine whether the words complained of constitute comment (and not statements of fact) and, if so, whether the comment is fair, meaning, whether it is a comment which might fairly be made on the facts referred to.[46] In addition, the comments must have been particularise in the pleadings. In **Doyle v Smith**[47] the defendant blogger's public interest defence failed because he did not adequately plead and prove that he had believed it was in the public interest to publish the statement complained of.

[98] The Defendants, in written submission, contend that the Claimant, at paragraph 8 of his Reply, admits that the column comments on current events and topics and that the matters of public importance stated in the column were the recently conducted poll and the treatment of mothers. The Defendants assert that as publisher and printer of the entire Chronicle newspaper, they should not be accused of malice because the newspaper cannot be categorized as a politically biased newspaper. They contend that while the author of the column could be so accused and be categorised as biased towards the incumbent party government and accused of malice if sued, the Defendants themselves could not. Counsel submitted that the author of the column was entitled to share his belief and commentary that the Claimant was lying about the poll when the Claimant wrote or spoke about it.

[99] The Defendants also observed that the Claimant himself was also entitled to share his belief and commentary that a grown man still living at his mother's home and apparently off of his mother was not a good thing and was wicked. Counsel for the Defendants also observed, on the issue of malice based on politics, that even the Claimant's witnesses were able to point out other articles published in the same edition of the newspaper with the impugned column was politically skewed towards the opposing party to make the point that the newspaper was balanced and not actuated by malice, and so too were the First Defendant.

[100] However, the Defendants' plea of fair comment on a matter of public interest fails. To plead fair comment, the defence must properly particularize the facts alleged to be true that the comments are based on. The defence must set out the facts alleged to be true that the comments are based.[48] The defence of fair comment must identify the matters of public interest on which the comment is made. In **Bullen and Leake** paragraphs 29-40 the learned authors stated, "A defendant **must plead** with sufficient precision the

[46] Sutherland and Others v Stopes [1925] AC 47 at 62; Burton v Board [1929] 1 KB 301 at 305
[47] [2018] EWHC 2935 (QB)
[48] See Cunningham - Howie v F. W Dimbleby & Sons Ltd [1951] 1 K.B 360; Cohen v Daily Telegraph [1968] 1 WLR 916]

comment relied upon as constituting the defence so that a Claimant knows the case he has to meet"[49]. In this case, the statements made in the column could not amount to fair comment as they went to the Claimant's character to show him guilty of a crime and perverting the course of justice without any factual evidence. Second, freedom of expression cannot excuse defamatory statements: **Panday v Gordon**[50].

[101] The submission that the published materials themselves were not defamatory based on fair comment is not agreed. The defence on the basis that the allegations involving the Claimant surrounding the election poll were substantially true was not proved. Statement (d) in paragraph 8 in the Amended Statement of Claim is defamatory of the Claimant by the words, phrases, depiction, undertones, and context. These allegations against the Claimant were very serious and were published widely.

[102] Accordingly, the defence of fair comment fails.

Issue 4: Whether the Second Defendant published the defamatory statements

[103] Counsel for the Claimant submits the proposition found in **Emmens v Pottle** (1886) 16 QBD at 356 where Lord Esher MR states, "the proprietor of newspapers, who publishes the papers by his servants, is the publisher of it, and he is liable for the acts of his servants. The printer of the paper prints it by his servants, and therefore he is liable for the libel contained in it." **Gatley on Libel and Slander** 10th Edition at page 153 paragraph 6.15 was also submitted for authority that "where a libel is published in a newspaper, everyone who has taken part in publishing it, or in procuring its publication … is **prima facia** liable for any libel which appears in its columns." **Gatley on Libel and Slander**" pg. 1382 also states, "Although a printer is prima-facie liable for defamation at common law, this prima facie liability can of course be rebutted by evidence that the printer was not a part of the publication of the [Column]".

[104] The Claimant himself testified to having worked at The Chronicle as acting Editor sometime before 2014 before this claim and the process he used to send work to the printers. That process was from long ago typesetting, where it goes to a dark room, and images and plates are developed to print the material sent.

[105] Dave Baron, the Managing Director of the Newspaper, testified that the Second Defendant used a modern-day direct-to-plate printing technology to print the newspaper at the material time. He stated, -

> " .. . our computer system was set up so that the Chronicle company could send their newspaper through our system directly to the plate making machine, so that our only interaction with the newspaper is through the operator who burns the plate for printing"

[106] Baron also explained that the Second Defendant did not review or vet the content of the newspaper before printing it, and it was not negligent or necessary to do so. It was not their role or responsibility. The printing process did not require them to read the paper and the printing staff could decide whether or not to read the newspaper while it was being printed.

[107] The evidence of Lucy Jones supports the evidence of Dave Baron. Under cross-examination, Lucy Jones testified that at the time when the article was published, she sent the newspaper to be printed by the

[49] See Bullen and Leake 29-40; Control Risks v New Library [1990] 1 WLR 183]
[50] [2005] UKPC 36; (2005) 67 WIR 290

printers already formatted and laid out in alignment with the technology used by the Second Defendant for printing as this method was most effective and only required, they provide the layout to the printers. She explained the process to be that she would send it to Paramount Printers via email. After the newspaper is printed, one of her employees collects it from the Printers, which is located at Loubiere. Further, once printed, the newspaper was delivered to an employee of the First Defendant, not any member of the public. Delivery of the paper to the very person who provided the content cannot sensibly or logically be deemed publication for the purposes of defamation.

[108] Here the state of a Defendant's knowledge is an important factor. If a person knowingly permits another to communicate information which is defamatory when there would be an opportunity to prevent the publication, there seems to in principle, that liability may accrue. So too, if the true position were that the second Defendants had been (in the claimant's words) responsible for the dissemination and approval of the illegal imputations without facts.

[109] On the evidence the Second Defendant shows that no member of staff was the author, editor or commercial publisher of the statement; and that they took reasonable care to ensure that the paper was printed based on the layout received from The Chronicle via direct transfer to the printers; and he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement. Mr. Baron also established that the printing process used at the material time had been overcome by new printing technology, which does not require the use of films and printing plates but direct-to-plate technology.

[110] In **Vizetelly v Mudie's Select Library**,[51] a circulating library provided to subscribers a book on Stanley's search for Emir Pasha in Africa, which turned out to be defamatory. The issue was whether the library could claim protection under innocent dissemination. Lord Justice Romer described the defence as follows:

> That [they were] innocent of any knowledge of the libel contained in the work disseminated by [them], that there was nothing in the work or the circumstances under which it came to [them] which ought to have led [them] to suppose that it contained a libel, and that, when the work was disseminated by [them], **it was not by any negligence on [their] part that [they] did not know that it contained the libel, then, although the dissemination of the work by [them] was primâ facie publication of it, [they] may nevertheless, on proof of the before-mentioned facts, be held not to have published it.** [Emphasis Supplied]

[111] On the evidence presented, I am satisfied that the Second Defendant was not required to review and approve the contents of what was to be published, nor that the Second Defendant knowingly permitted or was negligent in the publication of information which is defamatory. The final approval of inclusion or use of the column for publication, which would be expected, was that of the First Defendant based on the roles of the individual companies. Here Dr. Esprit admitted under cross-examination that she edited the 'A Moder's Love' article "for content, grammatical errors and placed it in the paper", which was included in her witness statement. The arrangement, as admitted, is that what the newspaper sent for printing is what is finally approved for such printing by the First Defendant, the Second Defendant's obligation being to

[51] [1900] 2 QB 170

print and deliver within certain timelines and printing specifications the "job" that was contracted to be printed.

[112] With respect to the methodology for printing, I have no doubt that the technology the Second Defendant adopted in their printing process exists as they have described, and believe the testimony of both Managing Directors that the Second Defendant, in fact, used this new technology in their printing process.

[113] It is therefore the Court's view that using this technology for the printing of the publication as testified by the witnesses at trial, that the Second Defendant was not required to read and did not read the contents of the newspaper, and that they only ensured that the paginations and appearance of the newspaper were faithful to the layout of foil script received from the producers for printing, the printers being concerned to ensure that their delivery of the order as contracted, was completed.

[114] Accordingly, the Court finds the claim against the Second Defendant fails. The claim against the Second Defendant is therefore dismissed.

Damages:

[115] In the case of **John v MGN Ltd**, Sir. Thomas Bingham MR summarised the principles for assessment of damages in defamation cases 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. The purpose of damages is to compensate for the injury suffered rather than punish the wrongdoer: **Rantzen v Mirror Group Newspapers (1986) Ltd**[52]. In **Halsbury's Laws of England Defamation (Volume 32 (2019))/1 at 515** the learned authors state the principle "At common law, if a person has been libelled without any lawful justification or excuse, the law presumes that some damage will flow in the ordinary course of events from the mere invasion of his right to his reputation, and such damage is known as 'general damage'. Compensation by damages operates in two ways: as a vindication of the claimant to the public and as consolation to him for a wrong done.

[116] Counsel for the Claimant cites the case of **Nigel Carty** v **Shawn Richards** SKBHCV 2016/0008 Ventose, J. as he then was, relied on the case of **John v MGN Ltd** [1997] Q.B. 586[53] where Sir Thomas Bingham in the Court of Appeal of England and Wales stated on damages (at pp. 607-608) summarised the principles for assessment of damages in defamation cases 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 for 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 touched 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 the publication is also very relevant: a libel published to millions has greater potential to cause damage than a libel published to a handful of people."

[52] [1993] All ER 975, 997; [1994] QB 670, 696
[53] 1997) QB 586 adopted by the Court of Appeal in Trinidad and Tobago in TnT News Center Ltd v John Rahael Civ App No. 166 of 2006

[117] The quantum of damages to be awarded is compensatory in nature and dependent on the peculiar circumstances of each case. The quantum of damages is also affected by evidence of the extent of the injury and or damage caused: **Edmond Mansoor v Eugene Silcott**[54]. Here, the existence and scale of any harm to reputation may be established by evidence or inferred. In the more recent cases **Cairns v Modi; C v MGN Ltd**[55], Lord Judge CJ noted:

> "In any case involving the assessment of compensation following a libel the essential question is indeed simply expressed: in the context of the principles in John v MGN Ltd, how much loss and damage did the publication cause to its victim, and how is this to be reflected in monetary terms?"

[118] It seems to me, therefore, that, properly speaking, a man defamed does not get compensation for his damaged reputation. He gets damages because he was injured in his reputation, that is simply because he was publicly defamed. As stated in **Cassell v Broomes**, "the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant."[56] Compensation is here a solatium rather than a monetary recompense for harm measurable in money. What is awarded is thus a figure which cannot be arrived at by any purely objective computation.

[119] In the **Eastern Caribbean Supreme Court,** the principles for the approach to the assessment of damages in defamation claims was helpfully identified by Master Actie (as she then was) in the case of **Roxane Linton v Louisiana Dubique and the Attorney General of the Commonwealth of Dominica, DOMHCV2011/0062** where the then learned Master identified the factors to be taken into consideration in any assessment of damages in a defamation action namely[57]:

i. The extent of the publication;
ii. The gravity of the publication;
iii. The effect of the publication;
iv. The extent and nature of the impact upon the claimant's feelings, reputation or character;
v. The conduct and behaviour of the defendant taking into consideration matters of aggravation or mitigation.

Extent of the publication:

[120] The Claimant in his testimony submitted the extent of the publication to be substantial. He attests that the publication was made in a newspaper and, as such, is in permanent form. He attests that The Chronicle has a very wide readership and that the impugned publication was not only sent to government ministries and published in Dominica, but also in the Caribbean and the world at large and further that the publication distributed through the post to the Defendant's regional and international subscribers continues as it is online and that the newspaper is archived at the library and documentation center and so will be available to future generations. The First Defendant disputes this testimony, contending that the claim is exaggerated since the publication of the column is not made online, being only in its printed copies and published in the Dominica community.

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[54] Antigua and Barbuda High Court Suit no. ANUHCH 2010/0209
[55] [2013] 1 WLR 1015 at 1023 [24]
[56] Cassell (n4) 1071
[57] paragraph 19

[121] The Claimant failed to provide any direct evidence to support their contention regarding the number of copies published, the nature of repeat issues, or the extent of the profit-making alleged. There was also no evidence presented to dispute that the publication was made online, or the extent of its reach. These matters remained unaddressed. On the other hand, the court considered the First Defendant's admission that the column known as "Nabes and I" was published by the newspaper and that it was popular. The Defendants also admitted that the publication circulated in Dominica, as well as among its diaspora community in Europe, North America, and the Caribbean. However, they clarified that it was never published online and was not carried out for profit-making. The Court was also informed that publication of the column had been discontinued. These admissions were not disproved by the Claimant.

[122] The Court, therefore, views and so holds, on a balance of probabilities, that the Claimant not having established before the Court whether the Defendant published the column on the web, how widespread the publication was and whether the extent of the publication was severe or minimal, that such damages have to be assessed in the context of the extent of the publication being unknown.

Gravity of the publication and the extent and nature of the impact upon the Claimant's feelings, reputation or career

[123] In **John v MGM,** Lord Bingham MR stated, "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 Claimant's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be."

[124] The Claimant's vive vice evidence in summary is that he is a well-known and well-respected journalist in Dominica. He is a former FIFA referee, works as a free-lance journalist for the Sun Newspaper and Dominica News Online, is the Associated Press correspondent for Dominica, and is a member of the Dominica Football Referee Association. The Claimant is also the Vice President of the Credit Union League, former member of the Board of Directors of the National Co-operative Credit Union, former Vice President of the St. Mary's Academy Parent Teachers Association and former Vice President of the St. Martin Primary School Parent Teachers Association. He is the father of three children - two girls and one boy. In his evidence, he also stated that he felt hurt and offended after reading the article. He cried after reading it and felt ashamed to face people because he believed many would believe the false statements in the article. He gave evidence of feeling humiliated, hurt and embarrassed. He continues to be shunned and taunted by people who have read the article. He has been confronted by many people about it, causing him to feel humiliated, hurt, and embarrassed. As a reporter, he now feels anxious when doing his job because he is self-conscious that people are looking at him. He also testified of what his children reported to him of what is allegedly being said by their school mates and teachers and that they have been teased and taunted at school and he was forced to take his son to counseling. No other evidence was provided in relation to this.

[125] Under cross-examination, the Claimant admitted that he did not lose any jobs, professional standing, or friendships. He makes the blanket statement that "as a result of the defamatory statement, not only his feelings were hurt and humiliated but also his professional reputation has been injured and brought into

public scandal, odium and contempt". However, there is no evidence of it affecting him professionally or his ability to attract or engage in business or that the words complained damaged his finances, or caused him to lose his job, or of any serious harm caused. More importantly, there is no evidence that he suffered any actual loss of income or professional opportunities as a result of the publication. Indeed, no such loss was pleaded even as special damages.[28] In **Cooke v MGN Ltd** [58], the defendant newspaper published an article in which it was asserted that she owned a number of properties rented to people on housing benefit, and that they were kept in a state of disrepair (roughly, an accusation that the claimant was profiting from others' poverty). The claimant could not demonstrate that this had caused serious harm (or was likely to do so), and thus the claim failed.

[126] While libel is serious by virtue of the imputations, there is no evidence of any significant damage to the Claimant's reputation and standing. In the instant claim, the Claimant admitted under cross-examination that he is well known in Dominica, and "that's a fact". He was asked whether he is a person in public life and answered, "very much so". He also admitted that he has not lost any 'gigs'/jobs since the 'A Moder's Love' column was published. He testified that he no longer works with The Sun Newspaper from sometime after 2017; he could not remember the exact date but admitted that it was not because of the article. The Claimant also admitted under cross-examination, that he continues to have a good relationship with his friends. Only two witnesses testified on his behalf. Both of them attest to having a good relationship with him. None of the Claimant's witnesses testified that the article caused them to lower their esteem of the Claimant, or that they shunned him, or that they are no longer friends with him. They both testify that they remained his friends even after the publication of the Column. Matthias Peltier, who his is long-time friend, said that he did not even believe the imputations supposedly made of the Claimant. Keith Boyce who said that he believed the allegations supposedly made in the Column has remained friends with the Claimant. They both testify that they did not shun him remaining good friends with him to this day and even continued to invite him to report on his Daily radio call-in program (Matt Peltier).

[127] I therefore regard the instant Claimant's evidence of the loss he suffered rests substantially on the injury to his feelings and distress caused to the injury to his reputation. The impact of the statements to the Claimant, on the evidence presented on a balance of probabilities, is therefore limited to his hurt feelings and distress. The evidence provided fails to prove any financial or other loss but rather illustrates how he felt by the people he accused of shunning him after the publication of the column. Accordingly, the Court holds that the extent of the publication of the statements on the Claimant is limited to his emotional distress and hurt feelings, as per the available evidence and on a balance of probabilities.

The conduct and behaviour of the defendant

[128] In examining the First Defendant's conduct, I consider first, the First Defendant's offer of an apology to the Claimant in a letter dated 21st November 2014 by its managing director in response to the Claimant's pre-action letter. The managing director in his letter seems to point out that the publication of an apology would do more harm than good to the Claimant[59] in the circumstances of their claim that the column was

[58] [2014] EWHC 2831
[59] [See volume 3 tab 15 page 43)

satire. The Defendants have also maintained that the defamatory statements were published as comedy.

[129] With respect to malice and intention to make a profit the allegation by the Claimant that both Defendants were motivated by a desire to increase sales and as such make a profit to justify an award of exemplary damages in accordance with the **Rookes v Bernard** principles, the court does not agree. No evidence of ulterior motives was found at the trial. In addition, the article in question contained a disclaimer of the fictional nature of the article. This detail, to my mind, also serves to support the lack of malicious intent on the part of the Defendants towards the Claimant. The sweeping and generalized assertion that the newspaper did this for profit, in my view, is also speculative. In the absence of evidence, the allegations of a desire to make a profit appear to be speculative. Similarly, the contention that the political undertone of the article illustrates that the Defendants were motivated by hatred of the Claimant as a result of his perceived political opinion being not concerned with whether the publication was true or false, justifying a finding of malice against the Defendants, I disagree. No evidence of ulterior motives was shown.

The effect of the apology

[130] It is settled law that a successful Claimant 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 offers to apologise or publicly expresses regret that the libellous publication took place. A proper apology or the offer of such an apology can significantly mitigate damages. It will reduce the injury to feeling and reputation, and limit the vindicatory element of the award.

[131] An apology is not an admission of fault or liability. Accordingly, I duly take it into account on the issue of compensation of damages for the claimant. Here, I am guided by the principle that damages are compensatory. It relates to how the defendant behaved in publishing the defamatory publication. It focuses on the Defendant's conduct, and it is different from exemplary or punitive damages.

[132] On the facts, the First Defendant has offered an apology that still remains open. Such an offer was made immediately when the offending statement was brought to their attention. The Claimant, in his witness statement, accepts that the defendant offered an apology for the defamatory news item. However, he says, that the apology was not adequate. Counsel for the Claimant, did not respond to the Defendant following the response to publish an apology. Counsel for the Defendants submits the First Defendant's offer to make an apology very early before the action commenced still subsists in mitigation of damages.

[133] In the circumstances of this case, where the Defendant tendered an early apology in accordance with the law and that apology is still being open, in my view, this is evidence of sincere conduct.' This should not be meted with an award of aggravated damage nor exemplary damages which is punitive. Accordingly, it is the Court's view that the foregoing would justify a global sum in respect of an award of damages. Here, I am however mindful of the words of Lord Nicholls in **Adam v Ward** where he expressed the view on responsible journalism thus:

> "The common law does not seek to set a higher standard than that of reasonable journalism, a standard the media themselves espouse. An incursion into press freedom which goes no further

that this would not seem to be excessive or disproportionate. The investigative journalist has adequate protection"[60]

Awards of Damages made in other cases:

[134] General damages being at large cannot be assessed by reference to any mechanical, arithmetical or objective formula. In **Murio Ducille v Robert Hoffman** et al[61] the court recognized that an assessment of damages in defamation "must include a substantial subjective element, because injury and damage to reputation cannot be converted by the use of any yardstick into a sum of money."

[135] The Claimant has relied on the cases of **Roxane Linton v Louisiana Dubrique and the Attorney General DOMHCV 2011/0062, Dr. Philibert Aaron v Abel Jno Baptiste DOMHCV2013/0015, Edwardo Lynch and DDS Ltd v. Dr. Ralph Gonsalves HCV AP 2009/002, Rishatha Nicholls *v* Arnhim Eustace SVG 2014/0240** and SVG 2014/0242; **Nigel Carty** v **Shawn K. Richards** SKBHCV 2016/0008 and **Douglas v The Democrat Printing Company Limited** (Claim No. **SKBHCV** 2012/0076 dated 8 October 2013), in support of his submission that damages should be in the vicinity of $200,000.00.

[136] In considering some of these as a practical guide, the court notes that each case in defamation turns on its own facts. For e.g. in **Roxanne Linton**, the sum of $120,000.00 was ordered as general damages and aggravated damages. The Claimant in **Roxanne Linton** was a customs officer, and the defamatory allegations contained elements of claims of impropriety and dishonesty published online, accessible anytime by anyone anywhere on the globe and available for viewing as long as the World Wide Web exists. The Defendants never apologised, nor was there an offer of apology. In **Dr. Philibert Aaron**, $75,000.00 was awarded for general damages. This case involved a song which imputed the Claimant to be involved in buggery. There was evidence before the Court that the Claimant held prominent public positions in Dominica and the words complained of were frowned upon. However, in assessing damages, the court not only took into consideration the standing of the Claimant but also the conduct of the Defendant that instead of apologizing when he received the letter requesting an apology the Defendant made matters worse by making a new version of his song such that the remix version gave rise to the reasonable inference that the Defendant was motivated by personal malice, spite and ill will. In addition, the Defendant never sought to stop the song from being played on the radio and he continued to perform the song in calypso tents, at the calypso semi-final and final, the song was played on the radio during the carnival season which ran from December to the first week in March, the song was in contention for road march which means that it was one of the songs more frequently played during the two-day jump-up and witnesses heard the song or saw the lyrics of the song on YouTube video.

[137] The Court also considered the case of **Mario Ducille v Robert Hoffman et al** ANUHCV1998/0151 where damages of EC$20,000.00 was awarded for libel alleging the claimant, an attorney-at-law of 27 years standing, in active private practice in the Bahamas, a former Chief Magistrate in Antigua which was a high profile position, former Deputy Director of Public Prosecutions and Chief Prosecutor in the Bahamas and DPP in Dominica had been jailed in the United States for pushing drugs. Here the court considered that

[60] Adam v. Ward [1971] AC 309, 344
[61] Civil Suit No ANUHCVI998/0I51

publication was via a newspaper which was still in its infancy and at the time with a weekly circulation; the community was small so that the publication would have been known within days to persons who knew or knew of the Claimant and would have spread outside Antigua to those who knew the Claimant. In addition, the Claimant suffered great damage to his reputation and injury to his feelings; so humiliated he declined the invitation to sit as a High Court Judge in the Bahamas, however, the court found there was no malice on the part of the defendants and once the offending statements were brought to the defendants' attention they printed a retraction and indicated their willingness to pay some compensation; they discontinued publication of offending column and at all times they acted in good faith.

[138] In **Mansoor v Silcott**[62] a case cited by the Defendants which the court found that a calypso as a medium of political and social commentary and an art form using the word "Mansure" and not "Mansoor" the name of the Defendant, was capable of bearing the meaning attributable to them claimed by the Claimant awarded damages to the Claimant of $10,000 and prescribed costs of $1,500. Here His Lordship Mitchel, J as he then was held

> [39] "The Court will not make an award to the Claimant based on his particular susceptibility to feelings of deep hurt and offence and considerable embarrassment and distress. The Court will instead treat the Claimant as a person holding political office in a country and a region accustomed to severely criticising its politicians in calypso, with no consequential lowering of the person so criticised in the estimation of right-thinking members of society generally or exposing of him to public hatred, contempt or ridicule or causing him to be shunned or avoided…
>
> [40] The Claimant, not having established to the Court's satisfaction that his reputation had been harmed so as to require repair and vindication, is left only with his feelings of hurt, offence, embarrassment and distress to be compensated in damages. The Court, having determined that these feelings -at least to the degree expressed by the Claimant -were incongruous with the realities of the role and place of calypso and with the holding of political office in Antigua and Barbuda and other similarly-circumstanced countries, will make an award of damages to the Claimant in the sum of $10,000, which amount the Court considers to be sufficient in the circumstances to compensate the Claimant for any hurt, offence, embarrassment or distress reasonably suffered by him as a result of the publication by the Defendant of the words complained of…
>
> [42] The fact that the Defendant did not respond to the Claimant's letter demanding a retraction of and apology for his publication of the words complained of and the fact that the words complained of contained an untrue imputation against the reputation of the Claimant, are precisely the factors which render the Defendant liable to the Claimant for defamation. These facts do not, in the circumstances, justify an award to the Claimant of aggravated damages. The claim for aggravated damages is accordingly denied."

[139] While awards made in other cases can be of assistance, I am cognizant that each case has, and must be decided upon its own peculiar facts, not least of all because, among other things, claimants are likely to have different social standing, and the effect of the publication will vary. In **Jagan v Burnham** Luckhoo C, stated:

> "It would…be quite wrong to think that damages could be categorised within the confines of levels of awards previously made in other cases as if those constituted precedents to be followed. No such limitation in law exists, for each case must be considered in light of all its relevant factors

[62] Antigua and Barbuda High Court Suit No. ANUHCH 2010/0209

> and prevailing circumstances and without the impediments of inapplicable restraint. That is why, in recognition of this freedom the law says the damages are to be "at large" – judged on the merits and the impression and common sense of the particular case, which would take into account it's special features that is the heinous nature of the defamation, the position and standing of the person the defamed, the resulting harm and hurt caused, the motivation behind the publication, the extent of his falsity and circumstances of aggravation, and the conduct of the defamers before action, after action , and in court during the trial etc…"

The Award of Damages:

[140] In the Caribbean Court of Justice case **Glen Lall & National Media and Publishing Company Limited v Walter Ramsahoye**[63], the Court stated that "Damages for defamation are intended to demonstrate to the public that the defamed person's reputation has been vindicated; if there is no apology and no withdrawal of the defamatory publication, the award should amount to a public proclamation that the defamation has inflicted a serious injury. The sum that is required to achieve this objective must necessarily vary from case to case."

[141] In the case at bar, the evidence led in support of actual damage, hurt feelings or injury to reputation and distress appears minimal. There are general statements about damage to reputation but nothing more. In the absence of such evidence, bearing in mind the mitigating factors by the Defendants stated earlier, which must be balanced against the fact of the publication of defamatory words effect caused to the Claimant's feelings and accordingly, weighing all the aggravating and mitigating factors and having regard to the purpose of an award of damages, the Court is of the view that while the Claimant did suffer damage, I regard the claim for $200,000.00 as manifestly too high and wholly out of proportion to such damage as the Claimant suffered as a result of the libel. One must also be mindful that today, it is important that the freedom of expression is not curtailed by high awards. As stated in the recent case of **Alexander v Gabriel**, by the Trinidad and Tobago Court of Appeal, "an award of such magnitude could only serve to have a chilling effect on the constitutional rights to freedom of expression and freedom and the right to express political views."

[142] Accordingly, having considered the authorities relied on, the award of damages to vindicate his good name or for damage to his reputation ought to be on the lower end of any scale, in light of the absence of any evidence from any person other than the Claimant. There is also no evidence that he lost his job or lost any benefit or circumstances by this publication. Kangaloo JA in **TNT News Centre Ltd v John Rahael, Civil Appeal No. 166 of 2006** (Trinidad and Tobago) stated that:

> Although the claimant starts off with a presumption of damages and is not required to testify, evidence of damage should still be presented since a claimant offering no evidence at all may find himself with a small award of damaged. To attract more than this small award for injured feelings and the distress associated with the libel, evidence is required.

[143] I have looked at the cases produced to the court for its assistance. Each of them turned on their own peculiar facts and circumstances. The cases I find most similar to provide guidance in the present cases are of **Mansoor v Silcott** as cited by the Defendants and **Mario Ducille v Robert Hoffman et al (supra)**.

[63] [2016] CCJ 18 (AJ) [37]

In the cases cited by the Claimant, the claims were defended, and there were other aggravating factors that do not arise in this case.

[144] Having considered the circumstances of this case and being mindful of the prevailing socio-economic realities of this jurisdiction in which the assessment is being made[64], I find an award of damages in the sum of EC$15,000.00 to be adequate and proper. There will be judgment for the Claimant for this amount.

[145] In determining the quantum of damages, I have taken all the facts of this case and comparable cases and the awards that have been made in recent years in the region into consideration and all the circumstances set out in the foregoing, including in respect to defamatory words (statement (d)), the effect of which was to impute criminal conduct to the Claimant, and the Claimant's evidence which does not disclose the extent he suffered any significant loss and damage occasioned from the publication from which he seeks damages.

[146] I bear in mind that he is entitled to a sum which vindicates his good name and remedy his hurt feelings and distress. I also bear in mind that the Defendants' offered an apology, which is still open to the Claimant from very early following the filing of this claim, that the suit was defended at trial and that the Defendants also engaged in mediation towards the resolution of this matter. In addition, the evidence that the Claimant has not lost his job, and that his association with FIFA was not at all affected by the libel.

[147] With respect to the claim made in the Statement of Claim for an injunction against the Defendants, the First Defendant shall not republish the Article.

CONCLUSION

[148] In all the circumstances, I am satisfied, on a balance of probabilities, the Claimant's case against the First Defendant succeeds; the First Defendant defamed the Claimant by the publication in the "Nabes and I" Column of The Chronicle Newspaper dated the 27th June, 2014 by statement (d) as particularised in the Amended Statement of Claim dated 30th March 2015 at paragraph 8. I also find that the statement references the Claimant in disparaging terms constituting libel.

[149] I am also satisfied with the evidence given in this case in proof of the pleadings and the general law applicable on a balance of probabilities, the claim against the Second Defendant fails and is therefore dismissed.

[150] The First Defendant shall pay to the Claimant damages assessed in the sum of EC$15,000.00 together with statutory interest to accrue on the amount at 5% per annum from the date of judgment to the date of payment.

COSTS

[151] The general rule is that costs follow the event. It is my view that the trial of this matter involved the application of several issues on the law of defamation; it also required the use of several authorities and written submissions. The Claimant, having been successful in this claim against the First Defendant, is

[64] Glen Lall & National Media and Publishing Company Limited v Walter Ramsahoye [2016] CCJ 18 (AJ) para [33].

entitled to his cost. To be observed is that the Claimant was unsuccessful on parts of his claim, with only one of his six statements found to be defamatory. In addition, the Claimant was unsuccessful in its claim against the Second Defendant. Those costs generally fall within the prescribed cost regime. In this regime, the cost recoverable is based on the value of the award. However, in my view, an award of prescribed costs on a value of the award, in this case, would be disproportionate to the work done in bringing this matter to trial and conducting a full trial.

[152] Accordingly, in keeping with the guidance of the Board in **Rampersaud v Ramlall** [2022] UK PC 50 and **Part 65.5(2)b** of the Eastern Caribbean Supreme Court Rules (Revised) 2000, I therefore order that the value of the claim for the purposes of prescribed cost be $50,000.00. Prescribed Costs is awarded in the sum of $7,500 to the Claimant to be paid by the First Defendant.

[153] The Court also awards cost to the Second Defendant in the sum of $2,500.00 to be paid by the Claimant. Here the Court is guided by the issue of proportionality. Given that the Second Defendant is represented by the same Counsel and the same material for the defence the cost hereby awarded is prescribed costs on the value of the award being 15% of $15,000.00.

ORDER:

The Court accordingly orders that –

[1] Judgment is granted to the Claimant against the First Defendant.

[2] The First Defendant shall not republish the Article.

[3] The First Defendant shall pay the Claimant damages assessed in the sum of $15,000.00 with statutory interest at the rate of 5% awarded on this sum from the date of judgment to the date of full settlement of payment.

[4] The First Defendant shall pay the Claimant prescribed costs in the sum of $7,500.00.

[5] The Claim against the Second Defendant is dismissed.

[6] The Claimant shall pay the Second Defendant prescribed costs in the sum of $2,500.00.

[7] The Claimant shall have conduct of this order.

Jacqueline Josiah-Graham
High Court Judge

IN THE COURT

REGISTRAR