

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

GRENADA

CLAIM NO. GDAHCV2023/0470
(FORMERLY CLAIM NO. GDAHCV2017/0466)

BETWEEN:

FRANCIS ALEXIS

Claimant

and

CABRAL DOUGLAS

Defendant

Appearances:

Mr. Ruggles Ferguson KC and Mr. Derick Sylvester for the Claimant
The Defendant in person

2023: November 29
2024: March 27, June 13.

DECISION ON ASSESSMENT OF DAMAGES

Introduction

- [1] **MICHEL M:** This is an assessment of damages on a defamation claim brought by Dr. Francis Alexis KC (“the Claimant”) against Mr. Cabral Douglas (“the Defendant”).
- [2] The Claimant is an attorney-at-law, and one of His Majesty’s Counsel, learned in the law, and author of multiple law-related books including the book ‘Changing Caribbean Constitutions’. He is also a former member of the Regional Judicial and Legal Services Commission (“RJLSC”) of the Caribbean Court of Justice (“CCJ”). It is alleged by the Claimant in his statement of claim that the Defendant holds

himself out to be an Attorney-at-Law admitted to practice in New South Wales, Australia and a senior journalist/editor residing in New South Wales, Australia.

- [3] By claim form and statement of claim filed on 17th November 2017, the Claimant commenced these proceedings against the Defendant seeking damages for libel, including aggravated and exemplary damages, for words published by the Defendant in three publications (“the Offending Publications”) and a permanent injunction to restrain the Defendant whether by himself, his servants or agents, or otherwise howsoever named, from printing or publishing or causing to be printed or published, the offending words which are referred to in the statement of claim.
- [4] The Claimant alleged that on 26th October 2017, the Defendant published or caused to be published via the internet, of and concerning the Claimant, and of and concerning him in the way of his profession, the following documents containing defamatory statements:
- (i) “A letter dated 24th October 2017 headed "OFFICIAL POLICE COMPLAINT" and reflecting its subject matter as "RE: "Dr. Francis Alexis Received Bribe from CCJ President Byron Ahead of Appointment to RJLSC in contravention of CCJ Agreement 2001 and Section 3 of the Trinidad and Tobago Prevention of Corruption Act 1987". The said letter is addressed to Acting Commissioner of Police Stephen Williams (Ag COP Stephen Williams) of the Trinidad and Tobago Police Service (“Offending Publication 1”).”
 - (ii) “A "Breaking News" Press Release dated 24th October 2017 bearing the title “Dr. Francis Alexis Received Bribe from CCJ President Byron Ahead of Appointment to RJLSC' ("Offending Publication 2").”
 - (iii) A document entitled “Corruption at the CCJ' ("Offending Publication 3") in which the Defendant stated that "the official Police Report dated 24th October 2017 (Offending Publication 1) has been submitted to:
 - 1.) The Trinidad and Tobago Police Commissioner (acting)
 - 2.) The Royal Grenada Police Force
 - 3.) The Royal Canadian Mounted Police ECMP)
 - 4.) The Dominica Police Commissioner"

- [5] In his statement of claim, the Claimant averred, in essence, that the Offending Publications falsely, maliciously, and scandalously asserted that the Claimant received a bribe from a former President of the CCJ ahead of the Claimant's appointment to the RJLSC.
- [6] The Claimant alleged that the Defendant is the author of all the above offending publications and that the assertion that the Claimant had received a bribe from a former President of the CCJ, is false and extremely defamatory of him, bringing him into public odium, contempt and disrepute and maliciously intended to lower his reputation among his colleagues and other right-thinking members of society - locally, regionally and internationally. The Claimant alleged that each of the three Offending Publications assert and repeat the false and baseless allegations made by the Defendant.
- [7] The Claimant further relied on a number of facts to support a claim against the Defendant for aggravated and exemplary damages
- [8] No acknowledgement of service or defence was filed by Defendant to the Claimant's claim within the time limited by the **Civil Procedure Rules 2000** ("CPR"), and on application by the Claimant for judgment in default of defence, default judgment was entered for the Claimant by a judge, on certain terms. The learned judge also gave directions for the assessment of damages to be conducted by a master. The Claimant duly complied with the learned judge's directions for the assessment of damages and filed a witness statement and written submissions in support of the assessment of damages. The Defendant failed to comply with the learned judge's directions for the assessment of damages. He did not file a Form 31 notice of intention to be heard on assessment and did not file any witness statements. The Defendant filed written submissions out of time without the leave of the Court on the day the assessment of damages was scheduled for hearing.
- [9] A subsequent application filed by the Defendant to set aside the default judgment was refused. Thus, the issue of liability having been crystallised by the default judgment, the task on the assessment is to determine how much compensation

the Claimant is entitled to, based on his pleaded case, the evidence and the law. All matters that go to quantification of damages were open to the Defendant to challenge in so far as any such challenge was not inconsistent with the issue of liability concluded by the default judgment; however, the Defendant opted not to comply with the learned judge's order to be heard on the assessment. The Court proceeded with the assessment of damages hearing on 29th November 2023 and reserved its decision.

Fresh Evidence Application

- [10] On 7th December 2023, the Claimant filed an application to admit fresh evidence touching and concerning the assessment of damages. The application is supported by the affidavit of the Claimant. In the affidavit, the Claimant gives an account of statements made by the Defendant following the assessment of damages hearing on 29th November 2023 as evidence of the conduct of the Defendant to be taken into account for the assessment of damages.
- [11] Despite being filed since 7th December 2023, the application did not come on for hearing until 27th March 2024.
- [12] The basis of the Claimant's fresh evidence application is that subsequent to the assessment of damages hearing on 29th November 2023, the Defendant proceeded via public media to make disparaging remarks about the Court, the Claimant and his counsel, while at the same time repeating the defamatory statement of the Claimant which forms the subject matter of these proceedings. The Claimant states that the offending remarks were made sometime between 29th November and 4th December 2023 and were received by one of his counsel in this matter via the WhatsApp platform.
- [13] The Claimant contends that not only did the offending remarks breach an injunctive order of the Court against the Defendant but they also constitute aggravating conduct on the part of the Defendant. The Claimant argues that the Court is entitled to take into account such aggravating conduct in assessing damages and consider, in particular, whether to increase the award for aggravating and exemplary damages.

[14] The Claimant further contended that the words and actions constituting the offending remarks could not be placed as evidence at the 29th November 2023 assessment of damages hearing, as they were uttered and done post the hearing. The Claimant contended that the law establishes clearly that he can rely on the aggravating conduct in the damages equation, since the Court has not yet rendered its decision.

[15] The Claimant relied on the well-known principles laid down in **Ladd v Marshall**¹ for the Court to consider the fresh evidence application. In a **Ladd v Marshall** application, three limbs must be satisfied before an application to adduce fresh evidence can be granted. First, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, though it need not be decisive; thirdly, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, though it need not be incontrovertible.

[16] Fresh evidence applications are usually made in the context of appeals whereby the evidence sought to be adduced was not before the court below from which an appeal against its decision is being heard. In the present case, the Claimant is seeking to admit evidence of the Defendant's conduct following the assessment of damages hearing but before the court has rendered its judgment on the assessment. This scenario was considered by Leon J [Ag.] in **Andriy Malitskiy et al v Stockman Interhold S.A.**² After discussing the principles concerning the reconsideration of a judgment in the High Court, looking at the matter from a pre-judgment point of view, the learned Commercial Division Judge stated:

“The test for additional evidence before judgment has been rendered must be taken to have advanced with the advancement of the test for a court to admit additional evidence and/or reconsider its judgment before its order has been sealed. The test before judgment also must be to deal with the case justly.”

¹ [1954] EWCA Civ 1.

² BVIHC(COM)2015/0008 (delivered 23rd December 2015, unreported) at para. 97.

[17] Considering the present matter, whether the test in **Ladd v Marshall** applies or the court is to exercise its discretion and in so doing considers the overriding objective to deal with cases justly, I am of the view that the affidavit evidence of the Claimant filed in support of his application on 7th December 2023 should be considered for the purpose of the assessment of damages. I have reached this conclusion for the following reasons.

[18] First, the evidence the Claimant is seeking to adduce is based on statements made by the Defendant after the conclusion of the assessment of damages hearing when the court reserved its decision and it would be impossible to have earlier placed such evidence before the court. Secondly, the evidence that the Claimant is seeking to adduce goes to the conduct of the Defendant, which is one of the factors the court must consider on the assessment of damages. It is important to bear in mind, as has correctly been submitted by learned King's Counsel for the Claimant, that the trial court in assessing damages is entitled to look at the whole conduct of the Defendant from the time the libel was published down to the time the verdict is given. It may consider what his conduct has been before action, after action and in Court during the trial.³

[19] Thirdly, the Court considers that the Claimant's evidence is credible. The Claimant is not seeking to adduce, as evidence, allegations or statements made by the Defendant, but rather to demonstrate the Defendant's conduct even after the assessment hearing and before judgment is delivered.

[20] In light of the foregoing, the affidavit of the Claimant, Francis Alexis, filed on 7th December 2023, is admitted for the purpose of the assessment of damages.

[21] I will now proceed with the substantive matter before the court, the assessment of damages on the Claimant's claim.

The Claimant's Evidence

³ See: *Praed v Graham* [1889] 24QBD 53,55 per Esher MR.

[22] In his witness statement filed on 2nd October 2023, the Claimant stated that he was relying on and incorporating into his witness statement, certain filed documents in the proceedings. I shall set this out in full:

“5.1 In support of this Assessment, apart from this affidavit [*sic*], I rely on the following documents which already form part of the Court record in this matter:

- i. The Statement of Claim filed on 10th November 2017;
- ii. Affidavit of Francis Alexis in support of Application for Interlocutory Injunction together with the Certificate of Exhibits attached thereto and numbering “FA1” to “FA20” filed on 10th November 2017 (“Alexis Affidavit 1”)
- iii. Affidavit of Francis Alexis in support of Notice of Application for substituted service and the Certificate of Exhibits attached thereto filed on 20th November 2017 (“Alexis Affidavit 2”)
- iv. Supplemental Affidavit of Francis Alexis in support of Application for Interlocutory Injunction together with Certificate of Exhibit attached thereto and marked “FA21” filed on 20th November 2017 (“Alexis Affidavit 3”)
- v. Affidavit of Francis Alexis in support of Notice of Application for substituted service together with the certificate of exhibits attached thereto and numbers FA22 to FA31, filed on December 19th, 2017 (“Alexis Affidavit 4”)
- vi. Affidavit of Francis Alexis in support of application for default judgment against the Defendant, filed on 18th November 2022 (“Alexis Affidavit 5”)
- vii. Affidavit of Francis Alexis in support of application for committal to of the Defendant to prison for breach of court order, together with certificate of exhibit numbered FA1 to FA3, filed 18th November 2022 (“Alexis Affidavit 6”).

5.2 I refer to, rely on, incorporate all the aforementioned documents as part of this Witness Statement.”

The Law of Defamation

[23] According to **Gatley on Libel and Slander**, “Defamation is committed when the defendant publishes to a third person words or matter containing an untrue imputation against the reputation of the claimant.” Any other imputation of the words or matter which may tend to lower a claimant in the estimate of right-thinking members of society generally or to expose him or her to hatred, contempt or ridicule is defamatory of him or her.

[24] Two types of defamatory statements are recognised. Libel, as in the present case, is a defamatory statement in a permanent form, usually consisting of printed or written words and includes anything more or less in a permanent form. Slander on the other hand is a defamatory statement that is in a transient form, often a spoken statement. The distinction at law between the two types of defamatory statements is that libel is actionable per se, that is, without any proof of special damages, as the law presumes that damage had been caused to the claimant's reputation. Thus, the law presumes that some damage will flow from the publication. However, because of its transient nature, for slander to be actionable, some special damages must be proved to flow from it, unless it falls within one of the specified exceptions.

[25] As was noted by Cave J in **Scott v Sampson**,⁴ 'the law recognizes in every man the right to have the estimation in which he stands in the opinion of others unaffected by false statements to his discredit.' The law of defamation is therefore there to protect a person's general reputation and the associated injury to his or her feelings.

Principles Guiding the Assessment of Damages

[26] The general principles guiding an assessment of damages in a defamation action were considered by the Court of Appeal in **Jenny Lindsay et al v Harriett Carty**.⁵ In the Court of Appeal's judgment, Baptiste JA cited with approval the following passage by Lord Bingham in **John v MGN Ltd.**:⁶

"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant: a libel published to millions has a greater potential

⁴ (1882) 8 QBD 491.

⁵ AXAHCVP2015/0007 (delivered 7th December 2021, unreported) at para. 8.

⁶ [1997] QB 586 at p. 607.

to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men."

[27] Lord Bingham went on to note that there can never be a precise arithmetical formula to govern the assessment of general damages and that in assessing general damages, a judge sitting alone should consider the particular facts of an individual case in the context of broadly comparable cases to lead to broadly comparable awards.⁷

[28] As was stated by Windeyer J in a passage approved by the House of Lords:⁸

"It seems to me 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. For this reason, compensation by damages operates in two ways—as a vindication of the plaintiff to the public, and as a consolation to him for the wrong done."

[29] I will therefore consider the assessment of general damages under the following heads: (1) the gravity of the libel; (2) the extent of the publication; (3) the reputation of the Claimant; (4) the conduct of the Defendant; and (5) the effect of the publication.

The Gravity of the Libel

[30] As was stated in **John v MGN Ltd**⁹ in assessing the damages recoverable for injury to reputation, the most important factor in the gravity of the libel; the 'more

⁷ Ibid at 608.

⁸ In *Broome v Cassell & Co. Ltd* [1972] A.C. 1027 at 1071, per Lord Hailsham LC.

⁹ 1997] QB 586 at 607.

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.'

[31] The defamatory words published by the Defendant were gravely serious. The words alleged that the Claimant had accepted a cash bribe and committed a criminal offence of corruption in public office. The words also carried an imputation that the Claimant's appointment to the RJLSC was part of an alleged bribe he received. The Defamatory words also suggested that the Defendant was dishonest. The defamatory words struck at the heart of the Claimant's integrity, character, and professional reputation, which are the very core attributes of a person's personality.

The Extent of the Publication

[32] As noted above, in **John v MGM Ltd**, (which was cited with approval by the Court of Appeal in **Edwardo G. Lynch v Ralph Gonsalves**),¹⁰ it was stated that the extent of publication is a relevant factor in assessing damages and 'a libel published to millions has a greater potential to cause damage than a libel published to a handful of people.'

[33] The first offending publication was addressed to the Acting Commissioner of Police, Trinidad and Tobago Police Service and was copied to the Royal Grenada Police Force, the Commonwealth of Dominica Police Force and the Royal Canadian Mounted Police.

[34] The second offending publication by the Defendant was a press release by the Defendant addressed to "media members". The third offending publication was a document entitled "Corruption at CCJ" published in the media.

[35] In his statement of claim, the Claimant alleged that Offending Publications 1, 2 and 3 were all published on the internet, including via Grenada Broadcast and the Caribbean News Network. He alleged that Grenada Broadcast is widely followed

¹⁰ SVGHCVAP2009/0002 consolidated with BDS Limited v Ralph Gonsalves SVGHCVAP2009/0004 (delivered 21st June 2011, unreported) at para. 15.

by Grenadians throughout the world, including as far away as China and New Zealand. He further alleged that the Caribbean News Network is read widely by Caribbean nationals and others throughout the world.

[36] The Claimant further alleged that by the Defendant's own admission, in Offending Publication 3, apart from publication via the World Wide Web, the Defendant copied all the offending publications specifically to the Royal Grenada Police Force, the Royal Canadian Mounted Police and the Dominica Police Force and has circulated it widely via email to the news media, Bar Associations, Lawyers and other professionals throughout the Caribbean and elsewhere.

[37] In his affidavit filed on 10th November 2017 in support of an application for an interim injunction, the Claimant stated that he saw the Defendant's Official Police Complaint (Offending Publication 1) and Press Release containing the defamatory words and allegations (Offending Publication 2) displayed on the internet site, Grenada Broadcast from 26th October 2017 and continuing. The Claimant stated that Grenada Broadcast is a leading internet site, which is visited, that is, watched or listened to daily, very widely, in Grenada and internationally.

[38] The Claimant stated that ever since the documents of the Defendant appeared on the internet, he has been inundated with telephone calls, email messages and WhatsApp messages. He stated that some have come from inside Grenada, others have come from across the Caribbean and that they have come from numerous people expressing deep disappointment that his reputation is being damaged by the said allegations.

[39] Although he pleaded that the defamatory statements were reported by the Caribbean News Network, the Claimant has not evidenced this allegation.

[40] In summary, the evidence before the Court is that the defamatory statements made by the Defendant were published to the police force of multiple countries and to an unknown number of media houses, staff and members of the judiciary and was reported on the internet on the Grenada Broadcast website which can be accessed globally. The Defendant specially caused the offending publications to be published and reported by the news media. It is evident therefore that the

Offending Publications were published widely and not in a limited form and therefore had the potential to cause greater damage to the Claimant.

Reputation of the Claimant

- [41] The qualifications, experience and general reputation of the Claimant are evidenced in his witness statement and the various affidavits incorporated into it.
- [42] The Claimant is a husband, father, and grandfather. He holds a Bachelor of Laws degree (LLB) and a Master of Laws degree (LLM) from the University of the West Indies (“UWI”), Cave Hill Campus, Barbados and obtained a Doctor of Philosophy (PhD) in Law from the University of Cambridge, England. The Claimant also attended the Hugh Wooding Law School in Trinidad and Tobago and obtained a Legal Education Certificate from the Caribbean Council of Legal Education.
- [43] The Claimant is a practicing attorney-at-law. He was admitted to practice as a Barrister-at-law in Grenada on 10th December 1980. He has therefore been practicing law for over 40 years. On 7th August 2008 he was appointed as one of Her Majesty’s Counsel in the Eastern Caribbean. He has appeared before the High Court in multiple Member States and Territories of the Eastern Caribbean Supreme Court as well as the Judicial Committee of the Privy Council.
- [44] The Claimant served as Assistant Lecturer in Law in the Faculty of Law, UWI, Cave Hill Campus, Barbados from 1973 to 1975, Lecturer in Law in the Faculty of Law, UWI, St. Augustine Campus, Trinidad and Tobago from 1975 to 1977 and a Senior Lecturer in Law in the Faculty of Law, UWI, Cave Hill Campus from 1980 to 1983. He was the Course Director of the Master of Laws (LLM) Advanced Constitutional Law Course and the Course Director of the LLM Advanced Administrative Law Course both put on by the Faculty of Law, UWI, Cave Hill Campus.
- [45] The Claimant served in the Government of Grenada at various periods between 1980 and 1995 including as Attorney General and Acting Prime Minister. He was an elected representative in the House of Parliament of Grenada was 15 years from 1984 to 1999.

- [46] The Claimant has served as Legal Adviser to several Governments, on Constitution Reform and on Public Law generally, including the Governments of Antigua and Barbuda, Barbados, Grenada, St. Vincent and the Grenadines, and Trinidad and Tobago. He also served as legal advisor to bodies of the Organisation of Eastern Caribbean States (OECS).
- [47] The Claimant was Chairman of the Constitution Drafting Committee which wrote the draft 2009 Constitution of St. Vincent and the Grenadines which was submitted to the Referendum there on 25th September 2009; but was not approved at the Referendum. He was also Chairman of the Grenada Constitution Reform Advisory Committee which conducted public education exercises on the Constitution of Grenada for purposes of the Referendum on Constitution Reform which was held on 24th November 2016 but the Constitution Reform Bills which were submitted to that Referendum were not approved at the Referendum. He also served on Commissions on other unrelated matters in Saint Lucia and Bermuda.
- [48] The Claimant has also authored multiple books including “Changing Caribbean Constitutions”.
- [49] When the alleged defamatory words about the Claimant were published by the Defendant, the Claimant was Deputy Chairman of the RJLSC of the CCJ headquartered in Trinidad and Tobago.
- [50] It is quite evident that the Claimant has had a long and successful career as an academic, author, politician, legal advisor and legal practitioner. He has reached the pinnacle of each of his chosen paths. Based on the evidence of the Claimant, I agree with the submission of learned King’s Counsel for the Claimant that the Claimant is a scholar of international repute and has enjoyed an unblemished, distinguished career.

Conduct of the Defendant

- [51] The Defendant’s conduct will largely feature when considering whether there are mitigating factors which would temper the award of damages to the Claimant or aggravating features justifying a higher award to the Claimant or whether the

Defendant's conduct rises to the level warranting an award of exemplary damages. In this context, the court is considering whether such conduct may lessen or cause additional injury to the Claimant's feelings.

[52] Learned King's Counsel for the Claimant submitted that the Defendant's conduct has been reprehensible, not just as a one-off, but consistently so. He submitted that pre-action protocol letters, the institution of the claim in November 2017, and the injunction issued by the Court restraining him from repeating the Offending Publications, had no effect on the Defendant, who pursued and persisted with his defamatory and inflammatory agenda.

[53] Learned King's Counsel pointed out that up to November 2022, the Defendant was publishing the offending words without restraint, without care, and reckless as to their adverse and damaging consequences to the Claimant or any other person. Learned King's Counsel submitted that the Defendant seemed unstoppable even in the face of the Court injunction.

[54] In his witness statement, the Claimant stated that from publication of the defamatory statements in 2017 until judgment in July 2023, the Defendant did not apologise for the offending publications. He stated that quite to the contrary, the Defendant entrenched his allegations, republished the damaging libel, and intentionally and maliciously sought to damage his reputation.

[55] The Claimant's evidence is that his lawyers wrote to the Defendant by letter dated 27th October 2017 requesting that he withdraw, apologise and make amends for the defamatory allegations made by the Defendant. However, instead of recanting his allegations the Defendant made additional allegations. At paragraph 17 of his statement of claim, which the Claimant incorporated into his witness statement, he stated that the Defendant repeated the libelous allegations in a letter dated 30th October 2017 and published it on the Grenada Broadcast Website in response to his pre-action protocol letter to the Defendant of 27th October 2017.

[56] The Claimant further stated that in his 30th October 2017 response letter, the Defendant expressly refused to apologise and retract his offending publications,

instead he contended that they were 'factual...well documented and substantiated...supported by the Claimant's own publication, Changing Caribbean Constitutions, second edition 2015...and in the public interest.'

[57] The Claimant's lawyer again wrote to the Defendant by letters dated 31st October and 2nd November 2017 and the Defendant responded to those letters with similar allegations against the Claimant as his first response.

[58] In his supplemental affidavit filed on 20th November 2017 in support of his application for an interlocutory injunction, the Claimant stated that repetition of the defamatory statements about him were made in a 14th November 2017 email which was written to 'Media Members' by the Defendant widely circulated to the Caribbean media, including daily newspapers in Jamaica and Trinidad, and to Judges, Registrars and other officials of Caribbean Courts.

[59] In his affidavit filed in support of a committal application, the Claimant stated that in an article published via the internet on Antigua News on 9th November 2022 the Defendant was quoted as calling on the Commissioner of Police in Saint Lucia to issue warrants for the arrest of the Claimant under relevant offences of bribery. In a further article dated 9th November 2022, the Defendant made further defamatory statements about the Claimant.

[60] By order dated 17th January 2018, the court granted the Claimant's application for an interim injunction. The Court ordered as follows:

"The Respondent/Defendant be and is hereby restrained whether by himself, his servants or agents or otherwise howsoever from printing or publishing or causing to be printed or published or in any way repeating the offending words as identified in the Statement of Claim filed herein (being Offending Publication 1, Offending Publication 2 and Offending Publication 3) or any similar words defamatory of the Applicant/Claimant pending the trial and determination of this matter or until further order."

[61] In his witness statement in support of the assessment, the Claimant highlights that the Defendant has been in breach of the interim injunction and as previously mentioned, the Defendant continued the publication of the offending words as late as 9th November 2022.

[62] What the above demonstrates is that the Defendant has embarked upon a course of conduct whereby he has doubled down and repeated his defamatory allegations about the Claimant despite pre-action letters, the institution of legal proceedings, and a court order restraining him from continuing to publish the defamatory words. The Defendant has demonstrated a blatant disregard for his actions, their effect on the Claimant's reputation and feelings and any legal consequences.

The Effect of the Publication

[63] The Claimant's evidence as to the effect of the publication can be gleaned from his witness statement and the various affidavits incorporated into his witness statement.

[64] The Claimant's evidence is that after the Defendant published the libelous words, he (the Claimant) was called on the telephone by various media persons to respond to the said words. He stated that some of these media persons were based in Grenada, some in Trinidad and Tobago and some in Barbados. He stated that he had to deny the allegations to the various media persons who called and when asked why the Defendant would make such statements, he would reply that he had no idea.

[65] The Claimant's further evidence is that when the libelous words were published by the Defendant, he was Deputy Chairman of the RJLSC and in order to perform his duties as Deputy Chairman, he had to travel from Grenada to Trinidad and Tobago by air every two months or so.

[66] In his witness statement, the Claimant explained the deep concern and apparent anxiety he felt over the possibility of being arrested in Trinidad and Tobago as called for by the Defendant, when he had to travel there from Grenada in December 2017 to perform his duties as Deputy Chairman of the RJLSC. The Claimant stated however that fortunately, he returned to Grenada without being arrested in Trinidad and Tobago.

[67] The Claimant further indicated that whilst he was in Trinidad and Tobago he had to interact with members of the judiciaries from various Caribbean countries, lawyers from across the Caribbean, other members of the RJLSC, and other persons. He stated that several of those persons expressed concerns to him about the said words published by the Defendant about him, and that he had to assure them that he would be taking action in court to vindicate his good name and probity.

[68] The Claimant's further evidence was that ever since the offending publications by the Defendant appeared on the internet, he has been inundated with telephone calls, email messages and WhatsApp messages. He stated that some of these communications have come from inside Grenada and others have come from across the Caribbean. The Claimant explained that the communications have come from numerous persons expressing deep disappointment that his reputation is being damaged by the said allegations.

[69] In summary the Claimant stated that the allegations made by the Defendant were extremely damaging to his reputation relating to his practice of law, his teaching of law, his writing on law and his service on entities in capacities in which his knowledge of law is relied on. He further stated that the said allegations were calculated to damage his reputation.

[70] The words used by the Defendant clearly disparaged the Claimant in his professional life. In a defamation action for libel, the law presumes that damage has been caused to a person's reputation and a claimant will be awarded damages.¹¹ However, an award of compensatory damages is in part meant to vindicate a Claimant for damage to his reputation. The court therefore has to consider the extent of the damage to the Claimant's reputation.

[71] Learned King's Counsel for the Claimant submitted that the offending publications have placed a serious blemish on the reputation of the Claimant. He submitted that it raised several issues among members of the public, touching and concerning the Claimant's honesty and integrity. In publishing the offensive words,

¹¹ See: *Myrna Liburd v Lorna Hunkins* at para. 39.

the learned King's Counsel submitted that the Defendant has sought to elevate himself and his influence by promoting the fact that he is the son of a former Dominican Prime Minister and that he is a legal practitioner in Australia. He submitted that the offending publications are permanently housed on the World Wide Web, accessible not just over the last six years but will be accessible for many years to come. He argued that defamation on the Web cannot be recalled or retracted, and that the Defamation is available for viewing as long as the World Wide Web exists.

[72] The Court notes that the Claimant did not file witness statements by any other person and it is only the Claimant's own evidence that is before the court. Whilst the Claimant's evidence shows that persons expressed concern to him about the potential damage to his reputation by the Defendant's statements there was no evidence as to the extent of the damage to his reputation. However, it must be kept in mind that the law will presume damage to the Claimant's reputation for libel.

[73] In **Jenny Lindsay v Harriett Carty**, Baptiste JA noted the following:

"[10] An award of damages in defamation is required to serve one or more, and usually all, of three interlocking purposes of compensation: damage to reputation; vindication of good name; and the taking account of the distress, hurt and humiliation caused by the defamatory publication:

"These distinct features apply to every defamation case, but the emphasis to be placed on each will vary from case to case. Sometimes, for example, there may be very little demonstrable damage to reputation, but serious emotional distress; on other occasions, the need for public vindication will predominate; in yet other cases the financial consequences of damage to the reputation of the individual may represent the most serious feature."⁵ (See Lord Neuberger in Cairns and Modi; *KC v MGN Limited* [2012] EWCA Civ 1382, at paragraph 22).

[74] Baptiste JA went on to cite¹² passages from the English decision in **Sir Kevin Barron MP v Vines**¹³ where Warby J explained that the existence and scale of any harm to reputation may be established by evidence or it may be inferred and that the impact on a person's reputation can be affected by various factors

¹² At para. 11.

¹³ [2016] EWHC 1226 (QB).

including the extent to which the publisher of the defamatory statements is authoritative or credible i.e. whether they may be well placed to know the facts or whether they appear to be an unreliable source; whether the defamatory words were published to friends or colleagues which may be more harmful or hurtful; and the propensity for defamatory statements to percolate freely, especially on the internet.

[75] The Claimant's name was certainly trampled by the allegations made against him. These were statements circulated within the legal community that the Claimant operates and were published to the media for internet consumption by the general public. The Claimant would undoubtedly have suffered some damage to his reputation as a result of the defamatory statements. It is also evident based on the Claimant's evidence that he suffered humiliation and injury to his feelings and fear as a result of the defamatory remarks. The allegations distressed the Claimant. Every time he had to take calls and respond to messages from persons and answer questions about the allegations, the Claimant would have felt embarrassment and humiliation. This is clearly evident from his account of the apprehension and concern he had about travelling to Trinidad and Tobago after the defamatory allegations were published and the fear of potentially being arrested and the questions and messages he had to respond to.

[76] The Claimant also had to deal with inquiries from friends and colleagues about the allegations and repeatedly had to address the situation. This would undoubtedly cause the Claimant to feel embarrassed. The Claimant's otherwise good name therefore has to be vindicated because of the Defendant's defamatory remarks.

Award of General Damages

[77] Having set out the above matters that the Court should consider in assessing damages, I will now go on to consider the quantum of damages that the Claimant should be awarded, guided by defamation awards in comparable cases.

[78] Learned King's Counsel for the Claimant has proposed that the Court make an award to the Claimant of \$600,000.00 inclusive of aggravated and exemplary damages.

[79] In arriving at an award of general damages to the Claimant, the Court, as far as possible, ought to be guided by comparable cases from the Organisation of Eastern Caribbean States (OECS) over which the Eastern Caribbean Supreme Court's jurisdiction extends. These cases would emanate from Member States and Territories with broadly similar socio-economic conditions thus rendering them more comparable.¹⁴ Where comparable cases are not available, the Court may consider cases emanating from other Caribbean jurisdictions preferably and further afield if necessary.

[80] Learned King's counsel for the Claimant referred the Court to five cases to consider comparable award, two from the OECS, one from Jamaica and two from Trinidad and Tobago:

- (1) **Dr. Patrick Antoine v Grenada Today Limited et al:**¹⁵ This is a decision from Grenada. Learned King's Counsel for the Claimant submitted that in this case, the Court awarded the claimant damages in the sum of \$575,000.00 plus costs and interest and of that sum, EC\$180,000.00 constituted aggravated damages and EC\$120,000.00 exemplary damages. Unfortunately, a copy of the judgment in this matter was not provided to the Court by the Claimant, and it was not part of his authorities bundle, and the Court's own efforts to obtain a copy of the decision or official record were unsuccessful. The Court has therefore been unable to read and consider the facts and circumstances of the case to assess how comparable it is to the present case.

¹⁴ See *Edwardo G. Lynch v Ralph Gonsalves SVGHCVAP2009/0002 consolidated with BDA Limited v Ralph Gonsalves SVGHCVAP2009/004* at para. 64

¹⁵ *GDAHCV2009/0346*.

- (2) **Marina Marshall v Lenisha Augustine et al:**¹⁶ The claimant was a contestant in the Miss Dominica Carnival Pageant and was employed with the local electricity company. The defendants published a derogatory email about the claimant containing an attachment depicting a woman in a sexually explicit position and the claimant's profile was superimposed or posted onto the original photograph. The email and attachments were widely circulated on the internet and was the subject of comment on one of the radio stations in Dominica. As a result of the publicity the claimant withdrew from the Dominica Carnival Queen Pageant. The claimant was also subsequently dismissed from her job. The Court found that the dissemination of the email and attachments on the internet were sufficient publication to ground the claimant's action in defamation. The court further found that the email and attachments were defamatory to the claimant and that the claimant had been outrageously defamed. The court found that the claimant's career had been affected in a drastic fashion. The court also accepted the claimant's evidence that she became introverted and feared appearing in public after she was defamed. The court found that her suffering lasted for years. The court considered that per defendant average damages of \$175,000.00 was an appropriate award to the claimant but took the view that a joint and several award of \$525,000.00 should be made against the three defendants. The court's award to the claimant was broken down as general damages of \$225,000.00, aggravated damages of \$180,000.00 and exemplary damages of \$120,000.00.
- (3) **The Gleaner Co Ltd and another v Abrahams:**¹⁷ The Judicial Committee of the Privy Council dismissed an appeal by a newspaper publisher and his editor-in-chief against the decision of the Court of Appeal in Jamaica to award the plaintiff libel damages in the sum of JM\$35 million dollars or just over EC\$600,000.00. The Board felt that there is a deterrent role to be played by damages in defamation

¹⁶ DOMHCV1001/0318 heard together with Marina Marshall v Georgette George et al DOMHCV2001/0319 (delivered 23rd September 2009, unreported).

¹⁷ [2003] UKPC 55.

actions. As a result of the defamatory statements made against the claimant, the claimant was universally treated with hostility and contempt, no one would do business with him and he became depressed, withdrawn and prone to weep. The Board considered that the Court of Appeal had been entitled to take the view that in such circumstances that if the amount awarded had a chilling effect upon the kind of conduct displayed, it would be no bad thing

- (4) **Dinanatha Ramnarine v Rafi Ali**:¹⁸ The court awarded the claimant the sum of TT\$831,823.65 or EC\$328,919.64 as damages for defamation.
- (5) **Davlin Thomas v Naresh Siewah**: the Trinidad and Tobago court awarded damages to the claimant the CEO of the North Central Regional Health Authority in the sum of TT\$900,000.00 comprising general and aggravated damages totalling TT\$800,000.00, and exemplary damages of TT\$100,000.00 equivalent to about EC\$358,943.26

[81] As attractive as the cases from Trinidad and Tobago and Jamaica may be to the Claimant, no doubt because of the relatively high awards, the Court will nonetheless focus its attention on awards emanating from OECS. I am guided by the pronouncements of Edwards JA in **Edwardo Lynch v Ralph Gonsalves** in this regard:

“[64] I accept the submissions of Mr. John that in determining the quantum of damages to be awarded it was preferable for the master to consider parallel awards for aggravated general damages in our jurisdiction since the circumstances relevant to the social and economic conditions in the islands of the OECS are relevant and critical in assessing such damages. Mr. John complains that the master was influenced by the awards made in cases from Trinidad and Tobago and Jamaica in deciding on the quantum of damages.

[65] The courts in the OECS have awarded damages to several heads of government over the years in defamation suits brought by them for damage to their reputation because of defamatory statements made by others.”

¹⁸ Claim no. CV2019-05233.

- [82] If, however, as I have stated previously, comparable cases are not available, then cases from other commonwealth Caribbean countries can be sourced where the history, culture and socio-economic background are similar in some respects to the OECS.¹⁹
- [83] The Court is mindful that the Claimant is not a head of government or a government official, however, he is a former public official and is an attorney-at-law and academic of regional stature who remains in the public eye. The Claimant is a private citizen, but with a raised, public profile in Grenada and the OECS.
- [84] The Court has therefore considered other cases from the OECS that were referred to in the written submissions by learned King's Counsel for the Claimant and cases that were referred to in those cases. The Court has also considered a recent decision of the Court of Appeal emanating from the Commonwealth of Dominica.
- [85] In the seminal case of **Edwardo Lynch v Ralph Gonsalves**, the appellant, one of the defendants in the court below, hosted a political radio programme sponsored by the opposition party in St Vincent and the Grenadines. The appellant published certain defamatory words about the respondent, the Prime Minister of St. Vincent and the Grenadines, who was the claimant in the court below. The defamatory statements alleged that the respondent allowed money from the State's consolidated fund to be used in the purchasing of tickets for his mother and daughter to travel to Rome to see the Pope. The respondent commenced proceedings against the defendants for damages for slander. The appellants' defences were struck out. On an assessment of damages the master ordered each defendant to pay the claimant assessed damages in the sum of \$160,000.00, inclusive of aggravated damages. The Court of Appeal reduced the lower court's award on an assessment of damages from \$160,000.00 to \$140,000.00 on account of errors made by the lower court concerning the extent of the publication and the effect of the slander on the reputation of the Defendant. The court was therefore of the view that those errors had to be registered in a reduction of the amount awarded for injury to his reputation. The Court of Appeal was also of the

¹⁹ Mathias Peltier et al v Matthew Leblanc et al DOMHCV2020/0006 (delivered 18th April 2024, unreported).

view that the court below erred in making separate awards for each of the appellants and that the respondent was entitled to receive a sum representing the damage that he suffered from a single wrong inflicted by both defendants. Therefore, the Court of Appeal ordered that the award of general damages of \$140,000.00 to the respondent to be paid by both defendants who were joint tortfeasors.

[86] In **Keith Mitchell v Steve Fassihi et al**,²⁰ the 1st respondent, the 1st defendant in the court below, wrote an article making certain defamatory remarks concerning the appellant, the claimant in the court below, who was then Prime Minister of Grenada. The article was published by the third respondent in the Grenada Today newspaper. The claimant commenced proceedings against the defendants and no defence was filed by the defendants nor was there ever any apology or retraction. Judgment in default of defence was entered for the claimant with damages to be assessed. The master awarded the appellant the sum of \$100,000.00 as general damages including aggravated damages but refused an award of exemplary damages. The appellant appealed the award of general damages and the master's refusal to award exemplary damages. The Court of Appeal noted that the defendants had failed to file a defence or evidence on damages and in the circumstances it was reasonable to conclude that the defendants had not even a scintilla of proof of the statements, further, the defendant offered no apology. The Court of Appeal found that such conduct came dangerously close to "outrageous" but considered that the defendants had gone even further by printing the same libel in a second and subsequent issue of the Grenada Today Newspaper. The Court of Appeal felt that it was clear and proper inference that the respondents were contemptuous of any sanction that the law might provide and was of the view that compensatory damages, even augmented by an element of aggravation was an inadequate remedy in the case. The Court of Appeal found that it was one of those exemplary exceptional cases where it was appropriate to make an award of exemplary damages. Whilst the Court of Appeal affirmed the award of \$100,000.00 for general damages, it allowed the

²⁰ Grenada Civil Appeal No. 22 of 2003 (delivered 22nd November 2004, unreported).

appeal against' s the master's failure to award exemplary damages and awarded the appellant the sum of \$50,000.00 exemplary damages.

[87] In **France and another v Simmonds**,²¹ the Prime Minister, the respondent to the appeal, instituted libel proceedings against the appellants in relation to an article written by the second appellant which on the face of it appeared to be stating that the Prime Minister had been guilty of corruption in relation to the transactions involving ferry vessels. The appellants were found liable following trial. The High Court judge awarded the respondent damages in the sum of \$75,000.00. The award was upheld on appeal to both the Court of Appeal and the Judicial Committee of the Privy Council.

[88] The recent decision of the Court of Appeal in **Mathias Peltier et al v Matthew LeBlanc**,²² which did not form part of the Claimant's submissions, also offers guidance for a comparable award. The appellants, the defendants in the court below, broadcast and published alleged defamatory statements made by a certain person concerning the respondent, the claimant in the court below. The said alleged defamatory statements alleged that the respondent used his office for financial gain and was engaged in certain unethical conduct. At the time, the respondent served as a Labour Commissioner in the Division of Labour and Immigration, Ministry of Justice, Immigration and National Security of the Government of the Commonwealth of Dominica. The respondents counsel wrote to the appellants counsel seeking a retraction of the allegations, an apology and an undertaking not to further broadcast the defamatory statements. The 1st appellant publicly acknowledged receipt of the letter but instead of retracting the statements, the appellants rebroadcast the defamatory words. The respondent commenced proceedings against the appellants seeking damages including aggravated and/or exemplary damages for libel or alternatively slander for the words broadcast. The appellants failed to file a defence to the respondents claim and judgment in default of defence was entered for the respondent.

²¹ (1990) 38 WIR 172.

²² DOMHCVAP2020/0006 (delivered 18th April 2024, unreported).

[89] At the assessment of damages the master proceeded on the basis that the issue of liability was concluded and assessed the damages on the respondent's claim. The master found that the allegations seriously undermined the integrity of the office held by the respondent and brought the respondent's character and professional reputation into disrepute. He found that the broadcast was of wide circulation and that the respondent's evidence was that he was embarrassed and seriously affected by the slander of his reputation. The master awarded the respondent \$120,000.00 in general and aggravated damages. Although the Court of Appeal commented that the award to the respondent was on the higher side, the Court of Appeal dismissed the appellants' appeal and affirmed the master's award to the respondent.

[90] I have read and considered all of the above cases. I note that in the **Marina Marshall** decision there were multiple defendants, and two claims were consolidated or heard together. I also note the reasoning of the Court as to how it arrived at the relatively high award to the Claimant in that case on the facts of that case.

[91] Turning back to the present case. Serious, unsubstantiated, allegations of criminal misconduct and bribery were made by the Defendant in the Offending Publications. The Defendant caused the statements to be published not only to regional and international police forces, but also to lawyers, court staff and the judiciary, persons who are the Claimant's professional colleagues. The Defendant also intended and caused the statements to be published on the internet via online news media to the public at large. The Claimant had an impeccable professional and personal reputation, and is a prominent public figure locally and regionally. The defamatory statements were intended to damage the Claimant's reputation and diminish his standing in society. The Claimant suffered embarrassment and humiliation.

[92] The Court has also recognized that damage to the Claimant's reputation by the Defendant's defamatory statement is presumed. The libelous allegation made by the Defendant involved the commission of a criminal offence. The Court is

cognisant that damage to the Claimant's reputation would have been increased by the Defendant's conduct.

- [93] The Claimant, whilst not a government official or politician, has a high profile and as was reiterated by the Court of **Edwardo Lynch v Ralph Gonsalves**,²³ it is well-settled that those who have high and distinguished profiles should receive a higher ward than a person similarly defamed with a lesser profile. Additionally, the Claimant, not being a politician or government official at the material time, his reputation would be more vulnerable to unfounded attacks and would not be expected to be as resilient in the face of public attacks and would likely be more sensitive to those attacks.

Mitigation of Damages

- [94] On the assessment of damages, it was open to the Defendant to seek to mitigate any award of damages to the Claimant. In **Edwardo Lynch v Ralph Gonsalves**,²⁴ Edwards JA stated:

“It is permissible at common law for a defendant to seek to mitigate the damages which may be awarded against him, by proving circumstances which show that he did not act with deliberate malice. A defendant may prove facts in mitigation of damages without pleading such facts.”

- [95] No defence was filed by the Defendant to the Claimant's claim and no evidence was filed by him for the assessment of damages as ordered by a judge. Even though the Defendant filed written submissions out of time without the leave of the court and those written submissions are accordingly not properly before the court, in my view, nothing contained in those submissions mitigate any award of damages to the Claimant. The Defendant has not tendered or offered any apologies for the defamatory statements made about the Claimant. Having considered all the material placed before the Court for the assessment of damages, I am unable to discern any mitigating features which could be taken into account in mitigating an award of damages to the Claimant.

²³ At para. 60.

²⁴ At para. 16.

Aggravated Damages

[96] General damages may be increased where there is an element of aggravation considering all the relevant factors of the case. In **Edwardo Lynch v Ralph Gonsalves**, Edwards JA noted:

“General damages may be aggravated by evidence of the circumstances of the publication, of the conduct of the defendant with reference thereto, and of the effect which it has actually produced.”²⁵

[97] In **Jenny Lindsay et al v Harriet Carty**, Baptiste JA put it thus:

“[41] Aggravated damages are awarded for a tort as compensation for the complainant’s mental distress, where the manner in which the defendant has committed the tort or his motives in so doing, or his conduct subsequent to the tort, has upset or outraged the claimant. Such conduct or motive aggravates the injury done to the claimant, and therefore warrants a greater or additional compensatory sum.²¹(Per Lewison LJ in *Phonographic Performance Limited and Andrew Ellis Trading* [2018] EWCA Civ 2812 at paragraph 11.)”

[98] In considering whether to make an award under this head I will bear in mind the conduct of the Defendant, his conduct of the case as well as his state of mind.

[99] The Claimant pleaded the facts to ground his claim his claim for aggravated and exemplary damages at paragraph 17 of his statement of claim, and in his witness statement and the various affidavits incorporated into the witness statement, he has sought to evidence those facts.

[100] The Claimant commenced these proceedings against the Defendant in November 2017. Despite being duly served with the claim, the Defendant failed to file an acknowledgement of service or defence. In fact, he did not seek to do so until after the Claimant made an application for judgment in default of defence in November 2022.

[101] The Court also takes cognisance of the fact that that in response to the Claimant’s pre-action protocol letter of 27th October 2017, the Defendant refused to apologise

²⁵ At para. 11.

and retract his offending publications and instead repeated and sought to justify his defamatory remarks without a basis for doing so.

[102] The Claimant's lawyer again wrote to the Defendant by letters dated 31st October and 2nd November 2017 and the Defendant responded to those letters with similar allegations against the Claimant as his first response.

[103] The Defendant deliberately gave attention to the offending statements and publicized his refusal to apologize and thus continued to seek to disparage the Claimant and trample his reputation.

[104] In his particulars of aggravated and special damages, the Claimant pleaded that the motives of the Defendant in making the defamatory allegation were purely malicious and vindictive and part of an overall plan to discredit the CCJ for ruling against him in certain proceedings brought before the CCJ. In his affidavit in support of his application for an interim injunction, which was incorporated into his witness statement, the Claimant states that the Defendant's defamatory allegations against him were made by the Defendant in retaliation against him for publicly rejecting the Defendants attacks on the former President of the CCJ, following a ruling by the CCJ.

[105] Considering all the above matter, I am of the view there are aggravating circumstances in this case which warrant an award of aggravated damages in to increase the award of general damages to the Claimant.

Conclusion on Award of General and Aggravated Damages

[106] I have considered all the circumstances of this case, the nature and gravity of the allegations made against the Claimant, the Claimant's reputation, the extent of the publication, the effect of the publication including the effect on the Claimant's reputation and the hurt and injury to the Claimant's feelings, the Defendant's conduct and his motives for making the defamatory statement. I have considered whether there are any mitigating and aggravating features in the case. I have also considered the comparable cases referred to above. I note that the cases mainly involved politicians/government official who as was alluded to by Michel J in

Edmond Mansoor v Eugene Scott,²⁶ would be expected to be less sensitive to allegations being levelled against them publicly. The Claimant however is a private citizen, albeit with a public profile. I am also of the view that the circumstances of this case, taken as a whole, are more serious than the cases from the OECS that have been referred to. Having given careful consideration to the foregoing, I am of the view that the Claimant should be awarded general damages of \$225,000.00 inclusive of aggravated damages of \$50,000.00.

Exemplary Damages

[107] The Claimant also seeks exemplary damages. Learned King's Counsel for the Claimant, relying on the case of **John v MGM Limited**, submitted that it has been held that principle requires that an award of exemplary damages should never exceed the minimum sum necessary to meet the public purpose underlying such damages, that of punishing the defendant, showing that tort does not pay and deterring others.

[108] In the case of **Keith Mitchell v Steve Fassihi et al**, Gordon JA discussed in detail the principles guiding an award of exceptional damages. His Lordship cited with approval²⁷ the principles guiding an award of exemplary damages as discussed in the **A v Bottrill**,²⁸ a judgment of the Judicial Committee of the Privy Council.

[109] I will set out the relevant paragraphs from **Keith Mitchell v Steve Fassihi et al** where Gordon JA quoted and discussed the Board's judgment in **A v Bottrill**:

"At paragraph 20 of the judgment of Lord Nicholls of Birkenhead he says the following:

"20 The starting point for any discussion of the limits of the court's jurisdiction to award exemplary damages is to identify the rationale of the jurisdiction. This is not in doubt, although different forms of words have been used, each with its own shades of meaning. For present purposes the essence of the rationale can be sufficiently encapsulated as follows. In the ordinary course the appropriate response of a court to the commission of a tort is to require the wrongdoer to make good the wronged person's loss, so far as a payment of money can achieve this. In appropriate circumstances this may include

²⁶ ANUHCV2010/0209 (delivered 1st March 2012, unreported).

²⁷ At paras. 15 to 16.

²⁸ [2003] 3 WLR 1406.

aggravated damages. Exceptionally, a defendant's conduct in committing a civil wrong is so outrageous that an order for payment of compensation is not an adequate response. Something more is needed from the court, to demonstrate that such conduct is altogether unacceptable to society. Then the wrongdoer may be ordered to make a further payment, by way of condemnation and punishment."

It is to be noted that the learned Law Lord focuses on the word "outrageous". Subsequently in the judgment he continues:

"22 In principle the limits of the Court's jurisdiction to award exemplary damages can be expected to be co-extensive with this broad-based rationale. The court's jurisdiction may be expected to extend to all cases of tortious wrongdoing where the defendant's behaviour satisfies this criterion of outrageousness...

"23 The next point to note is that, in the nature of things, cases satisfying the test of outrageousness will usually involve intentional wrongdoing with, additionally, an element of flagrancy or cynicism or oppression or the like: something additional, rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling. It is these features that make the defendant's conduct outrageous."

[16] What I derive from the above cases is that the narrow requirement that a defendant must contemplate a profit exceeding the likely damages to be assessed against him has been considerably widened. I believe that the law being applied, the Common Law, notwithstanding that the case derived from New Zealand, is the same law as applies in our jurisdiction and I so hold."

[110] Applying these principles to the facts of the case, I consider that the Defendant's failure to acknowledge service of the Claimant's claim and to file a defence and his refusal to offer an apology even after being written to, were aggravating factors in the present case which have already been considered in making an award of aggravated damages to the Claimant. However, the Defendant's persistence in repeating the defamatory statements, his attempts to justify his statements, his blatant breach of the interim injunction granted by the court and the evidence of his persistence and continued conduct of repeating the defamatory allegations even after the court concluded the assessment of damages hearing but before the court issued its ruling, in my view make his conduct outrageous. The Defendant has clearly demonstrated that he is unbothered by any sanction the law may provide.

[111] Exemplary damages are appropriate where a mere compensatory award is insufficient to punish a defendant for their outrageous conduct. The award of exemplary damages is to mark the disapproval of the conduct and deter the defendant from repeating it. In my view, compensatory damages even if increased by aggravated damages is inadequate in this present case.

[112] Having considered the circumstances of this case and the Defendant's conduct, I am of the view that this is such a case that warrants an award of exemplary damages. I bear in mind that such an award should not exceed the minimum necessary to meet the public purpose of such damages, punishing the defendant and demonstrating that tort does not pay.²⁹ In my view, the Defendant's conduct in this case is much more outrageous and egregious than the Defendants in **Keith Mitchell v Steve Fassihi et al.** The award in **Keith Mitchell v Steve Fassihi et al** was also made close to 20 years ago. The award of exemplary damages in this case must meet its purpose of marking the disdain for the Defendant's conduct and deterring such future conduct, accordingly, a higher award is therefore justified.

[113] I would therefore award the Claimant the sum of \$100,000.00 as exemplary damages.

Interest

[114] Interest on the judgment debt shall be at the statutory rate of 6% per annum until payment in full.

Costs

[115] The Claimant is entitled to 60% of prescribed costs on the global award of \$325,000.00 in accordance with rule 65.5 of the **Civil Procedure Rules (Revised Edition) 2023** ("CPR") and CPR Part 65, appendices B and C, in the sum of \$26,250.00.

²⁹ John v MGN Ltd.

Disposition

[116] In light of the foregoing the Defendant shall pay the Claimant the following:

- (1) General damages in the sum of \$225,000.00 inclusive of \$50,000.00 in aggravated damages.
- (2) Exemplary damages in the sum of \$100,000.00
- (3) Interest on the global award of \$325,000.00 at the statutory rate of 6% per annum from the date of this order, until payment in full.
- (4) 60% of prescribed costs on the global award of \$325,000.00 in the sum of \$26,250.00.

[117] I wish to thank learned King's Counsel and learned counsel for the Claimant for their helpful oral and written submissions.

Carlos Cameron Michel
Master

By the Court

Registrar